



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 26 May 2009

location: council chambers

time: 5:00 p.m.

ORDINARY MEETING

Table of Contents

Meeting Date: 26 May 2009

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE
	SECTION 4 - Reports for Determination	5
	CITY PLANNING	5
Item: 101	CP - Development Application - Subdivision - 3 Duke Road, Wilberforce - (DA0710/08, 95498, 102260, 36025, 36026)	5
Item: 102	CP - Nominations for Council Representatives on Joint Regional Planning Panels (JRPPs) - (95498)	15
	INFRASTRUCTURE SERVICES	27
Item: 103	IS - Proposed Tree removal at No. 15 Lieutenant Bowen Road, Bowen Mountain, for the Purpose of Providing a Piped Drainage System - (79346, 20994)	27

ORDINARY MEETING

Table of Contents

Meeting Date: 26 May 2009

ordinary

section 4

reports
for determination

ORDINARY MEETING
Reports of Committees

SECTION 4 - Reports for Determination

CITY PLANNING

Item: 101 **CP - Development Application - Subdivision - 3 Duke Road, Wilberforce - (DA0710/08, 95498, 102260, 36025, 36026)**

Development Information

Applicant: Montgomery Planning Solutions
Applicants Rep: Montgomery Planning Solutions
Owner: M G M Pellew and Mrs D K Pellew
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 3,856m²
Zone: Housing
Advertising: 1 October 2008 to 15 October 2008
Date Received: 23 September 2008

Key Issues: ♦ Inconsistency with Hawkesbury Local Environmental Plan 1989
 ♦ Objection under State Environmental Planning Policy No. 1
 ♦ Flooding
 ♦ Effluent Disposal
 ♦ Amenity

Recommendation: Refusal

REPORT:

Description of Proposal

The application seeks approval to subdivide the land described as Lot 15 DP 843883, comprising an area of 3856m², into two lots with the following attributes:

Proposed Lot 151 2156m² (approx) - is rectangular in shape with an approximate dimensions of 60m X 44m and contains an existing dwelling house which is to be retained.

Proposed Lot 152 1700m² (approx) - (1485m² excluding the access handle) - is also a rectangular allotment with an approximate dimensions of 47m X 31m with an access handle between 5m and 8m wide and 30m long off Duke Road.

The application includes an "ECOMAX" wastewater treatment system for proposed Lot 152. This is to be located along the north western boundary of the proposed lot.

The site is located at the end of the cul-de-sac on the western side of Duke Road, Wilberforce. The subject site adjoins a concrete drainage channel to the north-eastern boundary. The subject land is flood prone and the site levels vary from 12.9 metre - 14.4 metre AHD. The locality is characterised by low density development with a mix of single and two storey dwellings adjoining the site.

The proposal includes the filling of the building envelope, as shown on the submitted plans, to a level of 14.9m AHD.

History

A previous subdivision approval (DA0049/93) created the subject land and one other lot. DA0049/93 was originally for three lots but, due to flooding, difficulties providing a building platform and poor amenity, the proposal was revised to two lots.

Development Application DA0052/07, from the same current applicant was received on 31 January 2007 and sought consent for the subject subdivision. This application was refused on 20 July 2007 under delegated authority for the following reasons:

1. The proposed development is inconsistent with the aims and objectives of Hawkesbury Local Environmental Plan 1989.
2. The proposed subdivision fails to comply with the minimum allotment size of 4000sqm as required under Clause 12(3) of Hawkesbury Local Environmental Plan 1989.
3. The proposed subdivision fails to comply with Clause 25(2) of Hawkesbury local Environmental Plan 1989 relating to development of flood liable land.
4. The site is unsuitable for the proposed development due to the impact of flooding.
5. The design of the proposed development will not provide an acceptable level of amenity for future residents.
6. The proposed development is inconsistent with the aims and objectives of Hawkesbury Development Control Plan.
7. The proposed development does not comply with the requirements of the Hawkesbury Development Control Plan, in particular Part D Chapter 1., Residential Clause 1.18 - Effluent Disposal, Part D Chapter 3, Subdivision Clause 3.6 -Flooding, Landslip & Contaminated Land, Part D Chapter 3., Subdivision Clause 3.7.5 - Lot Size and Shape.
8. The development application does not demonstrate whether the site is suitable for the disposal of effluent generated by the proposed development.
9. The development application does not demonstrate that future development of the land will not unreasonably impact on adjoining properties due to filling required on the land and privacy and solar access issues associated with the future construction of any buildings on proposed Lot 152.

