



Hawkesbury City Council

ordinary
meeting
business
paper

date of meeting: 13 December 2016

location: council chambers

time: 6:30 p.m.



mission statement

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

How Council Operates

Hawkesbury City Council supports and encourages the involvement and participation of local residents in issues that affect the City.

The 12 Councillors who represent Hawkesbury City Council are elected at Local Government elections, held every four years. Voting at these elections is compulsory for residents who are aged 18 years and over and who reside permanently in the City.

Ordinary Meetings of Council are generally held on the second Tuesday of each month (except January), and the last Tuesday of each month (except December), meeting dates are listed on Council's website. The meetings start at 6:30pm and are scheduled to conclude by 11pm. These meetings are open to the public.

When an Extraordinary Meeting of Council is held, it will usually also be held on a Tuesday and start at 6:30pm. These meetings are also open to the public.

Meeting Procedure

The Mayor is Chairperson of the meeting.

The business paper contains the agenda and information on the items to be dealt with at the meeting. Matters before the Council will be dealt with by an exception process. This involves Councillors advising the General Manager by 3pm on the day of the meeting, of those items they wish to discuss. A list of items for discussion will be displayed at the meeting for the public to view.

At the appropriate stage of the meeting, the Chairperson will move for all those items which have not been listed for discussion (or have registered speakers from the public) to be adopted on block. The meeting then will proceed to deal with each item listed for discussion and decision.

Public Participation

Members of the public can register to speak on any items in the business paper other than the Confirmation of Minutes; Mayoral Minutes; Responses to Questions from Previous Meeting; Notices of Motion (including Rescission Motions); Mayoral Elections; Deputy Mayoral Elections; Committee Elections and Annual Committee Reports. To register, you must lodge an application form with Council prior to 3pm on the day of the meeting. The application form is available on Council's website, from the Customer Service Unit or by contacting the Manager - Corporate Services and Governance on (02) 4560 4444 or by email at council@hawkesbury.nsw.gov.au

The Mayor will invite registered persons to address the Council when the relevant item is being considered. Speakers have a maximum of three minutes to present their views. The Code of Meeting Practice allows for three speakers 'For' a recommendation (i.e. in support), and three speakers 'Against' a recommendation (i.e. in opposition).

Speakers representing an organisation or group must provide written consent from the identified organisation or group (to speak on its behalf) when registering to speak, specifically by way of letter to the General Manager within the registration timeframe.

All speakers must state their name, organisation if applicable (after producing written authorisation from that organisation) and their interest in the matter before speaking.

Voting

The motion for each item listed for discussion will be displayed for Councillors and public viewing, if it is different to the recommendation in the Business Paper. The Chair will then ask the Councillors to vote, generally by a show of hands or voices. Depending on the vote, a motion will be Carried (passed) or Lost.

Planning Decision

Under Section 375A of the Local Government Act 1993, voting for all Planning decisions must be recorded individually. Hence, the Chairperson will ask Councillors to vote with their electronic controls on planning items and the result will be displayed on a board located above the Minute Clerk. 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. This electronic voting system was an innovation in Australian Local Government pioneered by Hawkesbury City Council.

Business Papers

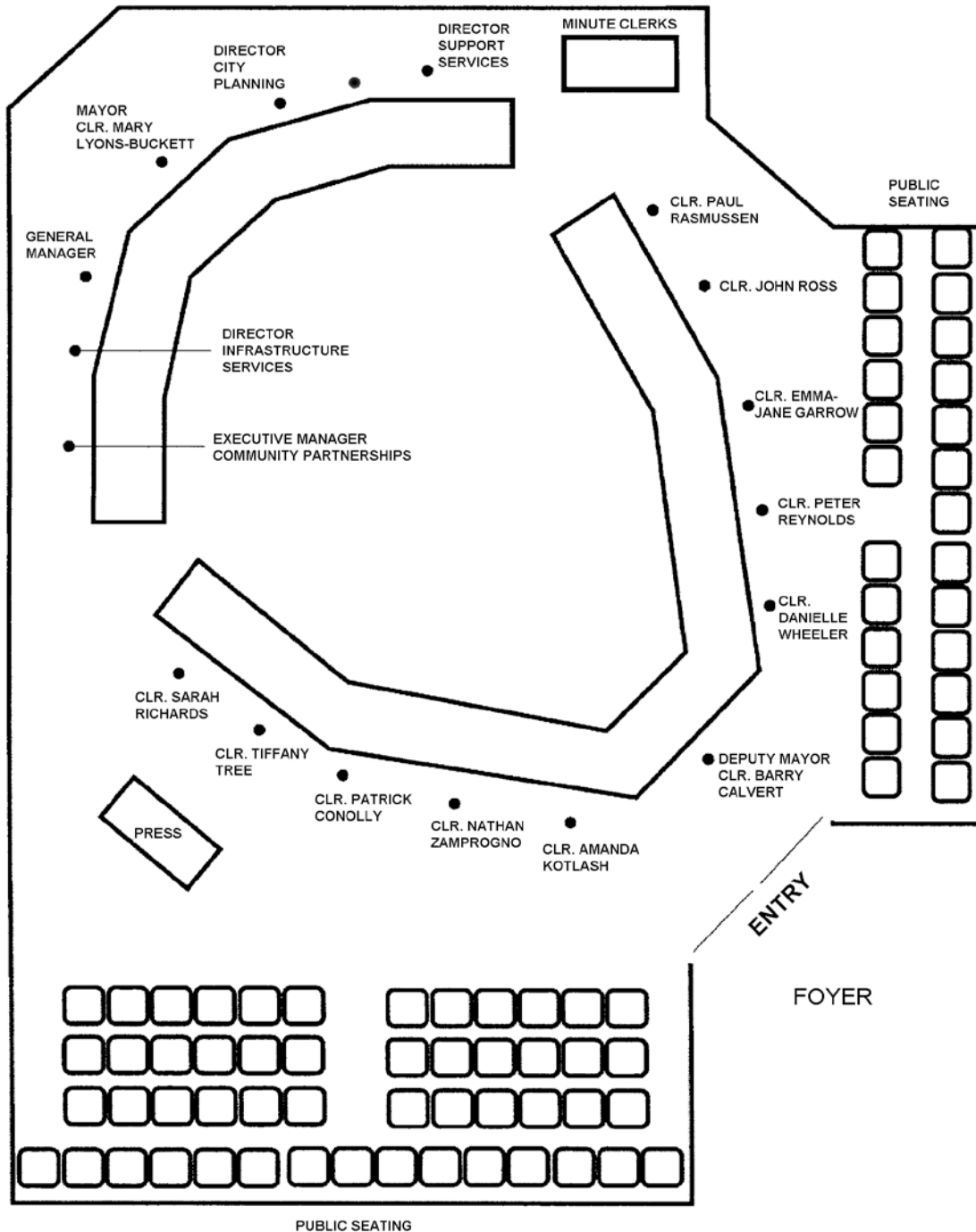
Business papers can be viewed online from noon on the Friday before the meeting on Council's website: <http://www.hawkesbury.nsw.gov.au>

Hard copies of the business paper can be viewed at Council's Administration Building and Libraries after 12 noon on the Friday before the meeting, and electronic copies are available on CD to the public after 12 noon from Council's Customer Service Unit. The business paper can also be viewed on the public computers in the foyer of Council's Administration Building.

Further Information

A guide to Council Meetings is available on the Council's website. If you require further information about meetings of Council, please contact the Manager, Corporate Services and Governance on, telephone (02) 4560 4444.

Hawkesbury City Council



ORDINARY MEETING

Table of Contents

Meeting Date: 13 December 2016

AGENDA

- **WELCOME**
 - Prayer**
 - Acknowledgement of Indigenous Heritage**
- **APOLOGIES AND LEAVE OF ABSENCE**
- **DECLARATION OF INTERESTS**
- **SECTION 1 - Confirmation of Minutes**
- **ACKNOWLEDGEMENT OF OFFICIAL VISITORS TO THE COUNCIL**
 - Hawkesbury Local Business Awards - Alpha Car Wash**
 - Natalie Burton Award - Kurtis Dodds Knott**
- **SECTION 2 - Mayoral Minutes**
- **EXCEPTION REPORT - Adoption of Items Not Identified for Discussion and Decision**
- **SECTION 3 - Reports for Determination**
 - Planning Decisions**
 - General Manager**
 - City Planning**
 - Infrastructure Services**
 - Support Services**
- **SECTION 4 - Reports of Committees**
- **SECTION 5 - Notices of Motion**
- **QUESTIONS FOR NEXT MEETING**
- **REPORTS TO BE DISCUSSED IN CONFIDENTIAL SESSION**

ORDINARY MEETING

Table of Contents

Meeting Date: 13 December 2016

ORDINARY MEETING**Table of Contents****Meeting Date:** 13 December 2016**TABLE OF CONTENTS**

ITEM	SUBJECT	PAGE
SECTION 1 - Confirmation of Minutes		3
SECTION 2 - Mayoral Minutes		7
MM1	Flood Planning in the Hawkesbury Local Government Area - (79351, 79353, 125612)	7
SECTION 3 - Reports for Determination		11
PLANNING DECISIONS		11
Item: 267	CP - DA0642/15 - 1029 St Albans Road, Lower Macdonald - Lot 1 DP 605179 - Function Centre and Tourist Accommodation - (94598, 115319, 91795)	11
Item: 268	CP - DA0685/15 - 64 Grandview Lane, Bowen Mountain - Postponement of report to January 2017 - (94598, 120744)	36
Item: 269	CP - Draft Voluntary Planning Agreement for Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond - Post Exhibition Report - (95498, 124414)	37
Item: 270	CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong - (95498, 124414)	56
Item: 271	CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 2A - 8 Hawkesbury Valley Way and 383 - 395 George Street, Windsor NSW 2756 - (95496, 124414)	85
GENERAL MANAGER		106
Item: 272	GM - Request for Sponsorship - EquiFest 2017 - (79351, 135945)	106
Item: 273	GM - Review of the Hawkesbury Community Strategic Plan 2013-2032 - (79351, 95498, 124414)	118
INFRASTRUCTURE SERVICES		120
Item: 274	IS - Establishment of a Committee to Discuss a Comprehensive Regional Traffic Study - (95495)	120
SECTION 5 - Notices of Motion		127
NM1	Support for Safe Schools Program - (79351, 105109, 138882)	127
NM2	Smoking Ceremony to Open Council Each Calendar Year - (79351, 105109, 138882)	129
NM3	Council Owned Solar Farm - Initial Investigations - (79351, 105109, 138881)	130

ORDINARY MEETING**Table of Contents****Meeting Date:** 13 December 2016

ITEM	SUBJECT	PAGE
NM4	Expediting of Council's Comprehensive Traffic Study - (79351, 105109, 138880)	131
RM1	LEP012/16 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 43 Bootles Lane, Pitt Town - (79351, 105109, 80093, 125610, 111627)	132
RM2	LEP002/14 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 1420 Kurmond Road, Kurmond - (79351, 105109, 138883, 80106, 138880)	133
QUESTIONS FOR NEXT MEETING		135
Councillor Questions from Previous Meetings and Responses - (79351)		135
CONFIDENTIAL REPORTS		137
MM2	Position of General Manager - (79351, 79353, 125612) CONFIDENTIAL	137
Item: 275	GM - Community Representation on Council Committees - (79351, 79356) CONFIDENTIAL	138
Item: 276	SS - Property Matter - 139 Colonial Drive and 85 Rifle Range Road, Bligh Park - (95496, 112106) CONFIDENTIAL	139
Item: 277	SS - Property Matter - Assignment of Lease - Shop 9 Wilberforce Shopping Centre - (95496, 112106, 96728, 113058) CONFIDENTIAL	140
Item: 278	SS - Property Matter - Lease to Optus Mobile Pty Ltd - Part of 111 Colonial Drive, Bligh Park - (95496, 112106, 137696, 109439) CONFIDENTIAL	141

ordinary

section 1

confirmation of minutes

ORDINARY MEETING
Confirmation of Minutes

ORDINARY MEETING
Confirmation of Minutes

SECTION 1 - Confirmation of Minutes

ORDINARY MEETING
Confirmation of Minutes

ordinary

section 2

mayoral minutes

ORDINARY MEETING

Mayoral Minutes

SECTION 2 - Mayoral Minutes**MM1 Flood Planning in the Hawkesbury Local Government Area - (79351, 79353, 125612)**

REPORT:

The Hawkesbury Local Government Area has its pedigree in the river and plains surrounding the Hawkesbury River. Much of the urban settlement and populated areas are located adjacent to the River or on the surrounding plains and foothills. Whilst this creates the character of the locality that is loved by the community, settlement adjacent to the river or on floodplains also introduces risks from flooding.

The NSW State Government Hawkesbury-Nepean Floodplain Review Taskforce (the Taskforce) has undertaken a comprehensive review over the past two years of the flood risks within the Hawkesbury-Nepean Valley and, whilst their full report has not yet been released by the State Government, the principal recommendations from their report have been released. These recommendations for phase one (2016-2020) included the following:

- establishing the Hawkesbury-Nepean Flood Risk Management Directorate to coordinate the implementation of the Strategy actions across the key state organisations and local councils
- developing and implementing a coordinated regional approach to flood risk land use, road and emergency planning
- better information for the community about flood risk
- improving evacuation road signage
- developing an improved forecasting model to better support evacuation planning and operations
- continuing ongoing improvements to flood emergency response and recovery arrangements
- completing business cases for the priority local evacuation road infrastructure upgrades to enable access to major evacuation routes
- completing the detailed design work, environmental impact assessment and consultation for planning approval and full business case for raising Warragamba Dam by around 14 metres.

It is clear that Council will need to work closely with Infrastructure NSW in the implementation of the above recommendations as, and when, that work commences. In the meantime, Council should not be complacent about the risks that our community face from flooding.

On 11 December 2012, Council adopted the Hawkesbury Floodplain Risk Management Study & Plan (the Plan). This Plan identifies seven action areas relating to education, emergency management, future development advice, suggested planning control changes, two feasibility mitigation investigations and identified the need for further flood studies. This Plan was also an important work that informed the Taskforce review and is well regarded in the industry.

However, Council's resolution to adopt this Plan specifically excluded the adoption of the recommendation to investigate changes to Town Planning issues and the planning controls. This area is the most relevant to Council and the safety of the community. Unlike the majority of the other recommendations in the Plan or the above Taskforce recommendations, this work is primarily the responsibility of Council.

Council currently has the Development of Flood Liable Land Policy in place. This Policy was adopted by Council on 31 July 2012 and commenced upon the gazettal of the Hawkesbury Local Environmental Plan 2012 (LEP 2012). The Policy was a conversion of the flood planning Clause (CI 25) from the previous LEP 1989 and was intended to be temporary until "other planning documents" were finalised to support the implementation of the current Flood Clause 6.3 in LEP 2012. The primary "other planning document" that would assist development assessment under Clause 6.3 is the Hawkesbury Floodplain Risk Management Study and Plan.

ORDINARY MEETING

Mayoral Minutes

Given the above and the fact that almost four years have passed waiting for action by other tiers of Government, it is proposed that Council receive a report on the implementation of Item 4 – Town Planning of the Hawkesbury Floodplain Risk Management Study and Plan and in the interim the current Policy be reviewed to assist in the assessment and consideration of development in flood liable areas.

RECOMMENDATION:

That:

1. As a matter of priority, a report be prepared for Council consideration on the implementation of Item 4 – Town Planning of the Hawkesbury Floodplain Risk Management Study and Plan December 2012. This report is to address the timeframe for implementation and the implications of implementing the Town Planning and Land Use actions recommended in that Plan.
2. As an interim action to point one, Council immediately commence a review of the Development of Flood Liable Land Policy of Council with a view to update the Policy so that it more adequately addresses a broad range of development types and more clearly expresses suitable and unsuitable development on flood liable land.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF MAYORAL MINUTE Oooo

ordinary

section

3

reports
for determination

ORDINARY MEETING

Meeting Date: 13 December 2016

ORDINARY MEETING

Meeting Date: 13 December 2016

SECTION 3 - Reports for Determination

PLANNING DECISIONS

Item: 267 **CP - DA0642/15 - 1029 St Albans Road, Lower Macdonald - Lot 1 DP 605179 - Function Centre and Tourist Accommodation - (94598, 115319, 91795)**

Development Information

File Number: DA0642/15
Property Address: 1029 St Albans Road, Lower Macdonald
Applicant: Mr S Kavanagh
Owner: BP & S Pty Ltd
Proposal Details: Function Centre and Tourist and Visitor Accommodation – Retrospective – The extension of a car park and the use of the premises as a function centre and tourist and visitor accommodation
Estimated Cost: \$25,000
Zone: E4 Environmental Living
Date Received: 16 October 2015
Advertising: 11 to 29 March 2016

Key Issues:

- ◆ Categorisation and Permissibility
- ◆ Traffic and Parking impacts
- ◆ Amenity impacts

Recommendation: Approval

REPORT:

Executive Summary

This application seeks Council approval for the extension of a car park and the retrospective approval for the use of the former St Joseph's Catholic Church at 1029 St Albans Road, Lower Macdonald, as a function centre and tourist and visitor accommodation.

The heritage listed building is currently being used as a function centre and guesthouse without the required Council approvals. In particular the property is being used to hold wedding ceremonies and receptions, with current bookings for the function centre extending into the new year.

Documentation supplied in support of the application indicates that the function centre is to cater for approximately 100 patrons and will operate between 8am and 10pm Friday to Sunday and between 8am and 8pm Monday to Thursday. Typically the applicant suggests that wedding ceremonies and receptions will be held on Saturdays from 4pm to 10pm. The tourist and visitor accommodation component of the development may accommodate up to 10 guests seven days a week.

It is evident that the owner of the property has to this point operated the function centre with little to no regard for his neighbours. Submissions received from three neighbours state that the current operation of the function centre generates significant noise, parking and traffic impacts for the locality. There have also been complaints that visitors to the site have been camping and parking on the neighbouring property at 937 St Albans Road, Lower Macdonald.

ORDINARY MEETING

Meeting Date: 13 December 2016

Function centres are typically prohibited within the E4 Environmental Living zone however the application seeks to rely on the 'conservation incentives' clause of the Hawkesbury Local Environmental Plan (LEP) 2012 for permissibility. In this regard the Applicant has already undertaken significant works to restore the former church building and the operation of a commercial venture will assist in the long-term maintenance of the building.

The application has been reviewed by Council staff and with the imposition of consent conditions to limit and control problems with the current operation of the function centre, the development is seen to be acceptable and is recommended for conditional approval. With the determination of the application it is further recommended that the matter be referred to Council's Regulatory Services – Compliance Section to ensure that appropriate action is taken with respect to the unauthorised activities that have been undertaken to this point.

The application is being reported to Council as this request was made during the term of the former Council.

Development Description

Pursuant to Section 78A(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's approval for the use of the premises as a function centre and tourist and visitor accommodation. Earthworks and an extension of the existing car park are also proposed to provide parking for 24 vehicles.

The subject property contains a sandstone former church that is identified as a local heritage item. The site also contains a car park and driveway with separate entrance and exit points. A cemetery associate with St Joseph's Catholic Church is located on both the subject property and the adjoining property at 937 St Albans Road, Lower Macdonald.

The building and property are currently being used to hold events and functions, as well as accommodate guests, without the consent of Council. The application therefore seeks retrospective approval for the function centre and tourist and visitor accommodation uses.

The Plan of Management submitted in support of the development indicates that the function centre will cater for up to 100 guests and operate within the following hours:

Friday to Sunday:	8am to 10pm
Monday to Thursday:	8am to 8pm.

The tourist and visitor accommodation within the former church building may cater for up to 10 guests seven days a week.

The Plan of Management indicates that the function centre may operate, dependent on booking demand, seven days per week. However, the supplied documentation suggests that one event or function will generally be held each week, with such events typically held on Saturdays from 4pm to 10pm.

Whilst the supplied documentation suggests the above hours and numbers, it should be noted that the website for the business suggests functions and events may extend past 11pm and that more than 100 people can be catered for. From the complaints received from neighbours it is clear that the function centre is not currently operating in accordance with their nominated details.

The documentation indicates that caterers will generally be used to prepare and cook meals offsite and bring meals to the site for service. A mini-bus will also be used to transport function centre guests between the site and local tourist accommodation facilities.

The property is zoned E4 Environmental Living and function centres are prohibited within this zone. This application therefore seeks to rely on Council's conservation incentives clause to permit the proposed function centre use (See LEP 2012 Clause5.10).

Background Chronology

- The application was lodged on 16 October 2015.
- Additional information regarding the permissibility of the function centre, noise impacts, effluent disposal, a Plan of Management and outstanding fees was requested by Council on 29 October 2015.
- Information was provided by the Applicant on 30 December 2015 and outstanding fees were paid 29 March 2016.
- The application was notified from 11 to 29 March 2016.
- Information regarding the management of the function centre and the installation of a noise limiting device within the building was provided on 30 March 2016.
- Additional information regarding the function centre use, noise impacts, parking impacts and the upgrading of the building was requested by Council on 21 June 2016.
- An onsite meeting between Council staff and the Applicant was held on 28 June 2016.
- Complaints that camping and the parking of vehicles were being undertaken on a neighbouring property were discussed with the Applicant on 9 August 2016.
- An Acoustic Report, Traffic Report and updated Plan of Management were provided by the Applicant on 17 August and 7 September 2016.
- Additional information regarding sight distances at the property access points was requested by Council on 12 September 2016.
- Information relating to access driveways and sight distances was provided by the Applicant on 16 September 2016.

Site and Locality Description

The subject property has frontage to St Albans Road and is located approximately 4.4km north of the ferry crossing at Wisemans Ferry. The land has an area of approximately 1.77ha and is legally known as Lot 1 in DP 605179.

The property contains the former St Joseph's Catholic Church building, a car park for four vehicles and a cemetery. The building and car park are located on a steep ridge above St Albans Road and the Macdonald River.

The building was most recently approved as a single dwelling house with Development Consent No. DA0459/09. Significant works were completed under this consent to restore the building.

Surrounding development generally consists of rural residential and agricultural properties.

Legislation, Policies, Procedures and Codes to which the matter relates

- Hawkesbury LEP 2012
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55)
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (SREP No. 20)
- Hawkesbury Development Control Plan (DCP) 2002

Section 79C Matters for Consideration

The development has been considered against the heads of consideration listed under Section 79C(1) of the EP&A Act.

(a)(i) Environmental Planning Instruments:***Hawkesbury Local Environmental Plan 2012***

The subject property is zoned E4 Environmental Living under the Hawkesbury LEP 2012.

ORDINARY MEETING

Meeting Date: 13 December 2016

The Hawkesbury LEP 2012's Dictionary provides the following definitions that are relevant to the development:

"tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility."

The building and its surrounds are currently being used as a guesthouse to accommodate up to 10 people and to hold functions and events for approximately 100 people. These uses fall under the definitions of 'tourist and visitor accommodation' and a 'function centre'.

Tourist and visitor accommodation is permissible whilst function centres are prohibited within the E4 Environmental Living zone.

The property is heritage-listed and contains the former St Joseph's Catholic Church. The church building dates from approximately 1843 and is listed as a local heritage item for historical and architectural reasons.

Clause 5.10(10) of the Hawkesbury LEP 2012 outlines Council "may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- "(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area."

Prior to the restoration work that was undertaken with Development Consent No. DA0459/09, the subject building appeared to be a ruin and in a state of disrepair. Indeed, the building is listed as 'ruins' under Schedule 5 of the Hawkesbury LEP 2012. The restoration works that have been undertaken by the Applicant have improved its appearance and rendered the building habitable.

Whilst significant conservation works are not proposed with the current application, it is considered that the past works have assisted in the conservation of the heritage item. Based on this past restoration and conservation work, it is considered that the Applicant should benefit from the use of the conservation incentives clause. The use of the property for a commercial purpose, in this instance a function centre, will not detract from the significance of the site and may allow for the ongoing maintenance and conservation of the heritage item. The approval of the otherwise prohibited function centre use would therefore facilitate the conservation of the heritage item.

The application is supported by documentation indicating that the activity can be carried out in a manner that would not permanently compromise the character of the locality or result in significant amenity impacts for neighbouring land uses. The application has been reviewed by Council staff and with the imposition of conditions to limit and control the current operation of the function centre, the development is seen to be acceptable.

Council's Heritage Advisor is generally supportive of the application. It is considered that the development is consistent with and satisfies the conservation incentive provisions of the Hawkesbury LEP 2012.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The site exceeds 1ha in area and therefore triggers the requirements of SEPP No. 44. However, the area surrounding the former church building has previously been cleared and minimal clearing would be required to accommodate the proposed car park extension. Based on the extent and condition of the vegetation the works are not expected to significantly impact on potential or core koala habitat. The development is therefore considered satisfactory having regard to the provisions of this Policy.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of SEPP No. 55 outlines a consent authority "must not consent to the carrying out of any development on land unless:

- "(a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."

The property has a long history of use for religious purposes. Most recently the building has been used as a residence and an unauthorised function centre and tourist and visitor accommodation. There is no evidence to suggest that the previous uses of the land would have contaminated the land so as to prevent the proposed development. The land is therefore considered suitable for the development having regard to the provisions of SEPP No. 55.

State Environmental Planning Policy No. 64 – Advertising and Signage

Not applicable. The installation of signage is not proposed with this application.

The installation of any future signage will require the submission of a separate development application.

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

The subject property falls within the boundary of SREP No. 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 No. 20 requires an assessment of development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

The property has a rural setting and the development is unlikely to significantly impact upon the environment of the Hawkesbury-Nepean River in neither a local nor regional context.

(a)(ii) Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject land.

(a)(iii) Development Control Plans

Hawkesbury Development Control Plan 2002

The proposal has been considered against the provisions of the Hawkesbury DCP 2002:

Part A Chapter 3: Notification:

The proposal was notified from 11 to 29 March 2016 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. A total of three submissions were received in response to the notification of the application and are discussed later in this report.

Part C Chapter 2: Car Parking and Access:

Part C Chapter 2 of the Hawkesbury DCP 2002 outlines that car parking for reception centres and the like is to be provided at a rate of one space per 20m² of gross floor area (GFA) or one space per three seats, whichever is greater.

Based on an area – not GFA – of approximately 230m² for the building and alfresco area a total of 13 parking spaces would be required for the function centre, whilst based on 100 patrons (seats) a total of 34 parking spaces would be required under Section 2.5.2 of Part C Chapter 2 of the Hawkesbury DCP 2002.

A total of 24 marked parking spaces are proposed by the application to service the function centre (including guests of the tourist and visitor accommodation, which would satisfy the numerical requirements of the Hawkesbury DCP 2002 with respect to area but not patron numbers (seats).

The car parking numbers onsite are limited due to the topography and heritage values of the site. The provision of further parking areas may detract from the aesthetic qualities of the site. Numerical parking requirements must therefore be assessed practically and due consideration is to be given to the benefits of the development on local businesses and the community.

Council's engineering assessment has found that the parking for the function centre is not ideal, despite compliance with Council's numerical controls (based on area). To address the issue of parking the engineering assessment has suggested that a maximum 84 patrons be permitted to attend the function centre. This figure is based on an estimate of three people per vehicle and the use of a mini-bus.

Documentation supplied by the Applicant indicates that a minibus will be used to transport guests between the venue and local places of accommodation. Such buses may accommodate up to 12 people and, with appropriate management, will help to reduce traffic and parking demand. Overflow parking on a grassed area to the east of the building may also provide parking for an additional eight vehicles onsite.

St Albans Road has a narrow width and the parking of vehicles within the road reserve may result in safety issues. However, the demand generated by 100 patrons as opposed to 84 patrons is expected to be negligible and accordingly the suggestion to reduce numbers is not seen to be a determinative issue. The provision of 24 defined spaces and overflow parking for an additional 8 vehicles is seen to be sufficient based on the numerical parking controls of the Part C Chapter 2 of the Hawkesbury DCP 2002.

