



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 13 October 2009

location: council chambers

time: 5:00 p.m.



mission statement

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

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SECTION 4 - Reports for Determination

GENERAL MANAGER

Item: 216 **GM - Complaint Under Council's Code of Conduct against Councillor B Porter - (90477, 114047, 79351)**

REPORT:

On 28 July 2009, a complaint was received under the Council's Code of Conduct (the Code) against Councillor B Porter in respect of comments he allegedly made towards the complainant during the Council Meeting held on 28 July 2009.

In accordance with Clause 12.9(d) of the Code, the General Manager decided to refer the matter to an independent Conduct Reviewer and subsequently appointed Ms R Hill of Way Forward Pty Ltd, a member of Council's recently appointed panel of Independent Reviewers under the Code for this purpose, with the matter being referred to Ms Hill on 11 August 2009.

Ms Hill has now submitted her "Investigation and Findings Report", a copy of which is included as Attachment 1 to this report. This report is now submitted to Council for its consideration in accordance with Clause 14.9 of the Code.

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

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

The "Investigation and Findings Report" from Ms Hill indicates that due to the nature of the complaint it was necessary to reveal the identity of the complainant to Councillor Porter and this had been previously agreed to by the complainant. It is understood that subsequently the complainant advised the Conduct Reviewer that the complainant's identity should not be revealed in the Conduct Reviewer's report.

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

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

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

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

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The issues and facts surrounding the allegation have been addressed in the "Investigation and Findings Report" and Ms Hill has made a number of findings, including that the Code of Conduct had been breached at the meeting of Council held on 28 July 2009.

As previously requested by Council, it is advised that the Conduct Reviewer's account in respect of conducting this review was \$7,100.00, excluding GST.

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

RECOMMENDATION:

That the Review Report by the Sole Conduct Reviewer, Ms R Hill of Way Forward Pty Ltd, dated 29 September 2009 in respect of a complaint under the Council's Code of Conduct regarding Councillor B Porter and matters occurring at the Council Meeting held on 28 July 2009 be received and the findings and recommendations contained therein be adopted by Council.

ATTACHMENTS:

AT - 1 Investigation and Findings Report" by Ms R Hill of Way Forward Pty Ltd dated 29 September 2009.

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**AT-1 Investigation and Findings Report” by Ms R Hill of Way Forward Pty Ltd
dated 29 September 2009**

WAY FORWARD PTY LTD

Investigation and Findings Report
For Hawkesbury City Council

Regarding a
Code of Conduct Complaint

Reviewer: Robin Hill
Date of Report: 29th September 2009

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Background

On 11th August 2009, Robin Hill, Director, Way Forward Pty Ltd was engaged to investigate and report on a complaint against a Councillor (Respondent) by a resident of the Hawkesbury Local Government Area (Complainant) within the parameters of the Hawkesbury City Council Code of Conduct, adopted by Council on July 8th 2008.

This Report

This report is designed for consideration by Hawkesbury City Council as prescribed by the Code of Conduct.

During the course of the interviews references were made about a history of other interactions between the Complainant and Respondent which have been unproductive. However, the Reviewer was engaged to review the complaint made about conduct by the Respondent at the council meeting on 28th July 2009. Accordingly the Reviewer has only made findings related to the specific complaint of 28th July 2009 by the Complainant.

However, in order to assist council with the resolution of what appears to be ongoing tension between the parties the Reviewer has made some other recommendations for council consideration.

It should be noted that interviewees frequently referred to the Complainant, her family members or other colleagues but this report focuses on the Complainant, her complaint and the interaction on the night of 28th July 2009 between the Complainant and Respondent.

The Reviewer

Robin Hill has Masters in Leadership and Organisation Dynamics and has extensive experience in organisation development and in the investigation and management of work place disputes, grievances and claims of inappropriate conduct within organisations. She has undertaken this kind of work through a series of Executive roles in the public health sector and Local Government in NSW and Victoria since 1998 and through the work of her company "Way Forward Pty Ltd" since February 2008. Prior to 1998 she held management positions in Local Government in both NSW and Victoria.

Robin Hill was appointed to Hawkesbury City Council's Panel of Code of Conduct Reviewers in 2009.

The Reviewer was contracted by the General Manager to:

1. Independently review the documentation and interview the Complainant, Respondent and Witnesses';
2. To make a finding of fact within the parameters of the Hawkesbury City Council Code of Conduct, and
3. To make recommendations with respect to the complaint.

The Reviewer cannot and will not make any finding with respect to the law or any legal implications of the facts, other than in regard to the Hawkesbury City Council Code of Conduct which was developed to ensure councils compliance with section 440 of the Local Government Act 1993. It is therefore recommended that the General Manager of Hawkesbury City Council seek legal advice with respect to the application of any legal definition to the behaviours found to have occurred.

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The Investigation and the Interview Process

The Reviewer interviewed three councillors and a resident of the Hawkesbury Local Government Area. The Reviewer also reviewed a series of documents.

This report is structured around one specific complainant.

Initially the report was written as a confidential draft document to the Complainant and Respondent in order for them to make a written statement to the Reviewer.

The Complainant responded to the Reviewer by email on 23rd September indicating that she was happy with the results, the comments made by the Reviewer and the way the Reviewer handled the matter. The Respondent did not provide a written response to the Reviewer but informed the Reviewer on Wednesday 23rd September that the report was a reasonable representation of his statements and issues of concern.

The complaint from a resident of the local government area was forwarded to the Acting General Manager, Chris Daley, by email on 28th July 2009.

The complaint was provided to the Reviewer on Tuesday August 11, 2009. The complaint related to the conduct of Councillor Bob Porter (the Respondent) at a Council meeting on 28th July 2009.

The Reviewer also interviewed two Witnesses whose names have not been included in this report in order to maintain their confidentiality

The Reviewer was also provided with a selection of material related to the complaint by the General Manager and other parties. The documents are as follows:

- Hawkesbury City Council Code of Conduct, adopted 8th July 2008.
- An email of the complaint dated 28th July 2009 from the Complainant to the Acting General Manager, Chris Daley and the General Manager, Peter Jackson, in which the Complainant lodges a formal complaint in regard to the conduct of Cr Porter at a council meeting on 28th July 2009 with particular regard to comments directed to her.
- An email from the General Manager, Peter Jackson to the Complainant on 3rd August 2009, in response to the Complainant's complaint about Cr Porter's conduct and seeking her permission for her identity, as complainant, to be made known to Councillor Porter as part of his assessment of the complaint under Clause 12.9 of the Code of Conduct.
- An email from the Complainant to the General Manager, Peter Jackson on 3rd August 2009 providing her permission for her identity, as Complainant, to be made known to Councillor Porter.
- An email of 11th August 2009 from the General Manager, Peter Jackson to the Complainant stating his decision, under Clause 12.9 d of Council's Code of Conduct to refer her complaint to a Conduct Reviewer for consideration. Mr Jackson further stated in his email to appoint Ms Robin Hill, a member of Council's "Panel of Independent Reviewers" as the Conduct Reviewer.
- The Hawkesbury City Council Code of Meeting Practice, adopted 28th June 2005.
- An email from the General Manager, Peter Jackson to the Reviewer, Robin Hill of Way Forward Pty Ltd on 11th August 2009, engaging her to conduct a review of the complaint under the terms of Council's code of Conduct.
- An email from the Complainant to Cr Bob Porter on 28th July 2009 titled "national swimmers as opposed to people who think they can"
- An email from Cr Bob Porter to the Complainant on 3rd August 2009 titled "national swimmers as opposed to people who think they can."
- An email from the Complainant to all Hawkesbury City councillors on 31st March 2009 titled "Council Meetings" and expressing an opinion on the behaviour of the four new councillors in council meetings
- An email from the Complainant to all Hawkesbury City Councillors on 2nd April 2009 titled "Council Meetings" and expressing an opinion about the competence of some of the current councillors on Hawkesbury Council

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- An email from Cr Warwick Mackay to the Complainant (& copied to Cr Bart Bassett , Mayor and Peter Jackson , General Manager) on 1st April 2009, titled "Council meetings" addressing some of the matters outlined by the Complainant in her email of 31st March 2009.
- An email from the Complainant to Cr Warwick Mackay on 2nd April 2009 titled "Council Meetings" thanking him for his reply to her email and suggesting changes to the starting times of Council meetings and allowing questions from the gallery.
- An email from Witness 1 to the Reviewer, Robin Hill, on August 19th 2009 regarding information included in a previous email from the Complainant.
- An email from Witness 1 to the Reviewer, Robin Hill, on 21st August 2009 regarding comments she overheard which, she stated, were made by the Complainant at the Council meeting of 28th July 2009.
- An email to the Reviewer, Robin Hill on 8th September 2009 from the General Manager, Peter Jackson with data on complaints against councillors since January 2007.

Notes from interviews conducted by the Reviewer with the Complainant, Cr Bob Porter and two witnesses which were also used in the preparation of this report:

The General Manager was also contacted by the Reviewer for telephone numbers and for statistics on the number of complaints against councillors with particular reference to the Respondent.

Interview Process

The Complainant was interviewed by telephone on 18th August 2009 and 27th August 2009. The interview of 27th August 2009 sought to provide the Complainant with an opportunity to respond to the statements made by the Respondent.

The Complainant was asked by the Reviewer if it was acceptable for the interviews to be conducted by telephone. The Complainant agreed to a telephone interview. The Complainant was asked if she wished to provide the names and contact details of any witnesses present at the council meeting of 28th July 2009 that she wished the Reviewer to interview. The Complainant stated that she did not wish to provide any witnesses for the review.

The Respondent was interviewed by telephone on 14th August 2009 and on 3rd September 2009. The Interview of 3rd September 2009 sought to provide the Respondent with an opportunity to respond to the statements made by the Complainant.