No appeal was lodged. However, a s.82A review request was received but not able to be considered within the timeframe allowed under the provisions of s.82A of the Environmental Planning and Assessment Act, 1979. Hence the current development application has been re-lodged.

Issues Relevant to the Decision

- Inconsistent with Hawkesbury Local Environmental Plan 1989
- Objection under State Environmental Planning Policy No. 1
- Flooding
- Effluent Disposal
- Amenity

Council Policies, Procedures and Codes to Which the Matter Relates

Hawkesbury Local Environmental Plan 1989
Sydney Regional Environmental Plan No 20
Hawkesbury Development Control Plan
State Environmental Planning Policy No. 1

Section 79C Matters for Consideration

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

a. The provisions of any:

i. Environmental Planning Instrument:

The relevant Environmental Planning Instruments are considered below:

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 proposal does not achieve compliance with general aims and objectives of the LEP 1989 as:

- The proposed subdivision does not represent orderly development of land due to the physical constraints affecting the land and non compliance with the minimum lot area requirements as stipulated in Hawkesbury Local Environmental Plan 1989.
- The subject land is flood prone, being affected by the 1 in 100 year flood regime and adjoins an open, concrete stormwater drain. The existing natural ground levels are such that substantial filling will be required to achieve a building platform for any future dwelling. The flood affectation together with the proximity to the adjoining drain will affect the quality of living on the proposed new lot and therefore the objective of the plan is not satisfied.
- The proposed subdivision has the potential to impact adversely on water quality within the adjoining drainage channel due to excessive fill and onsite effluent disposal. Filling of the land has potential to adversely impact adjoining properties with respect to drainage and flooding impacts. A loss of amenity of the adjoining neighbours may result due to loss of privacy and overshadowing from the location of any future buildings within the proposed building envelope area.

Clause 9 - Carrying out of development

The subject property is zoned Housing under Hawkesbury Local Environmental Plan 1989. Subdivision is permissible with the consent of Council.

Clause 9A - Zone objectives

The proposed development is considered to be inconsistent with the objectives of the Housing zone as follows:

- The allotments resulting from the proposed subdivision will provide for low density housing. However, physical constraints including flooding, natural ground levels and excessive filling required to achieve a building area will impact adversely on the amenity of future residents and that of the adjoining properties.
- The proposed additional allotment would require excessive filling of the land which may be detrimental to the existing amenity of the neighbouring properties.
- The proposed development, due to flooding and filling required for the additional allotment, is considered to be contrary to the natural amenity and ecological processes of the area.

- Water is available in the locality and Sydney Water is responsible for the supply. The subject land is not connected to a reticulated sewer system and therefore relies on an onsite effluent disposal system. Hawkesbury Local Environmental Plan 1989 requires a minimum 4,000m² allotment size for any subdivision to ensure that onsite effluent disposal on the land is sustainable. The proposed allotments are approximately 1485m² and 2100m² in area and onsite effluent disposal, whilst possible in the short term, is not sustainable in the long run.

Clause 12 - Residential Subdivision - General Provisions

The subject land is zoned Housing and the land is not serviced by a reticulated sewerage system. Therefore, under the provisions of the HELP, any proposed allotment that is to contain a dwelling is not to be less than 4,000m². The proposed allotments are approximately 2156m² and 1485m² (internal lot) and therefore do not comply. An objection under State Environmental Planning policy No. 1 has been submitted in respect to the variation of the proposed lots from the minimum allotment size requirement. This objection is not supported and is discussed further in the Report.

