



Hawkesbury City Council

ordinary
meeting
business
paper

date of meeting: 25 May 2010
location: council chambers
time: 6:30 p.m.

ORDINARY MEETING

Table of Contents

Meeting Date: 25 May 2010

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE
	SECTION 4 - Reports for Determination	2
	CITY PLANNING	2
Item: 100	CP - Development Application - Two Lot Torrens Title Subdivision to provide for a Water Recycling Facility - Lot 1062 DP1131838, 43 Bootles Lane, Pitt Town - (DA0084/10, 676, 95498)	2
Item: 101	CP - Development Application - Construction of a Service Station - Lot 3 DP 233054 & Part Lot B DP158748, 11 Macquarie St, Windsor NSW 2756 - (DA0578/09, 74442, 97811, 95498)	16
	SUPPORT SERVICES	32
Item: 107	SS - Code of Meeting Practice - Questions Without Notice - (95496, 79337)	32

ORDINARY MEETING

Table of Contents

Meeting Date: 25 May 2010

ORDINARY MEETING

Meeting Date: 25 May 2010

SECTION 4 - Reports for Determination

CITY PLANNING

Item: 100 **CP - Development Application - Two Lot Torrens Title Subdivision to provide for a Water Recycling Facility - Lot 1062 DP1131838, 43 Bootles Lane, Pitt Town - (DA0084/10, 676, 95498)**

Development Information

File Number: DA0084/10
Property Address: 43 Bootles Lane, PITT TOWN NSW 2756
Applicant: Bona Vista Properties Pty Limited
Owner: Bona Vista Properties Pty Limited
Proposal Details: Two Lot Torrens Title Subdivision to Provide for a Water Recycling Facility
Zone: Environmental Protection - Agriculture Protection
Advertising: 1/03/2010 - 17/03/2010
Date Received: 11/02/2010

Key Issues:

- ◆ Objection under State Environmental Planning Policy No.1
- ◆ Allotment Area

Recommendation: That the objection under State Environmental Planning Policy (SEPP) No. 1 be supported and that Council seek the concurrence of the Department of Planning to the SEPP No. 1 variation.

REPORT:

Introduction

An application has been received seeking approval for a two lot subdivision of Lot 1062 DP 1131838 at 43 Bootles Lane, Pitt Town. The parcel of land for which the current application relates, is the residue lot of the Bona Vista, Pitt Town Subdivision.

The subdivision will result in an area of 3125m² being created and the remaining allotment having an area of 7.943ha.

The application is being reported to Council as the variation to allotment area exceeds 10% and since November 2009 it is a requirement for all State Environmental Planning Policy No. 1 variations greater than 10% to be considered by Council. This report recommends that Council support the variation and seek the concurrence from the NSW Department of Planning.

Description of Proposal

The application is proposing the Torrens Title subdivision of land to create two allotment areas of 3125m² and 7.943ha respectively. The purpose behind the subdivision proposal is to facilitate the future erection of a Water Recycling Facility, which will provide reticulated sewerage services to the Pitt Town release area. The Water Recycling Facility is proposed as an alternative to the sewerage scheme previously adopted by Council. Council resolved on 25 August 2009 to take appropriate action should this alternate scheme proceed.

Subject to satisfying the license requirements of a Water Recycling Facility within State Environmental Planning Policy (2007) Infrastructure, development consent from Council will not be necessary for the

ORDINARY MEETING

Meeting Date: 25 May 2010

Facility. However, approval is still required for the subdivision to enable land to be transferred to a licensed authority under the Water Industry Competition Act, 2006 (WICA) to install the Water Recycling Facility.

Legislative changes to WICA now enable private entities to become a Water Authority with the same powers of any current Water/Sewer Authority. The Act sets out the functions and responsibilities given to the Minister for Water and the Independent Pricing and Regulatory Tribunal (IPART) in relation to the licensing scheme.

An application for a water license is currently being considered under the Water Industry Competition Act, 2006 (WICA).

History

- 10 July 2008 - Minister for Planning granted Part 3A concept approval for the overall development/subdivision of 659 lots within 5 precincts, including a boat ramp and provision for related infrastructure (services).
- 18 November 2009 – The Department of Planning approved a Section 75W modification amending the Part 3A approval. The amendments slightly modify lot layout and road design, improving engineering design outcomes, including drainage and increased the opportunity for the retention of trees.
- 25 August 2009 – Council considered a report with options on the matter of a private entity being granted a water licence and made the following resolution, in part:

"That:

Should a private water authority be granted a license to provide sewerage services to the new development area of Pitt Town, the current servicing strategy for Pitt Town be reviewed on the basis that the existing sewerage area of Pitt Town continue to be serviced as part of the existing Council owned sewerage system.

In the event that the Pitt Town servicing strategy is altered, a review of the developer contribution plan for sewerage infrastructure for Pitt Town be undertaken and reported to Council."

Issues Relevant to the Decision - In Point Form

- Allotment area
- Objection under State Environmental Planning Policy No.1

Council Policies, Procedures and Codes to Which the Matter Relates

Hawkesbury Local Environmental Plan 1989
Sydney Regional Environmental Plan No 20
State Environmental Planning Policy No. 1
State Environmental Planning Policy (Infrastructure) 2007
Hawkesbury Development Control Plan 2002

Section 79C Matters for Consideration

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

ORDINARY MEETING

Meeting Date: 25 May 2010

a. The provisions (where applicable) of any:

i. Environmental Planning Instrument:

The relevant environmental planning instruments are:

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

The subject property is zoned Environmental Protection - Agriculture Protection. Subdivision of land within the Environmental Protection – Agriculture Protection zone (shown hatched on the map) is permissible only if the area of each of the allotments to be created is not less than 10 hectares.

The subdivision will result in an area of 3125m² being created and the remaining allotment having an area of 7.943ha. An objection under State Environmental Planning Policy No.1 seeking a variation to the lot size requirement in respect to the Environmental Protection – Agriculture Protection zone was submitted and is recommended for support. This is discussed further in the report.

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

Clause 2 - Aims, objectives etc

Clause 5 - Definitions

Clause 9 - Carrying out of development

Clause 9a - Zone objectives

Clause 10 - Subdivision general

Clause 11 - Rural Subdivision

Clause 18 - Provision of water, sewerage services, etc

Clause 25 – Development of flood liable land

Clause 32B - Development of land at Pitt Town (the Bona Vista property)

Clause 37A - Development on land identified on Acid Sulfate Soils Planning Map

Clause 54 - Pitt Town - Heritage

Clause 55 - Pitt Town - subdivision and regional transport infrastructure

An assessment of the Development Application otherwise reveals that the proposal complies with the matters raised in the above clauses of Hawkesbury Local Environmental Plan 1989, with the exception of allotment area contained in Clause 11.

State Environmental Planning Policy No. 1 – Development Standards

An objection under State Environmental Planning Policy No. 1 was lodged in respect to the minimum allotment size requirement for land zoned Environmental Protection – Agriculture Protection (Scenic). The SEPP No. 1 objection states:

“The failure of the proposed subdivision to comply with the minimum lot size of the Environmental Protection – Agriculture Protection (Scenic) zone is an anomaly that has emerged due to the retention of the existing zoning over this portion of the Pitt Town Development Area, on a site that is already undersized for this zone.

The site has been located with respect to minimising environmental impact and vegetation removal, co-locating services, topography and accessibility. Little opportunity exists to locate this infrastructure elsewhere on the subject land without causing increased environmental impact. Positioning the infrastructure in this location improves the viability of the Part 3A approved Vermont Pitt Town residential development project. “

In responding to the clauses of SEPP No. 1, the applicant has claimed that compliance with the development standard is considered unreasonable and unnecessary,

“as the proposal will facilitate the objectives of the respective zone that applies to the land. “

ORDINARY MEETING

Meeting Date: 25 May 2010

In addition, the applicant states that:

“The development standard in this instance is considered unnecessary and unreasonable as maintaining the development standard does not contribute to the protection of the land as effectively as the zone provisions relating to land use permissibility or the land use objectives.”

Comment:

The purpose behind this subdivision is to facilitate the future erection of a water recycling factory, which requires a land transfer to a licensed authority under the Water Industry Competition Act, 2006 (WICA) to install the Water Recycling Facility. Without the proposed subdivision, the proposed Water Recycling Facility cannot commence, unless the land is transferred to a licensed authority. The site is considered to be ideally located, as Pump Station T is located adjacent to the proposed allotment.

The applicant’s arguments relating to the allotment being already undersized and not used for agricultural pursuits are not relevant in relation to the current application as their statements relate to a residential subdivision. In this case the purpose of the subdivision is to facilitate the provision of a water factory (Sewer Treatment Plant) to treat sewage and provide recycled water to the development and will NOT have a dwelling entitlement. This type of facility is usually operated by a public authority (such as Council or Sydney Water) licensed under the Water Industry Competition Act 2006 to undertake such work and, as such, the LEP and the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) permit this development without consent.