The Respondent was asked by the Reviewer if it was acceptable for the interview to be conducted by telephone. The Respondent agreed to a telephone interview. The Respondent provided the names of several witnesses for interview. One of those recommended by the Respondent was interviewed

The Reviewer interviewed two witnesses

In total the Reviewer had contact with the Complainant, the Respondent and the Witnesses from 12th August 2009 to 23rd September 2009.

All who participated in the interview were advised of the following:

1. The voluntary nature of the process such that any individual could withdraw at any time, or stop the interview to seek advice and/or reconvene with support people and/or advisors at a later time.
2. The limits of confidentiality of this process, and the likely reporting of statements made in interviews. Otherwise all notes would be reviewed for the report. That the final report would go to the General Manager for consideration by council.
3. That the notes taken during the interview process would be used to prepare a report for the General Manager but would otherwise remain confidential.
4. The neutrality of the Reviewer

All who participated in the interviews agreed to work with the Reviewer under the above principles.

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The Complaint

Ref	Complaint	Response	Witness statement and/or additional materials	Finding
	<p>(a) In her complaint of 28th July 2009 the Complainant stated that the Respondent had breached Council's Code of Conduct at the meeting on Tuesday 28th July 2009 by provoking her and behaving in a disrespectful manner towards her "when speaking about" her. She stated that he did not ask her questions after she had completed her presentation on a matter on council's agenda but waited until she was seated and unable to respond "to start his usual banter regarding her letters to local papers".</p> <p>She stated that she has a "democratic right" to write to local papers and that she does not attend council meetings to be "insulted" by the Respondent.</p> <p>The Complainant stated that "she saw red" when the Respondent referred to her writing to the local paper and from the gallery said to the Respondent "it's a democracy".</p>	<p>(a) The Respondent stated that the Complainant was talking in the gallery before he spoke. He stated that his reaction to the Complainant's behaviour at the Council meeting of 28th July 2009 was "against the Code of Conduct". The Respondent stated that he felt provoked.</p>	<p>(a) Witness 1 stated that the Complainant called out a comment about the Respondent at the council meeting. While she did not write down the specific words she stated that the comment was in essence "have you taken a look in the mirror –you haven't exactly got the most attractive body yourself"</p> <p>Witness 1 stated that the Respondent "shouldn't have snapped" but that the Complainant's "provoking behaviour has gone on for years"</p> <p>Witness 1 stated that she agrees with the position taken by the Complainant on a number of issues but not the way the Complainant conducts herself at council meetings.</p> <p>Witness 2 stated that the Respondent's behaviour is generally acceptable, that he wouldn't start provoking the Complainant and only responds when provoked.</p> <p>Witness 2 stated that the Respondent "has been attacked so many times he just got sick of it."</p> <p>The Reviewer was provided with a tape recording covering the portion of the meeting relevant to the complaint. Prior to the Respondent speaking the sound of talking and laughter can be heard from the gallery including someone calling out. The Reviewer was advised by the Respondent that the laughter and comments were made by the Complainant. While the Respondent was addressing council laughter can be heard from the gallery which the Respondent and Witness 2 advised the</p>	<p>(a) It is the finding of the Reviewer that the Respondent did breach sections 6.1 and 6.3 of Council's Code of Conduct at the council meeting of 28th July 2009 by making personal comments about the Complainant.</p>

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Ref	Complaint	Response	Witness statement and/or additional materials	Finding
	<p>(b)The Complainant stated that the Respondent is not respectful and doesn't listen.</p> <p>The Complainant stated that she said "you're a boofhead Bob", that she pointed to her temple to convey that the Respondent "was an idiot and that she made an insulting gesture with her hands. She stated that she made these comments and gestures as she was leaving the council chamber on 28th July 2009 or just before she left.</p> <p>The Complainant stated that she felt frustrated and "just snapped that night"</p>	<p>(b)The Respondent stated that he felt provoked by the Complainant during the meeting of 28th July 2009, that he could hear the Complainant talking in the gallery while Councillor Conolly was talking.</p> <p>The Respondent stated that after the meeting of 28th July 2009 a member of the community who was in the gallery expressed his support for the Respondent and congratulated him for how well he tolerates the conduct of the Complainant.</p>	<p>Reviewer was a the made by the Complainant.</p> <p>The Respondent then said " We can hear chuckles from the gallery because it doesn't suit them"</p> <p>The Respondent then said " You can point at your head..." and " The likes of the Complainant can write her letters, carry on the way she does."</p> <p>A voice can be heard on the tape calling out "You don't know what you're talking about you boofhead"</p> <p>The Reviewer was advised by the Respondent that it was the Complainant who called out.</p> <p>The Respondent then said " You see that's the sort of thing we enjoy from the gallery"</p> <p>The Mayor then asked the Respondent to retract his comments and asked that there be no calling out from the gallery.</p> <p>The Respondent did not retract his statements.</p>	<p>(b)It is the finding of the Reviewer that during the council meeting of 28th July 2009 both a councillor and a member of the gallery did not demonstrate the behaviours expected of Council's Code of Conduct.</p>
	<p>(c) The Complainant stated that the respondent had breached Council's Code of</p>	<p>(c)The Respondent stated that the Complainant has continually yelled from the</p>	<p>(c)The Reviewer was provided with a list of complaints against councillors</p>	<p>(c)It would appear that the complaint demonstrates a pattern of behaviour between</p>

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	<p>Conduct on previous occasions, behaved in a "childish and disrespectful manner" and was "well and truly out of line once again". She stated that the Respondent had behaved in this way for approximately five years. The Complainant stated that she has previously made a complaint against the Respondent as a result of his conduct towards her at a council meeting and that her complaint was investigated by the General Manager. The Complainant stated that the Respondent also told her "to go and get a wet suit" in response to an issue she was raising in a council meeting.</p>	<p>gallery over the last five years during council meetings for approximately 9 out of the 10 meetings that she has attended. He stated that she "gets personal", "continually provokes and interjects", that she isn't respectful, is "continually belligerent" and that she and her colleagues try to "bully councillors into their way of thinking".</p> <p>The Respondent stated that he did tell the Complainant "to go and get a wet suit" in response to an issue she was raising in a previous council meeting.</p> <p>The Respondent stated that he had previously moved his seat at council "to get away from" the Complainant", that she made a point of sitting behind him. He stated that she has "yelled " at him as he has walked through the foyer during the break in a previous council meeting</p>	<p>from January 2007. There were eleven complaints in total including one against the Respondent.</p> <p>The Reviewer was provided with a number of emails between the Complainant and a number of councillors which indicated that the Complainant holds long standing negative perceptions of a number of councillors. In the emails the Complainant makes statements about issues and also makes some negative personal comments about councillors. In some of the responses some councillors make negative personal comments about the Complainant.</p>	<p>the Complainant and perhaps her colleagues and at least one councillor which is not in accord with council's Code of Conduct and council's Code of Meeting Practice. It is not within the scope of this review to review any claims or statements made about the behaviour of the Complainant, other members of the gallery or councillors prior to 28th July 2009. However, the Code of Conduct requires that the assessment of the complaint has regard to, among other provisions, clause 13.2 "whether the complaint is one of a series indicating a pattern of conduct". This clause has been taken into account in the recommendations in this report.</p>
	<p>(d)The Complainant stated that the Respondent behaves negatively towards her in public forums outside the council chamber; for example, at the council Christmas party two years ago when the Respondent and another councillor looked disdainfully at her. The Complainant also stated that the Respondent called her a "beached whale" at a council Xmas party approximately two years ago.</p>	<p>(d) The respondent stated that the Complainant and her colleagues "make a point of coming towards the councillors at other public forums and has made statements to him like" your time will come. The voters will get rid of you" The Respondent stated that he has never called the Complainant a "beached whale or described her personally". He stated that he now tries to avoid the Complainant and her colleagues.</p>	<p>(d) There were no additional witnesses provided in regard to this matter.</p>	<p>(d)There was no agreement between the Complainant and the Respondent about statements which were allegedly made on a previous occasion. In addition the review of historic interactions between the two parties is outside the scope of this review other than as one of the grounds to be taken in to account in assessing the complaint.</p>
	<p>(e)The Complainant stated that she could not recall making any comments about the Respondents shape or size. She stated that she has never touched or poked the Respondent.</p>	<p>(e)The Respondent stated that in mid 2006 that the Complainant poked him in the chest in the foyer of council.</p>	<p>(e)Witness 1 stated that at the meeting of 28th July 2009 the Complainant made a comment about the Respondent along the lines of "what would you know about exercise. Have you taken a look in the mirror --you haven't got the most attractive body yourself"</p>	<p>(e)It would appear that while there is no agreement between the Complainant and Respondent about specific interactions and statements made at the council meeting of 28th July 2009 or prior to that date it seems reasonable to suggest that at times the interactions between the parties is not respectful.</p>