Clause 18 - Provision of Water, Sewerage etc. Services

Clause 18 requires Council to be satisfied that adequate utilities and services are available to the site. The site is not connected to reticulated sewerage. The application is accompanied by a report in respect to onsite disposal of wastewater, which suggests that wastewater disposal can be achieved. However, this report does not provide adequate details in respect to the effects of filling of the land on the proposed disposal area or the effects of localised flooding from the swale on wastewater disposal.

Clause 25 - Development of Flood Liable Land

The proposal involves the subdivision of land within the flood plain. The predicted 1 in 100 flood level for the locality is 17.3m AHD. Clause 25 (2) prohibits the erection of a building on land lying at a level lower than three metres below the 1-in-100 year flood level for the area. The survey details provided in conjunction with the application indicates that the levels of the new building envelope vary between 12.9m and 14.4m AHD. The proposed Lot 152 does not contain a suitable building platform at or above 14.3m AHD and would require filling to achieve the required levels. The application proposes the filling of the land within the proposed building envelope to a level of 14.9m AHD. The access driveway to the proposed dwelling will also require substantial filling. The filling of the land is not supported as the application does not provide adequate details demonstrating that such filling will not have an adverse impact on the drainage of adjoining properties or on the nature of flooding in the locality.

The subject application therefore fails to satisfy the requirements contained in Clause 25 (2).

In regard to the above it is also noted that:

- details of the full extent of filling is not shown on the plan (including batters);
- access to the proposed dwelling is on land below the 1 in 20 year flood level of 13.6m AHD.
- information regarding the potential for local flooding from the adjoining drainage swale is not known; and
- the filling of the flood plain is considered undesirable as it reduces the available flood storage and may increase impacts on surrounding properties.

A report with respect to localised flooding from the adjacent drainage channel was submitted with the application. However, that Report is not satisfactory, as its primary consideration is the effluent disposal area, and the Report does not consider the impacts the proposed filling will have on the adjoining properties.

State Environmental Planning Policy No. 1 - Development Standards (SEPP 1)

An objection under State Environmental Planning Policy No. 1 was lodged in respect to the minimum allotment size requirement for land zoned Housing and not connected to reticulated sewerage. The grounds for objection are:

1. *The land is zoned Housing. Subdivision is permissible with consent.*
2. *The proposed vacant allotment is 1700m². The site layout plan demonstrates that there is sufficient room for the erection of a dwelling and effluent disposal, with sufficient flexibility for orientation and design of the dwelling.*
3. *The standard in Clause 12(3) is based on an average situation with a conventional aerated treatment system. Whereas the wastewater feasibility report attached to the development application demonstrates that onsite effluent disposal on this site is acceptable with a mound type system.*
4. *The proposed vacant allotment and the allotment containing the existing dwelling comply with the requirements of the subdivision chapter of Hawkesbury Development Control Plan.*
5. *The proposed development will provide the opportunity for the construction of one additional dwelling. Although the land is affected by the 1-in-100 year flood from Hawkesbury River, there are a number of properties in the immediate locality which are similarly affected. The subject land has a rising access which reaches a level higher than the 1-in-100 year approximately 60 metres from the road access to the subject land.*
6. *It is submitted that the proposal will create no additional impact, given that all surrounding properties are developed for residential dwellings.*
7. *The proposal will result in a residential density on the land of 1 dwelling per 2000m² (approx), which is almost half that of adjoining properties. This is demonstrated in the map on the following page.*
8. *With a rising access for evacuation, it is considered that the subject land is more suitable for residential development than some of the properties which have frontage to King Road. The following contour map demonstrates this.*
9. *Detached dual occupancy is permissible with consent on the current land parcel. Should this occur, then subdivision would be permissible in the proposed configuration under the provisions of clause 12(6) of HLEP 1989, notwithstanding the minimum allotment size contained within Clause 12(3).*

Assessment of Applicants' SEPP 1 Objection

The main objective of the standard in Hawkesbury Local Environmental Plan 1989 is to provide a suitable area for residential development relying on onsite effluent disposal. An allotment size of 4,000m² was deemed to be the minimum in which a range of onsite disposal systems could be installed and operated in conjunction with a dwelling house and ancillary structures. This lot size allows for flexibility in the types of systems and their locations, and ensures, that should a system fail, adequate area is available for a replacement system.