The site's driveways currently have inadequate sight distance and do not comply with the relevant Austroads' Standards. The speed limit in the area is 80km/hour however on the tight bends it is more likely that vehicles will be travelling around 60km/hour. The current site distance is somewhere between 10m to 20m. The absolute minimum distance for a design speed of 60km/hour is 56m. The submitted Traffic and Parking Report suggests that the existing exit driveway and sight distances will be acceptable with the installation of a convex mirror.

Council's engineering assessment disagrees with these findings and has advised that works within the road reserve will be required (including batter modification and vegetation removal) to increase sight distances to at least 56m. A site meeting with the Applicant has been undertaken and guidance has been provided on what Council believes would be adequate to achieve the required sight distances.

ORDINARY MEETING

Meeting Date: 13 December 2016

The obtainment of a Design Compliance Certificate will be required for the earthworks, car park and road reserve works.

With the upgrading of onsite parking and sight lines to St Albans Road, it is considered that the development is unlikely to result in unreasonable traffic, parking or access impacts upon the surrounding road network.

Part C Chapter 3: Signs:

Not applicable. The installation of signage is not proposed with this application.

The installation of any future signage will require the submission of a separate development application.

Part C Chapter 10: Heritage Conservation:

The adaptation of the building to allow for the function centre and accommodation uses will have a minimal impact on the heritage significance of the property. The development will not materially affect views to or from the former St Joseph's Catholic Church.

The operation of the function centre and tourist and visitor accommodation is consistent with the provisions of Part C Chapter 10 of the Hawkesbury DCP 2002.

(a)(iv) Regulations

These matters have been considered in the assessment of this application.

The Environmental Planning & Assessment Regulation 2000 outlines that the development is to comply with the National Construction Code / Building Code of Australia (BCA). Suitable conditions of consent may be imposed to ensure compliance with this requirement should the application be approved.

(b) Likely Impacts of the Development (Environmental Impacts on both the Natural and Built Environments, and Social and Economic Impacts in the Locality)

These matters have been considered in the assessment of this application.

The function centre is to cater for up to 100 guests and is to operate seven days a week within the following hours:

Friday to Sunday:	8am and 10pm
Monday to Thursday:	8am and 8pm.

Typically the Applicant suggests that wedding ceremonies, receptions and other events will be held on Saturdays from 4pm to 10pm.

The tourist and visitor accommodation may cater for up to 10 guests seven days a week.

An Acoustic Report has been submitted in support of the application and has been assessed by relevant Council staff. The report indicates that the function centre can operate in compliance with the relevant noise criteria provided a number of operational measures are employed. These measures include:

- Power to all audio or audio-visual equipment shall be controlled by a noise limiting device that is set to 85dB(A) (internal). The noise limiter device must only be accessible by management and must not be used by third parties.
- All outdoor activities/congregations/events/functions shall be conducted on the western side of the building only.
- No personal stereos and/or public address (PA) systems are to be used onsite.
- Outdoor background music may only be played outside until 6pm. Any music after 6pm must be connected to the noise limiter installed within the building.

ORDINARY MEETING

Meeting Date: 13 December 2016

- Musicians are to consist of a maximum two piece band (acoustic string instruments only) or a disc jockey (DJ). No amplified or percussion instruments are allowed to perform. Musicians are only allowed to perform within the ground floor of the building; they must not perform outside the building.
- Patrons and guests must be instructed to not cause unnecessary noise and to be mindful of neighbours. Signs are to be placed on the balcony area to advise patrons to keep noise to a minimum.

These measures are generally reflected in the prepared Plan of Management for the development.

Whilst the findings of the Acoustic Report demonstrate that the activities could potentially be undertaken without unreasonably impacting on neighbours, the Applicant's conduct up to this point does not provide confidence that the recommendations of the Acoustic Report and Plan of Management will be satisfied. On this basis it is recommended that more restrictive hours and limitations on the number of functions and events that may be held each week are imposed.

The subject building is significantly setback from neighbouring dwellings and with the imposition of conditions restricting events and requiring compliance with the prepared consultancy reports it is considered unlikely that the development will produce significant environmental, social or economic impacts for the locality.

An Effluent Disposal Report has been submitted detailing that the land can accommodate the use of an Aerated Wastewater Treatment System (AWTS), balancing/metering tank and low-pressure effluent irrigation system designed to cater for up to 100 patrons. The installation of the balancing/metering tank will be required based on the demand generated by the function centre use and will allow for the proportional application of treated effluent.

It is recommended that the matter be referred to Council's Environment and Regulatory Services branch for action with respect to the unauthorised activities that have been undertaken onsite.

(c) Suitability of the Site for Development

These matters have been considered as part of the assessment of the application.

The property is located in close proximity to the Macdonald River and the adopted 1-in-100 year flood level for the area is 10.3m AHD. The subject building and car park are located on a steep ridge above St Albans Road that has height in excess of 31m AHD. On this basis the majority of the property is not subject to Council's flood planning controls however a portion of the site's western driveway and the roads within the vicinity may be subject to flooding.

Concerns were raised with the Applicant in relation to the possibility of visitors becoming stranded during even minor events with little shelter and the possibility of limited food supplies. This matter has since been addressed by the Applicant providing clarification that flood events in this area are typically long duration events and there is significant warning prior to access being blocked. It was also explained that limited people will stay on the site itself and the majority of visitors will stay at other accommodation within St Albans and other areas.

Functions and accommodation bookings may be cancelled in the event of flood warnings.

The proposed uses are commercial in nature and would be unoccupied for extended periods of time. It is therefore considered that the site is suitable for the development.

(d) Any Submissions

The development was notified from 11 to 29 March 2016 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. As detailed previously in this report a total of three submissions were received in response to the notification of the application.

ORDINARY MEETING

Meeting Date: 13 December 2016

The matters raised in the submissions are summarised below in italics, followed by a response by the assessing officer.

Comment: The property is already being used to hold functions and events.

Officer's response: The use of the building and property as both a function centre and tourist and visitor accommodation is currently being undertaken without the consent of Council.

Complaints regarding these unauthorised uses have been referred to Council's Regulatory Services – Compliance Department however it is understood that they have deferred any compliance action until such time that this application is determined.

This report recommends that the matter is again referred to the Regulatory Services – Compliance Department for appropriate action.

Comment: Functions and events being held onsite generate unreasonable noise impacts for neighbours.

Officer's response: It is evident that the function centre has been operated with little consideration for neighbours, the local community or Council. In this regard there are no specific conditions that could be enforced on the operation to minimise the impacts. However, as a part of this application, the Applicant has had to review his operation of the function centre and consultants have been engaged to address noise, traffic and parking issues.

With the imposition of conditions requiring the installation of noise limiting devices, as well as a reduction in the number of events and operating hours, it is considered that the function centre can be operated without unreasonably impacting upon the amenity of neighbours and the local community.

An Acoustic Report has been prepared in support of the development which indicates that the function centre use may operate within the relevant noise criteria provided appropriate measures are implemented.

Comment: The property does not provide adequate parking for the function centre. This results in vehicles being parked dangerously on St Albans Road which is a narrow and winding rural road.

Officer's response: Numerical parking requirements have been discussed previously in this report.

Comment: Guests have been parking their vehicles and camping on the neighbouring property at 937 St Albans Road.

Officer's response: Photographs supplied in a submission indicate that guests have been camping on both the subject property and the neighbouring property at 937 St Albans Road. There have also been complaints that guests have parked their vehicles on this neighbouring property.

The documentation supplied in support of the application does not address camping and insufficient facilities are available onsite to cater for such a use. It is also likely that such activities have contributed to amenity impacts that the neighbours have experienced.

It is therefore recommended that a condition is imposed prohibiting any camping or caravans on the property unless otherwise allowed under Section 77 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

ORDINARY MEETING

Meeting Date: 13 December 2016

A further condition requiring the installation of a rural fence to define the boundaries of the property will also deter guests from entering and parking vehicles on the neighbouring property

Comment: The plans do not appear to be accurate and there is a concern that the works will extend within the adjoining property at 937 St Albans Road.

Officer's response: The imposition of a condition requiring the obtainment of a boundary survey is recommended to ensure that any works are located wholly within the subject property.

Comment: Vegetation has been removed and the property is now far more visible from nearby properties and streets.

Officer's response: The works approved with Development Consent No. DA0459/09 restored the walls and roof of the building, increasing its height and visibility in comparison to the former ruins. Vegetation removal was also undertaken with approval to establish asset protection zones.

(e) Public Interest

With the imposition of conditions, and the appropriate management of the function centre use, the development is not expected to adversely impact upon the character of the locality, the surrounding environment or the heritage significance of the site. The approval of the application may assist in the conservation of the heritage item and is therefore seen to be in the public interest.

Referrals

Heritage – In the assessment of the application, Council's Heritage Advisor outlined that in order for the conservation incentives clause to be used there needed to be sufficient information provided to Council regarding the ongoing maintenance of the heritage item. In response, Council received a Schedule of Conservation Works and maintenance costings for the former St Joseph's Catholic Church:

- Interior re-pointing works: \$15,000
- Exterior re-pointing works: \$40,000
- Stone replacement: \$16,000
- Buttress stone replacement: \$40,000
- Galvanised roof replacement: \$40,000.

The total cost of the identified maintenance works is estimated to be in the vicinity of \$151,000.00. The Applicant has advised that the funding required to undertake this future maintenance work would largely be dependent on the operation of the function centre and the use of the Hawkesbury LEP 2012's conservation incentives clause.

It is noted that significant restoration works were undertaken to the former church building with Development Consent No. DA0459/09 and conservation benefits resulting from these past works have been achieved.

External Referrals

Rural Fire Services – The property comprises bush fire prone land and the tourist and visitor accommodation component of the development is defined as a 'special fire protection purpose' under the Rural Fire Services Act 1997. On this basis the application was referred to the Rural Fire Service (RFS) as 'integrated development'.

The RFS have reviewed the application and have provided their General Terms of Approvals. These terms may be imposed as conditions of consent should the application be approved.

ORDINARY MEETING

Meeting Date: 13 December 2016

Developer Contributions

The re-construction and fitout of the building was approved with Development consent No. DA0459/09 and accordingly the subject application primarily involves the extension of the existing car park. Based on the supplied value-of-works of \$25,000 the payment of Section 94A Development Contributions are not required.

It should also be noted that the adaptive re-use of a heritage item is not subject to the payment of Section 94A Development Contributions under Section 25J(3)(m) of the EP&A Regulation.

Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act with all matters specified under Section 79C(1) having been taken into consideration. The development may be considered under the conservation incentives clause of the Hawkesbury LEP 2012 and Council's environmental health assessment supports the conclusions of the prepared Acoustic Report.

With the imposition of conditions to manage and control the operation of the function centre, the development is recommended for conditional approval.

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 Council as the consent authority pursuant to Clause 80(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) approve Development Application No. DA0642/15 for a function centre and tourist and visitor accommodation on Lot 1 in DP 605179, known as 1029 St Albans Road, Lower Macdonald, subject to the conditions of this report.

General

1. The development shall take place generally in accordance with the following stamped approved plans and documentation:

Document Number	Prepared By	Dated
Drawing No. DA-01 '1029 St Albans Road'	John Potts Architect	October 2015
Drawing No. DA-01 'Figure 1'	Blue Mountains Geological and Environmental Services Pty Ltd	13 November 2015
'Plan of Management – St Joseph's – 1029 St Albans Road'	John Potts Architect	16 October 2015
'Noise Impact Assessment – Function Room – 1029 St Albans Road, Lower Macdonald' (Reference No. R160399R1 Rev '1')	Rodney Stevens Acoustics	2 August 2016

ORDINARY MEETING**Meeting Date:** 13 December 2016

Document Number	Prepared By	Dated
'Investigation and Assessment for On-site Effluent Management at St Josephs Guesthouse – Lot 1, DP 605179, No. 1029 St Albans Road, Central MacDonald' Report (Reference No. 151201)	Blue Mountains Geological and Environmental Services Pty Ltd	December 2015

... except as modified by the conditions of this consent.

2. No excavation, site works or civil works shall be commenced prior to the issue of a Design Compliance Certificate.
3. The building shall not be used or occupied prior to the issue of an Occupation Certificate.
4. The development shall comply with the provisions of the Building Code of Australia (BCA)/National Construction Code.
5. The development shall comply with the Disability (Access to Premises – Buildings) Standards 2010.
6. The accredited certifier shall provide copies of all Part 4A Certificates issued under the Environmental Planning and Assessment Act 1979 relevant to this development to Hawkesbury City Council within seven days of issuing the certificate. A registration fee applies.
7. This development falls within the Sewerage Scheme controlled by Hawkesbury City Council. Therefore Hawkesbury City Council is the approving authority for all sewer works.

An 'Application to Amend a Sewage Management Facility' Form must be submitted to Council's Regulatory Services/Environmental Health Department for the alterations to the existing Aerated Wastewater Treatment System (AWTS) and associated land application area prior to any works being commenced in relation to the sewage management facility (Septic Licence No. S0050/10).

The land application area shall be a minimum of 900m². A reserve area of 900m² shall be made available for expansion, for resting of the land application system or for duplication of the land application system if unforeseen circumstances require this at some future time.

The onsite sewage management facility shall be installed and commissioned in accordance with the 'Investigation and Assessment for On-site Effluent Management at St Josephs Guesthouse – Lot 1, DP 605179, No. 1029 St Albans Road, Central MacDonald' Report (Reference No. 151201) prepared by Blue Mountains Geological and Environmental Services Pty Ltd and dated December 2015.

Integrated Development – General Terms of Approval

The General Terms of Approval from the following authority, as referred to under Section 93 of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval:

8. NSW Rural Fire Service – The General Terms of Approval (Reference No. D16/1007 DA16040401357 MA) prepared by the Rural Fire Service and dated 24 May 2016 are attached and form part of this consent.

Prior to Issue of a Design Compliance Certificate

The following conditions in this section of the consent must be complied with or addressed prior to the issue of any Design Compliance Certificate relating to the approved development, whether by Council or an appropriately accredited certifier. In many cases the conditions require certain details to be included with or incorporated in the detailed plans and specifications which accompany the Design Compliance Certificate. The Design Compliance Certificate shall be obtained for the earthworks, car park, road works, retaining walls and drainage:

9. A Design Compliance Certificate shall be obtained for this development covering:

- a) Construction of the car park;
- b) Civil works for sight distance improvement within the road reserve;
- c) Construction of any retaining walls; and
- d) Civil drainage.

Prior to the issue of a Design Compliance Certificate, plans showing finished levels, any associated drainage, any structural details, batter grades and finished surfaces must be submitted to the Certifying Authority.

The applicant shall pay a Design Compliance Certificate Fee in accordance with Council's adopted fees and charges when submitting Civil Engineering Plans for approval.

10. The payment of a long service levy is required under Part 5 of the Building and Construction Industry Long Service Payments Act 1986 in respect to this building work. Proof that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of the Design Compliance Certificate. All building works in excess of \$25,000 are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Corporation offices or at most Councils.

11. All earthworks on the site must comply with the following:

- a) topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping
- b) all disturbed areas are to be stabilised/revegetated, using a minimum 300mm surface layer of topsoil, as soon as practicable after the completion of the filling works
- c) once the topsoil has been removed the natural batter shall be suitably stepped, scarified or roughened to prevent slipping and the fill is to be keyed in to hold the top of the fill batter in place
- d) where batters exceed a ratio of three horizontal to one vertical, retaining walls, stone flagging or terracing shall be constructed
- e) all fill within the site shall be placed in layers not exceeding 300mm thickness and compacted to achieve a minimum dry density ratio of 95% when tested in accordance with Australian Standard AS1289 'Methods of testing soils for engineering purposes' unless otherwise specified
- f) filling shall comprise only uncontaminated Virgin Excavated Natural Material (VENM). Contamination certificates for all source material shall be provided to the Principal Certifying Authority prior to placing any fill on site.

Details satisfying the above requirements are to be submitted to the Certifying Authority prior to the issue of the Design Compliance Certificate.

12. Any retaining walls having a height exceeding 600mm are required to be designed by a practicing structural engineer. The design must be submitted to the Certifying Authority prior to issue of the Design Compliance Certificate.

ORDINARY MEETING

Meeting Date: 13 December 2016

13. Earthworks, vegetation removal and traffic measures are to be undertaken within the road reserve to ensure that sight distances for vehicles leaving the site are a minimum of 56 metres (in accordance with AUSTROAD Absolute Minimum for 60km/hr) in both directions. Details demonstrating compliance with this requirement, such as the installation of additional measures such as convex mirrors, are to be included on the plans submitted to Council prior to issue of the Design Compliance Certificate.
14. Car parking spaces shall be provided in accordance with AS2890.1 'Parking facilities: Off-street parking'. The minimum number of sealed parking spaces provided shall be 24 spaces. The car parking spaces are to be identified onsite by line-marking.

Details of compliance with these requirements are to be submitted to the Certifying Authority prior to the issue of the Design Compliance Certificate.

15. The development shall not create adverse impacts to neighbouring properties in relation to overland flow of stormwater and must meet the following requirements:
 - a) water flowing from the property must not be redirected or concentrated to adjoining properties
 - b) water flowing into the property from adjoining lots shall not be impeded or diverted
 - c) water flow shall follow the natural flow directions without increasing velocity.

Details are to be provided on the plans submitted to the Certifying Authority prior to issue of a Design Compliance Certificate.

Prior to Commencement of Works

16. The applicant shall advise Council of the name, address and contact number of the principal certifier in accordance with Section 81A(2)(b) of the Environmental Planning and Assessment Act 1979.
17. At least two days prior to the commencement of works, notice is to be given to Hawkesbury City Council in accordance with the Environmental Planning and Assessment Regulation 2000.
18. A sign displaying the following information is to be erected adjacent to each access point and to be easily seen from the public road:
 - a) Unauthorised access to the site is prohibited.
 - b) The owner of the site.
 - c) The person/company carrying out the site works and telephone number (including 24 hour seven days' emergency numbers).
 - d) The name and contact number of the Principal Certifying Authority.

The sign is to be maintained for the duration of works.

19. Toilet facilities (to the satisfaction of Council) shall be provided for workers throughout the course of building operations. Such a facility shall be located wholly within the property boundary.
20. Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Landcom's publication 'Managing Urban Stormwater – Soils and Construction (2004)'.
21. A Traffic Management Plan prepared in accordance with the Roads and Maritime Services' (formerly the Roads and Traffic Authority) publication 'Traffic Control at Worksites' is to be prepared by an appropriately qualified person and submitted to Council for approval prior to commencement of any works.
22. The works shall be set out by a Registered Surveyor. A Survey Certificate for the site showing the location of the car park, fencing and other structures under construction and in compliance with the approved plans shall be lodged with the Principal Certifying Authority during an early stage of construction. Any easements must be shown on the Survey Certificate.

ORDINARY MEETING

Meeting Date: 13 December 2016

23. All civil construction works required by this consent shall be undertaken in accordance with Hawkesbury Development Control Plan 2002 – Appendix E – Civil Works Specification. Inspections shall be carried out and compliance certificates issued by Council or an accredited certifier.

During Construction

24. Site and building works (including the delivery of materials to and from the property) shall be carried out only on Monday to Friday between 7am and 6pm and on Saturdays between 8am and 4pm.

25. The site shall be secured to prevent unauthorised access and the depositing of unauthorised material.

The property entry and exit points shall be secured at all times to prevent the unauthorised entry of vehicles, and to ensure that the site manager can control and prevent dumping of waste and potentially contaminated material whilst fill material is being imported or managed on site.

26. Dust control measures (e.g. vegetative cover, mulches, irrigation, barriers and stone) shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
27. Measures shall be implemented to prevent vehicles tracking sediment, debris, soil and other pollutants onto any road.
28. A Traffic Management Plan must be implemented and all devices maintained for the duration of the proposed works in compliance with the approved Traffic Management Plan.
29. The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:
- a) stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site
 - b) building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site
 - c) builders waste must not be burnt or buried on site
 - d) all waste (including felled trees) must be contained and removed to a Waste Disposal Depot.
30. Vegetation waste resulting from the approved clearing of the site shall be salvaged for re-use either in log form or as woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots, stumps or declared weed species shall be disposed of to an appropriate waste facility.

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

31. All works associated with the storage, preparation and cooking of food shall be undertaken in accordance with the requirements of:

- Food Act 2003 and Regulations thereunder
- Australian Standard AS4674:2004 'Design, construction and fit-out of food premises'
- Australian Standard AS1668.2:2002 'The use of ventilation and air conditioning in buildings – Ventilation design for indoor air contaminant control'
- Hawkesbury Council's 'Food Premises Fit Out Code'.

Any food premises must comply with the following requirements:

- a) finishes, fittings and appliances must be fit for purpose, and should generally be smooth and impervious to moisture

ORDINARY MEETING

Meeting Date: 13 December 2016

- b) all gaps inside and outside the premises that may allow the entrance of vermin and insects to the kitchen shall be eliminated
 - c) hand washing facilities, with hot and cold running water mixed through a common spout, hand wash soap and hand drying facilities must be provided in the kitchen. A constant supply of soap and paper towel delivered through a dispenser must be located next to the hand washing facilities
 - d) where fittings are butt joined together they must be sealed to eliminate any cavities or crevices. Alternatively, a clear space of at least 75mm is to be provided between fittings. The following requirements apply to clearances and supports of equipment:
 - (i) all refrigerators, freestanding cupboards and similar fittings must have metal legs made of non-corrosive metal or moulded plastic at a minimum height of 150mm above the floor. If placed flush on solid plinths the solid plinth is to be a minimum of 75 mm high
 - (ii) where the above fittings do not comply with these clearances, the fittings shall be provided with wheels to enable easy cleaning, and eliminate inaccessible cavity.
32. All civil construction works required by this consent shall be undertaken in accordance with Hawkesbury Development Control Plan 2002 – Appendix E – Civil Works Specification. Inspections shall be carried out and Compliance Certificates issued by Council or an accredited certifier.

Prior to Issue of a Construction Compliance Certificate

33. The applicant shall pay a Construction Compliance Certificate fee in accordance with Council's adopted fees and charges when submitting Civil Engineering Plans for approval.
34. All works must be completed in accordance with the approved Design Compliance Certificate Plans, approved supporting documentation and to the satisfaction of the Principal Certifying Authority prior to the issue of a Construction Compliance Certificate.

Prior to Issue of an Occupation Certificate

35. A consolidated Plan of Management shall be prepared for the function centre and the tourist and visitor accommodation. This Plan of Management must be provided to Council for approval prior to the release of an interim or Final Occupation Certificate.

The Plan of Management must be prepared to address but not be limited to the following:

- a) hours of operation for the function centre are to be limited to 12pm (midday) to 10pm Friday to Sunday. The operation of the function centre is prohibited Monday to Thursday
- b) the function centre may be used for a maximum of one function or event per calendar week
- c) a maximum of 100 patrons (including any guests of the tourist and visitor accommodation component of the development) may be accommodated within the function centre and the property at any time
- d) a maximum of 10 guests may be accommodated within the tourist and visitor accommodation component of the development at any time
- e) an onsite manager must be present to oversee and manage the operation of the function centre during all functions and events
- f) no tents, caravans or campervans are to be installed or used onsite in association with the function centre use or the tourist and visitor accommodation use
- g) the recommendations of the 'Noise Impact Assessment – Function Room – 1029 St Albans Road, Lower Macdonald' Report (Reference No. R160399R1 Rev '1') prepared by Rodney Stevens Acoustics and dated 2 August 2016 are to be incorporated into the Plan of Management
- h) flood evacuation procedures (including vehicular routes along public roads to the nearest place of refuge) and emergency telephone numbers are to be incorporated into the Plan of Management
- i) the Plan of Management is to include details of any 'house rules' and complaints handling procedures.

ORDINARY MEETING

Meeting Date: 13 December 2016

36. A Flood Emergency Evacuation and Management Plan is to be prepared for the development. The plan shall advise occupants of flood evacuation procedures (including vehicular routes along public roads to the nearest place of refuge) and emergency telephone numbers. The evacuation procedures shall be permanently fixed to the building in a prominent location and maintained at all times.

The plan must outline that any functions, bookings and/or events are to be cancelled upon the issue of a flood warning for the locality.

A copy of this plan shall be provided to Council prior to the release of the Occupation Certificate.

The plan shall also be incorporated in the Plan of Management for the function centre and tourist and visitor accommodation development.

37. An approval to operate the onsite septic system is required to be obtained from Council. The approval to operate is required to be submitted to the Principal Certifying Authority prior to the issue of an Interim or Final Occupation Certificate. Any required inspections may be organised by calling (02) 4560 4444.
38. A qualified Structural Engineer shall inspect and certify the mezzanine floor level as being capable of withstanding the loads likely to be imposed upon it from a large gathering of people. The certificate shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.
39. A Building Code of Australia (BCA) report from a suitably qualified and experienced person (e.g. a Building Regulation consultant or a Fire Safety Engineer) shall be provided to the Principal Certifying Authority demonstrating adequate provision has been made for fire safety and egress from the building in the event of fire.

Should the report make recommendations for additional works to be carried out in order to address the Performance Provisions of the BCA, those works are to be carried out. Where it is intended not to carry out any such work, the owner is to obtain the written agreement of either Council or the author of the report. Suitable evidence (where necessary) shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

40. A Final Fire Safety Certificate is required to be submitted for the new Fire Safety Measures listed in the Fire Safety Schedule attached to this consent.
41. The following certificate is to be provided to the Principal Certifying Authority prior to the issue of an Interim or Final Occupation Certificate. The certificate shall state the name of person or company carrying out the installation and the relevant Australian Standard to which installed:
- a) A system of lighting must be installed to assist evacuation of occupants in the event of fire. The lighting system must be activated by a smoke alarm in accordance with Clause 3.7.2.5 of the Building Code of Australia. A Certificate of Compliance from an electrician is required to be provided.
42. Rural fencing (post and rail or post and wire) shall be installed to define the property's eastern and southern boundaries with 937 St Albans Road. The fencing shall be installed wholly within the subject property and clear of any headstones and monuments.

The installation of the fencing shall be completed prior to the release of an Occupation Certificate.

Note: Building work in close proximity to the boundary may be a sensitive matter for each property owner and can often end in an unsatisfactory relationship between neighbours. You are advised that the consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary.

ORDINARY MEETING

Meeting Date: 13 December 2016

43. The swimming pool shall be surrounded by a suitable swimming pool barrier that is compliant with the Swimming Pools Act and AS1926. A warning notice (incorporating resuscitation techniques) complying with the requirements of Section 17(1) and Regulation 8 of the Swimming Pools Act 1992 shall also be provided and maintained in a prominent position in the immediate vicinity of the pool.

These requirements shall be satisfied prior to the release of an Interim or Final Occupation Certificate.

44. Potable water shall be provided to the function centre and tourist and visitor accommodation building in accordance with the NSW Health Private Water Supply Guidelines. A Water Supply Management Plan is to be developed and implemented in accordance with this Guideline.

A copy of the Water Supply Management Plan shall be submitted to Council prior to the release of the Occupation Certificate.

The development must be registered with Council as a private water supplier.

45. Prior to the release of an Occupation Certificate, suitable evidence shall be provided to the Principal Certifying Authority to demonstrate that the General Terms of Approval (Reference No. D16/1007 DA16040401357 MA) issued by the Rural Fire Service and dated 24 May 2016 have been satisfied.
46. A flood warning sign is to be provided advising occupants that public roads used to access the site may be subject to inundation during times of flood. The sign shall be constructed of durable material and installed in a prominent location within the site.