In this case, the application for a licence has been made, by an entity that holds other licences for similar facilities, but has not yet been issued. Should this subdivision be proposed by an existing Water Licence holder, such as Council or Sydney Water, there would be no obstacle to the approval of this subdivision proposal.

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

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

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

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

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

Within the Draft Hawkesbury Local Environmental Plan 2009, the subject site is zoned RU2 Rural Landscape. The subject development is permissible only if the area of each of the allotments to be created is not less than 10 hectares. In the proposed development, an area of 3125m² will be created and the remaining allotment having an area of 7.943ha. An exception to this development standard can be considered where it is demonstrated by the applicant that:

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) that there are sufficient planning grounds to justify contravening the development standards.

As detailed earlier in the report, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that sufficient planning grounds exist to justify contravening the development standard.

ORDINARY MEETING

Meeting Date: 25 May 2010

Whilst the SEPP (Infrastructure) 2007 provides an exemption from development consent for the water factory itself the SEPP makes no provision to exempt the subdivision that is required. The current planning provisions contained in HLEP 1989 only assist in instances where the development or subdivision is undertaken by Council or another existing public authority. This anomaly is acknowledged and it is one that is not overcome by the Standard Template approach in the Draft LEP. It is noted that the applicant has made a submission to the Draft LEP on this basis for separate consideration.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan

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

Subdivision Chapter

The following is an assessment against the relevant Rules of the Subdivision Chapter in respect to Part D. Part E of HDCP does not apply in this instance.

Element	Rule	Complies
General		
Flora and Fauna Protection	<p>(a) Any subdivision proposal which is likely to result in any clearing of native vegetation or impact on any environmentally sensitive area is to be accompanied by a flora and fauna assessment report prepared by a suitably qualified person. This report is to primarily address the Eight Part Test pursuant to the Act (Section 5A), State Environmental Planning Policy 44 – Koala Habitat protection.</p> <p>(b) Vegetation cover should be retained where ever practicable as it acts to stabilize soils, minimize runoff, acts as a pollutant trap along watercourses and is important as a habitat for native fauna.</p> <p>(c) Degraded areas are to be rehabilitated as part of the subdivision.</p> <p>(d) Vegetation should be retained where it forms a link between other bush land areas.</p> <p>(e) Vegetation which is scenically and environmentally significant should be retained.</p> <p>(f) Vegetation which adds to the soil stability of the land should be retained.</p> <p>(g) All subdivision proposals should be designed so as to minimize fragmentation of bushland.</p>	<p>Yes. No trees are required to be removed as a result of the proposed subdivision.</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

ORDINARY MEETING

Meeting Date: 25 May 2010

Element	Rule	Complies
Visual Amenity	<p>(a) Building envelopes, accessways and road shall avoid ridge tops and steep slopes.</p> <p>(b) Subdivision of escarpments, ridges and other visually interesting places should:</p> <ul style="list-style-type: none"> ❖ Be managed in such a way that the visual impact rising from development on newly created allotments is minimal; and ❖ Retain visually significant vegetation such as that found on ridge tops and other visually prominent locations. <p>(c) <i>Development Applications for subdivision shall take into consideration the provisions of SREP No. 20 in relation to scenic quality.</i></p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>See assessment above.</p>
Heritage	<p>(a) A subdivision proposal on land which contains or is adjacent to an item of environmental heritage as defined in Schedule 1 of the Hawkesbury LEP should illustrate the means proposed to preserve and protect such items.</p>	Yes.
Utility Services	<p>(a) Underground power provided to all residential and industrial subdivisions. Where infill subdivision is proposed, the existing system, whether above or underground shall be maintained.</p> <p>(b) All lots created are to have the provision of power.</p> <p>(c) Where reticulated water is not available, a minimum storage of 100,000 litres must be provided. A minimum of 10,000 litres must be available during bush fire danger periods.</p>	<p>N/A. The subject lot will not have a dwelling entitlement.</p> <p>Condition</p> <p>NA.</p>
Flooding, Landslip & Contaminated Land	<p>(a) Compliance with clause 25 of Hawkesbury Local Environmental Plan 1989.</p> <p>(b) Access to the subdivision shall be located above the 1% AEP flood level.</p> <p>(c) Where a subdivision proposal is on land identified as being potentially subject to landslip, the applicant shall engage a geotechnical consultant to prepare a report on</p>	<p>Yes. No buildings are proposed to be erected in conjunction with the subdivision proposal.</p> <p>No. The subdivision is proposed to facilitate the future erection of a water recycling facility. Flood free access is not critical to the establishment of the water recycling facility.</p> <p>N/A</p>

ORDINARY MEETING

Meeting Date: 25 May 2010

Element	Rule	Complies
	<p>the viability of subdivision the land and provide recommendations as to the siting and the type of buildings which could be permitted on the subject land.</p> <p>(d) In the event the Council deems that there is the potential that land subject to a subdivision application is contaminated then the applicant shall engage a suitably qualified person to undertake a soil and ground water assessment.</p> <p>(e) Contaminated Land shall be remediated prior to the issue of the Subdivision Certificate.</p>	<p>Not considered to be contaminated.</p> <p>N/A</p>
Rural Lot Size and Shape	<p>(a) The minimum allotment size for land within rural and environmental protection zones are contained within Hawkesbury Local Environmental Plan 1989.</p> <p>(b) Lots should be able to accommodate a building envelope of 2000m² with a minimum dimension of 20 metres. Building envelopes should be located a minimum of 30 metres from significant trees and other significant vegetation or landscape features. Building envelopes will contain the dwelling house, rural sheds, landscaping, and on-site effluent treatment and disposal areas, and bushfire mitigation.</p> <p>(c) In calculating the area of a battle-axe or hatchet shaped allotment, the area of the battle axe handle should be included.</p> <p>(d) The width to depth ratio of allotments should not exceed 1:5.</p> <p>(e) Lot layout shall consider the location of watercourse vegetation and other environmental features.</p>	<p>Yes (See SEPP 1 comments)</p> <p>No. The subdivision is proposed to facilitate the future erection of a water recycling facility. The subject lot will not have a dwelling entitlement.</p> <p>N/A</p> <p>NA</p> <p>Yes</p>
Effluent Disposal	<p>(a) An effluent disposal report prepared by a suitably qualified person is required to accompany any development application for rural and rural-residential subdivisions.</p> <p>(b) Any system proposed other than a Household Aerated Wastewater Treatment System is required to be installed prior to release of Subdivision Certificate.</p>	<p>NA</p> <p>NA</p>
Rural Road and Access Way Design	<p>(a) The design specifications in Figure 4 at the end of this clause are to be met.</p> <p>(b) Where the road width is insufficient or unsatisfactory, an applicant should dedicate or provide land required for local road widening or new roads at no cost to Council.</p>	<p>N/A</p> <p>N/A</p>

ORDINARY MEETING

Meeting Date: 25 May 2010

Element	Rule	Complies
	(c) Upgrading of the access way from the nearest sealed road to the proposed subdivision to an all weather standard suitable for the expected traffic generation arising from the subdivision. This work may require the sealing of the pavement dependent upon traffic generation.	N/A
	(d) Where access to the subdivision is via a Crown or Reserve road in addition to the above, the road should be fully constructed to a standard commensurate with roads in the locality and linked to the nearest Council road. Prior to any construction works being undertaken the relevant section of Crown road is to be transferred to Council.	N/A
	(e) The road fronting the subdivision shall be sealed into half width (minimum 3.5 metres). An all weather standard of road construction may be acceptable where the expected traffic volume generated by the subdivision proposal is low and no sealed road in the vicinity.	Yes
	(f) Water courses should be piped where they cross roads and the applicant should create drainage easements generally 10 metres long and 4 metres wide over the point of any discharge of any water from any public road onto private property.	N/A
	(g) All internal driveways shall be constructed to an all weather standard suitable for the expected traffic generation. An all weather access should also be provided across the footway to any battle-axe lot. Such access should be sealed within the vicinity of existing houses on adjoining lots where dust nuisance may occur and also on steeply sloping land.	NA
	(h) Where 3 or more individual access handles are proposed, common roads are to be provided.	N/A
	(i) Battle-axe handles shall have a minimum width of 6 metres.	N/A
	(j) Access ways should have a maximum grade of 25% (1:4) and be sealed if the grade exceeds 1:6, concrete if exceeds 1 in 5.	NA
	(k) Where an access way meets a public road there should be a minimum sight distance of 70 metres. This may be increased on roads with a high speed limit.	Na
	(l) Cul-de-sacs for rural roads should have a minimum seal radii of 12.0 metres and boundary radii of 17.0 metres.	N/A

ORDINARY MEETING

Meeting Date: 25 May 2010

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

There are no planning agreements applicable to the proposed development.

v. Matters prescribed by the Regulations:

The development is not inconsistent with the provisions of the Environmental Planning and Assessment Regulation, 2000.