The SEPP 1 objection attempts to demonstrate that the objective of the standard is not relevant to the development by asserting that the land is of sufficient size *for the erection of a dwelling and effluent disposal, with sufficient flexibility for orientation and design of the dwelling*. It is considered that the flood liability of the land restricts the location of the future dwelling house, and, that the proposed filling of the land may have an effect on the proposed disposal area. The building envelope on proposed Lot 152 has an approximate area of 257m² (14m by 18.4m) and is located on the highest area of the land. Even so, as the land does not comply with the requirements of Hawkesbury Local Environmental Plan 1989 in respect to flooding, filling in the area of the building envelope is proposed to achieve this compliance. As a result, any future dwelling house would be restricted to this area of the lot, and it is further considered that 257m² provides limited flexibility in respect to design and orientation.

The proposed lots 151 and 152 would result in allotment sizes that would depart approximately 46% and 63% respectively from the size minimum that is required under Hawkesbury Local Environmental Plan 1989. The proposal is inconsistent with Hawkesbury Development Control Plan as flood free access

cannot be provided. Dual occupancy development on the land would be limited by the same constraint as the proposed subdivision; that is, those of flooding, effluent disposal, and amenity.

The application fails to consider the existing sewage management facility which services the existing dwelling house on proposed Lot 151 and how a decrease in area will affect onsite wastewater disposal in the future. The objection has also stated that the disposal of effluent onsite is possible using a mound system. Whilst this system is technically possible on the site, the operation of a system on the minimum site area is, in the long term, unsustainable, due to the high maintenance requirements, the need for alternate disposal areas in time and the cumulative impacts that these systems have on the catchment as a whole.

The subject land is not considered suitable for subdivision due to flood affectation, proximity to a drainage swale and the extent of fill required to achieve a suitable building platform, and therefore would not constitute 'considered and planned development'.

The proposed subdivision will set a precedent for other properties to be subdivided in the area, which would greatly undermine the purpose of the standard.

In view of the above the objection made under State Environmental Planning Policy No. 1 is not supported.

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

The subject land is not affected by any draft environmental planning instrument.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan

Part D Chapter 1 - Residential - Clause 1.18 – Effluent Disposal

This clause requires that where reticulated sewerage is not available, single lots created on or before 10 August 1999 may be connected to pump out. For all other development a minimum area of 4000sqm is required and it is demonstrated that there is adequate area for onsite effluent disposal.

The proposed subdivision would result in an allotment size which is less than 4000sqm and therefore does not comply. The proposed system, for the reasons mentioned previously in this report, does not warrant a variation to this standard.

Part D Chapter 3 - Subdivision - Clause 3.6 - Flooding, Landslip & Contaminated Land

The proposed additional allotment does not contain a building area which satisfies the requirements contained in Clause 25, as discussed previously, and access to the proposed new allotment is below the 1-in-100 year flood level.

Part D Chapter 3 – Subdivision - Clause 3.7.5 – Lot Size and Shape

The proposal does not satisfy this section of Hawkesbury Development Control Plan in that the building platform for the construction of a dwelling would require a fill in excess of 1m from the natural ground level.

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

Not applicable

v. Matters prescribed by the Regulations:

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

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

Context & Setting

The area surrounding the subject land comprises lots in varying sizes and configuration ranging from 1200m² and more. Whilst the proposed subdivision may be consistent with the lot sizes in the locality, specific site constraints including flooding and low lying land makes the proposed lot sizes inadequate.

Natural Hazards

The subject site is affected by 1 in 100 year flood which is 17.3m AHD. The proposed building envelope area for the additional lot has a level which varies between 12.9m AHD and 14.4m AHD. The proposal would require the site to be filled to achieve a building platform at a maximum three metres below the 1 in 100year flood level. In addition, a substantial part of the site would require filling for access driveways.

Given the location of the drainage swale, need for excessive filling within the floodplain, the effect of filling on the flood storage and inadequate information available to assess the impact of the localised flooding from the swale on the subject land and adjoining properties, the proposal is not supported. The natural hazards affecting the land cannot be adequately managed and therefore the land is considered not to be suitable to create an additional allotment.