The Use of the Development

47. Hours of operation for the function centre are to be limited to the following:

Friday to Sunday: 12pm (midday) to 10pm
Monday to Thursday: Closed

48. The function centre may be used for a maximum of one function or event per calendar week.
49. A maximum of 100 patrons (including any guests of the tourist and visitor accommodation component of the development) may be accommodated within the function centre and the property at any time.
50. A maximum of 10 guests be accommodated within the tourist and visitor accommodation component of the development at any time.
51. The tourist and visitor accommodation building shall not be used for permanent occupation as a residence and shall only be used for short term tourist accommodation. The building shall not be made available for long term accommodation. In this regard any continuous length of stay is to be restricted to no more than four consecutive weeks in any six month period.
52. A copy of the guest register for the tourist and visitor accommodation is to be kept from the date of the issue of an occupation certificate. This register is to be kept onsite and shall be made available at the request of Council Officers at any time and a copy is to be forwarded to Council at six monthly periods.
53. An onsite manager must be present to oversee and manage the operation of the function centre during all functions and events.
54. The operation of the function centre and tourist and visitor accommodation must be undertaken in accordance with the approved Plan of Management, except where modified by the conditions of this consent or the requirements of the Department of Liquor and Gaming and/or Police.

ORDINARY MEETING

Meeting Date: 13 December 2016

A copy of the Plan of Management must be kept and maintained in a register and made available for inspection by the Police, Department of Liquor and Gaming and/or authorised Council inspectors/officers upon request.

The Plan of Management may be altered with the consultation and consent of Local Licensing Police, Department of Liquor and Gaming and/or Council.

55. No tents, caravans or campervans shall be installed or used onsite unless otherwise allowed under Section 77 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
56. Functions, bookings and events shall not occur during flood warning periods or when access roads are inundated by water after rain events. Staff and guests shall be given advanced warning to not access the site during these periods.
57. Functions and events shall be managed to ensure that adequate parking is available to accommodate all patron, guest and staff/caterer vehicles within the subject property.
58. The operator shall keep a register detailing the date and times of when the premises is being used for a function and the number of guests attending. This register must be made available to Council officers on request and a copy is to be forwarded to Council at six monthly periods.
59. The operation of the development shall incorporate the recommendations of the 'Noise Impact Assessment – Function Room – 1029 St Albans Road, Lower Macdonald' Report (Reference No. R160399R1 Rev '1') prepared by Rodney Stevens Acoustics and dated 2 August 2016. All recommendations contained within the Acoustic Report are to be implemented, including but not limited to the following:
 - a) All activities on the site shall comply with the submitted Acoustic Management Plan.
 - b) Power to all audio or audio-visual equipment shall be controlled by a noise limiting device that is set to 85dB(A) (internal). The noise limiter device must only be accessible by management and must not be used by third parties.
 - c) All outdoor activities/congregations/events/functions shall be conducted on the western side of the building only.
 - d) No personal stereos and/or public address (PA) systems are to be used onsite.
 - e) Outdoor background music may only be played outside until 6:00pm. Any music after 6:00pm must be connected to the noise limiter installed within the building. The playing of amplified or live music inside the function centre shall cease by 9:45pm.
 - f) Musicians are to consist of a maximum two piece band (acoustic string instruments only) or a disc jockey (DJ). No amplified or percussion instruments are allowed to perform. Musicians are only allowed to perform within the ground floor of the building; they must not perform outside the building.
 - g) Patrons and guests must be instructed to not cause unnecessary noise and to be mindful of neighbours. Signs are to be placed on the balcony area to advise patrons to keep noise to a minimum.
 - h) A maximum of 10 guests be accommodated within the tourist and visitor accommodation component of the development at any time.

Where requested certification and/or evidence must be provided to demonstrate that the development is operating in accordance with 'Noise Impact Assessment – Function Room – 1029 St Albans Road, Lower Macdonald' Report (Reference No. R160399R1 Rev '1') prepared by Rodney Stevens Acoustics and dated 2 August 2016 and the conditions of this consent.

If, during the on-going use of the premises, substantiated complaints of breaches of noise occur, the applicant must arrange for further acoustic testing to be undertaken by a suitably qualified acoustic consultant. Any recommendations made by the consultant to ensure the premises complies with the noise criteria specified in the Noise Impact Assessment Report must be immediately implemented.

ORDINARY MEETING

Meeting Date: 13 December 2016

60. Noise generated as a result of the mechanical plant or equipment during hours of operation shall be managed so that the LAeq noise levels, measured at any point in accordance with the NSW DECs' Industrial Noise Source Policy, does not exceed 5dB(A) (LAeq) above background levels (LA90) with respect to noise amenity of other residential properties and associated outdoor areas. Outside of the hours of operation, the noise from any mechanical plant or equipment should not be audible at any residence.
61. Signs must be placed in clearly visible positions within the building and in the car park area requesting that patrons leaving the premises are to do so quickly and quietly, having regard to maintaining the amenity of the area.
62. All fire safety equipment and fixtures shall be regularly serviced and maintained. The owner or their agent shall certify annually that each of the fire safety measures specified in this statement has:
 - a) been assessed by a properly qualified person, and
 - b) found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the certificate is issued.
63. All vehicles being loaded or unloaded shall stand entirely within the property.
64. Any part of the building used for food preparation shall be registered with Council as a Food Premises and have inspections conducted by Council officers as necessary/required.
65. The food premises shall be maintained in accordance with the requirements of:
 - Food Act 2003 and Regulations there under.
 - Australian Standard 4674:2004 'Design, construction and fit-out of food premises'.

Hand washing facilities, with hot and cold running water mixed through a common spout, hand wash soap and hand drying facilities must be provided in the kitchen. A constant supply of soap and paper towel delivered through a dispenser must be located next to the hand washing facilities.

Any refrigeration used to store potentially hazardous food must have a capacity to keep food colder than 5°C and be provided with a thermometer, accurate to $\pm 1^{\circ}\text{C}$.
66. All food is to be transported, stored and displayed in a manner that protects the food from likely contamination in accordance with the provisions of Standard 3.2.2 of the Food Standards Code under the Food Act 2003.
67. All waste generated on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.
68. All waste materials are to be stored in covered vermin proof waste storage bins and regularly removed from the property. Waste is to be separated where appropriate for re-use and recycling purposes. Waste is to be contained in such a manner to prevent it from being blown, moved or located around the property or surrounding properties.
69. In accordance with the requirements of Part 5.7 Protection of the Environment Operations Act 1997, Council is to be informed of any pollution incident that occurs in the course of carrying out the approved activity where material harm to the environment is caused or threatened.
70. Any lighting from the development is to be directed away from surrounding properties, at an angle of 45 degrees towards the ground and shielded if needed, to prevent any light spillage and nuisance onto adjoining properties.

ORDINARY MEETING

Meeting Date: 13 December 2016

The reasons for the imposition of these conditions are those matters specified under Section 79C(1) of the Environmental Planning and Assessment Act 1979 as are relevant to the subject development.

Advisory Notes

- This consent operates from the consent date shown on the top of this notice and will lapse unless the development is commenced within five years from the date endorsed on this consent.
- Private Accredited Certifiers do not have any authority to issue Engineering Approvals or carry out inspections for works on Public Roads under the Roads Act 1993.
- The operation of the development shall not give rise to 'offensive noise' as defined by the Protection of the Environment Operations Act 1997.
- Any activity carried out in accordance with this approval shall not give rise to offensive noise, air pollution (including odour) or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.
- Building work in close proximity to the boundary may be a sensitive matter for each property owner and can often end in an unsatisfactory relationship between neighbours. You are advised that the consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary.

Your attention is directed to the provisions of the Dividing Fences Act 1991 that gives certain rights to adjoining owners, including use of the common boundary. In the absence of any structure standing well clear of the common boundary you need to make yourself aware of your legal position, which may involve a survey to identify allotment boundaries.

Note: This consent does not override your obligations under the Dividing Fences Act 1991.

- The sewage management facility must be operated in accordance with the relevant operating specifications and procedures for the component facilities, and so as to allow disposal of treated sewage in an environmentally safe and sanitary manner (Local Government [General] Regulation 2005).
- The installed system will be the subject of an approval to operate a system of sewage management in accordance with the provisions of Subdivision 6 and 7 of Division 4 of Part 2 of the Local Government (General) Regulation 2005 and for this purpose will be subject to inspection at annual frequency by Council's Environmental Health Officer or at such other frequency as may be determined according to the future operation or risk of the system.
- 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.
- Non-compliance with any condition of this development consent may result in a penalty notice being issued by Council.
- The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this development. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

ORDINARY MEETING

Meeting Date: 13 December 2016

- The applicant is advised to consult with the relevant:

- a) sewer provider;
- b) electricity provider; and
- c) telecommunications carrier

... regarding their requirements for the provision of services to the development and the location of existing services that may be affected by the works, either onsite or on the adjacent public roads.

ATTACHMENTS:

AT - 1 Locality Plan

AT – 2 Aerial View of Property

AT – 3 Plans of the Proposal

ORDINARY MEETING

Meeting Date: 13 December 2016

AT - 1 Locality Plan



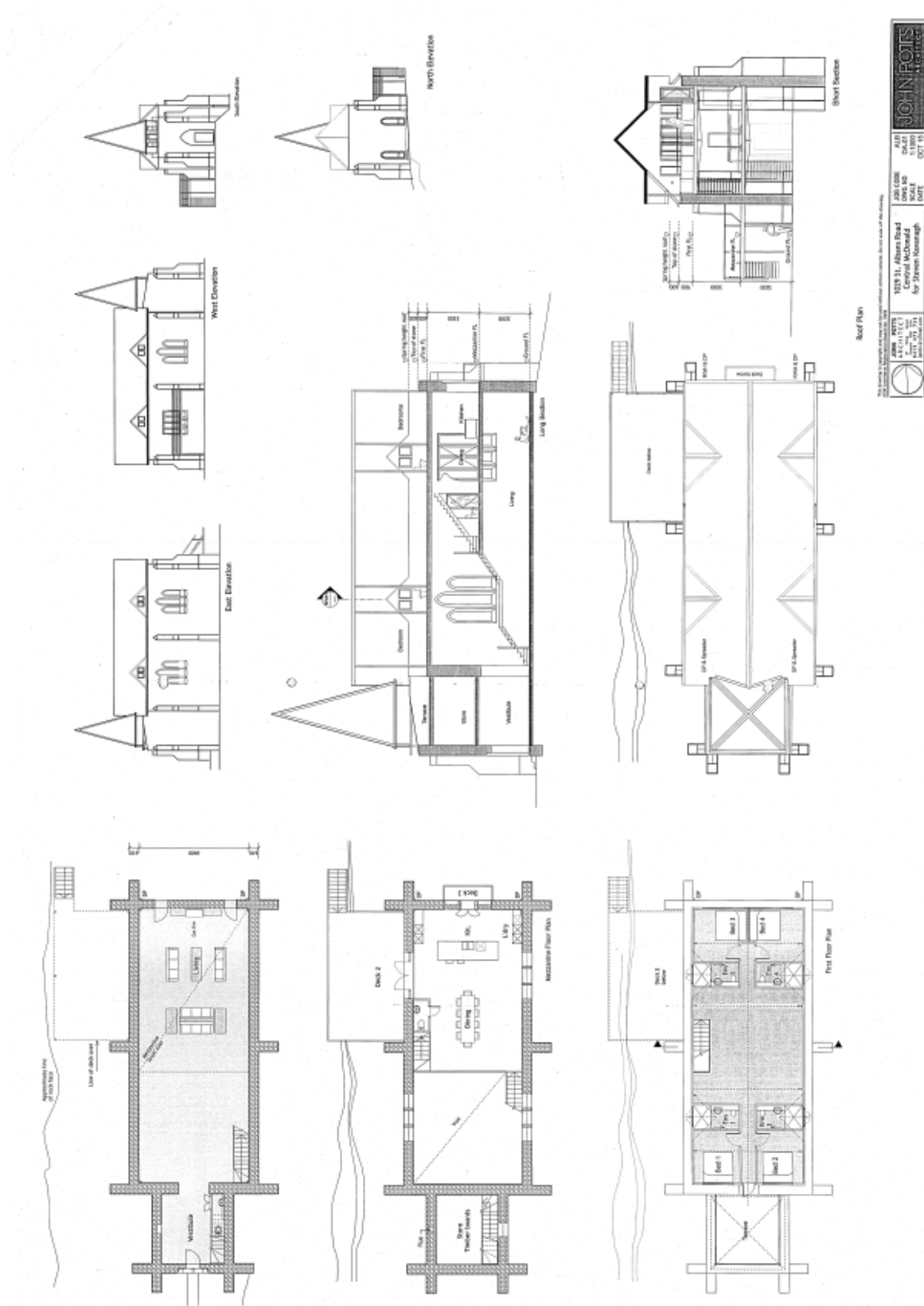
ORDINARY MEETING

Meeting Date: 13 December 2016

AT – 2 Aerial View of Property



AT – 3 Plans of the Proposal



oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 13 December 2016

Item: 268 CP - DA0685/15 - 64 Grandview Lane, Bowen Mountain - Postponement of report to January 2017 - (94598, 120744)

Previous Item: 252, Ordinary (29 November 2016)

REPORT:

Executive Summary

At the Council meeting of 29 November 2016 Council considered the assessment report for DA0685/15 – Proposed Dual Occupancy at 64 Grandview Lane, Bowen Mountain. The resolution for this matter was as follows:

"That the matter be deferred to an informal Councillor Briefing Session and be reported to the next Ordinary Council meeting."

This resolution means that Council has requested the application to be reported to Council on 13 December 2016.

A meeting was held between an objector and their engineering consultant, the Mayor, Director City Planning and the Development Services Manager on Tuesday, 6 December 2016. At this meeting the objector raised some specific comments related to the development and advised that some additional information was to be submitted to Council shortly in relation to, amongst other matters, on-site effluent disposal.

To enable this additional information to be submitted to Council and to be appropriately assessed in the Council report and to fully brief the Councillors, as resolved on 29 November 2016, it is proposed that the reporting of DA0685/15 be deferred to the Council meeting scheduled for 31 January 2017. An informal Councillor Briefing on this application will be provided prior to that date.

Planning Decision

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

RECOMMENDATION:

That:

1. An assessment report for DA0685/15 - 64 Grandview Lane, Bowen Mountain - Lot A DP416762 - Dual Occupancy be considered at the Council Meeting scheduled for Tuesday, 31 January 2017.
2. An informal Councillor Briefing Session on this application be held prior to the Council Meeting scheduled for 31 January 2017.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 13 December 2016

Item: 269 CP - Draft Voluntary Planning Agreement for Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond - Post Exhibition Report - (95498, 124414)

Previous Item: 186, Ordinary (30 August 2016)

REPORT:

Executive Summary

The purpose of this report is to advise Council of the public exhibition of a draft Voluntary Planning Agreement (draft VPA) for a proposed subdivision of Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond.

Having considered the submissions received during the exhibition period, it is recommended that the Agreement be executed under Council's Seal.

Background

The draft VPA was reported to Council on 30 August 2016 as part of a report concerning a planning proposal for Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond. The planning proposal sought to amend the minimum lot size provisions of the Hawkesbury Local Environmental Plan 2012 (LEP 2012) to enable subdivision of the land into not more than 13 lots with minimum lot sizes of 4,000m², 1ha and 4ha. Council resolved to proceed with the making of the proposed amendment and in terms of the draft VPA Council resolved (in part) to:

"Publically exhibit the draft Voluntary Planning Agreement attached to this report for a minimum of 28 days and the Voluntary Planning Agreement be reported back to Council following public exhibition prior to finalisation."

The parties to the draft VPA are Council and Mr Michael Mahboub, Mr Benjamin Matthias and Mr Daniel Galea (collectively known as 'the Developer').

The objective, nature and effect of the draft VPA is for the Developer to provide Council with a cash contribution of \$30,000 (subject to increase in the consumer price index) for each vacant Housing lot created. Contributions collected by Council will be expended on local and district infrastructure and facilities such as, but not necessarily limited to, cycleways, bus shelters, landscape and park embellishments and local road improvements to serve the needs of the community as a consequence of the development.

The agreement will only operate if and when Council grants development approval(s) to the proposed development of the site. The agreement excludes the application of section 94A and section 94 of the Environmental Planning and Assessment Act 1979 to the proposed development of the site.

Consultation

The draft VPA and supporting documentation was placed on public exhibition for the period 7 October 2016 to 7 November 2016. Notices relating to the exhibition of the draft VPA were placed in the Hawkesbury Courier on 6 and 20 October 2016. The draft VPA, an Explanatory Note and other supporting documentation were available for inspection at the Council offices, on Council's website, and on Council's online community engagement site www.yourhawkesbury-yoursay.com.au throughout the exhibition period.

ORDINARY MEETING

Meeting Date: 13 December 2016

As a result of the exhibition, two submissions were received. Both submissions were in support of the draft VPA respectively stating that it will enable roadwork and other facilities to be funded in the Kurmond area and that it is fair and reasonable the developer help the progress of the Kurmond area via the per lot monetary contribution.

In light of these responses it is considered that no amendment to the draft VPA is required.

Post Exhibition Amendments to the draft VPA and Explanatory Note

One minor amendment has been made to the draft VPA, that being the correction to the spelling of the name of one of the parties to the VPA. A 'tracked changes' version of the amendments to the draft VPA is provided in Attachment 1 of this report.

Also within Attachment 1 is an updated Explanatory Note which is to accompany the VPA. The amendments to the Explanatory Note have been the deletion, where appearing in the document, of the word "draft", updating of the section relating to the Local Government Act 1993 due to recent changes to this Act, and updating of the document's date.

Conformance to the Hawkesbury Community Strategic Plan

Council's consideration and approval of the Voluntary Planning Agreement would be consistent with the following CSP Themes and Direction statements:

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

and is also consistent with implementing the nominated strategy in the CSP being:

- Upgrade the necessary physical infrastructure and human services to meet contemporary needs and expectations.

Financial Implications

The per residential lot contribution in accordance with the provisions of the VPA is to be provided by the Developer via the future subdivision of the subject site.

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.

ORDINARY MEETING

Meeting Date: 13 December 2016

RECOMMENDATION:

That:

1. The Voluntary Planning Agreement and Explanatory Note for Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond attached as Attachment 1 to this report, be endorsed by Council.
2. Delegation be given to the Acting General Manager to execute the Voluntary Planning Agreement under the Seal of Council including the making of any necessary minor wording and formatting changes to the Voluntary Planning Agreement prior to execution, provided that these minor changes do not alter the intent of the Voluntary Planning Agreement.

ATTACHMENTS:

AT - 1 Copy of Voluntary Planning Agreement and Explanatory Note

ORDINARY MEETING

Meeting Date: 13 December 2016

AT - 1 Copy of Voluntary Planning Agreement and Explanatory Note

THIS PLANNING AGREEMENT is made on the day of 2016

BETWEEN:

Parties

HAWKESBURY CITY COUNCIL ("the Council")

AND:

MICHAEL MAHBOUB,
BENJAMIN MATTHIAS, AND
DANIEL GALEA (collectively known as "the Developer")

Introduction

- A. The Developer is the registered proprietor of the Development Land.
- B. On 19th March 2014 the Council lodged a Planning Proposal with the Department of Planning and Environment to amend the Hawkesbury Local Environmental Plan 2012 Lot Size Map to facilitate subdivision of the Development Land.
- C. The Developer proposes to make Development Applications to Council for Development Approval to carry out the Proposed Development if the Lot Size Map for the Development Land is altered generally in accordance with the Planning Proposal.
- D. The Developer has offered to provide a Developer's Contribution in the form of a Cash Contribution on the terms and conditions contained in this agreement if Development Approval is granted to the Proposed Development.

And it is agreed as follows

1 Definitions and Interpretation

In this agreement the following words and letters have the meanings set out below.

- 1.1 "Act" means the *Environmental Planning and Assessment Act 1979 (NSW)* (as amended from time to time).
- 1.2 "Approval" means any approvals consents, modifications, certificates (of all types) permits, endorsements, licenses, conditions or requirements (and any variation to them) which may be required by Law for the Proposed Development.
- 1.3 "Authority" means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body, commission, department, agency, tribunal or other authority or body.
- 1.4 "Base CPI" means the CPI number for the quarter ending immediately before the commencement of this agreement.
- 1.5 "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act and thing is to be performed or a payment is to be made.

16558605_1/GKS/3130496

ORDINARY MEETING

Meeting Date: 13 December 2016

- 1.6 "Cash Contribution" means, subject to clauses 3, 6, 7 and 8 an amount calculated on the basis of \$30,000 per Housing Lot.
- 1.7 "Completion Certificate" means the release of the subdivision, either in whole or in stages, to enable the lodgement to and issue of Housing Lot titles by the LPI.
- 1.8 "Costs" include costs, charges, fees, disbursements and expenses, including those incurred in connection with advisers.
- 1.9 "CPI" means the Consumer Price Index released by the Australian Bureau of Statistics for "Sydney - All Groups" or such other consumer price index that might replace it.
- 1.10 "CPI Review Date" means each anniversary of the date of this agreement.
- 1.11 "Current CPI" means the CPI number for the quarter ending immediately before the relevant CPI Review Date.
- 1.12 "Developer's Contribution" has the meaning given in clause 6.
- 1.13 "Development Application" means an application under Part 4 of the Act for Development Approval.
- 1.14 "Development Approval" means a development consent issued under the Act with respect to all or part of the Proposed Development.
- 1.15 "Development Land" means the land comprising Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond.
- 1.16 "Dispute" in connection with this agreement means an argument, a controversy, a difference, a dispute including of opinion or interpretation.
- 1.17 "Event of Insolvency" means anyone or more of the following occurrences:
- (i) the Developer becomes bankrupt, is served with a bankruptcy notice or a bankruptcy petition, has committed an act of bankruptcy or has entered into an arrangement within and under the meaning of the *Bankruptcy Act 1976* (Cth); or
 - (ii) the Developer becomes subject to any order or declaration under the *Mental Health Act 2007* (NSW) or is otherwise incapable of managing his or her own affairs.
 - (iii) if the Developer is a company, if:
 - (a) a resolution is passed for the winding up or liquidation of that company;
 - (b) a liquidator, provisional liquidator, receiver, receiver manager, controller, controlling manager, administrator, voluntary administrator or official manager is appointed to the Developer or a resolution is passed for the purposes of placing that party in the control of an external administrator;
 - (c) it suspends payment of its debts or is unable to pay its debts including of money payable under this agreement or is deemed insolvent;

16558609_1/GKS/3130496

2

ORDINARY MEETING

Meeting Date: 13 December 2016

- (d) it fails to or is taken as having failed to comply with a statutory demand under the *Corporations Act 2001* (Cth);
 - (e) if anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction with respect to the Developer.
- 1.18 "GST" has the same meaning as the GST Act and other words or expressions used in the GST Act which have a particular defined meaning (including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning.
- 1.19 "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- 1.20 "Housing Lot" means a lot approved by a Development Consent comprising part of the Development Land that is intended to be used for the purposes of a single dwelling house without being further subdivided.
- 1.21 "Housing Lot Contribution" means subject to Clauses 6, 7 and 8, cash to the value of \$30,000 per Housing Lot arising from a Development Consent of the Development Land.
- 1.22 "Law" means:
 - (i) the common law and principles of equity;
 - (ii) the requirements of legislation, regulations and by-laws; and
 - (iii) a binding order made by an Authority.
- 1.23 "LPI" means Land and Property Information or any other government agency replacing it.
- 1.24 "Lot Size Map" means the maps with a corresponding name and forming part of Hawkesbury Local Environmental Plan 2012.
- 1.25 "Party" means a party to this agreement, including their successors and assigns.
- 1.26 "Proposed Development" means the amendment to Hawkesbury Local Environmental Plan 2012 and the subdivision of the Development Land into not more than 13 Housing Lots.
- 1.27 "Subdivision Certificate" means a certificate issued under section 109C(d) of the Act with respect to the Proposed Development.
- 1.28 "Transfer" means to settle, assign, transfer, convey, alienate, otherwise dispose of or part with possession of.

2 Interpretation:

In this agreement unless the contrary intention appears:

- 2.1 One gender includes the opposite gender.
- 2.2 The singular includes the plural and the plural includes the singular.

16558609_1/GKS/3130496

3

ORDINARY MEETING

Meeting Date: 13 December 2016

- 2.3 A party includes that party's executors, administrators, successors, permitted assigns, permitted legal representatives and substitutes.
- 2.4 Dollars or \$ means Australia dollars and all money payable under this agreement is payable in that currency.
- 2.5 "Including" and similar expressions are not words of limitation.
- 2.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.7 Headings, any table of contents or index are for convenience only and do not affect interpretation of this agreement.
- 2.8 An explanatory note which relates to this agreement does not affect the interpretation of this agreement.
- 2.9 A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible wholly or partly for the preparation of this agreement or the inclusion of a term or condition in this agreement.
- 2.10 If an act and thing must be done on a specific day which is not a business day, it must be done instead on the next business day.
- 2.11 A person means and includes a person, a body corporate, Authority, firm, body of persons, association, trust, joint venture or other legal commercial entity or undertaking recognized by law whether or not incorporated.

3 Planning Agreement

- 3.1 This agreement
 - 3.1.1 applies to the Development Land;
 - 3.1.2 is a planning agreement within the meaning set out in section 93F of the Act;
 - 3.1.3 is to be registered on the title of the Development Land under section 93H of the Act;
 - 3.1.4 is not a confidential document and may be exhibited without restriction by either party.
- 3.2 Subject to clause 3.3, this agreement operates from the date it is executed.
- 3.3 Clause 6 of this agreement will only operate if and when Council grants Development Approval (or Development Approvals as the case may be) to the Proposed Development on the Development Land.

4 Application of s94 and s94A of the Act to the Development

- 4.1 This agreement excludes the application of section 94A and section 94 of the Act to the subdivision of the Development Land, the construction of a single dwelling and/or structures ancillary to residential use of land such as outbuildings, swimming pools, fencing, landscape structures and the like, on each Housing Lot. This agreement does not exclude the application of section 94A and section 94 of the

16558609_1/GKS/3130496

4

ORDINARY MEETING

Meeting Date: 13 December 2016

Act to the construction of more than one dwelling on a Housing Lot or development that is not ancillary to the residential use of the land.

- 4.2 Notwithstanding Clause 4.1, should a section 94 Plan which applies to the land come into force prior to the issue of any development consent for subdivision of the land, this agreement shall be terminated immediately and the adopted contribution rate within such section 94 Plan shall be applied in place of the Developer's Contribution cited within this agreement.
- 4.3 Clause 4.2 does not allow the Council or the Developer to retrospectively apply a section 94 contribution for allotments for which development contributions have been paid in accordance with this agreement.
- 4.4 Subject to Clause 15 should this agreement be terminated in accordance with clause 16, section 94A or section 94 of the Act, whichever is applicable, will apply to the Proposed Development.

5 Registration of this Agreement

- 5.1 Within 30 days from the commencement of this agreement the Developer must take all reasonable steps to procure the registration of the agreement, in accordance with Section 93H of the Act on the relevant folios of the register held by the LPI pertaining to the Development Land.
- 5.2 The Council agrees:
- (a) to provide a release and discharge of this agreement with respect to the Development Land or any lot created on subdivision of the Development Land on satisfaction by the Developer of the obligation to provide the Developer's Contribution: and
 - (b) to do all things reasonably necessary, including the execution of any documents, to enable the Developer to remove the notation of this agreement on the relevant folios of the register, held by the LPI pertaining to the Land.
- 5.3 The Council acknowledges that the registration of this agreement on the relevant folios of the register held by the LPI pertaining to the Development Land constitutes suitable means of enforcement of this agreement for the purposes of s93F(3)(g) of the Act.