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

The proposed subdivision is not considered to result in unreasonable amenity impacts to adjoining properties, as it will not diminish the agricultural potential of the remainder of the allotment, which is currently not used for this purpose. No dwelling entitlement will be given, with the purpose behind the subdivision proposal to facilitate the future erection of a Water Recycling Facility. Environmental impacts are limited, with no earthworks or removal of vegetation proposed.

c. Suitability of the site for the development:

The Water Industries Competition Act 2006 makes provision for the expansion of persons able to obtain a water licence to operate a water recycling facility. The subdivision will facilitate such an activity and the proposed allotment is to be located adjacent to existing infrastructure such as Pump Station T within 43 Bootles Lane, Pitt Town. Given that no earthworks are proposed and that the subdivision does not require the removal of any vegetation, the site is considered suitable for the development proposed.

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

In their letter dated 23 February 2010, the Department of Planning advised that *"concurrence is required if Council proposes to grant development consent to the development application."*

It is proposed that should the Council support the proposed development, that the application be referred to the Department of Planning for concurrence.

e. The Public Interest:

The purpose behind the subdivision proposal is to facilitate the future erection of a Water Recycling Facility, which requires a land transfer to a licensed authority under WICA. The Water Recycling Facility will provide reticulated sewerage services to the Pitt Town release area and is proposed as an alternative to the sewerage scheme previously adopted by Council. Council considered options for dealing with this alternate scheme at the meeting of 25 August 2009.

Having regard to the relevant planning considerations, it is concluded that it would be in the public interest to approve the proposed subdivision to engage the first step in the land transfer process to facilitate the future construction of the Water Recycling Facility.

Conclusion:

The current proposal is not consistent with the minimum allotment size requirement for subdivision as per Clause 11(2) of Hawkesbury Local Environmental Plan 1989. However, it is considered that strict compliance with these requirements is unreasonable and unnecessary in this instance, and is therefore worthy of support.

Under the provisions of State Environmental Planning Policy No. 1 (SEPP No.1), Council can not determine the application without the concurrence of the Director General. It is recommended that Council support the application and request that the Director General grant concurrence to the application. Should concurrence be granted, the application can be approved. Should concurrence

ORDINARY MEETING

Meeting Date: 25 May 2010

not be granted, then the application must be refused. Both of these determination options may be undertaken under the delegated authority of the General Manager.

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.

Developer Contributions

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

RECOMMENDATION:

That:

1. The objection under State Environmental Planning policy No. 1 be supported.
2. Council seek the concurrence of the Department of Planning to the SEPP No. 1 variation.
3. Development application DA0084/10 at Lot 1062 DP 1131838, 43 Bootles Lane, PITT TOWN for a Two Lot Torrens Title Subdivision be supported and, upon the receipt of the response from the Department of Planning, authority be delegated to the General Manager to appropriately determine the application.

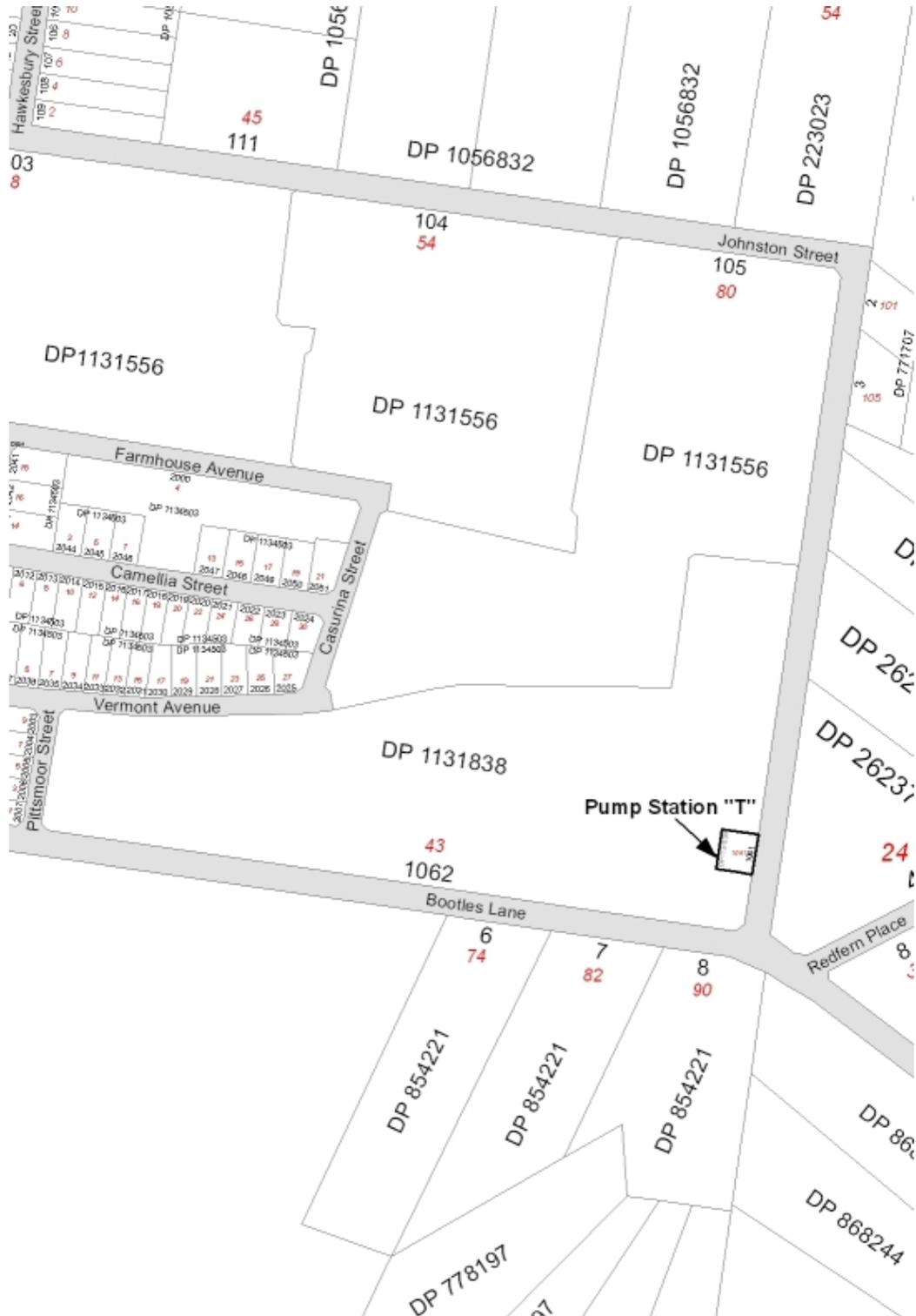
ATTACHMENTS:

- AT - 1** Locality Plan
- AT - 2** Plan of subdivision
- AT - 3** Potential development consent conditions should the application be approved.

ORDINARY MEETING

Meeting Date: 25 May 2010

AT - 1 Locality Plan



ORDINARY MEETING

Meeting Date: 25 May 2010

AT - 3 Potential development consent conditions should the application be approved.

General Conditions

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
2. No excavation, site works or building works shall be commenced prior to the issue of an appropriate construction certificate.
3. Creation of a restriction on use of land pursuant to Section 88B of the Conveyancing Act as follows:
 - a) Prohibiting the erection of a dwelling on Proposed Lot 1068.

Prior to Issue of Construction Certificate

4. An Environmental Management and Rehabilitation Plan for the development site shall be prepared by an appropriately qualified person. The Plan shall address (without being limited to) the clearing of vegetation, lopping and removal of trees, earthworks, erosion control, site rehabilitation and landscaping.

All site works shall be carried out in accordance with the Plan. Implementation of the Plan shall be supervised by an appropriately qualified person.
5. Payment of a Construction Certificate checking fee of \$616.00 and a Compliance Certificate inspection fee of \$1237.50 when submitting Civil Engineering Plans for approval. This amount is valid until 30 June 2010. Fees required if an Accredited Certifier is used will be provided on request.
6. Construction of the road is not to commence until three copies of the plans and specifications of the proposed works are submitted to and approved by the Director City Planning or an Accredited Certifier.
7. A Traffic Guidance Scheme prepared in accordance with AS 1742-3 (1996) by an appropriately qualified person shall be submitted to Council. Where the works affect Roads and Traffic Authority controlled roads, the Traffic Guidance Scheme is to be approved by the Roads and Traffic Authority before submission to Council.

Prior to Commencement of Works

8. All traffic management devices shall be installed and maintained in accordance with the approved traffic guidance scheme.
9. 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.
10. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.

During Construction

11. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
12. Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved plan and Hawkesbury Development Control Plan chapter on Soil Erosion and Sedimentation.

ORDINARY MEETING

Meeting Date: 25 May 2010

13. All natural and subsurface water-flow shall not be re-directed or concentrated to adjoining properties. Water flows shall follow the original flow direction without increased velocity.
14. The road shoulder and half width road pavement of Bootles Lane shall be constructed with a sealed pavement for the length of proposed Lot 1068. The works shall include a kerb return extending to the tangent point in Johnston Street.