- c. Suitability of the site for the development:**

The subject land is not considered suitable for subdivision due to flood affectation, proximity to a drainage swale and the extent of fill required to achieve a suitable building platform.

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

The application was publicly exhibited between 1 October 2008 and 15 October 2008. Two submissions were received. The matters raised in these submissions are listed below:

- Loss of privacy (overlooking) for adjoining property, given that future dwelling house on the land will be two storey and located along the fence line;
- Loss of views from future development of resultant vacant lot;
- Devaluation of adjoining properties;
- Out of character and loss of amenity;
- Impacts of flooding, in particular in respect to onsite effluent disposal

The lost of privacy and amenity are the result of the requirement for filling of the site to obtain a building envelope on the site. The issue of flooding and filling has been addressed previously in this report.

- e. The Public Interest:**

The proposal is not considered to be in the public interest.

Conclusion

The current proposal is not consistent with the minimum allotment size requirement for subdivision under the Hawkesbury Local Environmental Plan 1989. The application submission has not adequately demonstrated that strict compliance with the minimum lot size requirement is unreasonable or unnecessary. The existing development standards are imposed due to the flooding and effluent impacts of the site. The application has only provided technical argument to engineer a solution to the issues rather than demonstrate that the controls are unreasonable or unnecessary. As these engineering solutions are unlikely to be sustainable in the long term, the objection under SEPP No. 1 cannot be supported. The circumstances of this application are not unique to the site and therefore approval of the proposed subdivision would result in an undesirable precedent to consider onsite disposal on land less than 4000m².

The application includes the filling of the land to enable development of the property for a dwelling house in the future. The application fails to demonstrate that the filling of the land will have no adverse impact on adjoining properties or the nature of flooding in the locality. It is considered that future development of the land within the building envelope will have an adverse impact on neighbouring properties with respect to loss of privacy and overshadowing.

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 DA0710/08 at Lot 15 DP 843883, 3 Duke Road WILBERFORCE NSW 2756 for Subdivision - Two Lot Subdivision be refused for the following reasons:

Reasons for Refusal

1. The proposed development is inconsistent with the aims and objectives of Hawkesbury Local Environmental Plan 1989.
2. The proposed subdivision fails to comply with the minimum allotment size of 4000m² as required under Clause 12 (3) of Hawkesbury Local Environmental Plan 1989.
3. The proposed subdivision fails to comply with Clause 25 (2) of Hawkesbury Local Environmental Plan 1989 relating to development of flood liable land.
4. The application does not demonstrate that the proposed development is consistent in respect to Clause 18 of Hawkesbury Local Environmental Plan 1989 in that arrangements satisfactory to Council has not been provided in respect to the provision of sewerage disposal.
5. The site is unsuitable for the proposed development due to the impact of flooding.
6. The design of the proposed development will not provide an acceptable level of amenity for future residential development on the land.
7. The proposed development is inconsistent with the aims and objectives of Hawkesbury Development Control Plan.
8. The proposed development does not comply with the requirements of Hawkesbury Development Control Plan, in particular Part D Chapter 1 - Residential, Clause 1.18 - Effluent Disposal; Part D Chapter 3 - Subdivision, Clause 3.6 - Flooding, Landslip & Contaminated Land; Part D Chapter 3 - Subdivision, Clause 3.7.5 - Lot Size and Shape.
9. The development application does not demonstrate that the site is suitable for the sustainable disposal of effluent generated by the proposed development.
10. The development application does not demonstrate that future development of the land will not unreasonably impact on adjoining properties due to filling required on the land and amenity issues associated with the future construction of any buildings on proposed Lot 152.