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	(f)The Complainant requested that the Respondent's behaviour be taken "seriously" and that the Code of Conduct is "enforced" and that the Respondent not receive any more "chances" The Complainant stated that "other councillors have been reprimanded in regard to much more petty matters"	(f)The Respondent was not asked to respond to these statements.	(f)The Reviewer was provided with a list of complaints against councillors from January 2007. There were eleven complaints in total including one against the Respondent.	(f)It is the finding of the Reviewer that there is insufficient evidence to find that council has not treated complaints about the Respondent seriously nor that the Respondent has been given particular leniency in comparison to other councillors. It is also the finding of the Reviewer that the Respondent is not over-represented in complaints against councillors since January 2007.
	(g)The Complainant stated that the Mayor "doesn't pull the Councillors up" and didn't "say anything on the night" of 28 th July 2009.	(g)The Respondent stated that he has advised the Mayor that he should contain the behaviour of the Complainant and her colleagues in Council meetings and that he should give them three warnings and then eject them in accord with Council's Code of Meeting Practice if they do not behave in accord with the code.	(g) Witness 1 stated that she has told the Mayor that he shouldn't allow the Complainant to behave inappropriately in the gallery at council meetings and feels he could do more. Witness 2 stated that he expects respectful conduct from the councillors and from people in the gallery and does remind all parties of their obligations within the Code of Meeting Practice when required during meetings but that the Complainant doesn't think that the Code applies to her or her colleagues	(g)All parties appear to be seeking greater adherence to the Code of Conduct and Code of Meeting Practice from councillors and/or the members of the gallery at council meetings and would support the Mayor in taking stronger action to ensure that compliance to these codes does occur.
	(h)The Complainant stated that the Respondent antagonises and provokes her by not asking her questions after she makes a presentation, unless it is a question which is designed to get her "off side". She stated that the Respondent then "waits" until she returns to her seat before making remarks about her and the content of her presentation. The Complainant stated that the Respondent always takes the opposing view to any issue she is making a presentation on. The Complainant stated that she has not instigated the conflict between herself and	(h)The Respondent stated that he doesn't believe that he has instigated any conflict with the Complainant. The Respondent stated that he felt provoked by the Complainant on the night of 28 th July 2009.	(h) Witness 1 stated that the Respondent "shouldn't have snapped" but that the Complainant's "provoking behaviour has gone on for so many years" Witness 2 stated that the Respondent's behaviour is generally acceptable, that he wouldn't start provoking the Complainant and only responds when provoked. Witness 2 stated that the Respondent "has been attacked so many times he just got sick of it."	(h)The Complainant and Respondent do not agree about the source of inappropriate conduct at council meetings when the Complainant is in the gallery. However, it is the finding of the Reviewer that on the 28 th July 2009 both the Complainant and the Respondent did not behave in accord with council's Code of Conduct and Code of Meeting Practice.

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	<p>the Respondent and stated that individuals have told her that it is the Respondent that "antagonises" her.</p> <p>(i) The Respondent stated that her conduct in the gallery "is fine" and in accord with Council's Code of Meeting Practice. She stated that her conduct is 'no different than anyone else', that she might call out but would not usually stand up. She stated that the Respondent likes to blame her and her colleagues.</p> <p>The Complainant stated that at the council meeting of 28th July 2009 she said "you're a boofhead Bob" to the Respondent that she pointed to her temple to convey that the Respondent "was an idiot" and that she made an insulting gesture with her hands. She stated that she made these comments and gestures as she was leaving the council chamber on 28th July 2009 or just before she left.</p> <p>The Complainant stated that she felt frustrated and "just snapped that night"</p>	<p>(i) The Respondent stated that at the council meeting on 28th July 2009 he could hear the complainant talking in the background while he and other councillors were addressing the meeting, that the Complainant called him a "boofhead" and made an inappropriate hand gesture towards him.</p>	<p>(i) Witness 1 stated that the gallery is quiet if the Complainant is not present. Witness 2 stated that at the council meeting of 28th July 2009 the Complainant was scoffing while the Respondent was talking, made mocking facial expressions, was mouthing words and generally behaving aggressively.</p>	<p>(i) It is the finding of the Reviewer that at the council meeting of 28th July 2009 the Complainant did not behave in accord with councils Code of Meeting Practice.</p>

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RECOMMENDATIONS

1. In response to the finding that the Respondent breached the Hawkesbury City Council Code of Conduct it is recommended that;
 - (a) The Respondent make an apology at the next full council meeting to the Complainant, members of gallery and the Mayor and councillors for his conduct at the meeting of 28th July 2009.
 - (b) The Mayor remind all councillors of their obligation as community leaders to “act in a way that enhances public confidence in the integrity of local government” (Part 1.3 The Model Code of Conduct for Local Councils in NSW), to set the standard of behaviour that they expect of the community and to abide by the Hawkesbury City Council Code of Conduct and the Code of Meeting Practice.
 - (c) The Mayor and councillors manage presentations from members of the public at council meetings, emails and other correspondence from members of the public formally and respectfully, that is, respond only to the issues being addressed and not personal or other comments.
 - (d) Council offer an opportunity for mediation between the Complainant and Respondent. It is acknowledged that mediation may be more effective if it involves additional councillors and the Mayor and some colleagues of the Complainants. The decision on the participants should be made by the Complainant and Respondent.
 - (e) The Mayor reminds councillors that emails are discoverable documents and that councillors are not covered by parliamentary privilege.
2. In response to the statements from the Respondent and the Witnesses that on occasion the conduct of members of the gallery is not in accord with Council's Code of Conduct and Code of Meeting Practice it is recommended that the Mayor reinforce the provisions of the codes particularly in terms of calling out and interruptions from members of the gallery which may interrupt the proceedings of the council meetings
3. In response to the statements from all interviewees that the relationship between the Complainant (and her colleagues) and some councillors is unproductive it is recommended that;
 - (a) Council review its current community engagement policy
 - (b) Council offer all councillors training in the Code of Conduct to support its successful implementation.

Robin Hill
Director Way Forward Pty Ltd,
Reviewer, Hawkesbury City Council,
Panel of Independent Reviewers.
29th September 2009.

oooO END OF REPORT Oooo

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CITY PLANNING

Item: 217 **CP - Development Application - Extractive Industry - Quarry Rehabilitation - Lot 2 DP587166, 263 Tizzana Road, Ebenezer - (DA0893/07, 96075, 10055, 10056, 95498)**

Development Information

Applicant: N F Billyard Pty Ltd
Owner: Mr GJ Kirk & Mrs JA Kirk
Zone: Mixed Agriculture under Hawkesbury Local Environmental Plan 1989
Exhibition: 14/01/2008 - 29/01/2008
Date Received: 19/12/2007

Key Issues: Number of truck movements
Road safety, including pedestrian safety and safety of school children
Loss of amenity due to traffic noise, traffic pollution, and dust generation

Recommendation: Deferred Commencement Approval, subject to conditions

REPORT:

1 Executive Summary

The proposed development involves the rehabilitation of a disused quarry approximately 7.1 hectares in size. It is proposed to import 50,000m³ of excavated material to the site over a five year period. The development is to be carried out in five yearly stages comprising of the importation of 10,000m³ of fill material each year, as well as the revegetation of each stage. The purpose of the development is to restore the land to a more consistent topography to enable use of the land for agricultural purposes and/or for purposes ancillary to the residential use of the land. To this end, revegetation of the site will include a mix of native vegetation and pasture. The fill will be provided through one contractor, Jeffersann Excavations.

Assessment of the proposal, including matters raised in public submissions, highlights the following relevant issues for consideration in the determination of the application:

- Number of truck movements;
- Road safety, including pedestrian safety and safety of school children;
- Loss of amenity due to traffic noise, traffic pollution, and dust generation.

In response to public submissions, it is recommended that the following restrictions be imposed as conditions of consent:

- Hours of operation be limited to Monday to Friday 9:30am to 2:30pm
- Limit the number of truck movements to 18 per day (9 truck loads).
- Implementation of a staged Rehabilitation Management Plan, which includes a Dust Management Plan, Soil and Erosion Control Plan and Stormwater Management Plan.

The application provides the basic information to enable an assessment of the impacts of the proposal. However, detailed information on the proposed methods to mitigate these impacts has not been submitted. This detailed information can be provided and assessed via conditions of a 'Deferred Commencement' consent.

The application is being reported to Council at the request of Councillor Porter.

2 Description of Proposal

The application seeks consent for the rehabilitation of a disused quarry on Lot 2 DP 587166, No. 263 Tizzana Road, Ebenezer.

It is proposed to rehabilitate the disused quarry site by filling and contouring the land and providing new vegetation cover in accordance with a schedule of work undertaken progressively over five years.

The rehabilitation will occur in five yearly stages. Each stage will be completed prior to the commencement of the next stage.

The amount of excavation material to be placed on the site is approximately 10,000m³ per stage/year.

The application states *"This quantity of fill materials provides sufficient soil strata depth to promote substantial vegetation growth and enables the project to be self sustainable financially."*

The final batter is indicated on the plans to provide a suitable transition slope of approximately 1:10 from the filled area levels or year 5 to the regrowth areas beginning to occur in the year 6 area. This batter is required to be carefully placed to avoid interference with any established vegetation.

Topsoil may also be brought on site dependant on the type and composition of the fill materials and its suitability as a growing medium.

The application proposes hours of operation Monday to Saturday from 7:00am to 6:00pm.

The subject land is approximately 15.9 hectares. The disused quarry occupies approximately 7.1 hectares of the land. The property is currently used as a residence.

The application is supported by Statement of Environmental Effects, Stormwater Drainage Report, and Traffic Impact Assessment.

3 Background

On 29 August 1969, Colo Shire Council (File 68A/392/69) approved *'the establishment of an extractive industry for the purpose of winning extractive material in the form of sand'* on the subject land. The consent included a condition (No. (d)) requiring *"Re-instatement of the area of operations shall be carried out to the satisfaction of Council."*

Land fill was brought to the site in the beginning of 2006. The applicant was advised in letter of 10 August 2006 that the importation of large amounts of fill material did not meet the intent of the condition for rehabilitation of the site in Development Consent 68A/392/69, and that a development application was required. This was following receipt of legal advice that the importation of large amounts of fill did not constitute re-instatement of the site.

Initially the application proposed a development comprising of 7 stages, however, it was identified that the area corresponding to stages 6 and 7 supported substantial native vegetation identified as an endangered ecological community under the Threatened Species Conservation Act, 1995. As a result, a flora and fauna report, including an Assessment of Significance under Part 5A of the Environmental Planning and Assessment Act, 1979 was requested. In response, the applicants deleted stages 6 and 7 from the proposed development, and amended the plans accordingly.