Prior to Issue of Subdivision Certificate

15. A Certificate from a telecommunications carrier confirming that provision has been made for services to the development shall be submitted to the Principal Certifying Authority.
16. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.
17. Written clearance from an energy service provider shall be submitted to the Principal Certifying Authority.
18. A plan of subdivision prepared to the requirements of the Land Titles Office, shall be submitted to Council, with four copies.
19. A survey plan showing all existing services on the lots including sewer connections, water connections and stormwater disposal shall be submitted. The plan shall demonstrate that there are no encroachments over remaining or proposed boundaries.
20. Payment of a linen release Fee of \$421.00 in accordance with Council's Fees and Charges at the time of lodgement of the linen plan.
21. Copies of any instruments, requiring the creation of a positive covenant and/or restriction as to user under Sections 88B of the Conveyancing Act 1919, required under this development consent are to be submitted for approval with the final plan of subdivision, prior to the release of the plan of subdivision.

The terms of such restriction to be prepared by a registered surveyor prior to issue of the Subdivision Certificate to Hawkesbury Council's standard requirements at the applicant's expense. Hawkesbury Council shall be nominated as a party to release, vary or modify such restriction.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 25 May 2010

Item: 101 **CP - Development Application - Construction of a Service Station - Lot 3 DP 233054 & Part Lot B DP158748, 11 Macquarie St, Windsor NSW 2756 - (DA0578/09, 74442, 97811, 95498)**

Development Information

File Number: DA0578/09
Property Address: 11 Macquarie Street, Windsor NSW 2756
Applicant: Woolworths Limited
Owner: Rosefawn Pty Limited
Proposal Details: Construction of a Service Station
Zone: 3(a) Business General & Zone 9(b) Proposed Road
Advertising: 8/10/2009 - 21/10/2009
Date Received: 28/09/2009

Key Issues:

- ◆ Objection under State Environmental Planning Policy No.1
- ◆ RTA Requirements

Recommendation: That the objection under State Environmental Planning Policy (SEPP) No. 1 be supported and that Council seek the concurrence of the Department of Planning to the SEPP No. 1 variation.

REPORT:

Introduction

An application has been received seeking approval for the construction of a service station at Lot 3 DP 233054 and Part Lot B DP 158748 11 Macquarie Street, Windsor. Due to the development having direct vehicular access to Macquarie Street, a State Road under the control of the Roads and Traffic Authority (RTA), the application was considered to be a traffic generating development in accordance with State Environmental Planning Policy (SEPP) 2007 (Infrastructure). The application was referred to the RTA twice following modifications made to the internal layout and vehicular access points into the site.

This Development Application is submitted to Council for consideration as the SEPP No. 1 objection received objecting to clause 6 of Hawkesbury Local Environmental Plan, seeks numerical departure of greater than 10% in respect to the distance of the service station from the intersection of the main roads of Macquarie and Bridge Streets and requires Council to determine the application, prior to concurrence being obtained from the NSW Department of Planning.

Description of Proposal

The applicant seeks consent for the construction of a service station, situated on the corner of Baker and Macquarie Street, Windsor. Three fuel dispensers, including one LPG dispenser will be provided on site underneath a canopy and a paypoint building located at the north east corner of the site. The site currently benefits from existing vehicular crossings from both street frontages, with Baker Street proposed as an access entry only. Due to the proximity of the site and the development in relation to Macquarie Street and Bridge Street, the application was referred to the Roads and Traffic Authority (RTA) in accordance with the requirements of State Environmental Planning Policy (Infrastructure) 2007.

The entire frontage of the site along Baker Street is impacted by road widening to accommodate a possible widening of Baker Street.

The road widening if taken up by Council, will result in the Baker Street vehicular crossing being consumed by the road widening works. Due to the severe changes in level within the site towards Baker Street, no

ORDINARY MEETING

Meeting Date: 25 May 2010

vehicular crossing from Baker Street would be possible following any road widening. The development however, still benefits from an entry and an exit onto Macquarie Street. The layout of the proposal has been amended to take into consideration the possibility that road widening may eventuate in the future, with internal manoeuvrability satisfying Australian Standard turning paths for all vehicles entering and exiting the site.

The development seeks to operate 24 hours a day, seven days a week.

History

The application states that the use of the site for the purposes as a service station commenced from 1964 and ceased when development consent was granted for the removal of underground tanks, demolition of canopy and remediation of the site within DA0288/05 approved in August 2005. Following remediation works, a Site Audit Statement was issued in November 2007, declaring that the site was suitable for numerous purposes, including commercial/industrial use.

Issues Relevant to the Decision - In Point Form

- RTA requirements
- Objection under State Environmental Planning Policy No.1

Council Policies, Procedures and Codes to Which the Matter Relates

State Environmental Planning Policy No. 1
State Environmental Planning Policy (Infrastructure) 2007
State Environmental Planning Policy No. 55 – Remediation of land
State Environmental Planning Policy No. 64 – Advertising and signage
Hawkesbury Local Environmental Plan 1989
Sydney Regional Environmental Plan No 20
Hawkesbury Development Control Plan 2002

Section 79C Matters for Consideration

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

a. The provisions (where applicable) of any:

i. Environmental Planning Instrument:

The relevant environmental planning instruments are:

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

The subject property is zoned 3(a) Business General. Service stations are permissible land uses within the 3(a) Business General zone. Clause 6 – Adoption of Model Provisions, which refers to Part 5 – Special Provisions of HLEP 1989 states that for service stations or car repair stations:

“A building or work shall not be erected or used and land shall not be used for the purpose of a service station unless:

- (a) The site is more than 90 metres from the junction or intersection of a main or arterial road, with another main or arterial road;*
- (b) Where the site has frontage to a main or arterial road:*
 - (i) The Roads and Traffic Authority has been consulted; and*
 - (ii) Where the site is not a corner lot, the frontage to the road is not less than 38 metres, or, where the site is a corner lot, the frontage to the road is not less than 30 metres*

ORDINARY MEETING

Meeting Date: 25 May 2010

- (c) *where the site has frontage to a road other than a main road, the frontage is not less than 30 metres;*
- (d) *the width of a vehicle crossing over a footpath is not more than 9 metres;*
- (e) *any vehicular crossing over a footpath is not closer than 6 metres to a road intersection;*
- (f) *separate entrances to and exits from the site are provided and those entrances and exits are separated by physical barriers constructed on the road alignment and so identified by suitable signs readily visible to persons using the adjoining road or entering;*
- (g) *where the site is a corner lot and the Council so requires, separate entrances and exits are provided to and from each of the adjoining roads and a physical barrier is erected so that a vehicle entering the site must, when leaving it, use an exit leading only to the road from which entrance was gained;*
- (h) *inlets to bulk fuel storage tanks are so situated on the site as to ensure that tankers, while discharging fuel into such tanks, shall stand wholly within the site;*
- (i) *fuel pumps are within the site and not closer than 3 metres to the road alignment;*
- (j) *the layout of the site is such as to facilitate the movement of vehicles entering into or leaving the site with the flow of traffic on the adjoining road;*
- (k) *vehicular access to or from site from or to an adjoining road is situated not less than 24 metres to any traffic lights on the roads; and*
- (l) *the site is suitably landscaped to the satisfaction of the consent authority.”*

The proposed service station is situated a distance of only 63 metres from the intersection of Macquarie and Bridge Streets. An objection under SEPP No.1 seeking a variation to the distance of the service station from the intersection of the main roads of Macquarie and Bridge Streets was submitted and is considered worthy of support.

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

Clause 2 - Aims, objectives etc
Clause 5 – Definitions
Clause 6 – Adoption of 1980 Model Provisions
Clause 9 - Carrying out of development
Clause 9a - Zone objectives
Clause 18 – Provision of water, sewerage etc services
Clause 22 – Development fronting a main or arterial road
Clause 25 – Development of flood liable land
Clause 28 – Development in the vicinity of heritage items
Clause 31 – Acquisition and use of reserved land
Clause 37A – Development on land identified on Acid Sulfate Soils Planning Map

An assessment of the Development Application otherwise reveals that the proposal complies with the matters raised in the above clauses of Hawkesbury Local Environmental Plan 1989, with the exception of distances from a junction or intersection of a main road or arterial road as contained within Clause 6 – Adoption of 1980 Model Provisions.

State Environmental Planning Policy No. 1 – Development Standards

An objection under State Environmental Planning Policy No. 1 was lodged in respect to the distance of the development from the intersection of Macquarie and Bridge Streets. This SEPP No. 1 objection states:

“Clause 3 of SEPP No.1 allows flexibility in circumstances where strict compliance would be unreasonable or unnecessary or hinder attainment of the objects of the Act.