6 Developer's Contribution

- 6.1 Subject to the terms of this agreement, including clause 3.3, the Developer agrees to provide the Developer's Contribution in the form of the Cash Contribution via a condition of Development Consent at the rate of \$30,000, subject to clause 8, for the creation of each additional Housing Lot.
- 6.2 For the avoidance of doubt, the parties agree and acknowledge the Development Land consists of two allotments and the Council will exclude the number of existing allotments when calculating the required Developer's Contribution.
- 6.3 If less than 13 Housing Lots are achieved on the Development Land, the Cash Contribution of \$30,000 per Housing Lot created will be multiplied by the number of achievable Housing Lots created

16558609_1/GKS/2130496

5

ORDINARY MEETING

Meeting Date: 13 December 2016

7 Calculation of Developer's Contributions

The Developer and Council acknowledge and agree that the Contribution will be calculated on the basis that not more than 13 Housing Lots can be achieved on the Development Land and the Developer will contribute cash to the value of the Cash Contribution for each of those allotments.

8 CPI Adjustment of Developer's Contributions

8.1 On each CPI Review Date the Cash Contribution will be calculated as follows:

$$RAC_c = RAC_b \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where:

RAC_b = The Housing Lot contribution at the commencement of this agreement (i.e. \$ 30,000)

RAC_c = Adjusted Housing Lot Contribution at CPI review date.

9 Payment of Cash Contribution

The Cash Contribution must be paid to Council, prior to the issue of the Subdivision Certificate, on a 'pro-rata' basis. The pro-rata payment calculation is to be based on the number of Housing Lots included in the Subdivision Certificate for the relevant stage.

10 G.S.T

10.1 Unless otherwise expressly stated all money or other sums payable or consideration to be provided under this agreement are exclusive of GST.

10.2 Despite Clause 6, to the extent that the Commissioner of Taxation, a Court or Tribunal determines that any supply made under or in connection with this agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided and a valid Tax invoice is to be delivered to the recipient of the taxable supply and this clause will not merge on completion or termination of the agreement.

11 Dispute Resolution

11.1 Reference to Dispute

If a dispute arises between the Parties in relation to this agreement, then the Parties must resolve that dispute in accordance with this clause.

11.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other Party in writing of:

- (a) the intent to invoke this clause;

ORDINARY MEETING

Meeting Date: 13 December 2016

- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 15 Business Days of the written notice provided in accordance with clause 11.2) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert determination in accordance with clause 11.5 or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); and
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 No party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 11.3; and
- (b) the Parties have been unable to reach an outcome identified in clause 11.3; and
- (c) any of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 11.3(b)(iii), then, that Party may, by 15 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this agreement.

11.5 Expert Determination

- (a) If a Dispute arises between Parties to this agreement, the Parties may agree to refer the Dispute to expert determination in Sydney, New South Wales administered by the Australian Commercial Dispute Centre (ACDC).
- (b) The expert determination will be conducted in accordance with the ACDC Rules for Expert Determination (Rules) in force at the date of this agreement. The Rules set out the procedures to be adopted, the process of selection of the expert and the costs involved, including the Parties' respective responsibilities for the payment of the expert's costs and other costs of the expert determination.
- (c) The expert determination will be final and binding on the Parties.
- (d) This clause survives termination of this agreement.

16558609_1/GKS/3130496

7

ORDINARY MEETING

Meeting Date: 13 December 2016

11.6 Urgent Relief

At any time, a Party may, without inconsistency with anything in this clause 11, seek urgent interlocutory relief in respect of a dispute under this agreement from any Court having jurisdiction.

12 Agreement of the Developer

12.1 The Developer warrants that it:

12.1.1 is the legal and beneficial owner of part of the Development Land;

12.1.2 will take all practicable steps and use best endeavours and do all acts and things required to procure:

12.1.2.1 the execution of any documents necessary to effect registration of this agreement with LPI; and

12.1.2.2 the production of the relevant certificates of title for the Development Land and the registration of this agreement at LPI on the title of the Development Land within 30 days of the date of the commencement of this agreement.

12.2 Council shall not be required to seal any subdivision plan made pursuant to the Development Approval unless and until this agreement has been registered at LPI on the title of the Development Land.

13 Enforcement by any party

(a) Without limiting any other remedies available to the Parties, this agreement may be enforced by any Party in any court of competent jurisdiction.

(b) Nothing in this agreement prevents:

(i) a Party from bringing proceedings in a court of competent jurisdiction to enforce any aspect of this agreement or any matter to which this agreement relates, subject to compliance with clause 14; and

(ii) the Council from exercising any function under the Act or any other Act or law.

14 Assignment and dealings

14.1 The Developer is not to:

14.1.1 sell, transfer, mortgage or charge the Land, or

14.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

14.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold, transferred, mortgaged or charged or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in

ORDINARY MEETING

Meeting Date: 13 December 2016

favour of the Council on terms reasonably satisfactory to the Council, and

14.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, mortgagee, charge, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

14.1.5 the Developer is not in breach of this Deed, and

14.1.6 the Council otherwise consents to the transfer, mortgage, charge, assignment or novation, such consent not to be unreasonably withheld.

14.2 Clause 14.1 does not apply in relation to any sale, transfer, mortgage or charge of the Land if this Deed is registered on the title to the Land at the time of the sale.

14.3.1 Upon the commencement of this Deed, the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council has a sufficient interest in the Land to lodge and maintain with the Land and Property Management Authority a caveat notifying that interest.

14.3.2 The Developer consents to the Council lodging a caveat on the Land where this Deed is not registered on the title to the Land due to a breach by the Developer of its obligations.

15 Release

When the Developer has satisfied all of the obligations imposed on it under this agreement in respect of that part of the Development Land for which a Subdivision Certificate has been issued and for which the Developer's Contribution has been delivered then the Council must promptly at the request and at the reasonable expense of the Developer do all acts and things necessary to remove this agreement from the title of that part of the Development Land.

16 Termination

16.1 This agreement may be terminated by the Council by written notice to the Developer if:

16.1.1 the Developer commits a breach of any of the terms and conditions of this agreement and fails to remedy such a breach within fourteen (14) days of receipt of a written notice (which specifies the breach and requires the Developer to remedy the breach) whereupon the date of such termination will be effective on the 15th day from receipt of such written notice; or

16.1.2 an Event of Insolvency occurs.

17 Review Procedures

The parties may agree to review this agreement in circumstances and in a manner determined by the parties. Any amendment, modification, supplement or replacement document which results from a review must be in writing, signed by the parties and registered at LPI under Section 93H of the Act.

ORDINARY MEETING

Meeting Date: 13 December 2016

18 Notices

18.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.

18.2 For the purposes of this clause the parties' contact details for service are:

The Developer

Address:

Michael Mahboub
PO Box 353
RICHMOND NSW 2753

Council

Address:

Hawkesbury City Council
Attention: General Manager
366 George Street,
WINDSOR NSW 2756

Telephone: 4560 4444
Facsimile: 4587 7740

18.3 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

18.4 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

18.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

19 Proper Law and Jurisdiction

This agreement is made and will be construed and governed in accordance with the Law of the State of NSW South Wales. Each party submits to the exclusive

ORDINARY MEETING

Meeting Date: 13 December 2016

jurisdiction of each and every Court or Tribunal of the said State having jurisdiction to hear the matter submitted to it.

20 Severance

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

21 Waiver

- 21.1 No failure on the part of a party to exercise and no delay in exercising and no cause of dealing with respect to, any condition and the rights, powers or remedies of that party under this agreement will impair any of those rights, powers or remedies, nor constitute a waiver of any of those rights, powers or remedies.
- 21.2 No single or partial exercise by a party of any condition and rights, powers or remedies under this agreement will preclude any other or further exercise of those or exercise of any other conditions rights or remedies.
- 21.3 Any condition and the rights, powers or remedies under or relating to this agreement are cumulative and will not exclude any other rights, powers or remedies under or relating to this agreement at Law.
- 21.4 No waiver of any of the conditions of this agreement will be effective unless in writing signed by the party against whom such waiver is sought to be enforced.
- 21.5 Any waiver of the conditions of this agreement will be effective only in the specific instance and for the specific purpose given and the waiver will not be deemed a waiver of such obligations or of any subsequent breach of the same or some other obligation.

22 Approvals and Consent

Except as otherwise set out in this agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

23 Entire Agreement

This agreement contains all the terms and conditions to which the parties have agreed on in relation to the matters which they have dealt with. No party can rely on an earlier document, anything said or done by another party, or omitted to be relied upon, said or done except as permitted by Law.

24 No Fetter

- 24.1 Nothing in the agreement is to be construed as requiring the Council to do anything
 - 24.1.1 that would cause it to be in breach of any of its obligations at Law;
 - 24.1.2 limiting or fettering in any way the exercise of any statutory discretion or duty; at Law; or

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11

ORDINARY MEETING

Meeting Date: 13 December 2016

24.1.3 imposing any obligations to grant an Approval.

25 Representatives and Warranties

Each party agrees that it has the power and authority to enter into this agreement and comply with its obligations and that entry into this agreement will not result in a breach of Law.

26 Costs

Each party must bear and pay its own costs of and incidental to the preparation and execution of this agreement.

Executed as an agreement on

2016

Execution by Council

Signed by Hawkesbury City Council by
its authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name of witness

Authorised Officer's Name:
Signing on behalf of: Hawkesbury City Council
Power of Attorney Book:
No: _____

Address of witness

Execution by

Signed by :

Signature of director/company secretary

Signature of director

Print name

Print name

Explanatory Note

~~Draft~~ Voluntary Planning Agreement

Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond

This Explanatory Note has been prepared in accordance with clause 25E of *Environmental Planning and Assessment Regulation 2000* (the Regulation).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification, in accordance with section 93G of the *Environmental Planning and Assessment Act 1979* (the Act), of a ~~draft~~ Voluntary Planning Agreement (~~draft~~ VPA) under section 93F of the Act.

This Explanatory Note is not to be used to assist in construing the ~~draft~~ VPA.

The Parties

The Parties subject to this ~~draft~~ VPA are as follows:

Hawkesbury City Council (ABN 54 659 038 834) ("Council")
Michael Mahboub, Benjamin Matthias and Daniel Galea (collectively known as "the Developer")

Description of Subject Land

This ~~draft~~ VPA applies to Lots 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond.

Summary of objectives, nature and effect of the Planning Agreement

The ~~draft~~ VPA is complementary to a proposed amendment to Hawkesbury Local Environmental Plan 2012 which will enable the subdivision of the site into not more than 13 Housing lots.

The objective, nature and effect of the ~~draft~~ VPA is for the Developer to provide Council with a cash contribution of \$30,000 for each vacant Housing lot created. This amount is to be paid and is subject to consumer price index adjustment as per clauses 3, 6, 7 and 8 of the ~~draft~~ VPA. It is anticipated that contributions collected by Council will be expended on local and district infrastructure and facilities such as, but not necessarily limited to, cycleways, bus shelters, landscape and park embellishments and local road improvements to serve the needs of the community as a consequence of the development.

ORDINARY MEETING

Meeting Date: 13 December 2016

The agreement will only operate if and when Council grants development approval(s) to the proposed development of the site. The agreement excludes the application of section 94A and section 94 of the Act to the proposed development of the site.

Assessment of the merits of the Planning Agreement

The merits of the ~~draft~~-VPA are that it will provide Council with cash contributions to provide local and district infrastructure and facilities which are required by the community as a consequence of the development.

The ~~draft~~-VPA will have a positive impact on the public in that it will enable the provision of local and district infrastructure and facilities and for the orderly and economic development of the subject land.

How does the Planning Agreement promote the public interest and one or more of the objects of the Act?

The ~~draft~~-VPA promotes the public interest by ensuring that cash contributions are made for the provision of local and district infrastructure and facilities which are required by the community as a consequence of the development.

The ~~draft~~-VPA promotes the following objects of the Act through the provision of cash contributions to be used for the provision of local and district infrastructure and facilities:

- To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment (Section 5(a)(i))
- To encourage the promotion and co-ordination of the orderly and economic use and development of land (Section 5(a)(ii))
- To encourage the provision and co-ordination of community services and facilities (Section 5(a)(v))

How does the Planning Agreement promote the objects of the Local Government Act 1993?

By requiring the payment of cash contributions, the ~~draft~~-VPA provides Council with the ability to provide local and district infrastructure and facilities appropriate to the needs of the incoming community and also provides Council with a role in the management, improvement and development of resources in the area.

ORDINARY MEETING

Meeting Date: 13 December 2016

In this way, the ~~draft~~-VPA promotes the purposes set out in section 7(~~ed~~) of the *Local Government Act 1993*.

How does the Planning Agreement promote the Principles for local government elements of Council's Charter under Chapter 3 Section 8 of the *Local Government Act 1993*?

The ~~draft~~-VPA makes provisions for Council to receive cash contributions that can be used for the provision of local and district infrastructure and facilities, hence the ~~draft~~-VPA promotes the following elements of Principles for local government Council's Charter under Chapter 3 Sections 8A and 8B of the *Local Government Act 1993*:

- ~~• to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that these services and facilities are managed efficiently and effectively~~
- ~~• to have regard to the long term and cumulative effects of its decisions~~
- ~~• to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible~~
- ~~• to engage in long term strategic planning on behalf of the local community~~
- ~~• to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights~~
- ~~•~~
 - 8A (1) (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way
- ~~• 8A (1) (g) Councils should work with others to secure appropriate services for local community needs~~
- ~~• 8A (1) (h) Councils should act fairly, ethically and without bias in the interests of the local community~~
- ~~• 8A (2) (b) Councils should consider social justice principles~~
- ~~• 8A (2) (c) Councils should consider the long term and cumulative effects of actions on future generations~~
- ~~• 8B (d) Councils should have regard to achieving intergenerational equity, including ensuring the following: (i) policy decisions are made after considering their financial effects on future generations~~

What are the planning purposes served by the Planning Agreement?

ORDINARY MEETING

Meeting Date: 13 December 2016

The planning purpose of the ~~draft~~-VPA is to enable the collection of contributions that can be used for the delivery of local and district infrastructure and facilities required as a result of the proposed development.

The agreement will only operate if and when Council grants development approval(s) to the proposed development of the site. If the proposed development does occur then the planning purpose will be achieved. If the proposed development does not occur the planning purpose will not be achieved nor will it be required.

Does the Planning Agreement conform with Council's Capital Works Program?

It is anticipated that the contributions collected will be used to provide local and district infrastructure and facilities that are supplementary and consistent with Council's current capital work program.

Does the agreement specify certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued?

Yes, clause 9 of the ~~draft~~-VPA states:

The Cash Contribution must be paid to Council, prior to the issue of the Subdivision Certificate, on a 'pro-rata' basis. The pro-rata payment calculation is to be based on the number of Housing Lots included in the Subdivision Certificate for the relevant stage.

~~13 December & September 2016~~

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 13 December 2016

Item: 270 **CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong - (95498, 124414)**

Previous Item: 255, Ordinary (29 November 2016)

REPORT:

File Number:	LEP003/14
Property Address:	Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong
Applicant:	Montgomery Planning Solutions
Owner(s):	Mr MW Bull and Mrs JL Bull
Date Received:	9 September 2014
Public exhibition:	11 September 2015 to 6 October 2015
Community Submissions:	Nil
Government Agency Responses:	Six
Recommendation:	Council proceed with the making of the LEP amendment and publically exhibit an associated draft Voluntary Planning Agreement

REPORT:

Executive Summary

On 9 December 2014, Council considered a report regarding a planning proposal, submitted by Montgomery Planning Solutions (the applicant), seeking an amendment to Hawkesbury Local Environmental Plan 2012 (LEP 2012) in order to allow development of Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong primarily for large lot residential purposes.

The purpose of this current report is to advise Council of the outcome of consultation with public authorities and the community regarding the planning proposal.

This report also includes advice to Council of an offer by the developer to enter into a Voluntary Planning Agreement (VPA) with Council that would result in the developer paying a cash contribution of \$30,000 per housing lot to Council.

This matter was reported to Council's Ordinary Meeting on 29 November 2016 where Council resolved to defer the matter to the next Ordinary Meeting of Council, hence this further report.

It should also be noted that following consideration of a report on the Kurmond and Kurrajong Investigation Area Survey Results to the Ordinary Meeting of 29 November 2016, Council resolved:

"That:

- 1. Council receive the results of the Kurmond and Kurrajong Investigation Area Survey.*
- 2. Council Staff identify a number of specific areas (based upon Constraints Mapping, survey results and the preferred approach as outlined in this report) for possible, but not certain, development of additional large lot residential/rural-residential development throughout the Investigation Area and some residential development up to, but not within, the existing villages of Kurmond and Kurrajong.*
- 3. The identified areas be further consulted with the community regarding future development.*

ORDINARY MEETING

Meeting Date: 13 December 2016

4. *The results of that further consultation be reported to Council.*
5. *Council not accept any further planning proposal applications within the Kurmond and Kurrajong investigation area until such time as the structure planning as outlined in this report is completed. Council receive a progress report on the structure planning prior to July 2017.*
6. *Council continue processing the planning proposals within the investigation area that have received support via a Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016."*

In respect of the matter at hand, point 6 of the above resolution is the most relevant in that this particular matter deals with a planning proposal that had been supported by Council at its Meeting on 9 December 2014, and had received a Gateway determination advising to proceed in April 2015. The public authority consultation and public exhibition has been completed during which time it is also particularly relevant to note that no submissions were received from the community.

There has been ongoing discussions with the applicant in regard to the planning proposal, the outcome of which has seen the proposal revised to satisfy the fundamental development constraints established through the Kurmond Kurrajong Investigation Area Structure Planning process as they relate to the subject site. Based upon this, it is recommended that Council proceed with the making of an LEP that gives effect to the revised planning proposal described in this report, and to place the draft VPA on public exhibition.

Background

On 9 December 2014, Council considered a report regarding a planning proposal seeking an amendment to LEP 2012 in order to allow development of Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong into approximately nine lots with a minimum lot size of not less than 4,000m². The subject site is shown in Figure 1 below, whilst the adjoining Figure 2 shows the concept plan of subdivision (not adopted by Council) as presented to the Council Meeting on 9 December 2014.



Figure 1: Subject Site

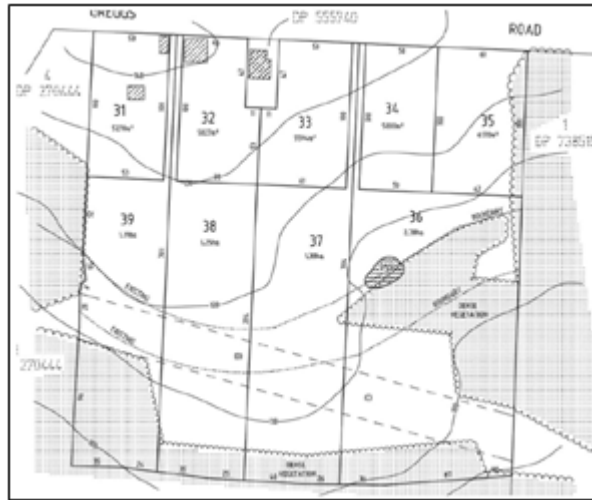


Figure 2: Original concept plan of subdivision

The recommendation of the report to Council was that the planning proposal not be supported in its submitted form as it was considered that it did not demonstrate adequate consistency with the relevant criteria of the Hawkesbury Residential Land Strategy.

Having considered the matter, Council resolved on 9 December 2014:

"That:

1. *Council support the preparation of a planning proposal for Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong to allow development of the land for large lot residential/rural residential development.*
2. *The planning proposal be forwarded to the Department of Planning and Infrastructure for a "Gateway" determination.*
3. *The Department of Planning and Infrastructure be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.*
4. *The Department of Planning and Infrastructure and the applicant be advised that in addition to all other relevant planning considerations being addressed, final Council support for the proposal will only be given if Council is satisfied that satisfactory progress, either completion of the Section 94 Developer Contributions Plan or a Voluntary Planning Agreement, has been made towards resolving infrastructure provision for this planning proposal.*
5. *Council does not endorse the subdivision concept plan submitted with the planning proposal as this will need to be subject to a future development application if the plan was made."*

A Rescission Motion relating to this decision was subsequently lodged, but at Council's Meeting of 3 February 2015 the motion to rescind Council's resolution of 9 December 2014 was lost.

Below is a timeline of key events relating to this planning proposal.

ORDINARY MEETING

Meeting Date: 13 December 2016

Timeline of key events

9 September 2014	Planning proposal received
9 December 2014	Planning proposal reported to Council and resolved to support
3 February 2015	Rescission motion considered by Council and lost
11 February 2015	Applicant requested to provide an amended planning proposal
24 February 2015	Amended planning proposal received
27 February 2015	Planning proposal referred to DP&E for a Gateway determination
30 April 2015	DP&E Gateway determination received advising to proceed
1 July 2015	DP&E clarification of Gateway determination received
21 July - 17 August 2015	Public authority consultation
27 August 2015	Public authority responses provided to applicant
11 September - 6 October 2015	Public exhibition of planning proposal
15 October 2015	Applicant advised that no submissions were received and requested to prepare a draft Voluntary Planning Agreement (VPA)
23 February 2016	Amended planning proposal and draft VPA received
5 April 2016	Applicant requested to review number of potential lots given slope, bushfire and vegetation constraints of the land
14 April 2016	Response from applicant received
22 April 2016	Applicant requested to provide further information to support concept lot layout
14 June 2016	Onsite meeting with Council staff, applicant and land owners
19 July - 10 October 2016	Various additional information received from applicant, with amendments submitted to reflect extensive ongoing discussions with Council officers.
29 November 2016	Council considers report on planning proposal and resolves to defer the matter until the next Ordinary Meeting.

In respect of the last point in the above timeline, it should also be noted that following consideration of a report on the Kurmond and Kurrajong Investigation Area Survey Results to the Ordinary Meeting of 29 November 2016, Council resolved

"That:

- 1. Council receive the results of the Kurmond and Kurrajong Investigation Area Survey.*
- 2. Council Staff identify a number of specific areas (based upon Constraints Mapping, survey results and the preferred approach as outlined in this report) for possible, but not certain, development of additional large lot residential/rural-residential development throughout the Investigation Area and some residential development up to, but not within, the existing villages of Kurmond and Kurrajong.*
- 3. The identified areas be further consulted with the community regarding future development.*
- 4. The results of that further consultation be reported to Council.*
- 5. Council not accept any further planning proposal applications within the Kurmond and Kurrajong investigation area until such time as the structure planning as outlined in this report is completed. Council receive a progress report on the structure planning prior to July 2017.*
- 6. Council continue processing the planning proposals within the investigation area that have received support via a Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016."*

In respect of the matter at hand, point 6 of the above resolution is the most relevant in that this particular matter deals with a planning proposal that had been supported by Council at its Meeting on 9 December 2014, and had received a Gateway determination advising to proceed in April 2015. The public authority consultation and public exhibition has been completed during which time it is also particularly relevant to note that no submissions were received from the community.

There has been ongoing discussions with the applicant in regard to the planning proposal, the outcome of which has seen the proposal revised to satisfy the fundamental development constraints established through the Kurmond Kurrajong Investigation Area Structure Planning process as they relate to the subject site.

Authorisation for Council to Exercise Delegation

The "Gateway" determination included authorisation for Council to exercise delegation to make this plan. Should Council resolve to proceed with the making of the plan this authorisation will allow Council to make a direct request to the Parliamentary Counsel's Office (PCO) to prepare a draft Local Environmental Plan to give effect to the planning proposal. Following receipt of an opinion from the PCO that the plan can be legally made, Council may then make the plan. Council delegated this plan making function to the General Manager by resolution on 11 December 2012.

In finalising a "delegated" planning proposal, Council staff are required to prepare a "Section 59" planning report in accordance with DP&E requirements. As part of this report it is required to provide details of consultation with relevant public agencies and demonstrate how any objections or issues were resolved, and identify what amendments were made to the planning proposal to respond to the issues raised by agencies.

Consultation with Public Authorities

Consultation was undertaken with the following public authorities as prescribed by the Gateway determination:

- NSW Rural Fire Service (RFS)
- NSW Office of Environment and Heritage (OEH)
- Endeavour Energy
- Roads and Maritime Service (RMS)
- Transport for NSW (TfNSW)
- NSW Trade & Investment - Resource & Energy Division (T&I)
- Greater Sydney Local Land Services (GSLLS).

Council received responses from all of the abovementioned public authorities, except for the Greater Sydney Local Land Services. Following is a summary of agencies comments, where provided, and officer responses:

NSW Rural Fire Service

Comment *The NSW Rural Fire Service (RFS) raised no objection to the planning proposal subject to a requirement that the future subdivision of the land complies with Planning for Bushfire Protection 2006 (PBP 2006).*

Response A provision requiring that the future subdivision comply with PBP 2006 need not be included into the proposed LEP amendment as this is a mandatory matter for consideration at development application (DA) stage.

Office of Environment and Heritage

Comment *OEH expressed concern that the planning proposal provided no additional planning controls proposed for the protection of native vegetation on the site, and that future development would result in the fragmentation and incremental loss of vegetation through the erection of dwellings and associated provision of Asset Protection Zones, infrastructure, effluent disposal areas, fencing and ancillary development such as sheds.*

ORDINARY MEETING

Meeting Date: 13 December 2016

OEH stated that if there are areas with high biodiversity values, Council will need to consider how the protection of this vegetation can be achieved, and that Council should consider a split zoning for the site using the E2 Environmental Conservation zone for land with biodiversity values.

Response Further discussions have been held with the applicant and owner regarding the protection of significant vegetation on the site. As a result, the applicant has provided an amended planning proposal effectively reducing the number of proposed lots from nine to eight, and providing for one larger lot that will contain the significant vegetation. In lieu of a multi zone response, various minimum lot sizes are proposed for the subject site in order to minimise potential development impacts on and fragmentation of significant vegetation. This approach is explained in greater detail later in this report.

Endeavour Energy

Comment *Endeavour Energy raised no objections to the planning proposal subject to the following comments and recommendations:*

- an application will be required for connection of the subdivision to carry out a load assessment and determine the method of supply, which may include additional infrastructure and easements*
- services and structures are not to be installed within Endeavour Energy's electrical easements, nor is the surface level of the easement site to be altered*
- access to the easement site is not to be restricted at any time*
- a policy of prudent avoidance should be adopted by siting sensitive uses away from any electricity infrastructure to minimise exposure to Electric and Magnetic Fields, such as orientating habitable rooms away from any electricity infrastructure*
- where development is proposed in the vicinity of overhead power lines, Endeavour Energy is not responsible for any acoustic/noise amelioration measures for such noise that may impact on nearby proposed development*
- public safety guidelines are available from Endeavour Energy's website for those working in the vicinity of electricity infrastructure.*

Response Consideration of future dwelling house locations, design and orientation, and noise impacts from overhead power lines are matters that can be addressed in future DAs.

Roads and Maritime Service

Comment *RMS raised no objection to the proposed amendments to the Lot Size Map of LEP 2012 subject to the inclusion of the subject site on the Restricted Lot Yield Map to place a maximum subdivision lot yield of nine lots.*

The RMS also advised:

"The proposal is a major variation to the existing controls and in isolation does not raise any concerns from an RMS perspective. Council are (sic) advised, however that in the absence of any Strategic Integrated Traffic/Transport Study to justify the same, RMS would be concerned with the cumulative impacts of other similar proposals within the area and the potential adverse impacts to the existing and future regional road network."

ORDINARY MEETING

Meeting Date: 13 December 2016

Response Council is undertaking a broader investigation of the impacts of large lot residential development in the Kurmond and Kurrajong area (see separate report on this agenda) and it is anticipated this investigation will include a Traffic Study to investigate the impacts to the surrounding road network and individual intersections that are likely to be adversely impacted by increased traffic. Council staff have had ongoing discussions with RMS in respect to the road network, and continue to undertake the broader assessment of the Kurmond and Kurrajong Investigation Area.

As will be discussed later in this report the maximum number of lots achievable by the proposed amendment to the LEP is proposed to be restricted to eight lots, and hence RMS's request that the maximum number of lots be restricted to nine can be satisfied.