4 History of Application

19 December 2007	Application received.
9 January 2008	Application notified 9 December 2008 to 29 January 2008, extended to 8 February 2008

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6 March 2008	Letter to applicant requesting additional information in respect to a site survey, location of existing vegetation, extent/depth of fill, reduction in the amount of fill to be imported to the site, reassessment of traffic movements, importation of topsoil, access road, as well as a response to the matters raised on the submissions.
5 May 2008	No response from the applicant received. Second request to applicant to provide the additional information.
16 May 2008	Letter in response to request for additional information received. Information inadequate. Council officer met a number of times with the applicant to discuss the information required for assessment of the application.
4 November 2008	No response from applicant received. Third request for additional information.
17 December 2008	Amended plans received.
3 March 2009	Site meeting with Council officers.
4 March 2009	Letter to applicant requesting additional information, including matters raised in previous letters.
15 May 2009	Amended plans and details received, and assessed.
10 July 2009	Letter to applicant advising that information provided is not detailed enough for assessment.
21 July 2009	Applicant requests site meeting.
10 August 2009	Site meeting held.

5 Council Policies, Procedures and Codes to Which the Matter Relates

The following planning instruments are relevant in the assessment of this application:

- Environmental Planning and Assessment Act, 1979
- Environmental Planning and Assessment Regulation, 2000
- State Environmental Planning Policy No. 44 – Koala Habitat
- State Environmental Planning Policy No. 55 – Remediation of Land
- Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River
- Hawkesbury Local Environmental Plan 1989
- Hawkesbury Development Control Plan

6 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:

6.1 Environmental Planning Instrument

The relevant Environmental Planning Instruments are considered below:

6.1.1 Environmental Planning and Assessment Regulations, 2000

Designated Development

Consideration has been given to Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (Regulations), which relates to designated development. Waste management facilities or works, as defined within this Schedule, include filling. It is considered that the proposed filling does not satisfy the criteria to be classified as 'designated development', for the following reasons:

- (a) The proposal will not import more than 100,000 tonnes of excavated material to the site. It has been calculated that approximately 90,000 tonnes in total will be brought to the site.
- (b) It is considered that the proposal will not have a significant adverse impact on drainage or flooding within the locality having regard to the recommendations and conclusion of the Stormwater Drainage Report submitted in support of the application.

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- (c) The proposed works are not located within 100 metres of a natural waterbody, wetland or environmentally sensitive area as defined by Schedule 3 of the Regulations.
- (d) The proposal is not considered to be in an area of high watertable, highly permeable soils, acid sulphate, sodic or saline soils.
- (e) The land is not located within a drinking water catchment.
- (f) The proposed works will not be carried out on land within a flood plain.
- (g) It is considered that the proposed development will have no significant adverse impact on the amenity of the locality or of dwellings located within 250 metres of the proposed development as discussed within this Report. There are a number of dwellings located to the east of the subject land and within 250m of the quarry site and the access driveway to the site. The closest dwellings being approximately 120m from the access driveway and 140m from the quarry site.

Hence the proposal does not require an Environmental Impact Statement and can be determined by Council.

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

The proposed land filling requires development consent under SREP 20. It is considered that the proposal is consistent with the aims of the plan as well as the general and specific planning policies, recommended strategies and development controls outlined in Parts 1, 2 and 3 of SREP No. 20 (No. 2).

6.1.3 State Environmental Planning Policy No. 44 - Koala Habitat Protection

The proposed development does not require the removal of native vegetation and will therefore not disturb habitat areas within the site. Consequently, an investigation into whether or not the land is a potential koala habitat is not required for the development.

6.1.4. State Environmental Planning Policy No. 55 - Remediation of Land

Where a proposed development involves a change in the use of the land, this Policy requires consideration as to whether the land is potentially contaminated. Given the use of the land as a quarry is not listed as a potentially contaminating landuse under the Contaminated Land Planning Guidelines, it is considered unlikely that the land is contaminated. It is therefore considered that the land is suitable for the proposed development and that a Preliminary site investigation is not required. Material brought to the site as part of the rehabilitation works can be monitored to ensure no contaminated fill is deposited on site. In this respect Conditions 27 and 29 under Schedule 2 is included in the Recommendation.

6.1.5 Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

An assessment of the proposed development against the relevant Clauses of Hawkesbury Local Environmental Plan 1989 follows:

Clause 2 - Aims, objectives etc,

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

Clause 5 - Definitions

The proposed development is defined as 'Landfill' under the provisions of HLEP 1989. 'Landfill' means *"the filling of land with clean fill or demolition fill, or both, which alters the natural ground surface level or affects pre-existing drainage. This fill material may be imported to or obtained from the site, but does not include top dressing."*

Clause 8 - Zones indicated on the map

The subject land is within the Mixed Agriculture zone.

Clause 9 - Carrying out development

'Landfill' is permissible with development consent within the Mixed Agriculture zone.

Clause 9A - Zone Objectives

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

The proposed development is consistent with the objectives of the Mixed Agriculture zone as follows:

(a) *to encourage existing sustainable agricultural activities,*

Comment: The property is currently used for residential purposes. The rehabilitation works would enable the use of the land for agricultural purposes.

(b) *to ensure that development does not create or contribute to rural land use conflicts,*

Comment: It is considered that the proposed rehabilitation of the land, subject to the imposition of conditions restricting the number and times of truck movements, will not create conflicts with the use of properties in the locality for residential and/or agricultural uses. A school is located on Sackville Road, near the intersection of Sackville Road with Tizzana Road, and approximately 3 kilometres from the quarry site. Whilst trucks will travel past this school to access the subject property, it is further considered that the truck movements associated with the rehabilitation will have no significant impact on traffic safety in the locality subject to the proposed restrictions. This matter is discussed further in Section 6.8 of this Report.

(c) *to encourage agricultural activities that do not rely on highly fertile land,*

Comment: The proposed development will improve the potential of the land to be used for agricultural purposes.

(d) *to prevent fragmentation of agricultural land,*

Comment: The proposal will not result in the fragmentation of agricultural land.

(e) *to ensure that agricultural activities occur in a manner:*

- a. *that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as streams and wetlands, and*
- b. *that satisfies best practice guidelines and best management practices,*

Comment: It is considered that the proposed development will have not result in any significant adverse impacts on water catchments, surface and groundwater quality and flows, land surface conditions, important ecosystems, streams or wetlands. The rehabilitation works will improve land surface conditions and the revegetation of the site will enhance the vegetation community on the land, which is listed as an endangered ecological community under the Threatened Species Conservation Act, 1995.

(f) *to promote the conservation and enhancement of local native vegetation, including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation,*

Comment: The revegetation of part of the land will assist in the enhancement of the vegetation community located on the land and will provide additional habitat and corridors for native fauna.

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(g) *to ensure that development retains or enhances existing landscape values that include a distinctive agricultural component,*

Comment: Upon completion of the works, it is considered that the proposal will be in keeping with the rural character of the locality and enhance the landscape value of the land.

(h) *to prevent the establishment of traffic generating development along main and arterial roads,*

Comment: The proposed development is not classified as traffic generating development under the provisions of State Environmental Planning Policy (Infrastructure) 2007.

(i) *to control outdoor advertising so that it does not disfigure the rural landscape,*

Comment: The proposal does not involve signage.

(j) *to ensure that development does not create unreasonable economic demands for the provision or extension of public amenities or services.*

Comment: The proposed development will not create unreasonable demands for the provision/extension of public amenities or services.

Specific Provisions of HLEP 1989

Clause 18 - Provision of water, sewerage etc. services

It is considered that the existing services to the site are adequate for the proposed development.

Clause 25 - Development on flood liable land

The proposed development is to be carried out on land that is located above the 1 in 100 year flood level for the locality.

Clause 27 - Heritage items

The site does not contain any heritage items as listed in the schedule 1 of the HLEP.

Clause 28 - Development in the vicinity of a heritage item

The subject land is not located within the vicinity of heritage items

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

The subject land is identified as being located within Class 5 on the Map. The proposed works are within 500m of land within Class 4 however the proposed works will not lower the water table to below 1 metre AHD on the land within Class 4. The proposal is consistent with this Clause.

Clause 40B - Use of tyres for landfill prohibited.

The application advises that all fill to be brought to the site will be Virgin Excavated Natural Material. Certification of the material brought to the site can be required as a condition of consent to ensure that appropriate monitoring, validation and recording of the material is undertaken and that the material is suitable for the proposed use and free of contamination. In this respect Condition 27 under Schedule 2 is included in the Recommendation.

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

There are no draft environmental planning instruments relevant to this application.

6.3 Development Control Plan applying to the land:

Hawkesbury Development Control Plan

An assessment of the proposal against the relevant provisions of this Plan follows:

Notification Chapter

The adjoining neighbours were notified as per the requirements of this Chapter of the Development Control Plan. Sixteen submissions were received, and are discussed further in this report.

Erosion and Sediment Control Chapter

Erosion and sediment control will be ensured through conditions of consent. Measures include sediment ponds, silt fencing, revegetation, shake-down bed, water trucks and maintenance of these measures.

Landscape Chapter

A concept Landscape Plan has been submitted with the application and is considered satisfactory with respect to the areas proposed to be revegetated with native species. However, the plant list provided is not considered to be extensive enough to achieve restoration of the ecological community found in the area. Additional species will be required and conditions of consent can be imposed in this respect. Given that this ecological community (Sandstone Shale Transition Forest) is listed as an endangered ecological community under the Threatened Species Conservation Act, 1979, it is recommended that the revegetation of the land be supervised by a suitably qualified and experienced person such as a bush regenerator. Seed used for restoration works will be required to be locally sourced to maintain genetic integrity of the site.

A Landscape Plan suitable for construction, and incorporating the above, will be required. A Vegetation Management Plan, addressing weed management, maintenance and irrigation of plants, will also be required. In this respect Conditions B and C under Schedule 1 is included in the Recommendation.