ORDINARY MEETING
Reports of Committees

ATTACHMENTS:

AT - 1 Locality Plan

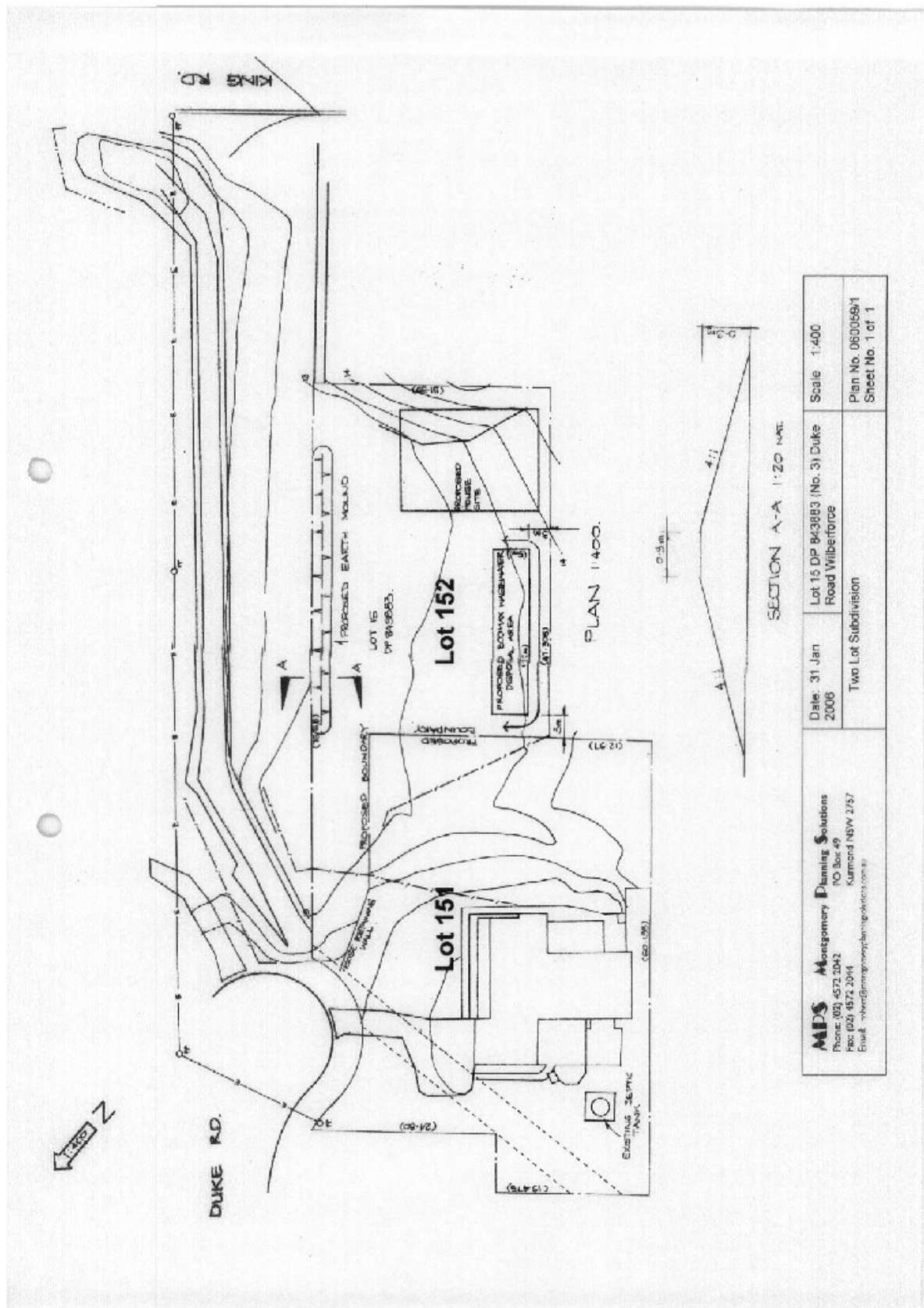
AT - 2 Subdivision Plan

AT - 1 Locality Plan



Reports of Committees

AT - 2 Subdivision Plan



oooO END OF REPORT Oooo

Item: 102 CP - Nominations for Council Representatives on Joint Regional Planning Panels (JRPPs) - (95498)

REPORT:

Introduction

On 11 May 2009 Council received a letter from the Hon Kristina Keneally MP, Minister for Planning, advising that the recent planning reforms provide for the commencement of Joint Regional Planning Panels (JRPPs) to commence on 1 July 2009 and requests Council to nominate two representatives, plus an alternate member, for the JRPP. The core functions of the JRPP will be to:

1. Exercise certain consent authority functions in regard to regional development applications; and
2. Where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPPs' region.