The accompanying Traffic and Parking Report by Colston Budd Hunt & Kafes provides evidence to the effect that there is expected to be no adverse effect on traffic safety as a result of resurrecting a petrol station on this site and continuing the traditional land use. “

ORDINARY MEETING

Meeting Date: 25 May 2010

The applicant's claim that compliance with the development standard is considered unreasonable and unnecessary, for the following reasons:

- *The site exists and has done so for many years without restraint on safety and efficiency*
- *The Land and Environment Court has referred to such instances as "accidents of history"*
- *The site is large and has a secondary street frontage and access*
- *Similar sites in other Local Government Areas allow flexibility towards minimum street frontages.*
- *The proposal will be situated on a consolidated lot with two street frontages. A total of 75.71 metres of street frontage.*
- *The access from Macquarie Street is separated i.e one for entry only and the other for exit only.*
- *The Baker Street access will provide secondary entry only thus offsetting the Macquarie Street entry.*
- *The existing frontage length and distance was applied to traditional service stations but newer petrol stations are less intensive because of the lack of vehicle repairs and the like with one frontage and providing both entry and exit thereto.*

The requirement for service stations to be located a minimum of 90 metres from the intersection of arterial roads is a current development standard within HLEP 1989 and a trigger for Development Applications to be referred to the RTA in accordance with SEPP (Infrastructure) 2007.

The traffic implications of the development of on site carparking, access arrangements, internal circulation and parking layout and the ability of the road network to be able to support the traffic generated by the development have been assessed and are considered satisfactory. Whilst the site is located only 63 metres from the intersection of Macquarie and Bridge Streets, the development has demonstrated that the site is suitable for this land use and can function adequately, despite not complying with the numerical development standard. Further in this respect, the RTA raise no objection to the development subject to specific conditions of consent.

Given the arguments presented by the applicant and noting that the allotments were previously utilised for the use as a service station, it is considered that the application adequately demonstrates that the standard is unreasonable in this case.

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

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

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

State Environmental Planning Policy No. 55 – Remediation of land

Development consent was granted for the removal of underground tanks, demolition of canopy and remediation of the site within DA0288/05 approved in August 2005. Following remediation works, a Site Audit Statement was issued in November 2007, declaring that the site was suitable for numerous purposes, including commercial/industrial use. The proposed development as a service station is consistent with the nominated use's declared suitable within the Site Audit Statement.

State Environmental Planning Policy No. 64 – Advertising and signage

Under SEPP No.64 Part 2 Signage Generally, "A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) *that the signage is consistent with the objectives of this Policy as set out in clause 3(1) (a), and*
- (b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1."*

An assessment of the proposal against the aims of this policy and the assessment criteria specified in Schedule 1 reveals that the development is consistent with the aims of the Policy and the assessment criteria specified in Schedule 1.

State Environmental Planning Policy (Infrastructure) 2007

Due to the development having direct vehicular access to Macquarie Street, a State Road under the control of the Roads and Traffic Authority (RTA), the application was considered to be a traffic generating development in accordance with State Environmental Planning Policy (SEPP) 2007 (Infrastructure). The application was referred to the RTA twice following modifications made to the internal layout and vehicular access points into the site. On the 26 March 2010, the RTA granted concurrence to the proposal subject to specific conditions of consent.

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

Within Draft Hawkesbury Local Environmental Plan 2009, the subject site is zoned B2 Local Centre and SP2 Infrastructure. The subject development is permissible with consent. Unlike Hawkesbury Local Environmental Plan 1989, no numerical provisions relate to the development of a service station within the Draft Local Environmental Plan.

iii) any development control plan applying to the land

The application has been notified to adjoining property owners in accordance with the requirements of Hawkesbury Development Control Plan 2002 Part A, Chapter 3.

In respect to carparking requirements, Hawkesbury Development Control Plan (HDCCP) 2002 Part C, Chapter 2 Carparking and access requires that service stations provide five spaces per work bay, plus one space per 30m² of ancillary retail floor space. The development does not propose any workbays, but does provide a small pay point terminal of approximately 78m² in area, thus requiring three carspaces to be provided on site. The development proposes seven carspaces on site, satisfying Council's requirements.

The application also wishes to erect a pylon sign for advertising and the display of petrol prices to a height of 6 metres. The height of the pylon sign is consistent with the requirements specified within HDCCP 2002 Part C, Chapter 3 Signs.

(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F

There are no planning agreements applicable to the proposed development.

iv) any matters prescribed by the regulations

The proposed development is not inconsistent with the provisions of the Environmental Planning and Assessment Regulation, 2000.

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

Context & Setting

The development site has been utilised for the purposes of a service station since 1964 up until recently when the site was remediated. The emergence of a new service station is not considered to distract from the local context and setting, given the sites previous long standing use.

Access, Transport & Traffic

Due to the development having direct vehicular access to Macquarie Street, a State Road under the control of the Roads and Traffic Authority (RTA), the application was considered to be a traffic generating development in accordance with State Environmental Planning Policy (SEPP) 2007 (Infrastructure). The

ORDINARY MEETING

Meeting Date: 25 May 2010

application was referred to the RTA twice following modifications made to the internal layout and vehicular access points into the site. On the 26 March 2010, the RTA granted concurrence to the proposal subject to specific conditions of consent.

Utilities

It is considered that the proposed development will not place unreasonable demands on the provision of services.

Heritage

The site is not a registered heritage item under any local or state registry. The subject land is however located adjacent to Thompson Square at the rear. The application was referred to the NSW State Heritage Office for comment and no objections were raised.

Soils

Erosion and sedimentation controls will be enforced through conditions of consent.

Waste

Provision exists on site for the storage of skip bins located to the north west of the pay point building. Removal of waste generated by the development is proposed to be removed by a private contractor.

Natural Hazards

The subject land is not defined as bushfire prone land, however is situated at a level below the 1:100 flood year event for Windsor. As the development is not for habitable occupation, no development standards for commercial floor levels exist.

Site Design and Internal Design

The development demonstrates that all service vehicles, including tanker delivery trucks can manoeuvre adequately within the site and entering and exiting the site.

Construction

Construction is not expected to unreasonably impact upon surrounding business' and residential properties to the north east of the development site.

Cumulative Impacts

The proposed development is compatible with surrounding land uses and no negative cumulative impact is foreseen.

c) the suitability of the site for the development

Development consent was granted for the removal of underground tanks, demolition of canopy and remediation of the site within DA0288/05 approved in August 2005. Following remediation works, a Site Audit Statement was issued in November 2007, declaring that the site was suitable for numerous purposes, including commercial/industrial use. The proposed development as a service station is consistent with the nominated use's declared suitable within the Site Audit Statement.

The traffic implications of the development on site carparking, access arrangements, internal circulation and parking layout and the ability of the road network to be able to support the traffic generated by the development have been assessed and are considered satisfactory. Whilst the site is located only 63 metres from the intersection of Macquarie and Bridge Streets, the development has demonstrated that the site is suitable for this land use and can function adequately, despite failing the numerical development

standard. Further in this respect, the RTA raise no objection to the development subject to specific conditions of consent.

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

Community Consultation

The application was notified to adjoining property owners for 14 days in accordance with Hawkesbury Development Control Plan 2002 from the 8th to 21st of October 2009. Within this period, one letter of objection was received.

1. Business' will suffer as due to cut price food and drinks that will be sold by Woolworths.

Comment: The proposed land use is already permitted in the zone with Council consent. No substantial evidence has been submitted to conclude such an impact would eventuate, with economic forces dictating the success and failure of businesses. It should also be noted that the introduction of competition to existing businesses alone is not a relevant planning matter.

e) the public interest

The site is considered suitable for the development proposed, with the traffic implications of the development on site carparking, access arrangements, internal circulation and parking layout and the ability of the road network to be able to support the traffic generated by the development considered to be satisfactory.

Having regard to the relevant planning considerations and the matters raised in public submissions, it is concluded that the proposal is not contrary to the public interest.

Conclusion

The current proposal is not consistent with the distance requirements for service stations from the intersection of arterial roads as per Clause 6 of Hawkesbury Local Environmental Plan 1989. However, it is considered that the applicant has successfully demonstrated that strict compliance with these requirements is unreasonable and unnecessary in this instance, and is therefore worthy of support.

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

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.

Developer Contributions

The following developer contributions apply to this development - \$9,000. Accordingly, a condition of consent is required to be imposed in this regard.

ORDINARY MEETING

Meeting Date: 25 May 2010

RECOMMENDATION:

That:

1. The objection under State Environmental Planning policy No. 1 be supported.
2. Council seek the concurrence of the Department of Planning to the SEPP No. 1 variation.
3. Development application DA0578/09 at Lot 3 DP 233054 and Part Lot B DP 158748, 11 Macquarie Street WINDSOR NSW 2756 for Construction of a Service station be supported and, upon the receipt of the response from the Department of Planning, authority be delegated to the General Manager to appropriately determine the application.