Landfill Chapter

The proposed development is considered to be consistent with the relevant provisions of the Landfill chapter of the Development Control Plan, as:

1. The proposed landfilling will enhance any future use of the land.
2. Council's Subdivision Engineer has provided comments on the effect on drainage. Appropriate drainage of the filled land can be achieved. A condition of consent requiring a detailed Stormwater Management Plan to be submitted for approval can be imposed. Condition A under Schedule 1 is included in the Recommendation.
3. Suitable conditions of consent can be imposed with respect to compaction. Condition 22 under Schedule 2 is included in the Recommendation.
4. Suitable conditions can be imposed with respect to erosion and sediment control devices. Condition A under Schedule 1 and Condition 12 under Schedule 2 is included in the Recommendation.
5. The proposed extent of land filling is not expected to adversely impact on the visual and scenic quality of the locality. Finished levels will be consistent with the topography of the area.
6. All material will be restricted to clean fill. The site will be revegetated with a combination of pasture and native vegetation and will not sterilise future use of this area.
7. The proposed landfilling works on the property will have no adverse impact on adjoining properties.
8. The proposed landfilling is unlikely to adversely impact on health and safety of residents.
9. The landfill will improve the potential use of the land. The fill will have no adverse impact on the rural character of the locality.

10. The proposal is not expected to affect water quality within the catchment.
11. The proposed importation of landfill is not expected to expose any acid sulphate soils, sodic soil or saline soils.

6.4 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 has been no planning agreement or draft planning agreement entered into under Section 93F of the Environmental Planning and Assessment Act, 1979.

6.5 Matters prescribed by the Regulations:

There are no matters prescribed in the regulations which would affect the proposal.

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

Context And Setting

Adjoining landuses consist of a mixture of rural/residential and agricultural uses. The proposal is compatible with the existing use and character of the locality subject to restrictions on truck movements. This is further discussed in Section 6.8 of this Report.

It is considered that the proposed development will not impact on adjoining properties in terms of overshadowing, loss of visual or acoustic privacy, or loss of views and vistas. In addition, due to the size of the subject land, the location of the quarry within the land and the topography of the land, any impacts from the works can be contained and managed on the subject property.

Access, Transport and Traffic

A Traffic Impact Assessment prepared by Traffic Solutions Pty Ltd was submitted in support of the application. The Traffic Assessment recommends:

"As well as restricting operating times to business hours the following restrictions upon the application are suggested to assist in mitigating the impacts of the proposal:

1. *The maximum number of truck loads per day is limited to 42 or a maximum of 745m³ per day.*
2. *No trucks to travel in convoy to or from the site.*
3. *No heavy vehicle access from the north."*

It is considered that the proposed 42 truck loads per day (84 truck movements) will have a significant adverse impact on the amenity of the locality due to traffic generation and associated noise and safety issues. This matter is discussed in detail in Section 6.8 of this Report.

Other Land Resources

The proposed filling will enhance the use of the property in the future for agricultural or residential purposes.

Water

A Stormwater Drainage Report prepared by AKY Civil Engineering was submitted in support of the application. This Report provides the following recommendations and conclusion:

"Any filling and rehabilitation of the quarry should be such that:

- *The proposed finished surface levels are reinstated at a level no higher than its naturalized form (i.e. pre-quarry activities).*

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- *The fall of the land post rehabilitation be directed to the ponds (to be retained) so that any overland flow does not get directed or redirected to the adjacent properties. The existing sediment basin should be retained and initial overland flow from the site directed to this basin.*
- *The existing vegetation near the existing ponds and near/within the existing sediment basin should be retained.*

Based on this investigation, we can conclude the proposal to rehabilitate the quarry will have no significant impacts on the drainage or flooding of the area."

The finished filled levels will be lower than the pre-existing levels prior to the operation of the quarry. The existing ponds and sediment basin are to be retained and no works are proposed within this area. As a result no vegetation within this area will be removed or disturbed. A Stormwater Management Plan, which provides details demonstrating how stormwater will be managed so that no overland flows will impact adjoining properties, can be required as a condition of consent. In this regard Condition A under Schedule 1 is included in the Recommendation.

Soils

Erosion and sedimentation controls will be required during all works, and appropriate controls (including use of the existing sediment basin) can be ensured through conditions of consent.

Air and Microclimate

To reduce the impacts of dust from the landfill area conditions can be imposed requiring monitoring of dust generation and the implementation of dust suppression measures. It is considered that these measures are satisfactory in minimising any nuisance to adjoining properties. In this respect Condition A under Schedule 1 and Condition 25 under Schedule 2 is included in the Recommendation.

Flora and Fauna

The proposed development is located within the previously disturbed quarry area.

A vegetated area to the rear of the property is mapped as being Sandstone Shale Transition Forest, which is identified as an endangered ecological community under the Threatened Species Conservation Act, 1995. No works are proposed within this area by this application.

Some vegetation regrowth has occurred within the quarry floor, however this is minimal. Substantial regrowth has occurred on the embankment areas, mostly along the northern boundary, and this vegetation is to be retained. In addition, supplementary plantings along the northern and southern boundary (10m wide) are required to provide vegetative corridors for native fauna. Revegetation of these areas is to utilise plants commensurate with those species of the ecological community Sandstone Shale Transition Forest.

The proposal involves minimal disturbance/removal of native vegetation regrowth and weeds. It is therefore considered that the requirements of Part 5A of the EP & A Act are satisfied in that the proposed development will have no significant impact on threatened species, populations, ecological communities or their habitats.

The owners intend to use the site for small acreage agricultural uses (horses, cattle grazing) and for leisure pursuits (walking, picnics, children playing). As such, revegetation of the site will include both pasture and native vegetation.

6.7 Suitability of the site for the development:

The site is considered suitable for the development proposed.

6.8 Any submissions made in accordance with the Act or the Regulations:

The application was publicly exhibited between 18 January 2008 and 8 February 2008. As a result sixteen submissions were received. The matters raised in these submissions are addressed below:

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Traffic Safety – The predominant concern related to road safety as a result of:

- the condition of Tizzana Road;
- the width of Tizzana road;
- safety of school children;
- poor sight distances from the driveway to the subject site,
- traffic generation;
- damage to road;
- vegetation needs to be trimmed along Tizzana Road;
- lack of footpaths for pedestrians along Tizzana Road;
- proximity to Ebenezer Public School (Sackville Road).

The Traffic Impact Assessment submitted with the application advises that the increase in traffic resulting from the proposed development is minor and will not change the existing level of service of Tizzana Road, taking into consideration existing traffic volumes, and the width and condition of the road. It further advises that the sight distances to and from the existing access driveway to the proposed development exceed the requirements of Australian Standard AS 2890.2:2002 – Off Street Commercial Vehicle Facilities in this respect.

The Assessment also states that:

"The site inspection also indicated that trucks generated by the proposal will travel past the Ebenezer Primary School as well as residential properties. Site observations reveal the Ebenezer Primary School has an existing 40 Km/h school zone with a supervised children's crossing across Sackville Road and the existing signposting and line marking is highly visible. Jeffsann Excavation Pty Ltd has advised that employed truck drivers (including) contractors are regularly reminded to take particular care at school zones."

Comment: In addition to the above, the applicant's submission provides details in respect to the number of truck movements proposed to bring the fill material to the site. To enable comparison, these details are summarised in Column A of the table below. Column B provides some suggested scenarios to demonstrate conditions under which the impacts of truck movements can be reduced to an acceptable level.

TABLE				
	A Calculations based on details provided with application		B Alternative scenarios	
Volumes of fill imported per day	743.3m ³	495.6m ³	79.4m ³	153.8m ³
Amount of fill per truck	17.7m ³	17.7m ³	17.7m ³	17.7m ³
No. of truck loads per day	42	28	4.5	8.69
No. of truck movements	84	56	10	18
Time between each truck movement (minutes) 9:00am to 5:00pm	6	8	48	27
Time between each truck movement (minutes) 9:30am to 2:30pm	3.4	5.4	30	16.6
No. of days to complete each stage (10,000m ³)	13.5	20	126 (6 months, Mon – Fri)	65 (3 months, Mon – Fri)

In view of the above calculations, it can be seen that the importation of fill at the rate of 84 truck movements over 13.5 days will have a significant adverse impact on road safety given that between the proposed hours of 9:00am to 5:00pm one truck will be entering or leaving the premises every 6 minutes. This also results in one truck passing by Ebenezer Primary School every 6 minutes.

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Given each stage, requiring the importation of 10,000m³ of fill, is to be carried out over a maximum twelve month period, it is not considered unreasonable that the fill be transported to the site over a minimum period of three (3) months or longer. A restriction on the hours in which trucks can travel to the property to 9:30am to 2:30pm is proposed to protect the safety of school children, as well as pedestrian and other road users. With this time restriction in place, as well as limiting truck movements to Monday to Friday, over a three (3) month period the number of trucks movements per day will be 18 movements. This equates to 1 truck movement approximately every 16 minutes. The benefits of limiting the number and times of truck movements in this way are:

- It will ensure that trucks do not travel in a convoy. The Traffic Assessment Report proposed a restriction that no trucks travel in a convoy to or from the site. It is considered that the number of maximum truck movements per day proposed by the application (84) will make it difficult to achieve this.
- It will prevent potential queuing of trucks along Tizanna Road.
- It will reduce the impact of traffic noise on residents in the locality and the school.
- It will reduce any potential conflicts between truck movements and safety of school children, pedestrians and other road users.

Loss of Amenity

Concern was raised in respect to the loss of amenity in relation to:

- Pollution – tracking of sediments on road,
- Noise – including hours of operation,
- Dust control;
- Excessive truck movements

Comment: It will be a requirement of any consent that monitoring and management of dust be implemented while landfilling and works are being carried out. A Dust Management Plan will be required and this Plan is to identify dust sources and provide measures to mitigate dust nuisance, including the tracking of sediments onto the road. In this regard Condition A under Schedule 1 and Conditions 25 and 26 under Schedule 2 is included in the Recommendation.

The applicant's submission sought overall hours of operation for both works and truck movements to be 7:00am to 6:00pm, Monday to Saturday. However as discussed, the hours in which trucks can access the locality should be limited to 9:30am to 2:30pm Monday to Friday to ensure public safety and amenity is achieved.

The hours of operation for works being carried out on site are proposed to be 7:00am to 6:00pm Monday to Saturday. Council's standard condition restricts construction works to the hours of 7:00am to 6:00pm Monday to Friday and 8:00am to 4:00pm on Saturdays. To ensure a reasonable level of amenity during site works, and to maintain consistency with the proposed restricted truck movements, it is considered that site works and truck movements only be allowed Monday to Friday. In this respect Conditions 16 and 17 under Schedule 2 is included in the Recommendation.