A copy of the letter from the Minister and the Information Package for Council Nominees for JRPPs is attached for information. The package contains information about the functions of the JRPPs, membership, Council's role, selection criteria, responsibilities and other administrative information.

The purpose of this report is to recommend nominees for Council to consider as its representatives on the JRPP for matters in the Hawkesbury. The Minister's letter also advises that nominations are to be submitted by 5 June 2009.

Functions and Operation of Joint Regional Planning Panels

"The objective of a JRPP is to create a panel of people with appropriate expertise to determine development proposals of regional significance providing stronger decision making through greater expertise, independence and regional knowledge." Regional development (relevant to the Hawkesbury), as announced by the Minister last year, includes the following:

- Commercial, residential, retail and tourism with a capital investment value (CIV) between \$10M and \$100M,
- Public and private community infrastructure and ecotourism with a CIV of more than \$5M, e.g., schools, community halls, libraries etc,
- Designated Development (Environmental Impact Assessment (EIS) required),
- If Council is the proponent or is conflicted in relation to a development with a CIV of more than \$5M.

Development Applications for projects classed as regional development, as above, will be assessed by Council officers first. The Council officer's assessment and recommendations will then be referred to a JRPP for determination.

JRPPs will consist of five members. Three members will be appointed by the Minister to participate in JRPP matters across the region, and two members appointed by Council, to participate in JRPP development and planning matters in the Hawkesbury.

A regional panel is not subject to the direction or control of the Minister, except in relation to the procedures of a regional panel and to the extent provided for in the Environmental Planning and Assessment Act.

Selection Criteria for JRPP Members

Members of a JRPP will need to have a broad range of skills and experience in development and planning matters and the selection criteria include the following:

- Senior level experience in dealing with multiple stakeholders,
- High level communication skills,
- Capability to drive high profile outcomes in a credible and authoritative manner,
- High level analytical skills; and
- Knowledge of the assessment of complex developments and planning matters.

In addition to the above, at least one of the Council panellists must have a high level of expertise in one or more of the following fields: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering and tourism.

From the selection criteria, it seems that at least one nomination and the alternative member should be a technical expert, being either a staff member or an external consultant. Given that the nominee is to represent Council, it is recommended that the Director City Planning and the Planning Manager, as alternate, be nominated.

The Director and Manager meet the main selection criteria as part of the pre-requisite for their employment at Council. The Director and Manager are both Certified Practicing Planners (CPP) which meets the expertise criteria in relation to planning. The Director has had experience running a formal Design Review Panel and the Planning Manager has had experience with similar panels in another State. The previous employment experience of both these staff also indicates a level of expertise in urban design, architecture, engineering and the environment.

As the second nominee it is recommended that Council, should it see fit, nominate a Councillor as a representative on the JRPP.

Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

"Investigating and planning the City's future in consultation with our community, and co-ordinating human and financial resources to achieve this future."

Funding

There are no funding implications relating to the nomination of staff and Councillors to be representatives on these panels. Should the Council wish to nominate an external person as a representative there will be costs for that person's time and travel expenses.

RECOMMENDATION:

That Council nominate the Director City Planning, with the alternate being the Planning Manager and one Councillor to be Council's representatives on the Sydney Metro West Region Joint Regional Planning Panel.

ATTACHMENTS:

AT - 1 Letter from the Minister for Planning and Information Package for Council Nominees.

AT - 1 Letter from the Minister for Planning and Information Package for Council Nominees.

NSW | The Hon **Kristina Keneally** MP
Minister for Planning | Minister for Redfern Waterloo

5 May 2009

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

Hawkesbury City Council

11 MAY 2009

Request for Nominations for the Joint Regional Planning Panels (JRPPs)

Dear Mr Jackson

The NSW Government's planning reforms include the establishment of Joint Regional Planning Panels (JRPPs) to determine development proposals of regional significance. The core objective of JRPPs is to provide stronger decision making through greater independence, to supplement Councils' expertise and draw on local and regional knowledge.