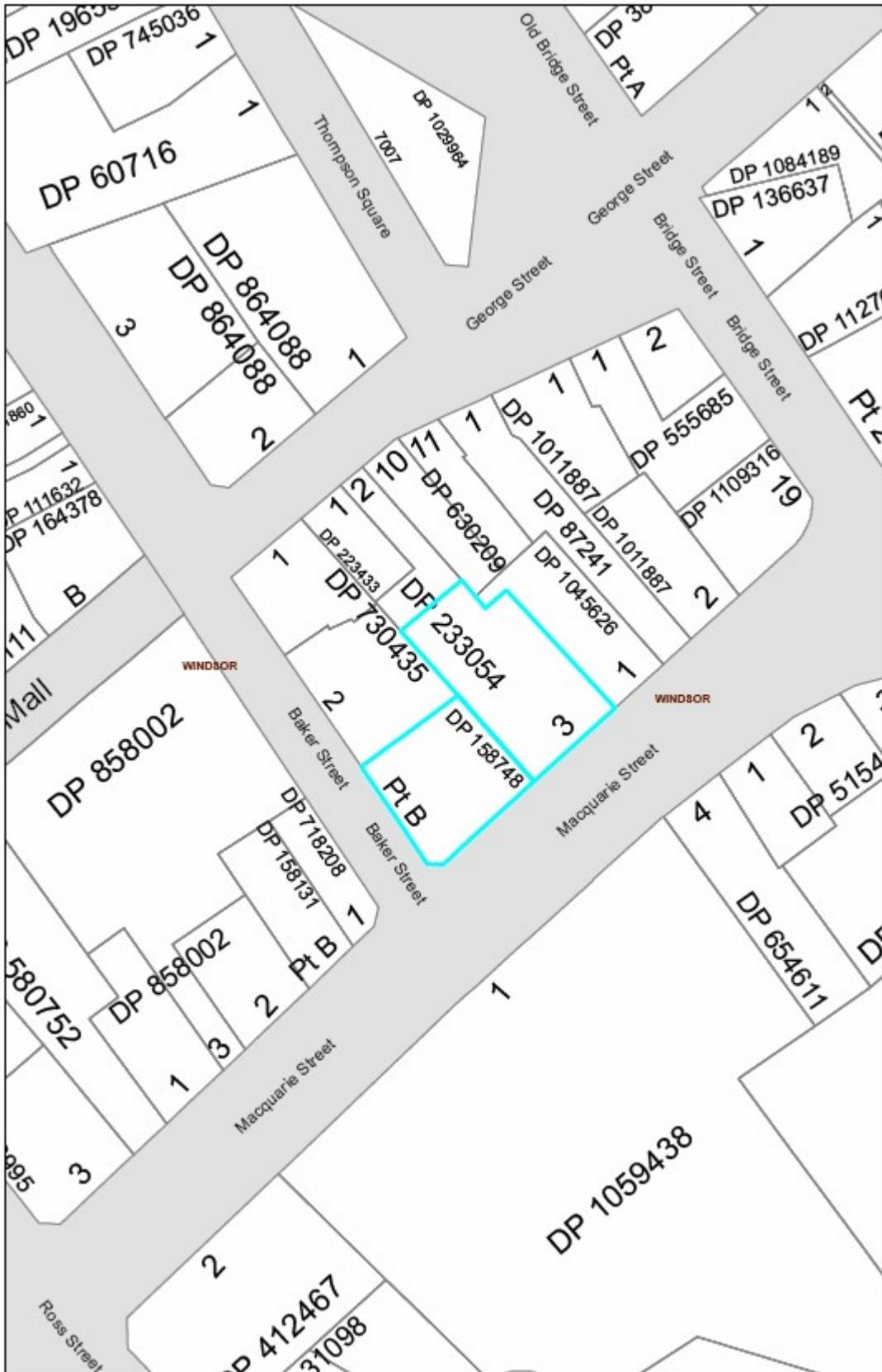
ATTACHMENTS:

- AT - 1** Locality Plan
- AT - 2** Site Plan
- AT - 3** Elevations
- AT - 4** Potential development consent conditions should the application be approved

ORDINARY MEETING

Meeting Date: 25 May 2010

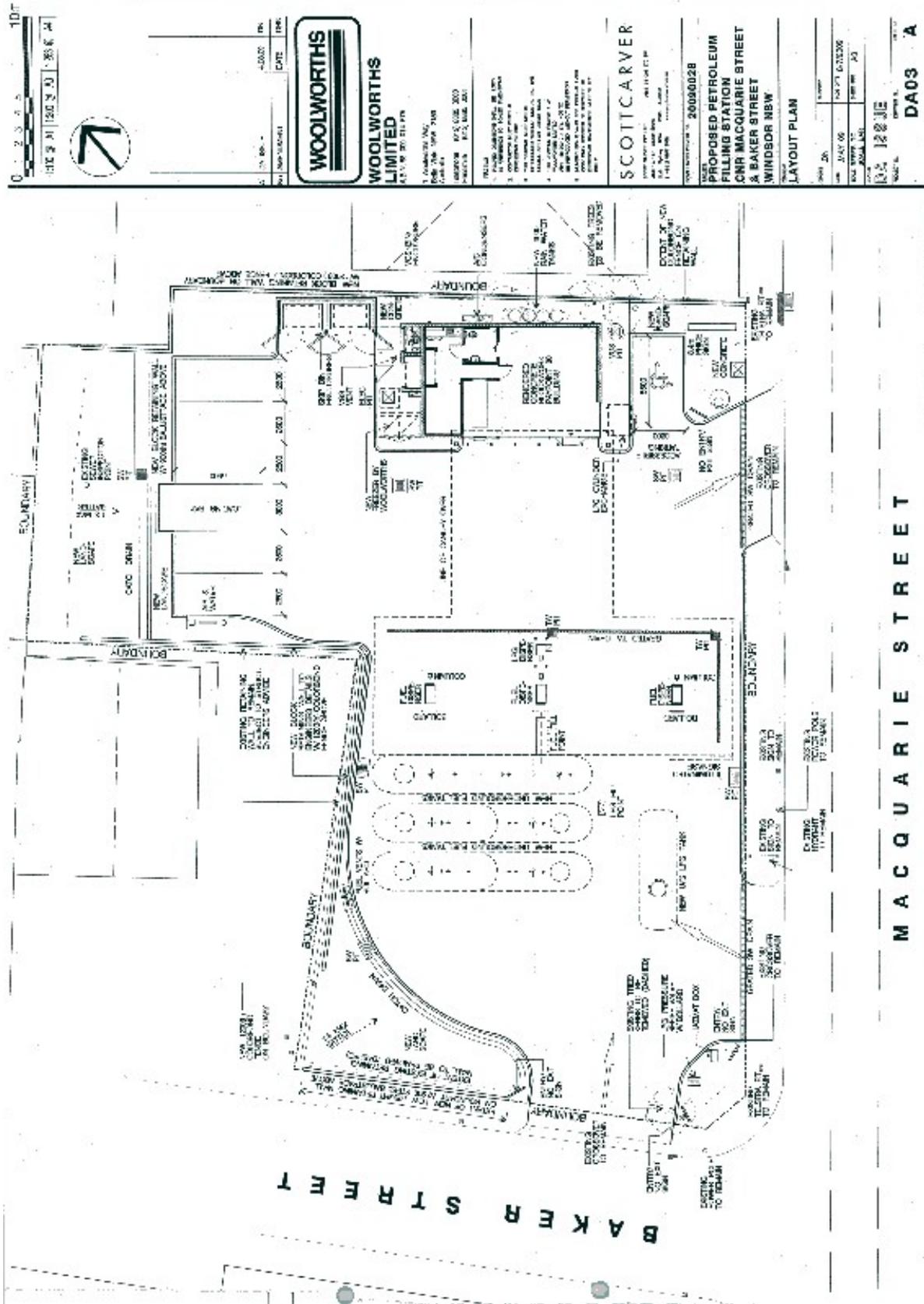
AT - 1 Locality Plan



ORDINARY MEETING

Meeting Date: 25 May 2010

AT - 2 Site Plan



ORDINARY MEETING

Meeting Date: 25 May 2010

AT - 4 Potential development consent conditions should the application be approved

General Conditions

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
2. No excavation, site works or building works shall be commenced prior to the issue of an appropriate Construction Certificate.
3. The approved use shall not commence until all conditions of this Development Consent have been complied with.
4. The building shall not be used or occupied prior to the issue of an Occupation Certificate.
5. The development shall comply with the provisions of the Building Code of Australia at all times.
6. The accredited certifier shall provide copies of all Part 4 certificates issued under the Environmental Planning and Assessment Act, 1979 relevant to this development to Hawkesbury City Council within seven days of issuing the certificate. A registration fee applies.
7. Hawkesbury City Council is the sewer authority for this development, inspection for compliance certification for internal and external sewer drainage shall be requested and approved prior to covering any pipe. An inspection fee applies.
8. The development shall be designed and operated in accordance with the acoustic report No. 4658 Revision 0, prepared by RSA Acoustics and dated 24 February 2010.