Transport for NSW

Comment *Transport for NSW (TfNSW) advised that they are currently investigating a suitable corridor for the Bells Line of Road - Castlereagh Connection and notes that the site is within their broad investigation area. TfNSW also advised that they are consulting with stakeholders and the wider community to identify potential corridors for further investigation and hopes to have a recommended corridor for preservation by late 2016. Despite this, TfNSW "would not object to development within the study area."*

TfNSW also requested that the planning proposal consider Section 117 Ministerial Direction 3.4 Integrating Land Use and Transport. This Direction indicates that planning proposals must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of Improving Transport Choice - Guidelines for Planning and Development (DUPA 2001). A key objective of this document is for every household to be within 400m walking distance of a bus route served at least every 30 minutes.

In addition TfNSW has noted that it has received several planning proposal referrals from Hawkesbury for similar large lot residential subdivisions in the surrounding area and therefore recommends that a Strategic Planning Study be undertaken to determine the potential scale of residential lot increases in the surrounding area and assess the cumulative impacts on the local and regional traffic and transport infrastructure, and identify mitigating measures if required.

Response To date TfNSW have not published a recommended corridor for the Bells Line of Road - Castlereagh Connection.

Section 117 Direction 3.4 primarily relates to the rezoning of land for urban purposes and is not readily applicable to a large lot residential / rural residential planning proposal. In response to this Direction the planning proposal states:

"The draft LEP will provide housing opportunities in a locality which is adequately serviced by public transport (in rural village terms). The draft LEP is consistent with the relevant guidelines and policy."

The DP&E in their "Gateway" determination of the planning proposal stated:

"I have also agreed that any inconsistencies with Section 117 Directions . . . 3.4 Integrating Land Use and Transport . . . are of minor significance. No further approval is required in relation to these Directions."

Council is undertaking a broader investigation of the impacts of large lot residential development in the Kurmond and Kurrajong area (see separate report on this agenda) and it is anticipated this investigation will include a Traffic Study to investigate and assess the cumulative impacts of increased residential lots on local and regional traffic and transport infrastructure, and to identify works which may be required to mitigate any adverse impacts.

NSW Trade & Investment - Resource & Energy Division

Comment NSW Trade and Investment raised no objection to the proposal.

Community Consultation

The planning proposal was publically exhibited for the period 11 September 2015 to 6 October 2015. A notice was placed in the 'Hawkesbury Courier' local newspaper and letters were sent to adjoining and nearby landowners and occupiers advising of the public exhibition of the planning proposal. During the public exhibition period the planning proposal and supporting documentation were made available on Council's website, Council's Community Engagement Portal: *Your Hawkesbury - Your Say* and at Council's Main Administration Building. No public submissions were received.

Proposed Amendment to Lot Size Map of LEP 2012

Since this planning proposal was reported to Council on 9 December 2014, a number of reports have been presented to Council regarding the Kurmond and Kurrajong Investigation Area. Of primary relevance are the reports to Council on 28 July 2015 and 24 November 2015 which included an analysis of land and environmental constraints within the Investigation Area.

The result of these reports was that Council adopted the following development principles as an Interim Policy for planning within the Kurmond and Kurrajong Investigation Area:

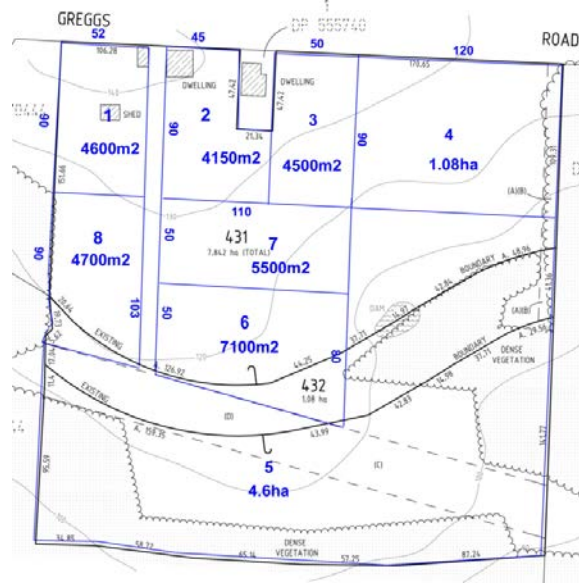
- building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%
- removal of significant vegetation is avoided
- fragmentation of significant vegetation is minimised
- building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourse) are located outside of riparian corridors
- road and other crossings of water courses is minimised
- fragmentation of riparian areas is minimised
- removal of dams containing significant aquatic habitat is avoided.

In response to these principles and comments received from OEH, extensive discussions were held with the applicant and owner regarding the identification of significant vegetation on the site, the proposed amendment to the Lot Size Map and overall lot yield.

In response the applicant has provided a revised concept subdivision plan (Figure 3) that avoids the removal and fragmentation of these significant vegetation communities and avoids excessive development of steep sloping land for future dwellings.

ORDINARY MEETING

Meeting Date: 13 December 2016



**Figure 3: Proposed Amendment to Lot Size Map
(Not adopted for subdivision layout)**

The amendment proposed by Figure 3 would result in an improved environmental outcome given it would result in a single lot being created at the rear of the site which includes Shale Sandstone Transition Forest, and sufficient area for a dwelling and associated waste water irrigation area and Asset Protection Zone outside of the Shale Sandstone Transition Forest area. In addition the electricity easement will also be wholly contained within this lot.

It should be noted that the lot layout shown in Figure 3 is for indicative purposes only and is not proposed to be incorporated into the LEP amendment. The actual plan of subdivision is to be determined at DA stage, and may be different to that shown in Figure 3, but the approach to lot sizes ensures that significant vegetation will be retained within a single lot.

As a result it is recommended that the relevant Lot Size Map and Restricted Lot Yield Map of the LEP be amended as shown in Figures 4 and 5 respectively.

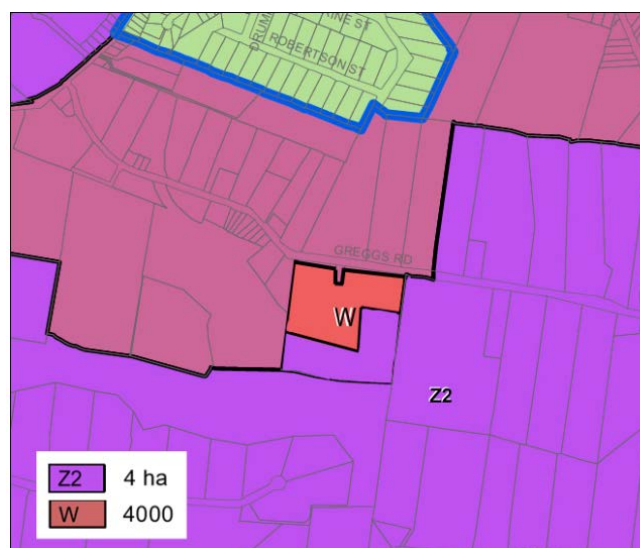


Figure 4: Proposed Amendment to Restricted Lot Yield Map

ORDINARY MEETING

Meeting Date: 13 December 2016

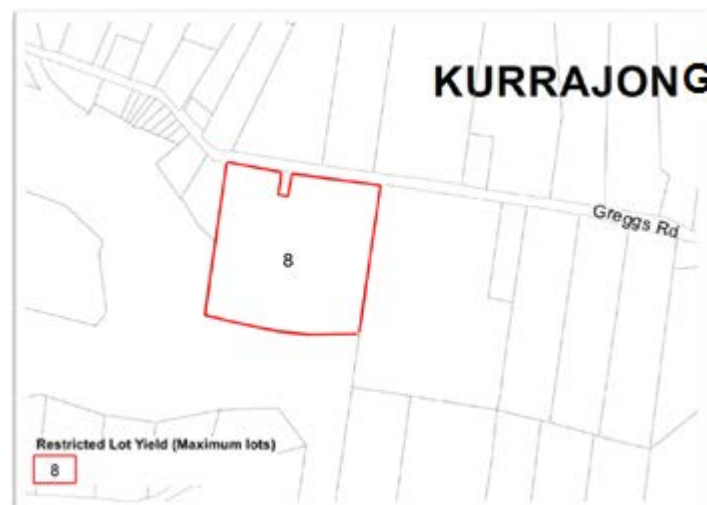


Figure 5: Proposed Amendment to Restricted Lot Yield Map

Council Resolution 28 July 2015 regarding Fundamental Constraints to Development

On 28 July 2015, Council resolved that current planning proposals within the Kurmond and Kurrajong Investigation Area only proceed to Gateway if the 'fundamental' development constraints have been addressed. A Gateway determination to proceed with this planning proposal was received on 30 April 2015, prior to this resolution being made.

Fundamental constraints and associated recommendations that are relevant to this planning proposal are shown below in Tables 1 and 2. These tables also provide comments regarding the proposal's compliance with the 'fundamental' development constraints.

Table 1: Physical Environment

Factor	Degree of Constraint to Development	Recommendation
<i>Terrestrial Biodiversity</i>		
<i>Impact of development on threatened or endangered flora and fauna</i>	<i>Fundamental - Major</i>	<i>Legislation applies to threatened and endangered species. OEH concurrence may be required.</i> <i>Removal of significant vegetation is to be avoided.</i> <i>Fragmentation of significant vegetation is to be minimised.</i>
Comment: The significant vegetation is contained mostly within the southern part of the subject site. The proposed 4ha minimum lot size in this area will minimise removal and fragmentation of this vegetation. If required, this vegetation can be further protected during the subdivision DA process by a requirement for a positive covenant to be registered on the title(s).		

ORDINARY MEETING

Meeting Date: 13 December 2016

Factor	Degree of Constraint to Development	Recommendation
Watercourses and Riparian Areas		
<i>Impact of development on watercourses and riparian areas</i>	<i>Fundamental - Major</i>	<p><i>Legislation applies to threatened and endangered species. OEH concurrence may be required.</i></p> <p><i>Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourses) are to be located outside of riparian corridors.</i></p> <p><i>Road crossings of watercourses are to be minimised.</i></p> <p><i>Fragmentation of riparian areas is to be minimised.</i></p>
Comment: The land contains no watercourses or riparian areas.		
Dams		
<i>Impact of development on aquatic habitat. Proximity of dams to effluent disposal systems</i>	<i>Fundamental - Minor</i>	<p><i>Legislation applies to threatened and endangered species. OEH concurrence may be required.</i></p> <p><i>Removal of dams containing significant aquatic habitat is to be avoided. Minimum required buffer distances for effluent disposal systems are to be adhered to.</i></p>
Comment: A small ephemeral dam is located within an area of the land which is proposed to have a 4 ha minimum lot size. The on-site wastewater disposal for the relevant lot as shown on the concept subdivision plan will be located below the dam. Therefore, it is considered that the proposal will have no impact.		
Bushfire threat		
<i>Impact of the location and management of APZs and perimeter roads</i>	<i>Fundamental - Major</i>	<p><i>RFS concurrence may be required.</i></p> <p><i>Building construction and water supply is to comply with NSW Rural Fire Service's Planning for Bushfire Protection 2006, e.g. APZs and roads.</i></p>
Comment: The planning proposal has demonstrated that asset protection zones can be provided within each lot without the need for clearing of significant vegetation. Compliance of future development with <i>Planning for Bushfire Protection 2006</i> can be satisfactorily dealt with at DA stage by way of referral to the RFS and appropriate conditions of consent.		
Aboriginal Heritage		
<i>Impact of development on Aboriginal heritage items</i>	<i>Fundamental - Moderate</i>	<p><i>National Parks and Wildlife Act 1974 applies</i></p> <p><i>Council and developers are also to consider relevant provisions of the Heritage Act 1977 when preparing and considering development applications.</i></p>
Comment: No known aboriginal relics are located on the site. Further consideration will be given to this at DA stage.		

ORDINARY MEETING

Meeting Date: 13 December 2016

Factor	Degree of Constraint to Development	Recommendation
Land Contamination		
<i>Suitability of land to be developed given potential for land to be contaminated</i>	<i>Fundamental - Minor</i>	<i>Remediation action plans and validation may be required. Council and developers are to consider relevant provisions of State Environmental Planning Policy No 55 - Remediation of Land when preparing and considering development applications.</i>
Comment: The applicant advises that the land has not been used for agriculture in the form of animal grazing for many years and that there is no evidence to suggest that any activities have occurred on the land which would give rise to contamination. Further consideration will be given to this at DA stage.		
Acid Sulfate Soils		
<i>Impact of disturbance of acid sulfate soils on the environment and development</i>	<i>Fundamental to Minor</i>	<i>Development proposals and land class are to be assessed with respect to Clause 6.1 Acid Sulfate Soils of LEP 2012. Acid sulfate soils management plans may be required.</i>
Comment: The subject site is within the Acid Sulfate Soils Class 5 categorisation which is the least restrictive of the five classifications. Further consideration will be given to this at DA stage.		

Table 2: Infrastructure and Services

Factor	Degree of Constraint to Development	Recommendation
Road network		
<i>Capacity and safety of existing road network</i>	<i>Fundamental - Major</i>	<i>RMS concurrence may be required. Development contributions are to be levied for road improvements. Council and developers are to consider relevant provisions of State Environmental Planning Policy (Infrastructure) 2007 when preparing and considering development applications.</i>
Comment: RMS have not requested a development contribution for road works. Council officers are continuing discussions with RMS regarding the road network. A VPA is proposed as part of this proposal.		
Wastewater		
<i>Capacity of land to cater for on-site effluent disposal</i>	<i>Fundamental</i>	<i>Sydney Water concurrence may be required. Developers are to demonstrate that waste water can be disposed of on site in an environmentally sensitive manner. Alternatively developers may provide reticulated sewer service to new lots in accordance with relevant licences and/or authority requirements. Clause 6.7 - Essential Services under LEP 2012 applies.</i>

ORDINARY MEETING

Meeting Date: 13 December 2016

Factor	Degree of Constraint to Development	Recommendation
Comment: The applicant has provided suitable advice demonstrating that waste water can be disposed of on-site in an environmentally sensitive manner for each of the indicative lots.		
Public Transport Services		
<i>Provision of bus service to cater for the needs of incoming population</i>	<i>Fundamental - Moderate</i>	<i>Transport NSW and RMS concurrence may be required. Possible levying of development contributions for bus services. Clause 6.7 - Essential Services under LEP 2012 applies.</i>
Comment: RMS have not requested a development contribution for a bus service. Council officers are continuing discussions with RMS and Transport for NSW regarding public transport services.		
Stormwater drainage		
<i>Quantity and quality of stormwater run-off entering watercourses</i>	<i>Fundamental - Moderate</i>	<i>Developers are to demonstrate that stormwater can be captured, treated and released in an environmentally sensitive manner. Possible levying of development contributions for stormwater purposes. Clause 6.7 - Essential Services under LEP 2012 applies.</i>
Comment: It is considered this can be satisfactorily dealt with at DA stage by way of the assessment of drainage designs and conditions of consent.		
Water supply		
<i>Provision of reticulated water supply to new lots</i>	<i>Fundamental - Moderate</i>	<i>Sydney Water concurrence may be required. A reticulated water service is to be provided to new lots by developers in accordance with relevant authority requirements. Clause 6.7 - Essential Services under LEP 2012 applies.</i>
Comment: The subject site is located within Sydney Water's Water Supply Area. Connection to the reticulated water supply is feasible, and can be satisfactorily dealt with at DA stage by way of conditions of consent.		
Electricity		
<i>Provision of electricity service to new lots</i>	<i>Fundamental</i>	<i>Electricity provider concurrence may be required. Electricity services are to be provided to new lots by developers in accordance with relevant authority requirements. Clause 6.7 - Essential Services under LEP 2012 applies.</i>
Comment: Endeavour Energy has confirmed that connection of future lots to the electricity service is feasible. Therefore, the provision of electricity to any new lots can be satisfactorily dealt with at DA stage by way of conditions of consent.		

Offer of a Voluntary Planning Agreement (VPA)

Council considered a report on VPAs for the Kurmond and Kurrajong Investigation Area at its Meeting of 10 November 2015. The resolution at that Meeting was as follows:

"That:

- 1. Council agree to offers to enter into negotiations for Voluntary Planning Agreements in the Kurrajong/Kurmond Investigation Area in the absence of an adopted Section 94 developer contributions plan.*
- 2. Any Voluntary Planning Agreement for this locality to be based on CPI adjusted cash contributions on a per lot release basis consistent with the offers discussed in this report.*
- 3. Negotiations for draft VPAs should include consideration of a Clause to terminate the VPA once the Section 94 Plan is adopted with no retrospective provisions should the amended contributions be different to the VPA contribution amount.*
- 4. To reinforce Council's previous resolutions planning proposals that have completed public exhibition are not to be reported to Council for finalisation until a Section 94 Plan is adopted or the report is accompanied by a draft Voluntary Planning Agreement that is proposed to be placed on public exhibition."*

In response to this resolution the developer has offered to enter into a VPA with Council that would result in the developer paying a cash contribution to Council to the value of \$30,000 per additional housing lot. The draft VPA is attached to this report and, if the recommendation is adopted by Council, the draft VPA will require public exhibition.

Variation to Planning Proposals

The Environmental Planning and Assessment Act 1979 permits Council, at any time, to vary a planning proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason.

If Council does vary the planning proposal it is to forward the revised planning proposal to the Minister of Planning.

As discussed above, post "Gateway" determination variations to the planning proposal are proposed. These variations include:

- the provision of a minimum lot size of 4ha to enable the creation of a single lot capable of containing the Shale Sandstone Transition Forest, thereby preventing the fragmentation and removal of this significant vegetation.
- a reduction in the number of lots to be created from the subject site from nine to eight allotments. This reduction enables the potential for the larger lot, as well as improved lot design of the 4,000m² lots to ensure that future development avoids steep sloping land.

Hence, if Council agrees with these variations, prior to finalising the planning proposal under delegated authority from DP&E, it will be necessary to forward these variations to DP&E for consideration.

Conclusion

In response to recent resolutions of Council and comments from OEH it is recommended that the planning proposal proceed on the basis of the abovementioned proposed amendments to the Lot Size Map and the Restricted Lot Yield Map of LEP 2012. These amendments are proposed in order to provide greater protection of the significant vegetation on the subject site.

ORDINARY MEETING

Meeting Date: 13 December 2016

In accordance with previous resolutions of Council, the developer has offered to enter into a Voluntary Planning Agreement with Council that would result in the cash payment of \$30,000 per additional housing lot.

It is therefore recommended that Council proceed with the making of an LEP that will give effect to the proposed amendment described in this report, and that the draft VPA be publically exhibited for a minimum of 28 days.

Conformance to the Hawkesbury Community Strategic Plan

The proposal is consistent with the Looking after People and Place Directions statement:

- Offer residents a choice of housing options that meet their needs whilst being sympathetic to the qualities of the Hawkesbury
- Population growth is matched with the provisions of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury
- Have development on both sides of the river supported by appropriate physical and community infrastructure.

Financial Implications

The applicant has paid the fees required by Council's Fees and Charges for the preparation of a local environmental 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 Council:

1. Proceed with the making of a plan to amend the Hawkesbury Local Environmental Plan 2012 in order to permit the subdivision of Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong into not more than 8 lots with minimum lot sizes of 4,000m² and 4ha as described in this report.
2. Request that the Parliamentary Counsel's Office prepare a draft Local Environmental Plan to give effect to the planning proposal in accordance with Section 59(1) of the Environmental Planning and Assessment Act, 1979.
3. Adopt and make the draft local environmental plan, under the authorisation for Council to exercise delegation issued by the Gateway determination, upon receipt of an opinion from Parliamentary Counsel's Office that the plan can be legally made.
4. Following the making of the Plan, advise the Department of Planning and Environment that the Plan has been made and request to notify the Plan on the NSW Legislation website.
5. Publically exhibit the Draft Voluntary Planning Agreement attached to this report for a minimum of 28 days and the Draft Voluntary Planning Agreement be reported back to Council following public exhibition prior to finalisation.

ORDINARY MEETING

Meeting Date: 13 December 2016

ATTACHMENTS:

- AT - 1** Draft Voluntary Planning Agreement between Hawkesbury City Council and Mark Bull and Jenelle Bull

ORDINARY MEETING

Meeting Date: 13 December 2016

AT - 1 Draft Voluntary Planning Agreement

between

Hawkesbury City Council and Mark Bull and Jenelle Bull

VOLUNTARY
PLANNING
AGREEMENT

Section 93F of the Environmental Planning and Assessment Act 1979

429 & 431
GREGGS ROAD
KURRAJONG

September 2016

ORDINARY MEETING

Meeting Date: 13 December 2016

THIS PLANNING AGREEMENT is made on theday of2016

BETWEEN:

Parties

HAWKESBURY CITY COUNCIL ("the Council")

AND:

Mark and Jenelle Bull ("the Developer")

Introduction

- A. The Developer is the registered proprietor of the Development Land.
- B. On 18 March 2015 the Council lodged a planning proposal with the Department of Planning and Environment to amend the *Hawkesbury Local Environmental Plan 2012* Lot Size Map to facilitate subdivision of the Development Land to create eight (8) lots.
- C. The Developer proposes to make a Development Application to Council for Development Approval to carry out the Proposed Development if the Lot Size Map for the Development Land is altered generally in accordance with the planning proposal.
- D. The Developer has offered to provide the Developer's Contribution on the terms and conditions contained in this Agreement if Development Approval is granted to the Proposed Development.

And it is agreed as follows

1 Definitions and Interpretation

In this agreement the following words and letters have the meanings set out below.

- 1.1 "Act" means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended from time to time).
- 1.2 "Approval" means any approvals consents, modifications, certificates (of all types) permits, endorsements, licenses, conditions or requirements (and any variation to them) which may be required by Law for the Proposed Development.
- 1.3 "Authority" means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body, commission, department, agency, tribunal or other authority or body.
- 1.4 "Base CPI" means the CPI number for the quarter ending immediately before the commencement of this Agreement.
- 1.5 "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act and thing is to be performed or a payment is to be made.

ORDINARY MEETING

Meeting Date: 13 December 2016

- 1.6 "Cash Contribution" means, subject to clauses 3, 6, 7 and 8 an amount calculated on the basis of \$30,000 per vacant Housing Lot.
- 1.7 "Completion Certificate" means the release of the subdivision, either in whole or in stages, to enable the lodgement to and issue of Housing Lot titles by the LPI.
- 1.8 "CPI" means the Consumer Price Index released by the Australian Bureau of Statistics for "Sydney - All Groups" or such other consumer price index that might replace it.
- 1.9 "CPI Review Date" means each quarterly anniversary of the date of this agreement.
- 1.10 "Costs" include costs, charges, fees, disbursements and expenses, including those incurred in connection with advisers.
- 1.11 "Current CPI" means the CPI number for the quarter ending immediately before the relevant CPI Review Date.
- 1.12 "Developer's Contribution" has the meaning given in clause 6.
- 1.13 "Development Application" means an application under Part 4 of the Act for Development Approval.
- 1.14 "Development Approval" means a development consent issued under the Act with respect to all or part of the Proposed Development.
- 1.15 "Development Land" means the land comprising Lots 431 and 432 DP 1189536 (Nos. 431 & 431A) Greggs Road Kurrajong.
- 1.16 "Dispute" in connection with this agreement means an argument, a controversy, a difference, a dispute including of opinion or interpretation.
- 1.17 "Event of Insolvency" means anyone or more of the following occurrences:
- (i) the Developer becomes bankrupt, is served with a bankruptcy notice or a bankruptcy petition, has committed an act of bankruptcy or has entered into an arrangement within and under the meaning of the *Bankruptcy Act 1976* (Cth); or
 - (ii) the Developer becomes subject to any order or declaration under the *Mental Health Act 2007* (NSW) or is otherwise incapable of managing his or her own affairs.
 - (iii) if the Developer is a company, if:
 - (a) a resolution is passed for the winding up or liquidation of that company;
 - (b) a liquidator, provisional liquidator, receiver, receiver manager, controller, controlling manager, administrator, voluntary administrator or official manager is appointed to the Developer or a resolution is passed for the purposes of placing that party in the control of an external administrator;
 - (c) it suspends payment of its debts or is unable to pay its debts including of money payable under this agreement or is deemed insolvent;
 - (d) it fails to or is taken as having failed to comply with a statutory demand under the *Corporations Act 2001* (Cth);

ORDINARY MEETING

Meeting Date: 13 December 2016

- (e) if anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction with respect to the Developer.
- 1.18 "GST" has the same meaning as the GST Act and other words or expressions used in the GST Act which have a particular defined meaning (including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning.
- 1.19 "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- 1.20 "Housing Lot" means a lot approved by a Development Consent comprising part of the Development Land that is intended to be used for the purposes of a single dwelling house without being further subdivided.
- 1.21 "Housing Lot Contribution" means subject to Clauses 6, 7 and 8, cash to the value of \$30,000 per vacant Housing Lot arising from a Development Consent of the Development Land.
- 1.22 "Law" means:
 - (i) the common law and principles of equity;
 - (ii) the requirements of legislation, regulations and by-laws; and
 - (iii) a binding order made by an Authority.
- 1.23 "LPI" means Land and Property Information or any other government agency replacing it.
- 1.24 "Lot Size Map" means the maps with a corresponding name and forming part of *Hawkesbury Local Environmental Plan 2012*.
- 1.25 "Party" means a party to this agreement, including their successors and assigns.
- 1.26 "Proposed Development" means the subdivision of the Development Land into not more than eight (8) Housing Lots.
- 1.27 "Subdivision Certificate" means a certificate issued under section 109C(d) of the Act with respect to the Proposed Development.
- 1.28 "Transfer" means to settle, assign, transfer, convey, alienate, otherwise dispose of or part with possession of.

2 Interpretation:

In this agreement unless the contrary intention appears:

- 2.1 One gender includes the opposite gender.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A party includes that party's executors, administrators, successors, permitted assigns, permitted legal representatives and substitutes.
- 2.4 Dollars or \$ means Australia dollars and all money payable under this agreement is payable in that currency.

ORDINARY MEETING

Meeting Date: 13 December 2016

- 2.5 "Including" and similar expressions are not words of limitation.
- 2.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.7 Headings, any table of contents or index are for convenience only and do not affect interpretation of this agreement.
- 2.8 An explanatory note which relates to this agreement does not affect the interpretation of this agreement.
- 2.9 A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible wholly or partly for the preparation of this agreement or the inclusion of a term or condition in this agreement.
- 2.10 If an act and thing must be done on a specific day which is not a business day, it must be done instead on the next business day.
- 2.11 A person means and includes a person, a body corporate, Authority, firm, body of persons, association, trust, joint venture or other legal commercial entity or undertaking recognized by law whether or not incorporated.
- 3 **Planning Agreement**
 - 3.1 This agreement
 - 3.1.1 applies to the Development Land;
 - 3.1.2 is a planning agreement within the meaning set out in section 93F of the Act;
 - 3.1.3 is to be registered on the title of the Development Land under section 93H of the Act;
 - 3.1.4 is not a confidential document and may be exhibited without restriction by either party.
 - 3.2 Subject to clause 3.3, this agreement operates from the date it is executed.
 - 3.3 Clause 6 of this agreement will only operate if and when Council grants Development Approval (or Development Approvals as the case may be) to the Proposed Development on the Development Land.
- 4 **Application of s94 and s94A of the Act to the Development**
 - 4.1 This agreement excludes the application of section 94A and section 94 of the Act to the Proposed Development.
 - 4.2 Notwithstanding Clause 4.1, should a section 94 Plan which applies to the land come into force prior to the issue of any development consent for subdivision of the land, this Agreement shall be terminated immediately and the adopted contribution rate within such section 94 Plan shall be applied in place of the Developer's Contribution cited within this Agreement.
 - 4.3 Clause 4.2 does not allow the Council or the Developer to retrospectively apply a section 94 contribution for allotments for which development contributions have been paid in accordance with this Agreement.