6.9 The Public Interest

The proposed rehabilitation of the disused quarry is considered to be beneficial in both improving the useability of the land and to the environment in general. Whilst the proposal, as presented, will have a short-term adverse impact on the locality in terms of amenity and traffic safety, it is considered that the imposition of restrictions on the number of trucks movements and times than can operate will mitigate these impacts. With the imposition of these restrictions the proposed development can be considered to be in the public interest.

7 Conclusion

The proposed development is consistent with the relevant provisions of Hawkesbury Local Environmental Plan 1989, Sydney Regional Environmental Plan No. 20, State Environmental Planning Policies No. 44 & 55, Hawkesbury Development Control Plan, and other relevant policies.

It is considered that the proposal will have no significant adverse impact on the locality, subject to the implementation of appropriate control measures. Details of these measures can be obtained via conditions of consent and in this respect, it is recommended that a Deferred Commencement Consent be granted.

8 Developer Contributions

The following developer contributions apply to this development - \$2,450.00. Accordingly, a condition of consent is required to be imposed in this regard.

Planning Decision

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

RECOMMENDATION:

That development application DA0893/07 at Lot 2 DP 587166, 263 Tizzana Road, Ebenezer for Quarry Rehabilitation be approved as a Deferred Commencement Consent subject to the following conditions:

1. Upon compliance with the conditions appearing in Schedule 1, and with the issue of confirmation to that effect in writing from Council, this "Deferred Commencement" consent shall commence to operate as a development consent inclusive of all conditions appearing in Schedule 2 pursuant to Section 80(3) of the Act.
2. The "Deferred Commencement" consent will lapse in twelve months from the date of this consent unless all conditions appearing in Schedule 1 have been complied with.

Schedule 1

- A. A staged Rehabilitation Management Plan shall be submitted to, and approved by Council. The Plan shall incorporate, but not be limited to the following:
 - a. Plans and details demonstrating how the filling within each stage will be blended into the next stage.
 - b. Plans clearly showing areas of existing vegetation to be retained. Methods to protect this vegetation from damage during rehabilitation works;
 - c. Sediment and erosion control measures for each stage;
 - d. Stormwater management plan for each stage;
 - e. The proposed areas for storage of fill material, topsoil and mulch for each stage;
 - f. A Dust Management Plan is to be submitted for approval identifying the potential sources of dust, addressing how monitoring of dust is to be carried out and the measure proposed to minimise dust generation and nuisance.
 - g. Location of truck waiting area on site
- B. A Landscape Plan suitable for construction is to be submitted for approval. The Landscape Plan, in particular, is to:
 - (i) include a more extensive range of species which are of local provenance.

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- (ii) use seeds that are locally sourced to maintain genetic integrity of the site.
- (iii) detail the planting regime and the methods of revegetation (such as brush matting).
- (iv) provide plans for the progressive revegetation of each stage (or part stage);

The revegetation of the land is to be supervised by a suitably qualified and experienced person, such as a bush regenerator. This person is also to be consulted in respect to the compilation of the Landscape Plan and the Vegetation Management Plan.

- C. A Vegetation Management Plan is to be submitted for approval detailing the proposed methods for protecting and maintaining vegetation on completion of filling for each stage (or part stage), and shall address the following:

- (i) weed management;
- (ii) maintenance of revegetated areas;
- (iii) replacement planting
- (iv) irrigation

Schedule 2

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. This consent is limited in time and shall expire 5 years from the operational date of this consent.
3. No excavation, site works or building works shall be commenced prior to the issue of an appropriate construction certificate.
4. The quantity of fill material to be imported to the site over the life of this consent shall be limited to a maximum of 50,000m³. A maximum limit of 10,000m³ of material shall be brought to the site in each stage/12 month period.
5. No work is permitted within the Crown Road reserve.
6. The preceding stage is to be satisfactorily completed and revegetated prior to the commencing of the subsequent stage. A compliance certificate for each stage, to indicate that works have been satisfactorily completed, is to be obtained from the Principle Certifying Authority prior to the commencement of the subsequent stage.

Prior to Issue of Construction Certificate

7. Construction of the access road and earthworks 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.
8. Payment of a Construction Certificate checking fee and a Compliance Certificate inspection fee when submitting Civil Engineering Plans for approval. A fee quote will be provided on request.
9. A traffic Guidance Scheme prepared in accordance with AS1742-3 2002 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.
10. 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 \$2,450.00 shall be paid to Hawkesbury City Council.

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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.

Prior to Commencement of Works

11. All traffic management devices shall be installed and maintained in accordance with the approved traffic guidance scheme.
12. 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.
13. 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.
14. Toilet facilities (to the satisfaction of Council) shall be provided for workmen throughout the course of building operations. Such facility shall be located wholly within the property boundary.
15. 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

16. Site works shall be carried out only on Monday to Friday between 7:00am – 6:00pm. No works shall be permitted on Saturdays, Sundays or Public Holidays.
17. Trucks delivering fill material or machinery to the site shall be restricted to the hours of 9:30am to 2:30pm Monday to Friday. No truck shall pass Ebenezer Primary School prior to 9:15am or after 2:45pm.
18. All work shall be carried out in accordance with:
 - (a) the stamped approved plans;
 - (b) the approved Rehabilitation Management Plan;
 - (c) the approved Landscape Plan;
 - (d) the approved Vegetation Management Plan;
 - (e) the approved Dust Management Plan.

Implementation of the Rehabilitation Management Plan shall be supervised by an appropriately qualified person.

Implementation of the Landscape Plan and Vegetation Management Plan shall be supervised by an appropriately qualified person, such as a bush regenerator.

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19. A report shall be submitted to Council's Director of City Planning every three (3) months from commencement of works detailing the amount of fill brought to the site within this timeframe and providing certification of the fill in accordance with Condition 27 of this Consent.
20. The preceding stage is to be satisfactorily completed and revegetated prior to the commencing of the subsequent stage.

The following are to be submitted to Council upon completion of each stage:

- a. Submission of all dockets relating to filling to confirm quantities, sources and validation of all fill brought to the site for the preceding stage,
- b. Submission of a works as executed and contoured depth of fill plan for the completed stage.

Upon submission of the above, a final inspection of the stage is required to confirm that the works have been satisfactorily completed and revegetated.

A compliance certificate for each stage, to indicate that works have been satisfactorily completed, is to be obtained from Council prior to the commencement of the subsequent stage.

21. To mitigate the impacts to surrounding properties deliveries of materials to the site are to be strictly in accordance with the following:
 - a. The maximum number of heavy vehicle movements to the site is limited to 18 per day.
 - b. No heavy vehicles are to travel in convoy to or from the site.
 - c. No heavy vehicle access from the north of the site.
22. All fill to be adequately compacted by track rolling or similar in layers not exceeding 300mm.
23. The top 300mm of fill shall be topsoil in order to ensure site revegetation.
24. The site shall be secured to prevent the depositing of any unauthorised material.
25. Dust control measures, eg vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
26. Measures shall be implemented to prevent vehicles tracking sediment, debris, soil and other pollutants onto any road.
27. A ticketing system is to accompany any material being brought to the site. A register is to be kept on site to cross reference against the source records. An independent site auditor is to be engaged to undertake appropriate certification regarding the monitoring and validation of the fill material imported to the site as being sound, suitable for the proposed use and free of contamination.
28. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted.
29. Filling shall comprise only uncontaminated virgin excavated natural material. Contamination certificates for all source material shall be provided to the Principal Certifying Authority prior to placing any fill on site.
30. 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.
31. The development shall be conducted in such a manner that the LA(eq) noise levels, measured at any point in accordance with the NSW EPA's Industrial Noise Policy (2000), do not exceed 5dB(A) LA(eq) above background noise levels with respect to noise amenity of residential dwellings.

ORDINARY MEETING

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32. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
33. 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 E Civil Works Specification, Part II, Table 1.1.
34. A pavement 4m wide shall be constructed to provide suitable construction access and appropriate to the gradient of the land in accordance with the following table:

Gradient	Surface Construction
0-16%	Compacted crushed rock
17-20%	Bitumen seal
21-25%	Reinforced concrete

Driveway gradient shall not exceed 25% in any section.

Prior to Issue of Final Compliance Certificate

35. The following are to be submitted to Council upon completion of the 5th and final stage:
- Submission of all dockets relating to filling to confirm quantities, sources and validation of all fill brought to the site,
 - Submission of a works as executed and contoured depth of fill plan for the full extent of the completed development.

Upon submission of the above, a final inspection of the stage is required to confirm that the works have been satisfactorily completed and revegetated.

A final compliance certificate for is to be issued by Council prior to indicate that the works have been satisfactorily completed in accordance with the conditions of consent.