Prior to Issue of Construction Certificate

9. The subject sites shall be consolidated in accordance with the approved plan. The plan for consolidation is to be registered prior to the release of the Construction Certificate.
10. The design and construction of the proposed new driveway crossing on Macquarie Street shall be in accordance with AS2890.1 – 2002 and the Roads and Traffic Authority (RTA) requirements (ie. 11m at the kerbline). Details of further requirements can be obtained from the RTA's Project Services Manager, Traffic Projects Section, Parramatta (ph. 02 8849 2144).

A certified copy of the design plans shall be submitted to the RTA for consideration and approval prior to the release of the Construction Certificate by the Principle Certifying Authority and commencement of road works.

The RTA fees for administration, plan checking, civil works inspections and Project management shall be paid by the applicant prior to the road works.

11. An Environmental Management and Rehabilitation Plan for the development site shall be prepared by an appropriately qualified person. The Plan shall address (without being limited to) the clearing of vegetation, lopping and removal of trees, earthworks, erosion control, site rehabilitation and landscaping.

All site works shall be carried out in accordance with the Plan. Implementation of the Plan shall be supervised by an appropriately qualified person.

12. Construction of the road, access, car park, drainage, filling and retaining walls are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved by the Director City Planning or an Accredited Certifier.

ORDINARY MEETING

Meeting Date: 25 May 2010

13. A Traffic Management Plan prepared in accordance with AS 1742-3 (1996) by an appropriately qualified person shall be submitted to the Principle Certifying Authority for approval. Where the works affect Roads and Traffic Authority controlled roads, the Traffic Management Plan is to be approved by the Roads and Traffic Authority before submission to Council.
14. Retaining walls are to be designed by a suitably qualified and experienced Structural Engineer and approved by the Principle Certifying Authority prior to construction.
15. Pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979* and Hawkesbury City Council's Section 94A Development Contributions Plan 2006 (as amended from time to time), a contribution of \$9,000 shall be paid to Hawkesbury City Council.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of Hawkesbury City Council's Section 94A Development Contributions Plan 2006 (as amended from time to time).

The contribution is to be paid prior to the issue of the construction certificate and copies of receipts(s) confirming that the contribution has been fully paid are to be provided to the certifying authority.

16. The applicant shall submit plans for assessment and approval by Hawkesbury City Council regarding the collection and treatment of Trade Waste prior to discharge to the local sewerage system.

Prior to Commencement of Works

17. Should there be changes to the RTA's drainage system then detailed design plans and hydraulic calculations of the stormwater drainage system are to be submitted to the RTA for approval, prior to the commencement of any works.

Details should be forwarded to:
The Sydney Asset management
Roads and Traffic Authority
PO Box 973 Parramatta CBD 2124

A plan checking fee will be payable and a performance bond may be required before the RTA's approval is issued. With regard to the Civil Works requirement please contact the RTA's Project Engineer, External Works Ph 02 8849 2114 or Fax 8849 2766.

18. All traffic management devices shall be installed and maintained in accordance with the approved traffic management plan.
19. A waste management plan shall be submitted to and approved by the Principle Certifying Authority. The plan shall address any builder's waste and waste generated during the day to day operation of the development. Particular attention shall be paid to type and quantity of waste, recycling, reuse, storage and disposal.
20. Erosion and sediment control devices are to be installed and maintained at all times during site works and construction. The enclosed warning sign shall be affixed to the sediment fence/erosion control device.
21. The applicant shall advise Hawkesbury City 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.
22. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.

ORDINARY MEETING

Meeting Date: 25 May 2010

23. Toilet facilities (to the satisfaction of the Principle Certifying Authority) shall be provided for workmen throughout the course of building operations. Such facility shall be located wholly within the property boundary.
24. A sign displaying the following information is to be erected adjacent to each access point and to be easily seen from the public road. The sign is to be maintained for the duration of works:
 - (a) Unauthorised access to the site is prohibited.
 - (b) The owner of the site.
 - (c) The person/company carrying out the site works and telephone number (including 24 hour 7 days emergency numbers).
 - (d) The name and contact number of the Principal Certifying Authority.

During Construction

25. All redundant driveways are to be removed along the site's Macquarie Street frontage with kerb and gutter reinstated to the RTA's requirements.
26. The layout of the proposed car parking and loading areas associated with the subject development (including driveways, queuing areas, grades, turn paths, sight distance requirements, aisle widths and parking bay dimensions) should be in accordance with AS2890.1 – 2004 and AS2890.2 – 2002 for heavy vehicle usage.
27. The development shall be completed in accordance with the approved colours and finishes and shall not be altered.
28. Off-street car parking spaces, together with access driveways and turning areas, shall be constructed, paved, line marked, signposted and maintained, as shown on the approved plan.
29. Vehicle entrances and exits shall be clearly signposted, including street number, and visible from both the street and site at all times.
30. The loading area shown on the plan to cater for a small rigid vehicle is to be increased in size to comply with the minimum requirements of AS2890.2 – 2002 for this type of vehicle (3.5m x 6.4m). The loading bay is to be clearly marked as such.
31. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted.
32. Site and building works (including the delivery of materials to and from the property) shall be carried out only on Monday to Friday between 7am – 6pm and on Saturdays between 8am – 4pm.
33. 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. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.

ORDINARY MEETING

Meeting Date: 25 May 2010

34. The development shall be constructed of flood compatible materials in accordance with the NSW Government Flood Plain Manual. In this respect the following design precautions must be adhered to in all respects:
 - (a) all electrical, heating and air conditioning service installations are to be located above the 2% AEP flood level of 15.7m AHD;
 - (b) the building is to be constructed of flood compatible materials such as galvanised steel frame, galvanised zinc alum cladding doors and door frames; and
 - (c) the structure and walls shall be strengthened to a level of 15.7m AHD to increase resistance to floodwater flow and debris impact.
35. All natural and subsurface water-flow shall not be re-directed or concentrated to adjoining properties. Water flows shall follow the original flow direction without increased velocity.
36. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
37. Inspections shall be carried out and compliance certificates issued by Council or an accredited certifier for the components of construction detailed in Hawkesbury Development Control Plan Appendix B Civil Works Specification, Part II, Table 1.1.
38. All necessary street signage and pavement markings shall be installed and/or relocated as required.
39. The installation and operation of any fuel facility is to be done in accordance with:
 - (a) AS4897 – 2008 : Design, installation and operation of underground petroleum storage systems.
 - (b) AS1596 – 2002 Storage and handling of LP Gas
 - (c) AS1940-1993 The Storage and Handling of Flammable and Combustible Liquids
 - (d) All WorkCover NSW Requirements

Prior to Issue of the Occupation Certificate

40. Dedication of road widening along the Baker Street frontage of the site. The current road reserve width of Baker Street is shown as 12.805m. The dedication is to be 7.195m wide (subject to final survey), to result in a final width of the Baker Street road reserve of 20 metres. The dedication of road widening is to be at no cost to Council.
41. The applicant must enter into a Trade Waste Agreement with Hawkesbury City Council.
42. Landscaping is to be installed in accordance with the approved landscape plan. All works and methods nominated and materials and plants specified on the approved landscape plan are to be completed prior to the issue of an occupation certificate. The landscaping shall be maintained for the life of the development.

Use of the Development

43. No internal or external alterations shall be carried out without prior approval of Council.
44. 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.

ORDINARY MEETING

Meeting Date: 25 May 2010

45. No additional advertising signs or structures shall be erected, displayed or affixed on any building or land without prior approval.
46. No advertising signs or structures shall be displayed on the footpaths, pedestrianways, roadways or on any land other than the approved development site.
47. The development shall be limited to the area shown on the submitted plans.
48. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
49. Any external lighting shall be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.
50. All waste materials shall be regularly removed from the property.
51. Only pre-packaged foods and drinks shall be sold from the premises.
52. No air-conditioning condenser units or plant machinery shall be located within the side setback adjacent to No. 7 Macquarie Street, Windsor.
53. Vehicles entering the property must be wholly contained within the property before being required to stop.
54. All vehicles are to enter/exit to the site in a forward direction.
55. Fuel deliveries shall be restricted to outside of the AM / PM traffic peaks to minimise potential conflicts between articulated vehicles and passenger vehicles in the fuel dispensing area and to also minimise the potential for vehicles to queue out of the site and disrupt traffic flows along Macquarie Street. Fuel delivery tankers, while discharging fuel into storage tanks, shall stand wholly within the site
56. All chemicals shall be stored, handled and disposed of in accordance with:
 - (a) AS1940-1993. The Storage and Handling of Flammable and Combustible Liquids
 - (b) The Department of Environment, Climate Change and Water - Storage and Handling Liquids: Environmental Protection – Participants Manual.
 - (c) Environmental Compliance Report: Liquid Chemical Storage handling and spill management – Part B Review of best practice and regulation
57. The hours of operation are 24 hours a day, seven (7) days a week.