- 4.4 Subject to Clause 15 should this Agreement be terminated in accordance with clause 16, section 94A or section 94 of the Act, whichever is applicable, will apply to the Proposed Development.

5 Registration of this Agreement

- 5.1 Within 30 days from the commencement of this Agreement the Developer must take all reasonable steps to procure the registration of the Agreement, in accordance with Section 93H of the Act on the relevant folios of the register held by the LPI pertaining to the Development Land.
- 5.2 The Council agrees:
- (a) to provide a release and discharge of this Agreement with respect to the Development Land or any lot created on subdivision of the Development Land on satisfaction by the Developer of the obligation to provide the Developer's Contribution: and
 - (b) to do all things reasonably necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land.

- 5.3 The Council acknowledges that the registration of this Agreement on the relevant folios of the register held by the LPI pertaining to the Development Land constitutes suitable means of enforcement of this Agreement for the purposes of s93F(3)(g) of the Act.

6 Developer's Contribution

- 6.1 Subject to the terms of this agreement, including clause 3.3, the Developer agrees to provide the Developer's Contribution, subject to clause 8, in the form of the Cash Contribution via a condition of Development Consent at the rate of \$30,000, subject to clause 8, for the creation of each vacant Housing Lot.
- 6.2 For the avoidance of doubt, the parties agree and acknowledge that the maximum Cash Contribution is calculated on the basis of \$30,000, subject to clause 8, per additional Housing Lot created by subdivision of the Development Land. The existing Development Land allotment does not attract a Cash Contribution through this Agreement by virtue of there being on the land prior to any additional subdivision one lawfully existing dwelling.

7 Calculation of Developer's Contributions

The Developer and Council acknowledge and agree that the Contribution will be calculated on the basis that not more than eight (8) Housing Lots can be achieved on the Development Land and the Developer will contribute cash to the value of the Cash Contribution for each of those vacant allotments.

8 CPI Adjustment of Developer's Contributions

On each CPI Review Date the Cash Contribution will be calculated as follows:

$$RAC_c = RAC_a \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where:

RAC_a = The Housing Lot contribution at the commencement of this Agreement (i.e. \$30,000)

RAC_c = Adjusted Housing Lot Contribution at CPI review date.

9 Payment of Cash Contribution

The Cash Contribution must be paid to Council, prior to the issue of the Subdivision Certificate, on a 'pro-rata' basis. The pro-rata payment calculation is to be based on the number of Housing Lots included in the Subdivision Certificate for the relevant stage.

10 G.S.T

10.1 Unless otherwise expressly stated all money or other sums payable or consideration to be provided under this agreement are exclusive of GST.

10.2 Despite Clause 6, to the extent that the Commissioner of Taxation, a Court or Tribunal determines that any supply made under or in connection with this agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided and a valid Tax invoice is to be delivered to the recipient of the taxable supply and this clause will not merge on completion or termination of the agreement.

11 Dispute Resolution

11.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then the Parties must resolve that dispute in accordance with this clause.

11.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other Party in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 15 Business Days of the written notice provided in accordance with clause 11.2 meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert determination in accordance with clause 11.5 or consideration is needed to effectively resolve the dispute (in which

event the Parties will, in good faith, agree to a timetable for resolution);
and

- (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 No party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 11.3; and
- (b) the Parties have been unable to reach an outcome identified in clause 11.3; and
- (c) any of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 11.3(b)(iii), then, that Party may, by 15 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

11.5 Expert Determination

- (a) If a Dispute arises between Parties to this Agreement, the Parties may agree to refer the Dispute to expert determination in Sydney, New South Wales administered by the Australian Commercial Dispute Centre (ACDC).
- (b) The expert determination will be conducted in accordance with the ACDC Rules for Expert Determination (Rules) in force at the date of this Agreement. The Rules set out the procedures to be adopted, the process of selection of the expert and the costs involved, including the Parties' respective responsibilities for the payment of the expert's costs and other costs of the expert determination.
- (c) The expert determination will be final and binding on the Parties.
- (d) This clause 11 survives termination of this Agreement.

11.6 Urgent Relief

At any time, a Party may, without inconsistency with anything in this clause 11, seek urgent interlocutory relief in respect of a dispute under this Agreement from any Court having jurisdiction.

12 Agreement of the Developer

12.1 The Developer warrants that it:

- 12.1.1 is the legal and beneficial owner of part of the Development Land;
- 12.1.2 will take all practicable steps and use best endeavours and do all acts and things required to procure:
 - 12.1.2.1 the execution of any documents necessary to effect registration of this agreement with LPI; and

ORDINARY MEETING

Meeting Date: 13 December 2016

- 12.1.2.2 the production of the relevant certificates of title for the Development Land and the registration of this agreement at LPI on the title of the Development Land within 30 days of the date of the commencement of this agreement.

12.2 Council shall not be required to seal any sub-division plan made pursuant to the Development Approval unless and until this agreement has been registered at LPI on the title of the Development Land.

13 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in a court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates, subject to compliance with clause 14; and
 - (ii) the Council from exercising any function under the Act or any other Act or law.

14 Assignment and dealings

14.1 The Developer is not to:

- 14.1.1 sell, transfer, mortgage or charge the Land, or
- 14.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

- 14.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold, transferred, mortgaged or charged or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 14.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, mortgagee, charge, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 14.1.5 the Developer is not in breach of this Deed, and
- 14.1.6 the Council otherwise consents to the transfer, mortgage, charge, assignment or novation, such consent not to be unreasonably withheld.

14.2 Clause 14.1 does not apply in relation to any sale, transfer, mortgage or charge of the Land if this Deed is registered on the title to the Land at the time of the sale.

14.3.1 Upon the commencement of this Deed, the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the

ORDINARY MEETING

Meeting Date: 13 December 2016

Council has a sufficient interest in the Land to lodge and maintain with the Land and Property Management Authority a caveat notifying that interest.

- 14.3.2 The Developer consents to the Council lodging a caveat on the Land where this Deed is not registered on the title to the Land due to a breach by the Developer of its obligations.

15 Release

When the Developer has satisfied all of the obligations imposed on it under this agreement in respect of that part of the Development Land for which a Subdivision Certificate has been issued and for which the Developer's Contribution has been delivered then the Council must promptly at the request and at the reasonable expense of the Developer do all acts and things necessary to remove this agreement from the title of that part of the Development Land.

16 Termination

- 16.1 This agreement may be terminated by the Council by written notice to the Developer if:

16.1.1 the Developer commits a breach of any of the terms and conditions of this agreement and fails to remedy such a breach within fourteen (14) days of receipt of a written notice (which specifies the breach and requires the Developer to remedy the breach) whereupon the date of such termination will be effective on the 15th day from receipt of such written notice; or

16.1.2 an Event of Insolvency occurs.

17 Review Procedures

The parties may agree to review this agreement in circumstances and in a manner determined by the parties. Any amendment, modification, supplement or replacement document which results from a review must be in writing, signed by the parties and registered at LPI under Section 93H of the Act.

18 Notices

- 18.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

(a) Delivered or posted to that Party at its address set out below.

(b) Faxed to that Party at its fax number set out below.

- 18.2 For the purposes of this clause the parties' contact details for service are:

The Developer

Mr Mark and Mrs Jenelle Bull

Address:

431 Greggs Road Kurrajong

Email: Mark.Bull@jemena.com.au>

Telephone: 0402 060 438

ORDINARY MEETING

Meeting Date: 13 December 2016

Council

Address:

Hawkesbury City Council
Attention: General Manager
366 George Street,
WINDSOR NSW 2576

Telephone: 4560 4444
Facsimile: 4587 7740

- 18.3 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 18.4 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 18.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.
- 19 Proper Law and Jurisdiction**
- This agreement is made and will be construed and governed in accordance with the Law of the State of NSW South Wales. Each party submits to the exclusive jurisdiction of each and every Court or Tribunal of the said State having jurisdiction to hear the matter submitted to it.
- 20 Severance**
- If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 21 Waiver**
- 21.1 No failure on the part of a party to exercise and no delay in exercising and no cause of dealing with respect to, any condition and the rights, powers or remedies of that party under this agreement will impair any of those rights, powers or remedies, nor constitute a waiver of any of those rights, powers or remedies.

ORDINARY MEETING

Meeting Date: 13 December 2016

- 21.2 No single or partial exercise by a party of any condition and rights, powers or remedies under this agreement will preclude any other or further exercise of those or exercise of any other conditions rights or remedies.
- 21.3 Any condition and the rights, powers or remedies under or relating to this agreement are cumulative and will not exclude any other rights, powers or remedies under or relating to this agreement at Law.
- 21.4 No waiver of any of the conditions of this agreement will be effective unless in writing signed by the party against whom such waiver is sought to be enforced.
- 21.5 Any waiver of the conditions of this agreement will be effective only in the specific instance and for the specific purpose given and the waiver will not be deemed a waiver of such obligations or of any subsequent breach of the same or some other obligation.

22 Approvals and Consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

23 Entire Agreement

This agreement contains all the terms and conditions to which the parties have agreed on in relation to the matters which they have dealt with. No party can rely on an earlier document, anything said or done by another party, or omitted to be relied upon, said or done except as permitted by Law.

24 No Fetter

- 24.1 Nothing in the agreement is to be construed as requiring the Council to do anything
- 24.1.1 that would cause it to be in breach of any of its obligations at Law;
- 24.1.2 limiting or fettering in any way the exercise of any statutory discretion or duty; at Law; or
- 24.1.3 imposing any obligations to grant an Approval.

25 Representatives and Warranties

Each party agrees that it has the power and authority to enter into this Agreement and comply with its obligations and that entry into this agreement will not result in a breach of Law.

26 Costs

Each party must bear and pay its own costs of and incidental to the preparation and execution of this Agreement.

ORDINARY MEETING

Meeting Date: 13 December 2016

Executed as an agreement on

2016

Execution by Council

Signed by Hawkesbury City Council by its
authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name of witness

Authorised Officer's Name:
Signing on behalf of: Hawkesbury City
Council
Power of Attorney Book:
No: _____

Address of witness

Execution by Mark and Jenelle Bull

Signed by :

Signature of Mark Bull

Signature of Jenelle Bull

Print name

Print name

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 13 December 2016

Item: 271 **CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012
- 2A - 8 Hawkesbury Valley Way and 383 - 395 George Street, Windsor NSW
2756 - (95496, 124414)**

Applicant Name:	Urban City Consulting Pty Ltd
Planning Proposal No:	LEP013/16
Property Address:	2A – 8 Hawkesbury Valley Way and 383 – 395 George Street, Windsor
Owner/s:	Pumpkin Group Pty Ltd
Date Received:	27 June 2016
Current Zone:	R2 Low Density Residential
Proposed Zone/s:	B1 Neighbourhood Centre
Site Area:	0.53ha (Approximately)
Recommendation:	Council support the preparation of a planning proposal and submit to the Department of Planning and Environment for a "Gateway" determination

REPORT:

Executive Summary

This report discusses a planning proposal from Urban City Consulting Pty Ltd (the applicant) which seeks to amend the Hawkesbury Local Environmental Plan 2012 (the LEP) to rezone Lots 7-12 DP 1093, 383-395 George Street, Lot A DP 108510, 2A Hawkesbury Valley Way and Lots 11-13 DP 1662, 4-8 Hawkesbury Valley Way, Windsor from R2 Low Density Residential to B1 Neighbourhood Centre under the LEP.

This report provides Council with an overview of the planning proposal and recommends that the planning proposal be supported and submitted to the Department of Planning and Environment (DP&E) for a Gateway determination.

Consultation

The planning proposal has not yet been exhibited as Council has not resolved to prepare the proposal, i.e. without the Council resolution there is no proposal to publically exhibit. If the planning proposal is to proceed and receive a supporting 'Gateway' determination, it will be exhibited in accordance with the relevant provisions of the Environmental Planning and Assessment Act, 1979 (EP&A Act) and associated Regulations, and as specified in the 'Gateway' determination.

Planning Proposal

The planning proposal seeks to:

- rezone the subject site from R2 Low Density Residential to B1 Neighbourhood Centre under the LEP to allow development of the site for business/commercial purposes.
- amend the Lot Size Map of the LEP to remove the current 450m² lot size provision applying to the subject site.
- amend the Height of Buildings Map to change the current maximum 10m building height provision applying to the subject site to 12m.

ORDINARY MEETING

Meeting Date: 13 December 2016

The planning proposal aims to achieve the intended outcome by amending:

- the Land Zoning Map of the LEP (Map Ref No - 3800_COM_LZN_008DA) to change the zoning of the site to B1 Neighbourhood Centre.
- the Lot Size Map of the LEP (Map Ref No - 3800_COM_LSZ_008DA) to remove the current 450m² minimum lot size provision applying to the subject site.
- the Height of Buildings Map of the LEP (Map Ref No - 3800_COM_HOB_008DA) to specify a 12m maximum building height provision for the subject site.

Subject Site and Surrounds

The subject site is located at the signalised intersection of Hawkesbury Valley Way and George Street in relatively close proximity to both the Windsor Town Centre and the Railway Station as shown in Figure 1 below:



Figure 1: Site Location Map

The subject site consists of 11 properties, and has a total area of approximately 0.53ha as shown in Figure 2 and Table 1 below:

ORDINARY MEETING

Meeting Date: 13 December 2016



Figure 2: Aerial View of the Subject Site

Table 1: Subject Site Properties and Current Land Uses

Property Description	Street Address	Area	Current Use
Lot 13 DP 1089172	383 George Street	329m ²	Open car yard
Lot 12 DP 1093	385 George Street	278m ²	Open car yard
Lot 11 DP 1093	387 George Street	278m ²	Open car yard
Lot 10 DP 1093	389 George Street	278m ²	Open car yard
Lot 9 DP 1093	391 George Street	285m ²	Open car yard and car sale office
Lot 8 DP 1093	393 George Street	285m ²	Car sales office and car workshop
Lot 7 DP 1093	395 George Street	285m ²	Car sales office and car workshop
Lot A DP 108510	2A Hawkesbury Valley Way	277m ²	Open car yard
Lot 13 DP 16626	4 Hawkesbury Valley Way	1088m ²	Dwelling
Lot 12 DP 16626	6 Hawkesbury Valley Way	1012m ²	Dwelling
Lot 11 DP 16626	8 Hawkesbury Valley Way	936m ²	Dwelling
Total		5,331m²	

Approximately 20% of the subject site covering 383-389 George Street and part of 391 George Street at the northeast corner is currently being used as a car sales yard, and there are three single storey dwellings fronting Hawkesbury Valley Way as shown in Figure 2 and Table 1 above. A car sales office and a car workshop occupy the rest of the subject site covering part of 391 George Street and 393-395 George Street.

The subject site is bounded by Hawkesbury Valley way to the north, George Street to the east and R2 Low Density Residential zoned properties to the south and west as shown in Figure 2 above. It has an approximate 75m wide frontage to Hawkesbury Valley Way, and 79m wide frontage to George Street.

ORDINARY MEETING

Meeting Date: 13 December 2016

The subject site is currently zoned R2 Low Density Residential under the LEP. The current minimum lot size for subdivision of the subject site is 450m² and 10m maximum building height provision applies to the subject site.

Other relevant matters from the LEP include:

- the site falls within the Middle Nepean & Hawkesbury River Catchment Area of Sydney Regional Environmental Plan No.20 Hawkesbury – Nepean River (No.2 – 1997)
- the whole of the subject site is shown as being within Class 5 Acid Sulfate Soils on the Acid Sulphate Soils Planning Maps contained within the LEP. Acid Sulfate Soil Classification 5 represents a relatively low chance of acid sulphate soils being present on the site
- the subject site is shown as being flood prone
- the subject site is affected by aircraft noise from Richmond RAAF base and its flight paths.

The site is surrounded by a mixture of land uses including retail/commercial, residential and public recreation uses, Windsor Railway Station and Bus Interchange, schools, church and a cemetery. McQuade Park is located directly opposite the subject site. The Windsor Railway Station and the Town Centre are located within a short walking distance.

Applicant's Justification of Proposal

The applicant has provided the following justification for the planning proposal:

- The planning proposal will enable a range of business opportunities and increased job opportunities in proximity to a major public transport network.
- The planning proposal is consistent with the relevant planning framework.
- The site has no constraints that would prevent or prohibit the use of the subject site for business purposes.
- Future development of the subject site for business purposes is unlikely to have any significant impact on the amenity of the residential development adjoining the site.
- The subject site has easy access to the required infrastructure services and public transport system.

A Plan for Growing Sydney and Draft North West Subregional Strategy

A Plan for Growing Sydney was released in December 2014 and is the NSW Government's 20-year plan for the Sydney Metropolitan Area (SMA). It provides direction for Sydney's productivity, environmental management, and liveability; and for the location of housing, employment, infrastructure and open space.

A Plan for Growing Sydney contains the following Vision for Sydney:

A strong global city, a great place to live.

The Vision is supported by the following four goals and three principles.

- Goal 1: A competitive economy with world-class services and transport
- Goal 2: A city of housing choice with homes that meet our needs and lifestyles
- Goal 3: A great place to live with communities that are strong, healthy and well connected
- Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources

ORDINARY MEETING

Meeting Date: 13 December 2016

Principle 1: Increasing housing choice around all centres through urban renewal in established areas.

Principle 2: Stronger economic development in strategic centres and transport gateways.

Principle 3: Connecting centres with a networked transport system.

A Plan for Growing Sydney divides Sydney into six subregions: Central; West Central; West; North; South West; and South. The Hawkesbury LGA is in the West subregion along with the Penrith and Blue Mountains LGAs.

The Draft North West Subregional Planning Strategy (the Strategy) was released by the NSW Government in December 2007. The Strategy covers the LGAs of The Hills, Blacktown, Blue Mountains, Hawkesbury and Penrith and sets broad directions for additional dwelling and employment growth.

The Key Directions of the draft Strategy are:

- plan to meet employment and housing capacity targets
- develop Penrith as a Regional City
- strengthen the role of centres
- improve access to, from and within the subregion
- protect rural and resource lands
- promote the environmental and scenic qualities of the region
- improve access to open space and recreation opportunities.

The Strategy was never finalised and is currently under review. At the time of lodgement, assessment of the planning proposal and writing of this report the draft Sydney West District Plan had not been released for public exhibition.

The planning proposal seeking rezoning of the site with easy access to the existing regional road network, and in close proximity to both the Windsor Town Centre and Railway Station to a business zone enabling the expansion of the Windsor Town Centre and the Windsor Railway Station Business Precinct is considered to be generally consistent with this State planning framework.

Hawkesbury Employment Lands Strategy 2008

In December 2008, Council adopted the Hawkesbury Employment Lands Strategy (HELS). The purpose of this strategy is to provide a planning framework for employment precincts (industrial, commercial and retail) and locations for a range of employment types to support and enhance the economic competitiveness of the Hawkesbury region. The HELS recommended Council to pursue eight strategies to address the economic prosperity of the Hawkesbury Local Government Area.

Windsor Town Centre is one of the two main commercial/retail centres within the Hawkesbury Local Government Area (LGA), and is the LGAs historic and traditional retail main street centre extending approximately 1.5km mainly along George Street and linking the Windsor Mall at the north-eastern end of George Street, and the Windsor Railway Station south of Hawkesbury Valley Way.

The HELS acknowledges that the growth in population creates a demand for retail capacity in business zoned employment areas, and there is significant scope for additional retail development in commercial/retail areas. The HELS also acknowledges that an additional 28,104m² of retail floor space would need to be accommodated in the business zoned land, and a modest amount of floor space could mostly be accommodated within the existing centres through minor expansion or a renewal of the commercial/retail areas.

THE HELS recommends eight strategies with Strategy 3 being to facilitate renewal of existing centres with capacity for growth, and a land area surrounding the Windsor Station has been identified as an Investigation Area for possible minor commercial and retail purposes as shown in Figure 3 below. This is to investigate options for redevelopment of the Windsor Station Business Precinct to transform it as a local hub providing a mixture of retail and commercial floor space to meet the needs of the current and future population in the area. The subject site is located in close proximity to the Investigation Area and between the Windsor Station Business Precinct and the Windsor Town Centre.

Given these circumstances, the planning proposal seeking rezoning of the subject site to B1 Neighbourhood Centre is considered to be generally consistent with the HELS.



Figure 3: Windsor Investigation Area

Hawkesbury Local Environmental Plan 2012

Proposed Amendment to Land Zoning Map

The subject site is currently zoned R2 Low Density Residential under the LEP as shown in Figure 4 below.



Figure 4: Current Land Zoning Map Extract

A range of land uses are permitted in the R2 zone, but retail and commercial uses (other than neighbourhood shops) are not permitted in this zone. Therefore, the planning proposal is seeking to amend the Land Zoning Map of the LEP to rezone the subject site to B1 Neighbourhood Centre as shown in Attachment 1 of this Report to allow development of the subject site for retail and commercial purposes.

The planning proposal seeking rezoning of the site to B1 Neighbourhood Centre is considered appropriate for the following reasons:

- the subject site is not suitable for residential purposes for reasons explained in further detail later in this report.
- the site is located in close proximity to the Windsor Investigation area identified in the HELS.
- the subject site is located within a short walking distance to the Windsor Town Centre, Railway Station and the Bus Interchange.
- the proposal will enable the revitalisation of the existing Windsor Station Business Precinct and expansion of the Town Centre to provide increased local job opportunities closer to homes and public transport system, and improve the viability of the Windsor Town Centre and the public transport system.

Proposed Amendment to Lot Size Map

The current minimum lot size provision applying to the subject site is 450m² as shown in Figure 5 below. The planning proposal is seeking to amend the Lot Size Map of the LEP to remove the current minimum lot size provision applying to the subject site as shown in Attachment 2 of this report.

ORDINARY MEETING

Meeting Date: 13 December 2016



Figure 5: Current Lot Size Map Extract

Minimum lot size provisions do not apply to business zoned land within the Hawkesbury LGA, and therefore the proposed amendment to the Lot Size Map of the LEP to remove the current minimum lot size provision applying to the subject site to ensure consistency with the Business zoned land within the Hawkesbury LGA is considered necessary.

Proposed Amendment to Height of Buildings Map

The current maximum building height provision applying to the subject site is 10m as shown in Figure 6 below. The planning proposal is seeking to amend the Height of Buildings Map of the LEP to specify a 12m maximum building height provision for the subject site as shown in Attachment 3 of this report.

Currently the maximum building height provision applying to Business zoned land within the Hawkesbury LGA is 12m, and therefore the proposed amendment to the Lot Size Map of the LEP to specify a 12m maximum building height provision for the subject site to ensure consistency with the Business zoned land within the Hawkesbury LGA is considered necessary.



Figure 6: Current Height of Buildings Map Extract

Section 117 Directions

The Minister for Planning, under section 117(2) of EP&A Act issues directions that relevant planning authorities including councils must comply with when preparing planning proposals. The directions cover the following broad range of categories:

- employment and resources;
- environment and heritage
- housing, infrastructure and urban development;
- hazard and risk;
- regional planning;
- local plan making; and
- implementation of a Plan for Growing Sydney.

Section 117 Directions are issued by the Minister for Planning and apply to planning proposals. Typically, the Section 117 Directions will require certain matters to be complied with and/or require consultation with government authorities during the preparation of the planning proposal.

However, all these Directions permit variations subject to meeting certain criteria (refer to the last part of this section of this report). The principle criterion for variation to a 117 Direction is consistency with an adopted Local or Regional Strategy.

A summary of the key Section 117 Directions includes:

"Direction 1.1 Business and Industrial Zones

The objectives of this direction are to:

- (a) *encourage employment growth in suitable locations;*
- (b) *protect employment land in business and industrial zones, and*
- (c) *support the viability of identified strategic centres."*

The planning proposal seeks to rezone the subject site from a residential to a business zone. The subject site with easy access to the regional road network is located between and in a very close proximity to the Windsor Town Centre and the Railway Station. Therefore, future development of the subject land for business purposes will enable the expansion of the established Windsor Business Precinct, minimisation of the current gap between the Windsor Railway Station Business Precinct and the Windsor Town Centre. It will also boost economic, business and employment activities in close proximity to the Windsor Town Centre and the Railway Station, and thereby help improve the viability of both the Town Centre and the public transport system. Hence, it is considered that the planning proposal is consistent with this direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this direction is to ensure that future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

Direction 1.3 (3) states that:

"This Direction applies when a relevant planning authority prepares a planning proposal that would have the effect of:

- (a) *Prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or*
- (b) *Restricting the potential development of resources of coal, other mineral, petroleum or extractive materials which are of State regional significance by permitting a land use that is likely to be incompatible with such development."*

ORDINARY MEETING

Meeting Date: 13 December 2016

The subject site is not located within the Identified Resource Area or the Potential Resource Area or the Transition Area - areas adjacent to identified resource areas as defined by mineral resource mapping provided by the NSW Resource & Energy Division of NSW Trade & Investment. Also, the subject site is not located within or in the vicinity of land described in Schedule 1, 2 and 5 of the *Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995)* nor will the proposed development restrict the obtaining of deposits of extractive material from such land.

Should Council resolve to proceed with the planning proposal and receive a gateway determination advising to proceed with the planning proposal from DP&E, the NSW Trade and Investment (NSW T&I) would be consulted in accordance with Direction 1.3(4).

Direction 2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

Direction 2.3(4)(a) states that:

"(4) A planning proposal must contain provisions that facilitate the conservation of:

- (a) Items, places, buildings, works, relics, movable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area."*

The site contains a heritage item known as "Learholm" which is included in Schedule 5 - Environmental Heritage of the LEP as a heritage item with local heritage significance. Given the LEP contains provisions to conserve items, areas, objects and places of environmental heritage significance identified in Schedule 5 of the LEP, the planning proposal does not contain provisions to conserve the heritage significance of 'Learholm'. The current provisions contained in the LEP do contain conservation measures and will ensure the conservation of the existing heritage building on the subject site. Therefore, it is considered that the planning proposal is consistent with this Direction.

Direction 3.1 Residential Zones

Planning proposals must include provisions that encourage the provision of housing that will:

- a) broaden the choice of building types and locations available in the housing market*
- b) make more efficient use of existing infrastructure and services*
- c) reduce the consumption of land for housing and associated urban development on the urban fringe*
- d) be of good design.*

The planning proposal seeking rezoning of the site from R2 Low Density Residential to B1 Neighbourhood Centre under the LEP is not consistent with this direction. This minor inconsistency is justified with the following reasons:

- a) The subject site is not suitable for residential purposes, given the subject site's proximity to the Richmond RAAF Base it is affected by aircraft noise, and its flight paths. Australian Noise Exposure Forecast (ANEF) shows that the whole site is located within the range of 25 - 30 ANEF contours as shown in Figure 7 below.



Figure 7: Australian Noise Exposure Forecast Map Extract

Table 2.1 'Building Site Acceptability Based on ANEF Zones', of AS 2021 - 2000 Acoustics - Aircraft noise intrusion - building siting and construction shows housing in areas above 25 ANEF contour as "UNACCEPTABLE". The Department of Defence states that Richmond RAAF Base opposes new residential development around their bases because it exposes new home owners to significant aircraft noise, and may limit opportunities to mitigate against noise impacts in the future.

- b) The subject site with easy access to the regional road network is located between and in close proximity to the existing Windsor Town Centre and Windsor Railway Station Business Precinct. Therefore, the planning proposal enabling future development of the site for business purposes is more consistent with the existing character and land uses in the locality.
- c) The planning proposal seeking future development of the subject land for business purposes will enable the expansion of the Windsor Town Centre, and improved connectivity between the Windsor Railway Station Business Precinct and the Windsor Town Centre.
- d) The planning proposal will enable more economical and environmentally sustainable development on the subject site. This will provide increased job opportunities closer to the local residents' homes, the existing public transport system and improve viability of both the Windsor Town Centre and the public transport system.

Should Council resolve to proceed with the planning proposal and receive a Gateway determination advising to proceed with the planning proposal from DP&E, it will be referred to the Department of Defence for comments.