Advisory Notes

- *** Non-compliance with any condition of this development consent may result in a penalty notice being issued by Council.
- *** Should any Aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.
- ** The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed development. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

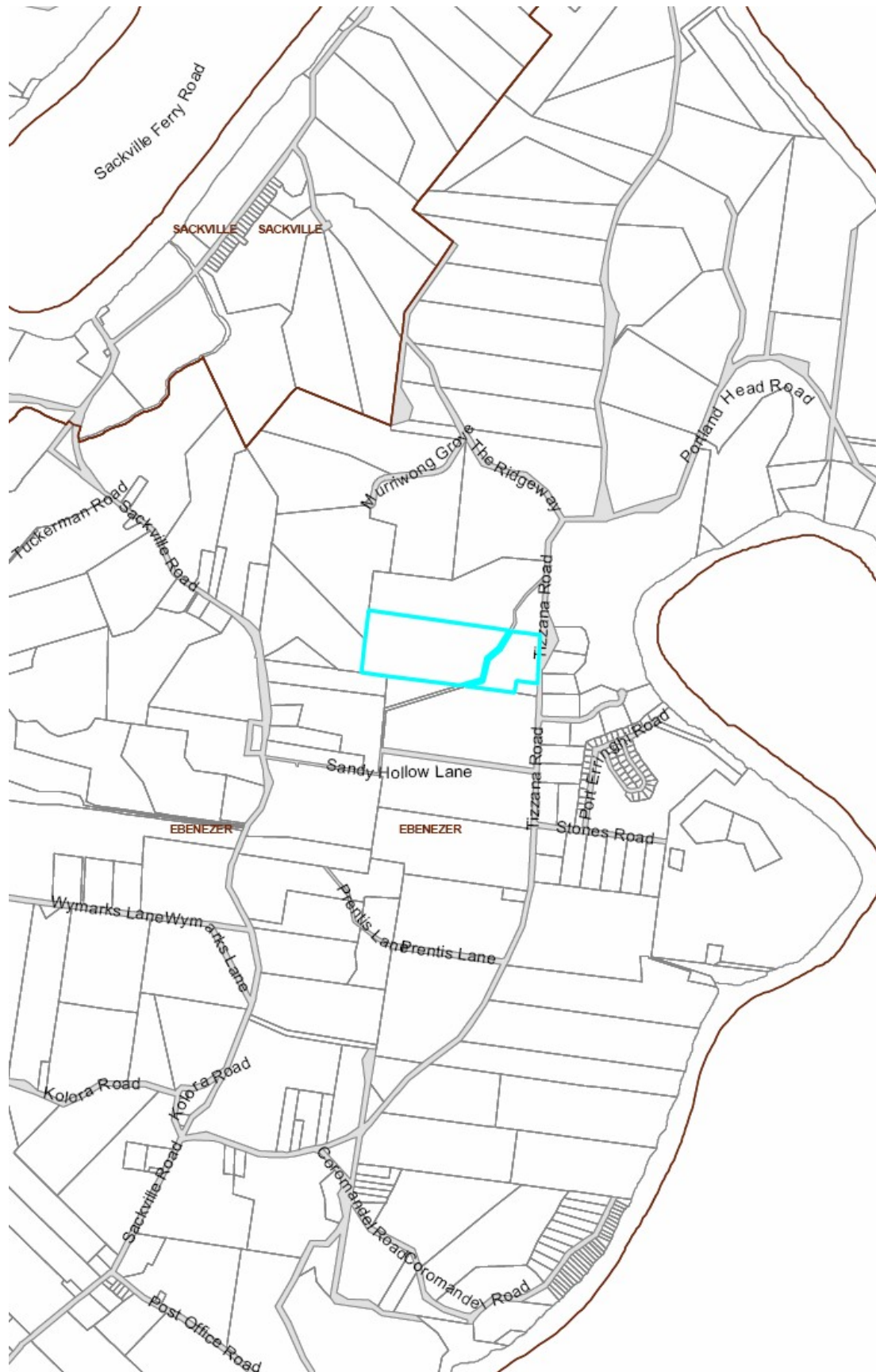
ATTACHMENTS:

- AT - 1 Locality Plan
AT - 2 Staging Plan
AT - 3 Concept Landscaping Plan

ORDINARY MEETING

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AT - 1 Locality Plan



Meeting Date: 13 October 2009

STAGING PLAN - 5 YEARS TO COMPLETION
(PROPOSED RL'S ON EXISTING SITE LEVELS)

PLAN LEGEND

EXISTING CONTOUR LINE
PROPOSED RL
NOTE: ALL LEVELS ARE TO AHD

SECTION LEGEND

PROPOSED GROUND LINE
EXISTING GROUND LINE
PROPOSED AREA TO BE FILLED
AREA ALREADY FILLED

C AREA AMENDMENTS
B REVISION AFTER NEW SURVEY
A REVISION FINISHED CONTOURS
PROPOSED QUARRY REHABILITATION AT
2105/00
283 TUZANA ROAD
EBENEZER
FOR JEFFREY'S EXCAVATION
N. F. BILLYARD P/L
24 YORK ROAD, PEWORTH, N.S.W. 2750
Ph. 47 314 988
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STAGING PLAN (2 YEARS TO COMPLETION & CROSS SECTIONS) 10. A020

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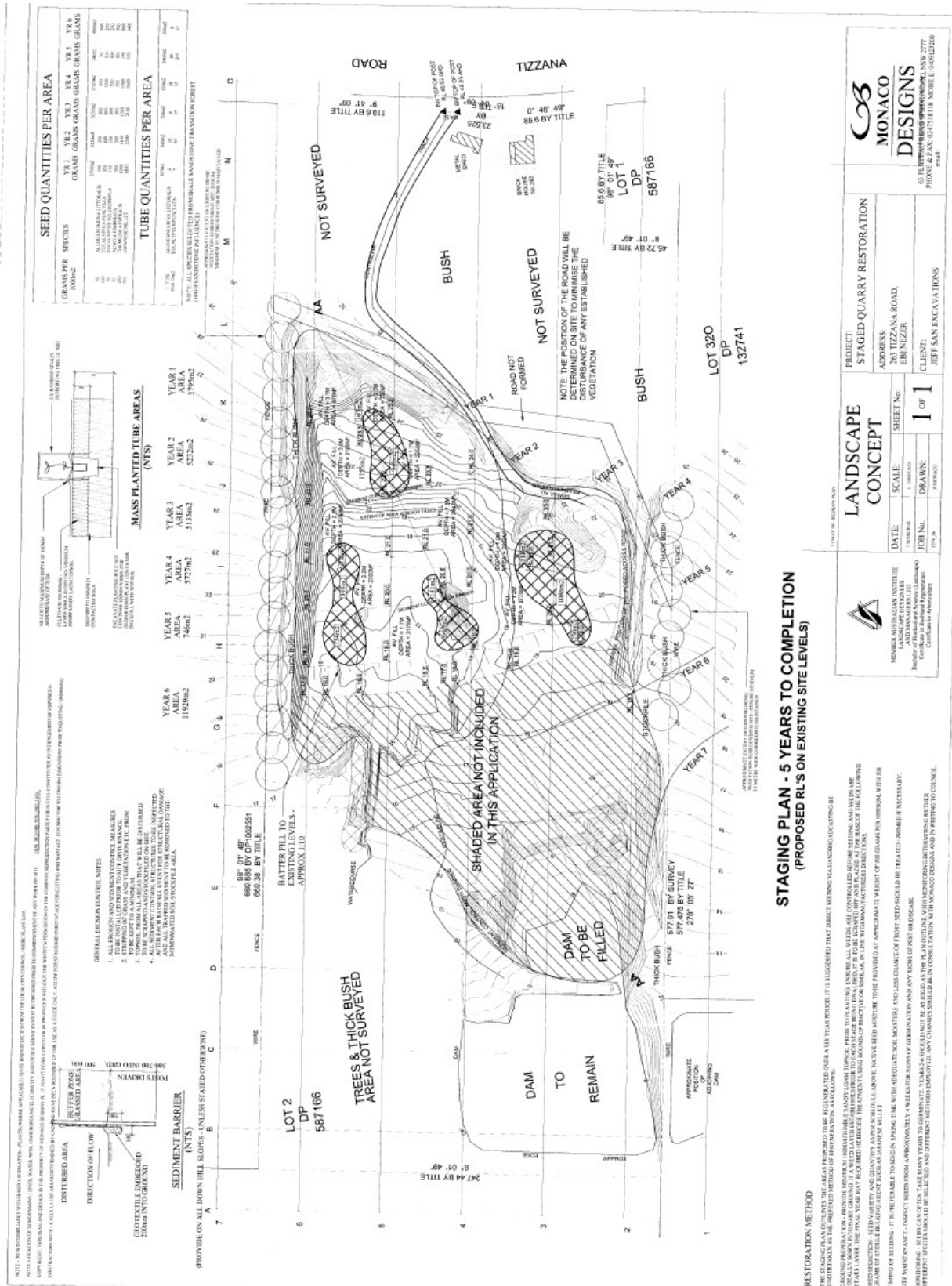
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AT - 3 Concept Landscaping Plan



oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 13 October 2009

Item: 218 CP - Section 96 Modification - Condition 94 to Original Approval to Demolish Existing Structures and Construct an 18 Hole Golf Course and Club House - Lot 1, DP 546915, Lot 2, DP 546915, 329 Pitt Town Road, Pitt Town - (DA1150/04D, 110850, 95498)

Previous Item: 289, Ordinary (27 September 2005)
370, Ordinary (29 November 2005)

REPORT:

Applicant:	MSK Architects on behalf of Lynwood Country Club
Owner:	Lynwood Country Club Ltd
Statutory Provisions:	Hawkesbury Local Environmental Plan 1989 Hawkesbury Development Control Plan 2002
Area:	43.950 Ha
Zoning:	Environmental Protection - Agriculture Protection (Scenic) & Rural Living
Brief Description:	Demolish existing structures and construct an 18 hole golf course and club house S96 - Deletion of condition 94
Advertising:	15/09/2009 to 29/09/2009
Date Received:	25/08/2009
Key Issues:	<ul style="list-style-type: none">• Roadworks/intersection• Condition of consent imposed by the RTA
Recommendation:	Approval
No. of submissions	Four (4) submissions of objection were received.

Introduction

This modification request is submitted to Council for consideration as the original development application was determined by Council.

History

On the 27 September 2005, at its Ordinary Meeting, Council approved, by way of Deferred Commencement consent, DA1150/04D.

On 29 November 2005 Council considered a Section 96 application for modifications to conditions of consent. Within this modification request, conditions relating to stabilisation works at Lynwood and road intersection works were amended.

In February 2006, the consent became operational, with the deferred commencement requirements of providing a construction management plan, a site remediation plan, a conservation management plan and stabilisation plan for Lynwood having been satisfied.

At present, 9 holes of the golf course have been completed, including the clubhouse. However, intersection works have not physically commenced. This aspect is discussed in more detail later in the report.