Advisory Notes

- **** All works/regulatory signposting associated with the proposed development are to be at no cost to the RTA.
- **** All construction vehicles are to be contained wholly within the site as a work zone permit will not be approved on Macquarie Street.

oooO END OF REPORT Oooo

SUPPORT SERVICES

Item: 107 SS - Code of Meeting Practice - Questions Without Notice - (95496, 79337)

Previous Item: 11, Ordinary (2 February 2010)
 210, Ordinary (29 September 2009)
 123, Ordinary (30 June 2009)
 NM, Ordinary (12 May 2009)
 201, Ordinary (28 June 2005)
 62, Ordinary (9 November 2004)

REPORT:

Executive Summary

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

Consultation

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

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

Background

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

Following consideration of amendments to the Council's Code of Meeting Practice, Council resolved to seek legal advice as to whether the asking of questions seeking information and answering of those questions by councillors or staff constitutes transaction of business in the terms of Section 241 of the Local Government (General) Regulation 2005. Legal advice was sought on 29 October 2009 and received by letter dated 16 December 2009. The legal advice supported the views expressed by the then Department of Local Government in its updated Practice Note 16 – Meetings Practice issued in August 2009. The legal advice in relation to having Questions Without Notice as an agenda item concludes by stating:

"Whilst it may have been the practice of some councils in the past to have an agenda item for 'Questions Without Notice' we agree with the view expressed by the Division of Local Government, Department of Premier and Cabinet in Practice Note 16 that having such an

ORDINARY MEETING

Meeting Date: 25 May 2010

agenda item is inconsistent with the provisions of the Regulations and is likely to constitute a breach of the LG Act in respect of which any person may bring proceedings in the Land and Environment Court to remedy or restrain (see section 674 of the LG Act)."

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

"That:

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

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

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

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

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

Suggested Approach

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

Previously, it was reported that the advice in the Practice Note in relation to this issue is that:

- Councillors may ask questions during the meeting on matters on the business paper as outlined in the Code (see 3.2.7 and 3.3.6 of Council's Code);
- Councillors can ask questions of the General Manager using the "questions with notice" provisions of the Code including appropriate notice (see 3.3.7 of Council's Code);
- A matter not on the business paper may be dealt with where the matter is ruled by the chairperson to be of great urgency but only after a motion is passed to allow this particular business to be dealt with (see 2.2.3 (3) of Council's Code).

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

ORDINARY MEETING

Meeting Date: 25 May 2010

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

- In Clause 2.3.4 - delete sub clause 4) – tabling of Documents during question time.
- In Clause 2.3.6 - “Order of Business” - delete Item 12) “Councillors’ Questions without Notice”.

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

The Departmental response offers a further suggestion and states:

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

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

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

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

“3.3.12 Questions For Next Meeting

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

A consequential amendment would be required to the order of business for Ordinary Meetings. In this regard it is proposed that Item 12 of Clause 2.3.6 - “Order of Business” would be amended to read “Questions For Next Meeting” in lieu of “Questions Without Notice”. This would mean that the last agenda

ORDINARY MEETING

Meeting Date: 25 May 2010

item of the Ordinary Council Meeting prior to reports proposed to be discussed in Confidential Session, would have Councillors ask questions as is now the case with the exception that there will be no responses to those questions until the following meeting if possible.

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

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

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

Conformance to Community Strategic Plan

The proposal is consistent with the Shaping Our Future Together Directions statement;

- Have transparent, accountable and respected leadership and an engaged community.

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

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

Financial Implications

No financial implications applicable to this report.

RECOMMENDATION:

That:

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

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

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

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

- i. Add Clause 3.3.12 as follows:

"3.3.12 Questions For Next Meeting

1. *At all Council meetings, each Councillor may ask questions for the next Council meeting under the segment of the business paper designated for that purpose. The Mayor or Chairperson of the meeting may exercise discretion in limiting questions or ruling any question out of order.*
2. *Questions for the next meeting should relate to questions concerning items not on the business paper of the Meeting where the question is raised.*
3. *The chairperson must not permit discussion or any reply to a question under this clause.*
4. *Councillor questions for the next meeting and responses shall be included on the next Council Meeting's business paper or, if this is not possible, the*

ORDINARY MEETING

Meeting Date: 25 May 2010

one following the next or an explanation given as to the reasons for delay and anticipated time of final response.

5. *These questions and subsequent reports responding to the questions are not subject to discussion, debate or public address at the meeting asked and/or answered.*
6. *This clause does not apply to an extraordinary meeting of the Council.*
7. *Nothing in this clause affects questions being asked, with the leave of the chairperson, relevant to any matter under discussion at a meeting."*

- ii. Rework Item 12 of Clause 2.3.6 - "Order of Business" to read "Questions For Next Meeting" in lieu of "Questions Without Notice".
2. As the amendments to the Code of Meeting Practice are not substantial, the changes not be advertised and the amended Code of Meeting Practice be adopted from the date of this meeting.

ATTACHMENTS:

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

ORDINARY MEETING

Meeting Date: 25 May 2010

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

ITEM: Business Paper - Ordinary Meeting Agenda - 25 May 2010

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

REPORT:

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

"That:

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

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

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

ORDINARY MEETING

Meeting Date: 25 May 2010

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

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

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

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

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

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

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

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

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

Conformance to Strategic Plan

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

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

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

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

Funding

Not applicable.

ORDINARY MEETING

Meeting Date: 25 May 2010

RECOMMENDATION:

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

ATTACHMENTS:

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

ORDINARY MEETING

Meeting Date: 25 May 2010

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

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



ABN 59 874 202 316

Your Ref: Fausto Sut

The General Manager
Hawkesbury City Council
DX 8601 WINDSOR

16 December 2009

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

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

Dear Sir,

Re: Questions without Notice on Council Meeting Agenda

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

BACKGROUND

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

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

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

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

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

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AGENTS IN VICTORIA, QUEENSLAND AND AUSTRALIAN CAPITAL TERRITORY

- Partners: J H Marsden, J B Adam, K J Searle, A I Percival, A J Seton, E M White, D R Baird, P J Crittenden, T C Reeve, G P Butterfield, J Bonura, J T Henshaw, J J Tunks
Consultant: R H Norwood
Senior Associates: P D Hudson, N M Youssef, J R Thornton
Associates: D A Vardy, C R McElroy, T M Danjoux, A E Hayward, S A Rocha, N Kallipolitis, D T Stott, E Macfarlane

Campbelltown
T: 02 4626 5077
F: 02 4626 4826

Camden
T: 02 4655 7121
F: 02 4626 4826

Sydney
T: 02 9233 1133
F: 02 4626 4826

Liverpool
T: 02 9601 5666
F: 02 4626 4826

24 Hour Contact
M: 0416 184 412

Accredited Specialist Advocacy
Accredited Specialist Family Law
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ORDINARY MEETING

Meeting Date: 25 May 2010

2

Re: Questions without Notice on Council Meeting Agenda

16 December 2009

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

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

On page 7 of the Practice Note it is stated:

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

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

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

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

Advice

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

1075671_1

ORDINARY MEETING

Meeting Date: 25 May 2010

3

Re: Questions without Notice on Council Meeting Agenda

16 December 2009

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

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

Clause 241 of the Regulation relevantly provides as follows:

"241 Giving notice of business

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

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

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

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

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

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

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

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

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

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

1075671_1

ORDINARY MEETING

Meeting Date: 25 May 2010

4

Re: Questions without Notice on Council Meeting Agenda

16 December 2009

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

Such a motion can be moved without notice.

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

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

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

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

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

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ORDINARY MEETING

Meeting Date: 25 May 2010

5

Re: Questions without Notice on Council Meeting Agenda

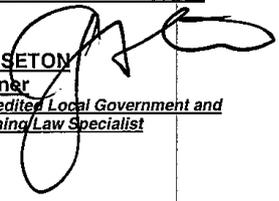
16 December 2009

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

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

Yours faithfully

MARSDENS LAW GROUP


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

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ORDINARY MEETING

Meeting Date: 25 May 2010

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

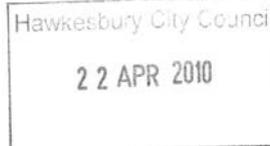


Department of Local Government
5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

OUR REFERENCE
YOUR REFERENCE
CONTACT

A208742
Mr P Jackson
Susan Hartley
4428 4214

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



Dear Mr Jackson

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

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

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

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

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

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

02 4428 4100 • 02 4428 4119 • 02 4428 4209
e dlq@dlg.nsw.gov.au w www.dlg.nsw.gov.au ABN 99 567 863 195



SCANNED



ORDINARY MEETING

Meeting Date: 25 May 2010

2

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

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

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

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

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

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

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

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

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

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

ORDINARY MEETING

Meeting Date: 25 May 2010

3

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

I trust this information is of assistance.

Yours sincerely



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

oooO END OF REPORT Oooo



ordinary
meeting

end of
business
paper

This business paper has been produced electronically to reduce costs, improve efficiency and reduce the use of paper. Internal control systems ensure it is an accurate reproduction of Council's official copy of the business paper.