Direction 3.4 Integrating Land Use and Transport

The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) *improving access to housing, jobs and services by walking, cycling and public transport,*
- (b) *increasing the choice of available transport and reducing dependence on cars,*
- (c) *reducing travel demand including the number of trips generated by development and the distances travelled, especially by car,*

- (d) *supporting the efficient and viable operation of public transport services, and*
- (e) *providing for the efficient movement of freight.*

The Planning Proposal will enable approximately 0.53ha of business employment land with good access to both rail and road transport networks. It will also enable improved local business/retail activities and employment opportunities within a reasonable walking distance from the Windsor Railway Station and the Town Centre, thereby minimising likely travel demand and distance for shopping and employment activities. It is therefore considered that the planning proposal is generally consistent with this Direction.

Direction 4.1 Acid Sulfate Soils

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. This Direction requires consideration of the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of DP&E.

The subject site is identified as containing "Class 5 Acid Sulfate Soils on the Acid Sulphate Soils Planning Maps contained within the LEP, and as such any future development on the land will be subject to Clause 6.1 Acid Sulfate Soils of the LEP which has been prepared in accordance with the Acid Sulfate Soils Model Local Environmental Plan provisions within the Acid Sulfate Soils Planning Guidelines adopted by the Director General.

This Direction requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soil study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act. An acid sulfate soil study has not been included in the planning proposal as, due to the classification of the land, it is unlikely that such a study will be required. However, the DP&E will consider this as part of their "Gateway" determination, and if required can request further information/consideration of this matter.

Direction 4.3 Flood Prone Land

The objectives of this Direction are to:

- (a) *ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
- (b) *ensure that the provisions of an LEP on flood prone land are commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

The subject site is flood prone land, and therefore Clause 6.3 Flood planning of the LEP and Council's Development of Flood Liable Land Policy will apply to future development of the subject site.

The Hawkesbury Floodplain Risk Management Study and Plan divides flood prone land up into five flood risk categories i.e. Extreme, High, Medium, Low and Very Low and suggests that commercial and industrial development is suitable in all but the Extreme Flood Risk area. The Extreme Flood Risk area is defined as all land below the 1 in 20 year flood event level, which for the subject site is 13.7m AHD. The height of the subject site proposed to be rezoned varies from approximately 18.5m AHD to the southwest of the subject site to approximately 16m AHD to the northeast, and therefore rezoning of the subject site to a business zone is considered consistent with this Direction.

A detailed flood impact assessment could be undertaken if required when assessing a future development application for the proposed development on the site. However, it is not considered this is required at this stage.

ORDINARY MEETING

Meeting Date: 13 December 2016

Should Council resolve to proceed with the planning proposal and receive a Gateway determination advising to proceed with the planning proposal from DP&E, the State Emergency Services (SES) and the NSW Office of Environment and Heritage would be consulted seeking comments on this matter.

Direction 6.1 Approval and Referral Requirements

The objective of this Direction is to ensure that the LEP provisions encourage the efficient and appropriate assessment of development. This Direction requires that a planning proposal must:

- "(a) *minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and*
- (b) *not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:*
 - (i) *the appropriate Minister or public authority, and*
 - (ii) *the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act, and*
- (c) *not identify development as designated development unless the relevant planning authority:*
 - (i) *can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and*
 - (ii) *has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act."*

It is considered that the planning proposal is consistent with this Direction as it does not contain provisions requiring the concurrence, consultation or referral of development applications to a Minister or public authority, and does not identify development as designated development.

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessary restrictive site specific planning controls. The planning proposal proposes an amendment to the Land Zoning, Building Height and Lot Size Maps only and there are no site specific controls proposed. It is therefore considered that the proposed amendment is consistent with this Direction.

Direction 7.1 Implementation of 'A Plan for Growing Sydney'

The objective of this Direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in *A Plan for Growing Sydney*.

This Direction requires planning proposals to be consistent with the NSW Government's '*A Plan for Growing Sydney*' (the Sydney Metropolitan Strategy) released in December 2014. '*A Plan for Growing Sydney*' is the NSW Government's 20 year plan for the Sydney Metropolitan Area. It provides directions for Sydney's productivity, environmental management, and liveability; and for the location of housing, employment, infrastructure and open space.

The early part of this report demonstrates that the planning proposal enabling increased business employment land to meet the future demand will facilitate the implementation of '*A Plan for Growing Sydney*'.

State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are *State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land*, *Sydney Regional Environmental Plan (SREP) No. 9 - Extractive Industry (No 2- 1995)* and *(SREP) No. 20 - Hawkesbury - Nepean River (No.2 - 1997)*.

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)

SEPP 55 requires consideration as to whether or not land is contaminated and, if so, is it suitable for future permitted uses in its current state or does it require remediation. The SEPP 55 may require Council to obtain, and have regard to, a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

Council's records show that part of subject site has previously been used as a car workshop and service area. This may cause contamination referred to in Table 1 - 'Some Activities that may Cause Contamination' of the Managing Land Contamination: Planning Guidelines published by the (then) Department of Planning and Urban Affairs.

Therefore, if the planning proposal is to proceed further consideration of potential contamination can be dealt with after the Department of Planning and Environment's "Gateway determination" should that determination be in support of the proposal.

Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995) - (SREP 9)

The primary aims of SREP 9 are to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance, and to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential. The subject site is not within the vicinity of land described in Schedule 1, 2 and 5 of the SREP nor will the proposed development restrict the obtaining of deposits of extractive material from such land.

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

The aim of SREP 20 is 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.

This requires consideration of the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, impacts of the development on the environment, the feasibility of alternatives and consideration of specific matters such as total catchment management, water quality, water quantity, flora and fauna, agriculture, rural residential development and the metropolitan strategy.

Specifically SREP 20 encourages Council to consider the following:

- rural residential areas should not reduce agricultural viability, contribute to urban sprawl or have adverse environmental impact (particularly on the water cycle and flora and fauna)
- develop in accordance with the land capability of the site and do not cause land degradation
- the impact of the development and the cumulative environmental impact of other development proposals on the catchment
- quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters
- consider the need to ensure that water quality goals for aquatic ecosystem protection are achieved and monitored

ORDINARY MEETING

Meeting Date: 13 December 2016

- consider the ability of the land to accommodate on-site effluent disposal in the long term and do not carry out development involving on-site disposal of sewage effluent if it will adversely affect the water quality of the river or groundwater
- have due regard to the nature and size of the site; when considering a proposal for the rezoning or subdivision of land which will increase the intensity of development of rural land (for example, by increasing cleared or hard surface areas) so that effluent equivalent to that produced by more than 20 people will be generated, consider requiring the preparation of a Total Water Cycle Management Study or Plan
- minimise or eliminate point source and diffuse source pollution by the use of best management practices
- site and orientate development appropriately to ensure bank stability
- protect the habitat of native aquatic plants
- locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land
- consider the range of flora and fauna inhabiting the site of the development concerned and the surrounding land, including threatened species and migratory species, and the impact of the proposal on the survival of threatened species, populations and ecological communities, both in the short and longer terms
- conserve and, where appropriate, enhance flora and fauna communities, particularly threatened species, populations and ecological communities and existing or potential fauna corridors
- minimise adverse environmental impacts, protect existing habitat and, where appropriate, restore habitat values by the use of management practices
- consider the impact on ecological processes, such as waste assimilation and nutrient cycling
- consider the need to provide and manage buffers, adequate fire radiation zones and building setbacks from significant flora and fauna habitat areas
- consider the need to control access to flora and fauna habitat areas
- give priority to agricultural production in rural zones
- protect agricultural sustainability from the adverse impacts of other forms of proposed development
- consider the ability of the site to sustain over the long term the development concerned
- maintain or introduce appropriate separation between rural residential use and agricultural use on the land that is proposed for development
- consider any adverse environmental impacts of infrastructure associated with the development concerned.

The site falls within the Middle Nepean and Hawkesbury River Catchment Area of SREP 20.

It is considered that some form of business development on the subject site has the potential to satisfy the relevant provisions of SREP 20. Further detailed consideration of the above matters can be addressed at the development application stage.

Public Infrastructure and Services

The site has easy access to required infrastructure services including reticulated water, reticulated sewerage, electricity and telecommunication service to accommodate future retail/commercial development on the subject site. The subject site also has good access to both regional road transport systems and Sydney Metropolitan Rail and Public Bus Transport Networks.

Given the site has reasonable access to all required infrastructure and services it is likely to place a significant demand on the existing services. However, if the planning proposal is to proceed, the relevant public authorities such as Sydney Water, Integral Energy and Telstra Corporation would need to be consulted about the planning proposal after DP&E's Gateway determination.

Public Transport and Traffic Movement

The planning proposal is not supported by a transport/traffic statement or traffic impact statement. The applicant states that the area is well serviced by an existing public transport system.

The subject site is located within a short walking distance to the Windsor Railway Station and the Public Bus Interchange, therefore the subject site has easy access to both the Sydney Metropolitan Rail and Public Bus Transport Network. Therefore, it is considered that the subject site has reasonably easy access to public transport.

The subject site is currently accessed via both Hawkesbury Valley Way and George Street. Future development of the subject site for retail/commercial purposes may impact on the existing road network, and therefore the NSW Roads and Maritime Services (RMS) may restrict access to and from Hawkesbury Valley Way.

Should Council resolve to proceed with the planning proposal and receive a Gateway determination advising to proceed with the planning proposal from DP&E, it will be referred to RMS for comments.

Flooding

The site is affected by the 1 in 100 year flood. This issue is addressed in an earlier part of this report.

Heritage

Lots 8 and 9 DP 1093, 391-393 George Street, Windsor which forms part of the subject site and known as 'Learholm' is included in Schedule 5 Environmental Heritage of the LEP (Schedule 5) as a heritage item with local significance. Also 394 George Street directly opposite the subject site is included in the Schedule 5 as a heritage item with local significance.

The planning proposal is not supported by a 'Statement of Heritage Impacts. However, given the subject site containing a heritage item and a property directly opposite the subject site are also heritage listed, the planning proposal will be referred to the NSW Environment & Heritage Office for comments should Council resolve to proceed with the planning proposal and receive a gateway determination advising to proceed with the planning proposal from DP&E.

Flora and Fauna

The planning proposal does not contain a flora and fauna report or statement. The Terrestrial Biodiversity Map of the LEP does not identify any areas of significant vegetation, remnant vegetation or connection between significant vegetation on the subject site.

The applicant states that there is no critical habitat or endangered species evident on the subject site.

Given that there are no Council records or other evidence to suggest that there is critical habitat or endangered species evident on the subject site, a flora and fauna assessment report is not warranted.

ORDINARY MEETING

Meeting Date: 13 December 2016

Character

The locality is characterised by a mix of existing land uses including retail/commercial premises, residential, public open space/parks, schools, industrial development and a public cemetery, and as such the predominant land uses in the immediate vicinity are business and residential.

Given the subject site is flood prone land and it is affected by aircraft noise and flight paths, future development of the subject site for retail/commercial purposes consistent with the character in the locality and in close proximity to existing houses, Windsor Town Centre and Railway Station is considered appropriate.

Conformance to the Hawkesbury Community Strategic Plan

The proposal is consistent with the Supporting Business and Local Jobs Directions statement:

- Plan for a range of industries that build on the strengths of the Hawkesbury to stimulate investment and employment in the region.
- Offer an increased choice and number of local jobs and training opportunities to meet the needs of Hawkesbury residents and to reduce their travel times.
- Help create thriving town centres, each with its own character that attracts residents, visitors and businesses.

Financial Implications

The applicant has paid the fees required by Council's fees and charges for the preparation of a local environmental plan.

Conclusion

The assessment of the planning proposal with regard to the matters considered in this report reveals that the subject site has the potential for some form of retail/commercial development and therefore the planning proposal has some merit. Hence it is considered worthy of support.

It is therefore recommended that the planning proposal be supported and submitted to the Department of Planning and Environment (DP&E) for a 'Gateway' determination.

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.

ORDINARY MEETING

Meeting Date: 13 December 2016

RECOMMENDATION:

That:

1. Council support the preparation of a planning proposal in regard to 2A - 8 Hawkesbury Valley Way and 383 - 395 George Street, Windsor:
 - a) Amend the Land Zoning Map of the Hawkesbury Local Environmental Plan 2012 to change the current R2 Low Density Residential zoning of the subject site to B1 Neighbourhood Centre.
 - b) Amend the Height of Buildings Map of Hawkesbury Local Environmental Plan 2012 to specify a 12m maximum permissible height provision for the subject site to ensure consistency with business zoned land within Hawkesbury Local Government Area.
 - c) Amend the Lot Size Map of Hawkesbury Local Environmental Plan 2012 to remove the current 450m² minimum lot size provision applying to the subject site to ensure consistency with business zoned land within Hawkesbury Local Government Area.
2. The planning proposal be forwarded to the Department of Planning and Environment with a request for a 'Gateway' determination.
3. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.

ATTACHMENTS:

- AT - 1** Proposed Amendment to Land Zoning Map
- AT - 2** Proposed Amendment to Lot Size Map
- AT - 3** Proposed Amendment to Height of Buildings Map

Meeting Date: 13 December 2016

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ORDINARY MEETING

Meeting Date: 13 December 2016

GENERAL MANAGER

Item: 272

GM - Request for Sponsorship - EquiFest 2017 - (79351, 135945)

REPORT:

Executive Summary

An equestrian event managed by Equine Productions Pty Ltd will be held at the Hawkesbury Showground from Thursday, 30 March 2017 to Sunday, 2 April 2017.

'EquiFest' is a multi-disciplinary event designed to bring all aspects of equestrian sport together in a unique and entertaining format, and claims to offer one of the most diverse range of competition available in Australia. In addition to encompassing the interests and abilities of all equestrian minded people, the event provides a wide range of competition, varying from beginners to advanced.

Organisers indicate that the event will welcome approximately 900 horses and 800 competitors and 12 arenas to accommodate eight different Equestrian disciplines. The program will be complimented by various forms of entertainment and shopping at 100 exhibition sites, for those who are not competing.

It is proposed that it will be an ongoing event with the event management company seeking to evolve and develop it long-term.

The event organisers have requested that Council consider a financial contribution of \$5,000, plus assistance with the promotion of the event.

The formal request is included as Attachment 1 to this report.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

Equine Productions Pty Ltd met with the former Mayor of Hawkesbury City Council and Council staff in August 2016, to discuss outcomes from the Equine Lifestyle Festival held in November 2015 at the Hawkesbury Showground and to explain their plans for the rebranded 'EquiFest' event.

The event is based on New Zealand's successful 'Horse of the Year' event. Although new to Australia, this concept has been refined in New Zealand over the last 20 years.

The event is proposed to be held again at the Hawkesbury Showground featuring all kinds of equine enthusiasts, with horses, riders, coaches, supporters, families, trade exhibitors, spectators, and volunteers celebrating 'All Things Equine'. Extending beyond the traditional boundaries of a 'horse show', the event will cover a diversity of competitions ranging from miniature horses and ponies, to heavy horses, jumping to dressage, and show horses to mounted games.

'EquiFest' aims to attract competitors from Australia wide and New Zealand, as well as more than 10,000 spectators, and 320 exhibition site personnel.

An extensive marketing budget is aimed at attracting many participants to the event, and therefore to the Hawkesbury. Equine Productions Pty Ltd advised that the objective is to grow this event, not only in size, but also in prestige, so that 'EquiFest' becomes one of the 'must attend' events in most equestrian discipline calendars.

ORDINARY MEETING

Meeting Date: 13 December 2016

Equine Productions Pty Ltd estimate that each of the 800 competitors will bring 3.2 people. Along with the exhibition personnel, an estimated 70% will be residents outside of greater Sydney, 20% of whom will come from outside New South Wales. Based on a spending of \$125 per day per person (NZ Horse of the Year, 2014), it is proposed the first year of the event will bring approximately \$1.5 million into the area, much of this being spent on accommodation, food and beverage, and fuel. They indicate that where possible, local businesses will be involved, including on-site food, security, and veterinary and other associated services.

Key performance indicators for the event will include spectator attendance numbers, revenue from ticket sales, competitor numbers and associated revenue, sponsorship and income. Gate entries will be \$20 per adult and \$15 per child per day. Some concessions apply and there will be no charges for Thursday.

Equine Productions Pty Ltd indicate they only receive commercial sponsorship for the particular event that they are managing. There is no regular income from these sources. All sponsorship is on a commercial level, where funding is gained for promotion given, either in the form of money or product, or both.

Total production cost for the event is estimated to be \$677,000. A breakdown of income/expenses provided indicates that the event would breakeven with no profit being generated.

The event organisers have requested that Council consider the financial assistance of \$5,000 plus assistance with the promotion of the event, including placement of signage on a puiissance wall, and through social media and Council's website.

It would not be possible to advertise on Council's website due to Council's Web Policy however alternative promotional channels could be offered.

Event organisers indicate that the long term plan is for 'EquiFest' to be an annual event, which will increase in participation numbers by 30% over the next two years, and spectator numbers by 50%. This will increase net income, and thus the need for additional financial assistance will become obsolete.

In return for the above provisions, Council would require the following commitments from the event organisers:

- Council logo and recognition of support to be included on all promotional material, including but not limited to flyers, posters, banner, bags etc
- invitations issued to a Council representative for official activities.

The significance of this event in the Hawkesbury and its potential positive impact on the Hawkesbury's local business and tourism sector is acknowledged. It is also recognised that the event will attract mainly out of area participants and it is a good opportunity to encourage repeat visits in the Hawkesbury after the event.

Lastly, this event aligns with one of the four major 'Regionally Significant Investible Project's' (RSIP) as part of the Hawkesbury Horizon Initiative, this being an Equine Precinct. On 10 May 2016 Council resolved to form a working party to establish/support a stakeholder working party to develop an equine industry strategy for the Hawkesbury. This would aim to "drive growth and development at the existing equine precinct at Clarendon which currently includes the Hawkesbury Showground, Race Course and Equestrian Centre, Equine Veterinary Centre and the TAFE Racing and Equine Academy".

ORDINARY MEETING

Meeting Date: 13 December 2016

Conformance to the Hawkesbury Community Strategic Plan

The proposal is consistent with the Supporting Business and Local Jobs Directions Statement;

- Plan for a range of industries that build on the strengths of the Hawkesbury to stimulate investment and employment in the region.

and is also consistent with the nominated strategy in the CSP being:

- Differentiate, brand and promote the Hawkesbury as a tourism destination.

Financial Implications

Funding has been provided for in Component 168 – Corporate Communication of the 2016/2017 Adopted Operational Plan to support major flagship events.

RECOMMENDATION:

That:

1. Council support an allocation of funding of \$5,000 to Equine Productions Pty Ltd for the 'EquiFest' event to be held from 30 March to 2 April 2017 from Component 168 – Corporate Communication of the 2016/2017 Adopted Operational Plan.
2. Council's standard Sponsorship agreement be executed.

ATTACHMENTS:

AT - 1 Proposal from Equine Productions Pty Ltd requesting support for the 'EquiFest' 2017 event

ORDINARY MEETING

Meeting Date: 13 December 2016

AT - 1 Proposal from Equine Productions Pty Ltd

requesting support for the 'EquiFest' 2017 event



EquiFest

A MULTI DISCIPLINE EQUESTRIAN EVENT

MANAGED BY



**EQUINE PRODUCTIONS
PTY LTD.**

4/3 ROCKLEA DRIVE
PORT MELBOURNE
VICTORIA 3027

EQUIFEST - THE NAME SAYS IT ALL!

The Equine Productions team launches a new concept for the Australian Equestrian scene; celebrating 'All Things Equine'. Extending well beyond the traditional boundaries of a 'horse show' EquiFest will fuse beauty, excitement, and entertainment for a contemporary take on equestrian events.

For four days in March, the Hawkesbury Showgrounds will be turned into a mecca for equine enthusiasts as horses, riders, coaches, supporters, families, trade exhibitors, spectators and volunteers converge into the region.

EquiFest is vying to be an event whose stand-alone accolades make it a destination, with competitions heralding presence and creating aspirations towards hard-won titles that will be rewarded by some of the largest prize pools in Australia.

Covering a diversity of competitions ranging from Miniature Horses and Ponies to Heavy Horses, Jumping to Dressage and Show Horses to Mounted Games there will be truly something at EquiFest for everyone.

But this isn't just an industry show; with spectators considered as prime stakeholders awe inspiring entertainment, strategically woven into the program will entertain and educate.

3



EquiFest

An all-encompassing marketing program that uses proactive digital and traditional media will organically capture the equine enthusiast with the event capitalising on technical progressions to re-market; offering a new level of exposure unrivaled outside of the Equine Productions portfolio. KPIs will encompass exciting and novel ideas geared towards achieving solid press coverage thus reaching local, national and international spectators.

Australians love their horses; with an estimated 300,000 regular participants in equestrian activities all over the country, along with an equal number of casual riders and horse and animal lovers, this is an opportunity not to be missed.

Equestrian supporters are generally those with above average incomes whose discretionary spending power is considerably higher than the national average. A truly loyal demographic whose actions speak louder than words, they are hugely supportive of the companies that sponsor the sport they love so much.



A truly loyal demographic whose actions speak louder than words, they are hugely supportive of the companies that sponsor the sport they love so much.



EquiFest

EquiFest is a multi-discipline equestrian event being launched and run by Equine Productions, Australasia's leading Equine Event Management company. Born as a joint venture, Equine Productions is a formidable entity founded by the powerhouses behind EQUITANA Melbourne and the NZ Horse of the Year. EquiFest is based on the successful competition and trade centric New Zealand Horse of the Year Show concept.

EquiFest is more than a Horse Show! It is designed to bring all aspects of Equestrian Sport together in a unique and entertaining format that will be enjoyed by all. With the advantage of the versatile facilities within the Hawkesbury Showgrounds, EquiFest will offer one of the most diverse range of competition available in Australia. Designed to encompass the interests and abilities of all equestrian minded people, the Event provides a wide range of competition varying from Grassroots to Grand Prix. This program will be complemented by entertainment and shopping for those who are not competing.

As well as 100 exhibition sites, the Event will welcome the 900 horses and 800 competitors who will compete in the 12 arenas set up to house the eight different Equestrian disciplines featured. Alongside competition and exhibition, the entertainment aspect completes the EquiFest concept. The many and varied forms of entertainment will be a unique feature of this iconic Event, with the evening extravaganza's one not to be missed.

EquiFest is not a once off, but an incredible event stemming from years of experience which Equine Productions ambitiously will evolve and develop to ensure EquiFest will raise the bar long term.



FUNDING APPLICATION

EquiFest

5) EVENT DESCRIPTION

The Equine Productions Team launches a new concept for the Australian Equestrian scene; celebrating "All Things Equine". Although new to Australia this concept has been tried and refined in New Zealand over the last twenty years. Known as EquiFest, this multi discipline, competitor based, event will be held at the Hawkesbury Showgrounds from 30th March - 2nd April 2017. Extending well beyond the traditional boundaries of a 'horse show' EquiFest will fuse beauty, excitement and entertainment for a contemporary take on equestrian events. Designed to attract over 900 horse and rider combinations, Australian wide, as well as a number from New Zealand, EquiFest will witness more than 10,000 spectators and 320 exhibition site personnel. Providing for all levels of competition from grass roots to the elite, through all age groups, this event will provide a unique opportunity for several equestrian disciplines to compete alongside each other, all at the one venue. EquiFest is packaged to entertain. Along with competition, the Premier Arena will focus on entertainment, aimed to attract, not only those on site, but also the equine interested public

6) OBJECTIVES

Equine Productions is an exciting entity, combining the best of equestrian event management talent from both Australia and New Zealand. In this venture, their objective is to fill a void in the equestrian calendar, by developing a unique event which provides competition

at all levels from grass roots to the elite, over many equestrian disciplines, all competing side by side in one venue, thus developing the concept of 'All things Equestrian'. The entertainment value of equestrian sport is to be packaged to attract a wide cross section of people. The establishment of exhibition sites completes this concept and is designed to add value to the EquiFest experience, by providing a ready market and attracting non-competition minded equestrians to the event. An extensive and novel marketing budget is aimed at attracting many participants to the event, and thus to the Hawkesbury Area. Through professional management and excellent prize money, the objective is to grow this event, not only in size, but more importantly in prestige, so EquiFest, becomes one of the 'must attend' events in most equestrian discipline calendars.

7) FUNDING

We wish to apply for \$5,000 plus assistance with the promotion of the event including placement of signage and puiissance wall, as well as social media and Hawkesbury County Council Website.

8) SOCIAL AND ECONOMIC BENEFIT

It has been estimated that each of the 800 competitors will bring 3.2 people. Along with the exhibition personnel, an estimated 70% are resident outside of greater Sydney and of this 20% will come from outside NSW. Based on a spend of \$125 per day

FUNDING APPLICATION

per person (NZ HOY 2014), the first year EquiFest will bring another \$1.5m into the area, much of this spend being on accommodation, food and beverage, and fuel. Where possible local businesses will be involved, including on-site food, security, showgrounds, veterinary and other associated services. Socially, the entertainment aspect will provide another dimension and a unique new concept to Hawkesbury, providing entertainment for the local people. EquiFest is also providing The Billie Kinder Foundation, a memorial foundation aimed supporting mistreated animals and sick children, with the opportunity to fund raise.

9) ANNUAL EVENT

As part of the Hawkesbury Council Strategic Planning one of the goals listed is the funding of viable and sustainable events. EquiFest is based on a concept that is still operating after 18 years. The long term plan is for EquiFest to be an annual event, which will increase in participation numbers by 30% over the next two years, and spectator numbers by 50%. This will increase net income and thus delete the need for financial assistance.

10) EVENT EVALUATION

Key performance indicators will include spectator attendance numbers, revenue from ticket sales, competitor numbers and associated revenue, sponsorship numbers and income. These will be used as the basis for evaluation as follows:

- Post event reporting – Post event reports will

EquiFest

- be completed by the relevant managers
- Ticket sales analysis – Analysis of ticket sales will be completed to gather information regarding geographic location of visitors, buying habits etc.
- Post event sponsorship reports – compiled and distributed to exhibitors, sponsors and other relevant stakeholders
- Competitor and exhibitor feedback – post event survey.

11) FEES

Entry fees are charged for all classes. These vary between disciplines and level of competition. Schedules are available for detailed entry fees. Gate entries are \$20 per adult and \$15 per child per day. Some concessions apply and there will be no charge for Thursday.

13) & 14)

The company only receives commercial sponsorship for the particular event that they are managing. There is no regular source of income from these sources. All sponsorship is on a commercial level, where funding is gained for promotion given, either in the form of money or product, or both.

ORDINARY MEETING

Meeting Date: 13 December 2016

EquiFest



FUNDING APPLICATION

Income	\$
Earned Income	450,000
Donations (Sponsorship)	140,000
Grants	
Other Income	82,000
Amount requested from Council	5,000
Total	677,000

Expenses	\$
Salaries	140,000
Promotion & marketing	70,000
Infrastructure	240,000
Venue	40,000
Other costs	187,000
Total	677,000

ORDINARY MEETING

Meeting Date: 13 December 2016

EquiFest

CONTACT EQUIFEST

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ORDINARY MEETING

Meeting Date: 13 December 2016

Item: 273 **GM - Review of the Hawkesbury Community Strategic Plan 2013-2032 - (79351, 95498, 124414)**

Previous Item: 213, Ordinary (11 October 2016)
 57, Ordinary (9 April 2013)

REPORT:

Executive Summary

At its Meeting on 11 October 2016, Council resolved to commence the process to review the Hawkesbury Community Strategic Plan 2013-2032 (CSP) on the basis, and timeframe outlined in that report, and the Draft Community Engagement Strategy attached to that report.

That process has commenced and advanced to a point where the Draft CSP is now ready to be considered by Council for adoption for the purposes of community engagement. The purpose of this report is to seek Council endorsement of the draft CSP for the purposes of community engagement, and to resolve to report back to Council on the outcomes of the community engagement prior to formal adoption of the new CSP.