Current Situation

An interim occupation certificate has been issued for the clubhouse and for 9 holes of the golf course. The Lynwood Country Club has two remaining aspects to complete in order to enable opening of the remaining 9 holes. Firstly, completion of the intersection works at the corner of Pitt Town Bottoms Road and Pitt Town Road and secondly, stabilisation of Lynwood. The Club has indicated an intention to open in early December 2009.

In respect to the stabilisation works of Lynwood, the applicant advises that tender documents have been prepared. Tenders are due to close in October 2009, with construction forecasted to commence by the first week in November 2009. Stabilisation works are estimated to be completed by April 2010.

Council's Heritage Advisor has reviewed the applicant's stabilisation proposal and raises no objection, advising that the work will give the building protection and provide for future restoration. A further discussion in respect to the stabilisation works at Lynwood is contained at the end of the report.

The Proposal

The applicant seeks approval to delete condition 94 from the development consent, which relates to the intersection works at Pitt Town and Pitt Town Bottoms Road. At present, Condition 94 reads:

An auxiliary right turn lane is to be provided in Pitt Town Road on the southbound carriageway for cars turning into Pitt Town Bottoms Road to be completed upon the practical completion date of the Golf Course Works.

The applicant has sought for the deletion of Condition 94. However, the Roads and Traffic Authority (RTA), has agreed to modified works not a total deletion of works. The modified works are discussed later in the report. Accordingly, Council cannot consent to the removal of the condition. In lieu, a modified Condition 94 can be imposed.

ASSESSMENT OF SECTION 96**Planning Assessment**

Section 96 of the Environmental Planning & Assessment Act permits a Development Consent to be modified, if the Consent Authority:

- a) is satisfied that the proposed modification is of minimal environmental impact, and
- b) is satisfied that the proposed development to which the consent as modified related is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) and
- c) it has notified the application in accordance with:
 - i) the regulations if the regulation so require, or
 - ii) a development control plan if the consent authority is a Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- d) it has considered any submission made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan as the case may be.

The proposed modification seeks to delete Condition 94, which previously required an auxiliary right turn lane to be provided in Pitt Town Road on the southbound carriageway for cars turning into Pitt Town Bottoms Road. The RTA has agreed with this request, however has requested the developer to construct a left turn deceleration lane from Pitt Town Road to Pitt Town Bottoms Road.

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As construction work is still required to upgrade the intersection, the proposed modification is considered to be of minimal environmental impact. The proposed intersection work modifications do not alter the general site layout. The overall development remains essentially the same as was previously approved by Council.

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

a) the provisions of:

i) any environmental planning instrument (i.e LEPs, REPs & SEPPs)

Statutory Situation

The site is zoned part Rural Living and Environmental Protection - Agriculture Protection (Scenic) under Hawkesbury Local Environmental Plan 1989 and is also subject to:

- Sydney Regional Environmental Plan 20 (Hawkesbury Nepean)
- Hawkesbury Development Control Plan 2002.

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

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

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

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

There are no planning agreements applicable to the proposed development.

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.

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

The application was originally referred to the RTA as a traffic generating development within State Environmental Planning Policy (SEPP) No.11, which is now known as SEPP (Infrastructure) 2007. It should be noted that Pitt Town Road is a main road under the control of the RTA and any works proposed would require the consent of the RTA. The RTA has granted its concurrence to this proposal via the requirement in condition 94.

The applicant has approached the RTA proposing to reduce the scope of works in relation to the intersection works as originally imposed. In advice from the RTA to the applicant, the RTA has accepted the deletion of the right turn lane, however the following works are now required in lieu:

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" - Redesign the subject intersection by providing a left turn deceleration lane from Pitt Town Road to Pitt Town Bottoms road to access the golf club and resubmit the design to RTA for review and acceptance.

- All necessary utility adjustments and land acquisition has to be accommodated under the revised scope of works.

- The club has to dedicate all the land as public road which forms part of the road corridor under the construction of the slip lane.

- The cost of redesign and construction of the slip lane including relocation of services has to be financed by Lynwood Country Club and at no cost to the RTA. "

Comment

The RTA has specified that the design and construction works are to be completed by the end of December 2009.

Whilst the intersection works sought under this application are proposed to be amended, the conditions of approval for the subdivision, at 18 Johnston Street, Pitt Town (DA0577/06) still remain and will require that developer (Johnson Property Group) to upgrade 5 intersections along Pitt Town Road. This includes the intersection immediately opposite, at Pitt Town Bottoms Road and Saunders Road, being upgraded with localised widening to provide appropriate left and right turn bays in accordance with RTA's intersection treatments.

The proposed modification to Condition 94 of the development consent is not considered to result in unreasonable amenity impacts to adjoining properties and the immediate locality. The revised scope of works have been endorsed by the RTA in principle and will improve the intersection and allow vehicles travelling north approaching the golf course to enter a left hand deceleration lane, thus allowing following vehicles to pass unobstructed towards Pitt Town improving traffic flow. Other intersections along Pitt Town Road will be also upgraded in the near future as a result of other developments and overall public safety will be improved.

c) the suitability of the site for the development

Intersection works are required to improve the access of people entering the golf course from Pitt Town Bottoms Road, in addition to allowing vehicles to pass and manoeuvre at this intersection towards Pitt Town and Saunders Road. Intersection works, as specified by the RTA, still form part of the golf course redevelopment and will improve the existing intersection. Accordingly, the modification to Condition 94, as required by the RTA, of the development consent will still ensure that the site is considered suitable for the development proposed.

d) any submissions made in accordance with the EPA 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 15 to 29 of September 2009. Within this period, four (4) letters of objection were received.

1 Safety

Concern has been raised that the deletion of Condition 94 will result in safety consequences as intersection works will not occur.

Comment

It should be noted that intersection works, as required by the RTA, will still be required by the RTA, albeit in a modified format. The applicant has approached the RTA independently seeking to revise the scope of works at the Pitt Town Bottoms Road and Pitt Town Road intersection. The RTA have reviewed the

applicants request and have agreed to a modified design involving a left turn deceleration lane from Pitt Town Road to Pitt Town Bottoms road to access the golf club.

2 Authority to remove condition of consent imposed by the RTA

A submission has been received questioning whether Council has the authority to remove a condition of consent imposed by the RTA.

Comment

Condition 94 was originally imposed at the request of the RTA in its assessment of the application as a Traffic Generating Development, in accordance with SEPP No. 11. As discussed earlier in this report, it would be more appropriate for Council not to permit the removal of Condition 94, rather to modify the wording of the condition to be consistent with the RTA's latest requirements for the intersection. In accordance with Section 96 of the Environmental Planning and Assessment Act, 1979, Council, as a consent authority, may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent.

e) the public interest

Intersection works are required to improve the access of people entering the golf course from Pitt Town Bottoms Road, in addition to allowing vehicles to pass and manoeuvre at this intersection towards Pitt Town and Saunders Road. Intersection works still form part of the golf course redevelopment within this modification request and will improve the existing intersection. Having regard to the relevant planning considerations and the matters raised in public submissions, it is concluded that it would be in the public interest to approve the proposed modification to Condition 94 to allow the revised intersection works to physically commence in accordance with the RTA's endorsement.

Stabilisation works at Lynwood

This modification request only relates to the intersection treatment. However, in order for the golf club's remaining 9 holes to open the remaining conditions to be met relate to the stabilisation of Lynwood (a listed heritage building). The club has undertaken some stabilisation work as required by their conservation plan. However, there are a number of key items still to be undertaken. The application was originally approved with 25 items to be completed. There are still a number of items to be completed including stabilisation of walls, roof and interior works. Council requested a progress report to be submitted to indicate when the works would be completed. The progress report indicates that tenders have been commenced but that stabilisation works will not be completed before the intended opening of the remaining 9 holes in December 2009.

For major development projects it is not uncommon for some works (not critical to operation of the development) to be incomplete upon opening of a facility. Accordingly, the applicant, in a letter dated 1 October 2009, has requested Council consider whether the golf club could open with an undertaking relating to the delayed timeframe for completing stabilisation works for the Lynwood homestead. Those discussions are underway and a further report to Council will be provided if a further modification to consent conditions is required. Currently, a modification report has not been lodged.

Conclusion

Further intersection works will commence in the future as per the conditions of consent pertaining to DA0557/06 to upgrade several other intersections along Pitt Town Road, including the intersection of Pitt Town Bottoms Road and Pitt Town, subject to this modification request.

The revised scope of works considered under this modification application have been endorsed by the RTA in principle and will improve the intersection of Pitt Town Bottoms Road and Pitt Town Road. The intersection works will allow vehicles travelling north approaching the golf course to enter a left hand deceleration lane, thus permitting following vehicles to pass unobstructed towards Pitt Town improving traffic flow.

ORDINARY MEETING

Meeting Date: 13 October 2009

The modification request to delete the condition is not able to be supported but a modified condition is proposed to achieve the same intent as proposed by the applicant, i.e., to enable the RTA's requirements to be met and the intersection design to be modified.

Planning Decision

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

RECOMMENDATION:

That the request to modify the consent relating to DA1150/04 be approved subject to Condition 94 being modified to read:

94. A left turn deceleration lane is to be provided from Pitt Town Road to Pitt Town Bottoms Road to access the golf club. A design plan shall be submitted to the Roads and Traffic Authority for review and acceptance prior to the operation of the remaining 9 holes of the golf course.

ATTACHMENTS:

AT - 1 Location Plan

Meeting Date: 13 October 2009

This is a detailed plat map of a portion of the City of Pittsboro, North Carolina. The map shows various lots and parcels, many of which are labeled with 'DP' (Deed Plat) numbers and acreage. A large pink-shaded area is labeled 'DP 546915'. Other labeled areas include 'PITTSBORO', 'PITTSBORO BOTTOMS', and 'PITTSBORO HILLS'. The map also shows 'Old Stock Route Road' and 'Saunders Road'. The map is oriented with North at the top.

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