It is considered that this review of the CSP provides a unique opportunity to review the overarching vision and strategy for the Hawkesbury to ensure it reflects the community's aspirations. The Community Engagement Strategy will test whether or not the community's aspirations have been reflected in the new CSP. The process also provides an opportunity to ensure a better understanding of and integration between the Community Strategic Plan and Council's Delivery Program.

Consultation

The issues raised in this report concern matters which constitute a trigger for Community Engagement under Council's Community Engagement Policy. Legislation requires Council to prepare a Community Engagement Strategy for use when developing/reviewing its Community Strategic Plan. A draft Community Engagement Strategy was considered and adopted by Council at its Meeting on 11 October 2016. That Strategy will be followed for the public exhibition of the draft CSP.

Background

Following the adoption by Council at its Meeting on 11 October 2016 of the process to review the CSP, that review process has commenced and advanced to a point whereby the Draft CSP is now ready for consideration by Council for adoption for the purposes of community engagement.

In accordance with the process adopted by Council at its Meeting on 11 October 2016, Councillors have been an integral part of this review process. This has included individual sessions with the CSP consultant, active participation at the CSP Workshop weekend along with senior executive staff, and as part of ongoing reviews of the working draft CSP Structure, Vision, Mission, Values, new Strategy Areas, and the Key Directions, Strategies and Measures.

The review process has been an exhaustive process, with the principal aim being to prepare a new CSP following a significant review process designed to ensure it is reflective of the Hawkesbury community's aspirations.

The Local Government Act 1993 requires that a council's CSP is based, amongst other criteria, on the social justice principles of equity, access, participation and rights, and that the Community Engagement Strategy for engagement with the local community when developing/reviewing the CSP is also based upon

ORDINARY MEETING

Meeting Date: 13 December 2016

these principles. As such, both the review of the Hawkesbury CSP and the implementation of the Community Engagement Strategy will have regard to these principles.

Under Council's Community Engagement Policy the review of the Hawkesbury CSP represents a Level 1 trigger for community engagement. In order to meet the recommended level of community engagement under the Community Engagement Policy for a Level 1 trigger event and devise a Community Engagement Strategy that is reflective of the need to engage with the Hawkesbury community and all stakeholders in a transparent and collaborative manner, a Draft Community Engagement Strategy was prepared and included as an attachment to the Council Meeting report on 11 October 2016. That Draft Community Engagement Strategy was subsequently adopted by Council at its Meeting on 11 October 2016.

As outlined in the report to the Council Meeting on 11 October 2016, it is considered that there would be considerable benefits to the CSP review process if Councillors were directly involved in the implementation of various components of the Community Engagement Strategy in addition to the actual review process. This would provide Councillors an opportunity to hear directly from the community on matters in a structured manner.

Should the Draft CSP be adopted by Council for the purposes of community engagement, that engagement process will test the Draft CSP against the community's aspirations. The outcomes of this community engagement will subsequently be reported to Council prior to the formal adoption of the new CSP which is expected to be in late March/early April 2017.

Conformance to the Hawkesbury 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 the nominated strategy in the CSP being:

- Achieve community respect through good corporate governance and community leadership and engagement; and
- Make decisions in ways that are transparent, fair, balanced and equitable supported by appropriate resource allocations

Financial Implications

Funding to enable the review of the Hawkesbury Community Strategic Plan as required by legislation has already been included within the 2016/2017 Adopted Operational Plan.

RECOMMENDATION:

That

1. The Draft Community Strategic Plan as attached as Attachment 1 to this report be adopted for the purpose of community engagement, with the engagement process to be in accordance with the Community Engagement Strategy adopted by Council on 11 October 2016.
2. Following the implementation of the Community Engagement Strategy a further report be submitted to Council to consider the outcomes of the engagement strategy and amend, if required, the draft prior to adoption of the Community Strategic Plan.

ATTACHMENTS:

AT - 1 Draft Hawkesbury Community Strategic Plan (*Distributed Under Separate Cover*)

ORDINARY MEETING

Meeting Date: 13 December 2016

oooO END OF REPORT Oooo

INFRASTRUCTURE SERVICES

Item: 274 **IS - Establishment of a Committee to Discuss a Comprehensive Regional Traffic Study - (95495)**

REPORT:

Executive Summary

At its meeting on 25 October 2016 Council resolved to request a report dealing with the formation of a Committee to establish a regional traffic study, and to examine and pursue funding option.

This report provides an overview of matters relevant to the establishment of this Committee and recommends the establishment of a Working Party, with community representation to prepare a brief for a traffic study.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy. Should Council proceed there will however, be a requirement to advertise for expressions of interest for community representation on the proposed new Committee.

Background

At its meeting on 25 October 2016 Council resolved as follows:

"That:

- 1. A report be brought to Council regarding the establishment of a committee to discuss the establishment of a comprehensive regional traffic study of river crossings and road links including options for funding such a study, with specific instructions to draw up a brief and seek submissions from a selected short list of companies. The proposed committee to consist of the Directors of Planning and Infrastructure, two Councillors and one qualified community representative.*
- 2. The Committee request an urgent meeting with the Member for Hawkesbury, The Hon. Dominic Perrottet and the Member for Macquarie, Susan Templeman to discuss the establishment of a comprehensive regional traffic study of river crossings and road links including options for funding such a study.*

The report contains the following discussion details:

- Options for a Committee
- Functions and role of a Committee
- Funding options.

Establishment of a Committee

Council's resolution proposes that a Committee be formed, comprising two Councillors, the Directors of City Planning and Infrastructure Services and one qualified community representative.

There are two main options to establish such a body:

ORDINARY MEETING

Meeting Date: 13 December 2016

1. Committee under Section 377 of the Local Government Act 1993
2. Working Party.

Section 377 Committee

This section of the Local Government Act 1993 deals with the delegation of the functions of Council. Such Committees do not have an ability to vote funding (with limited exceptions) but make recommendations to Council. Section 377 Committees generally operate under constitutions, with strict scope on roles. External representation is permissible.

Working Party

This is a less formal arrangement than a Section 377 Committee, and is suited to a project or time limited arrangement. Working parties can similarly be required, by resolution, to report back to Council.

The resolution outlines the role of a proposed Committee to carry out a number of actions:

- a) discuss the establishment of a comprehensive regional traffic study of river crossings and road links
- b) draw up a brief for the traffic study
- c) seek submissions from a selected short list of companies.

The issue of funding options is dealt with later in the report however, it should be noted that in the absence of allocated funding, neither Council or a Committee is able to call for submissions/tenders/offers.

Given these aspects it is considered that a Working Party structure would be the better option, at least initially. It would remain open to establish a Section 377 Committee in the future, should circumstances warrant this.

Accordingly, it is recommended that a Working Party model be adopted.

Working Party Functions/Role

The following functions / roles are proposed:

- identify scope of traffic study (i.e. regional, state, local network)
- determine purpose of study (i.e. advocacy for state funded works/improvements, management of development related impacts, assessment of major transport projects on the area or direct delivery of works by Council)
- determine staging of project - traffic survey including origin - destination traffic flows, intersection performance
- identification and collation of existing data and studies held by Council agencies and consultants
- preparation of a staged brief which may include a desktop review, field survey, traffic modelling, route improvement studies.

Funding Options

Until such time as a Working Party has established the extent of the project it is difficult to identify the cost and therefore funding sources/opportunities.

A basic desktop review of studies, supported by a limited Origin - Destination vehicular survey may be able to be achieved within a budget of \$100,000 to \$200,000, however route and capacity analysis on a regional basis would expand this estimate significantly. Additionally, staff time would need to be diverted or funding made available to engage additional resources to coordinate and manage the project should it progress.

ORDINARY MEETING

Meeting Date: 13 December 2016

Funding could be considered in the 2017/2018 Operational and Delivery Plans, however would impact on other services and projects.

Some discussion occurred at a recent Council meeting in relation to possible Section 94 funding and borrowing, to advance this work. Whilst this is possible, there are limitations on these funding sources.

Section 94 funds can be collected to fund studies including traffic that directly relate to a particular development or development area and are necessary to develop a Section 94 contributions plan.

A regional study would not satisfy, in full, this nexus requirement. Council would, by advancing funding, incur the risk that a Section 94 Contributions Plan or development does not eventuate and therefore costs may not be recovered. Additionally only that component of the study related to a development can be charged to a Section 94 Plan.

The Voluntary Planning Agreement (VPA) process does provide some flexibility in the funding of studies. The Redbank development funded the cost of a Transport Management Accessibility Plan (TMAP) as part of the development process. Whilst Council is proposing to collect funds from a number of planning proposals, these funds are collected to fund a range of works and improvements, again, required by that additional demand. Future planning proposals could canvass the allocation of a percentage of funding towards traffic studies as a precursor to works.

The resolution also requires the issue of funding to be raised with the State and Commonwealth members. This approach may be the most effective means of both securing funding, but to also ensure that the relevant transport agencies have some ownership of both the survey / study and the need to use this as a planning tool to deliver improved road infrastructure. The preparation of a detailed brief will be of high value in seeking State and Commonwealth support.

Establishment of Working Party

Should Council endorse the establishment of a Working Party with Community Representation an Expression of Interest process for a suitably qualified community representative is considered the most transparent way of selecting this person. It is suggested that the essential criteria for a community representative would be:

- significant experience in traffic survey and modelling
- knowledge of road and development planning
- experience in preparation of transport plans including pedestrian and active transport.

Council will also be required to nominate two Councillors, as proposed in the resolution.

Summary

The establishment of a Working Party, in the first instance, is supported. The key task for a Working Party is the quantification of the scope of a traffic survey and study, and the preparation of a draft brief. This brief would be used to seek engagement and funding from other tiers of Government and their respective agencies.

To establish this Working Party, Council would:

1. nominate two Councillor representatives
2. call for Expressions of Interest for a suitably qualified community representative
3. select such a representative following a report to Council
4. convene the Working Party to establish and confirm its role and scope in relation to the development of a regional traffic study.

ORDINARY MEETING

Meeting Date: 13 December 2016

Conformance to the Hawkesbury 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 the nominated strategy in the CSP being:

- Broaden the resources and funding available to our community by working with local and regional partners as well as other levels of government

Financial Implications

There are no immediate direct financial implications arising from this report. Community Representatives are not paid. The costs applicable to the management of the Working Party will be predominantly in the form of staff time.

Should the project develop further, there may be financial implications requiring the specific allocation of funding for staff and consultancies.

RECOMMENDATION:

That:

1. Council establish a Working Party comprising of two Councillors, the Directors of City Planning and Infrastructure Services and one suitably qualified Community Representative to discuss the preparation of a regional traffic study.
2. Council nominate two Councillor representatives to this Working Party.
3. The Working Party be required to report back to Council with a recommended scope and program for a regional traffic study.
4. Council call for Expressions of Interest for a Community Representative for this Working Party.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 13 December 2016

ordinary

section 5

notices of motion

ORDINARY MEETING

Notices of Motion

SECTION 5 - Notices of Motion

NM1

Support for Safe Schools Program - (79351, 105109, 138882)

Submitted by: Councillor Wheeler

NOTICE OF MOTION:

That Council:

1. Pledge its support for the Safe School Program.
2. Authorises the Mayor and General Manager to sign the Safe Schools pledge on behalf of Council. The pledge states:

"We believe that schools should provide a safe and inclusive environment for all students, so that they can learn, grow, and reach their full potential – free from bullying and discrimination.

We pledge to stand up against homophobia and transphobia whenever we see or hear it. We are proud to support Safe Schools Coalition Australia and its work to create positive change for same sex attracted, intersex and gender diverse students, school staff and families."

Background

Safe Schools is a program designed to create safe and inclusive schools, free from homophobic and transphobic bullying for Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) young people.

Research tells us that thousands of young people across Australia experience homophobic and transphobic behaviour, discrimination and isolation in schools. These experiences have serious consequences for their health and wellbeing, and academic achievement. The research study, 'Writing Themselves In' found that 75% of same sex attracted young people aged between 14 and 21 years of age had experienced some form of homophobic bullying or abuse because of their sexuality, or the perception of their sexuality. 80% said it was while they were at school.

Recently, 13-year-old Tyrone Unsworth tragically took his own life after being taunted about his sexuality and allegedly assaulted with a fence post. Statistics from Beyond Blue show that up to 50% of transgender people have attempted suicide at least once in their lives. Same-sex attracted young people in Australian have up to 84 times higher rates of suicide attempts than their heterosexual peers. The average age of a first suicide attempt is 16 years, often before 'coming out'. <https://www.beyondblue.org.au/.../bw0258-lgbti-mental...>

Safe Schools Program

Safe Schools Coalition Australia is a national network of organisations working with schools to create safer and more inclusive environments for same sex attracted, intersex and gender diverse students, staff and families. The program was written by teachers and mental health professionals, who noticed a lack of any structural support for LGBTQIA young people. The Foundation for Young Australians (FYA) is the national convenor of Safe Schools Coalition Australia.

Attacks on the program

Recent attacks on the Safe Schools Program have seen the Federal Government withdraw significant funds from the Program, and place restrictions on how it is implemented, including requiring young people to "out" themselves by requiring parental permission to participate in the Program or receive counselling.

ORDINARY MEETING

Notices of Motion

Although young people like Tyrone Unsworth suffer bullying long before High School, the Government overhaul has restricted the Program to secondary school students, reduced it to an 'opt-in' program, and reduced the content in the Program, despite the age specific content set by educators.

The Federal Government now intends to withdraw all funding for the Program starting 2017, which will be devastating for young people, whose schools say they are inadequately equipped to deal with this specific type of bullying on their own.

Safe Schools is Council business

Hawkesbury Council has supported LGBTIQ people through its previous motion supporting Marriage Equality. This issue is Council business because we are the closest tier of government to these young people in our community. Council is well placed to provide support to kids who need it via our youth programs and to help change community values to increase acceptance. Our civic leadership and support will hopefully send a strong message to kids who may be suffering in silence.

It is important that Hawkesbury Council adds its voice in support of this important Program, as a way to show support for our LGBTIQ young people, and for the schools that support gender diversity. A list of the supporters of Safe Schools, including several local councils, and the form which Council can use to sign the pledge, can be found here: <http://www.safeschoolscoalition.org.au/our-supporters/organisations>

Colo High has voluntarily opted in to implement the Safe Schools Program, and our support of them and other young people in the area is essential.

Other Councils have passed similar motions supporting the original fully funded program, including Shoalhaven City Council, Kiama Municipal Council, Forbes Shire Council, Albury City Council, Inner West Council, Frankston City Council, Darebin Council, Hobsons Bay City Council, City of Sydney Council, City of Port Phillip Council, Marrickville and Leichardt Councils, along with a host of other organisations, here: <http://www.safeschoolscoalition.org.au/our.../organisations>

Testimonials from teachers, students and principals are available here: <http://www.safeschoolscoalition.org.au/our.../testimonials>

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

ORDINARY MEETING

Notices of Motion

NM2

Smoking Ceremony to Open Council Each Calendar Year - (79351, 105109, 138882)

Submitted by: Councillor Wheeler

NOTICE OF MOTION:

That Council engages a member of the local Darug community, determined by their Elders, to undertake a Smoking Ceremony at the beginning of the first Council meeting of each calendar year.

Background

Hawkesbury Council has historically done little to encourage the Aboriginal Community to participate in local government. By facilitating a ceremony of great significance to Aboriginal people, we can show a greater level of respect for the Traditional Owners of the Hawkesbury and surrounding areas, and mark a new beginning to each year. This is consistent with Council's commitment to place making and local heritage.

Logistics

Estimated costs are approximately \$300. The ceremony could begin with a smoking of the Chamber before the meeting. The main ceremony would need to be held outdoors on the lawn. Councillors, staff and members of the public would then be invited to walk through the smoke and into the chamber. Depending on numbers, this would take about 15 minutes. A movable fire pit can be used to avoid damage to the lawn. In the case of a total fire ban, a dispensation for ceremonial fire can be sought and fire extinguishers kept on hand.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

ORDINARY MEETING

Notices of Motion

NM3

Council Owned Solar Farm - Initial Investigations - (79351, 105109, 138881)

Submitted by: Councillor Kotlash

NOTICE OF MOTION:

That a report be provided to Council that:

1. Outlines the opportunities and barriers to inform Council of the possibilities of owning solar farms to generate revenue as well as decreasing electricity costs. The report should include but not be limited to addressing characteristics such as - reduction in carbon emissions, energy output, capital costs and return on investment.
2. An investigation into all avenues available to Council for support, grants and funding to assist in the development, construction and operation of such projects.
3. The possibility of forming an arrangement with the Department of Defence to develop, construct and operate a solar farm on the RAAF site at Richmond be investigated.
4. Identification of other suitable sites for solar farms in the Hawkesbury.

Background

Large-scale solar power generation is an activity that is increasingly being undertaken by community groups, businesses and government agencies in NSW. Some small and large-scale examples include:

- Goulburn Community Solar Farm (2.5ha, 1.2MW capacity, reduces carbon emissions by about 1,600 tonnes per year, powers about 350 homes)
- Queanbeyan Solar Farm (State-owned)
- Moree Solar Farm owned by Fotowatio Renewable Ventures (56MW capacity)
- Broken Hill Solar owned by AGL (53 MW capacity)
- Nyngan Solar Farm owned by AGL (102MW, powers 33,000 homes and saves 203,300 tonnes of carbon emissions per year).

A Council-owned solar farm would benefit the community in the following ways:

- reduce carbon emissions thus tackling climate change
- raising much needed revenue for Council to fund services for the community
- would enable local residents to purchase their electricity from their Council's solar farm (referred to as 'white label customers').

The RAAF base site is appealing because of its security, expansive areas of vacant land and vast roof top areas. Moreover, the land is owned by the Commonwealth which would save substantial land acquisition costs. The RAAF base would obviously benefit by receiving very low cost energy.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

ORDINARY MEETING

Notices of Motion

NM4

Expediting of Council's Comprehensive Traffic Study - (79351, 105109, 138880)

Submitted by: Councillor Reynolds

NOTICE OF MOTION:

That Council resolve to expedite its comprehensive traffic study

Background

At Council's Ordinary Meeting held on 25 October 2016, Council unanimously resolved to ask for a report to establish a comprehensive traffic study of river crossings and road links.

The expediting of this study will allow Council to develop traffic strategies for the planning of and the consideration of strategic development west of the river.

The study will also provide options for traffic solutions with which to lobby the State and Federal Governments.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

ORDINARY MEETING

Notices of Motion

RM1 **LEP012/16 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 43 Bootles Lane, Pitt Town - (79351, 105109, 80093, 125610, 111627)**

Submitted by: Councillor Calvert, Deputy Mayor
Councillor Conolly
Councillor Tree

NOTICE OF RESCISSION MOTION:

That Council rescind its resolution on Item 254 of 29 November 2016.

Background

It is nonsensical to list environmental protection as a reason to refuse a proposal to rezone from RU2 to E2.

Note by Management

Council's resolution of 29 November 2016 regarding a Planning Proposal in respect of 43 Bootles Lane, Pitt Town was as follows:

"That Council not support the planning proposal for Lot 61 DP 1206587, 43 Bootles Lane, Pitt Town seeking an amendment to Hawkesbury Local Environmental Plan 2012 to allow development of the subject site as detailed in this report as the endangered native vegetation on the land needs to be protected."

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

ORDINARY MEETING

Notices of Motion

RM2

LEP002/14 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 1420 Kurmond Road, Kurmond - (79351, 105109, 138883, 80106, 138880)

Submitted by: Councillors Garrow
Councillor Rasmussen
Councillor Reynolds

NOTICE OF RESCISSION MOTION:

That Council rescind Item 253 resolution from Council meeting of 29 November 2016.

NOTE BY MANAGEMENT:

Council's resolution of 29 November 2016 regarding the Planning Proposal in respect of 1420 Kurmond Road, Kurmond was as follows:

'That Council:

1. *Proceed with the making of the plan to amend the Lot Size Map of Hawkesbury Local Environmental Plan 2012) in order to permit the subdivision of Lot 2 DP805023, 1420 Kurmond Road, Kurmond into large lots with minimum lot sizes of 4,000m² and 4ha.*
2. *Request that the Parliamentary Counsel's Office prepare a draft Local Environmental Plan to give effect to the planning proposal in accordance with Section 59(1) of the Environmental Planning and Assessment Act, 1979.*
3. *Adopt and make the draft Local Environmental Plan, under the authorisation for Council to exercise delegation issued by the Gateway determination, upon receipt of an opinion from Parliamentary Counsel's Office that the plan can be legally made.*
4. *Following the making of the plan advise the Department of Planning and Environment that the plan has been made and request to notify the plan on the NSW Legislation website.*
5. *Publically exhibit the draft Voluntary Planning Agreement attached to this report in accordance with the relevant statutory provisions for a minimum of 28 days.*
6. *The draft Voluntary Planning Agreement be reported back to Council following public exhibition prior to finalisation."*

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

ORDINARY MEETING

Notices of Motion

ORDINARY MEETING
Questions for Next Meeting

QUESTIONS FOR NEXT MEETING

Councillor Questions from Previous Meetings and Responses - (79351)

REPORT:

Questions - 29 November 2016

#	Councillor	Question	Response
1	Rasmussen	Requested if it is possible for Council to identify State owned lands in the Hawkesbury Local Government Area.	The Acting Director Support Services advised that a list of State owned lands in the Hawkesbury Local Government Area has been circulated to Councillors.
2	Ross	Enquired if the trip hazards on the nature strip at Chisholm Catholic Primary School, Bligh Park, could be investigated and rectified.	The Director Infrastructure Services advised that instructions had been issued to investigate and rectify.
3	Reynolds	Requested an update on the status of the Jolly Frog Hotel.	The Director City Planning advised that DA0628/16 – Additions of a roof on the Jolly Frog was received at Council on 2 September 2016. Following initial assessment additional information was requested from the applicant. Some of that information was received on 25 November 2016 and it is currently being reviewed by Council's Heritage Advisor and Council staff. The adequacy of that information is still being assessed and a timeframe for determination is not yet known.
4	Wheeler	Requested that Council investigate antisocial activities at Hanna Park car park and consider the possibility of gating the entrance to prevent after-hours access.	The Director Infrastructure Services advised that NSW Police would be requested to carry out patrols, and that residents should immediately report any issues to the police. Investigations into the extension of the car park are currently underway and this will also include consideration of gating and access issues.

ORDINARY MEETING**Questions for Next Meeting**

#	Councillor	Question	Response
5	Calvert	Requested that the grass along Windsor Function Centre be attended to for weeds.	The Director Infrastructure Services advised that the area will be inspected and attended to as necessary.
6	Zamprogno	Requested copies of any reports relating to the feasibility and cost of web casting of Council meetings.	The Acting Director Support Services advised that reports relating to the feasibility and cost of webcasting of Council meetings previously submitted to Council have been circulated to all Councillors.
7	Zamprogno	Enquired if poor quality asphalt or bitumen could result in a road surface that melts at a lower temperature.	The Director Infrastructure Services advised that information regarding road surface material and temperature effects would be provided to all Councillors.

oooO END OF REPORT Oooo

ORDINARY MEETING
CONFIDENTIAL REPORTS

CONFIDENTIAL REPORTS

MM2 **Position of General Manager - (79351, 79353, 125612)** **CONFIDENTIAL**

Previous Item: MM 3, Ordinary (31 May 2016)
 MM 1, Ordinary (11 October 2016)

Reason for Confidentiality

*This report is **CONFIDENTIAL** in accordance with the provisions of Part 1 of Chapter 4 of the Local Government Act, 1993, and the matters dealt with in this report are to be considered while the meeting is closed to the press and the public.*

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(d) of the Act as it relates to quotations for the recruitment of the General Manager position and the information is regarded as being commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it, confer a commercial advantage on a competitor of the Council, or reveal a trade secret and, therefore, if considered in an open meeting would, on balance, be contrary to the public interest.

In accordance with the provisions of Section 11(2) & (3) of the Local Government Act, 1993, the reports, correspondence and other relevant documentation relating to this matter are to be withheld from the press and public.

ORDINARY MEETING
CONFIDENTIAL REPORTS

Item: 275

GM - Community Representation on Council Committees - (79351, 79356)
CONFIDENTIAL

Reason for Confidentiality

*This report is **CONFIDENTIAL** in accordance with the provisions of Part 1 of Chapter 4 of the Local Government Act, 1993, and the matters dealt with in this report are to be considered while the meeting is closed to the press and the public.*

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(a) of the Act as it relates to personnel matters concerning particular individuals (other than councillors).

In accordance with the provisions of Section 11(2) & (3) of the Local Government Act, 1993, the reports, correspondence and other relevant documentation relating to this matter are to be withheld from the press and public.

ORDINARY MEETING
CONFIDENTIAL REPORTS

Item: 276 **SS - Property Matter - 139 Colonial Drive and 85 Rifle Range Road, Bligh Park - (95496, 112106) CONFIDENTIAL**

Previous Item: 68, Ordinary (12 April 2016)
 133, Ordinary (11 August 2015)
 187, Ordinary (10 September 2013)
 45, Ordinary (12 March 2013)
 64, Ordinary (8 May 2012)
 63, Ordinary (29 March 2011)
 240, Ordinary (12 October 2010)
 26, Ordinary (26 February 2008)

Reason for Confidentiality

*This report is **CONFIDENTIAL** in accordance with the provisions of Part 1 of Chapter 4 of the Local Government Act, 1993, and the matters dealt with in this report are to be considered while the meeting is closed to the press and the public.*

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(d) of the Act as it relates to the potential sale of a Council property and the information is regarded as being commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it, confer a commercial advantage on a competitor of the Council, or reveal a trade secret and, therefore, if considered in an open meeting would, on balance, be contrary to the public interest.

In accordance with the provisions of Section 11(2) & (3) of the Local Government Act, 1993, the reports, correspondence and other relevant documentation relating to this matter are to be withheld from the press and public.

ORDINARY MEETING
CONFIDENTIAL REPORTS

Item: 277 **SS - Property Matter - Assignment of Lease - Shop 9 Wilberforce Shopping Centre - (95496, 112106, 96728, 113058) CONFIDENTIAL**

Reason for Confidentiality

*This report is **CONFIDENTIAL** in accordance with the provisions of Part 1 of Chapter 4 of the Local Government Act, 1993, and the matters dealt with in this report are to be considered while the meeting is closed to the press and the public.*

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(c) of the Act as it relates to details concerning the leasing of a Council property and it is considered that the release of the information would, if disclosed, confer a commercial advantage on a person or organisation with whom the Council is conducting (or proposes to conduct) business and, therefore, if considered in an open meeting would, on balance, be contrary to the public interest.

In accordance with the provisions of Section 11(2) & (3) of the Local Government Act, 1993, the reports, correspondence and other relevant documentation relating to this matter are to be withheld from the press and public.

ORDINARY MEETING
CONFIDENTIAL REPORTS

Item: 278 **SS - Property Matter - Lease to Optus Mobile Pty Ltd - Part of 111 Colonial Drive, Bligh Park - (95496, 112106, 137696, 109439) CONFIDENTIAL**

Reason for Confidentiality

*This report is **CONFIDENTIAL** in accordance with the provisions of Part 1 of Chapter 4 of the Local Government Act, 1993, and the matters dealt with in this report are to be considered while the meeting is closed to the press and the public.*

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(c) of the Act as it relates to details concerning the leasing of a Council property and it is considered that the release of the information would, if disclosed, confer a commercial advantage on a person or organisation with whom the Council is conducting (or proposes to conduct) business and, therefore, if considered in an open meeting would, on a balance, be contrary to the public interest.

In accordance with the provisions of Section 11(2) & (3) of the Local Government Act, 1993, the reports, correspondence and other relevant documentation relating to this matter are to be withheld from the press and public.



ordinary
meeting

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