Details of the JRPPs, the regions, and their functions are provided in the attached background document. Six regions are proposed to cover metropolitan and regional areas of NSW. It is intended currently to only appoint JRPPs in five of the regions, with the functions of the JRPP in the Western Region being undertaken by the Planning Assessment Commission.

The JRPPs will commence operation on 1 July 2009.

The core functions of JRPPs will be to:

1. Exercise certain consent authority functions in regard to regional development applications; and
2. Where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPPs' region.

Development Applications for projects classed as regional development will be assessed by Council officers. The Council officer's assessment and recommendations will then be referred to a JRPP for determination. Last year I announced that regional development will include:

- Commercial, residential, retail and tourism with capital investment value (CIV) between \$10M and \$100M
- Public and private community infrastructure and ecotourism with a CIV of more than \$5M e.g. schools, community halls, libraries etc
- Designated development (Environmental Impact Statement (EIS) required)
- Certain major coastal developments; and
- If council is the proponent or is conflicted in relation to a development with a CIV of more than \$5M.

JRPPs will be comprised of three members appointed by me to participate in JRPP matters across that region, and two members appointed by the relevant councils, to participate in JRPP development and planning matters in their particular Local Government Area.

The NSW Government is now requesting councils to nominate two persons to become members of the relevant JRPP. Each council should also nominate an alternate member, who could replace a council nominee if unavailable.



New South Wales Government

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SCANNED

ORDINARY MEETING
Reports of Committees

It is important for the JRPP to consist of members with a broad range of skills and experience in development and planning matters. The selection criteria include:

- Senior level experience in dealing with multiple stakeholders
- High level communication skills
- Capability to drive high profile outcomes in a credible and authoritative manner
- High level analytical skills; and
- Knowledge of the assessment of complex developments and planning matters.

In addition, *at least one* of the Council panellists must have a high level of expertise in *one or more* of the following fields: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering and tourism.

The Department of Planning has prepared the enclosed information package to assist councils to nominate appropriate candidates for this role.


Please consult the information package and return submissions in writing **by Friday 5 June 2009** to:

Director General
NSW Department of Planning
GPO Box 39
Sydney NSW 2001

For further information please contact Sarah McGirr on (02) 9228 6347.

Additional copies of the enclosed information package are available at www.planning.nsw.gov.au or by emailing innovation@planning.nsw.gov.au.

Yours sincerely



The Hon Kristina Keneally MP

Enc: Information Package for Council Nominees



NSW GOVERNMENT
Department of Planning

EXPRESSIONS OF INTEREST AND NOMINATIONS FOR THE JOINT REGIONAL PLANNING PANELS

Information Package for Council Nominees

May 2009

1. Joint Regional Planning Panels

1.1. About Joint Regional Planning Panels

The NSW Government's planning reforms, aimed at delivering a more efficient and transparent planning system, include the establishment of Joint Regional Planning Panels (JRPPs).

The NSW Government is now requesting councils to nominate two persons to become members of the relevant JRPP. Each council should also nominate an alternate member, who could replace a council nominee if unavailable.

The NSW Government is also currently seeking Expressions of Interest (EOIs) for candidates interested in being appointed as State members of the JRPPs. This is being done through an advertised EOI processes.

The objective of JRPPs is to create a panel of people with appropriate expertise to determine development proposals of regional significance providing stronger decision making through greater expertise, independence and regional knowledge.

Six regions are proposed to be established covering metropolitan and regional areas of NSW (see figure one). The JRPPs are planned to commence operation on 1 July 2009.

1.2. Functions of JRPPs

The functions of JRPPs are to:

1. Exercise certain consent authority functions for 'regional development'; and
2. Where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPPs' region.

JRPPs will also have such other functions as are conferred on them by the *Environmental Planning and Assessment Act 1979* (EP&A Act). For example, JRPPs may have a role in relation to Local Environmental Plans (LEPs). This may include being appointed as the Relevant Planning Authority (RPA) for a LEP or, where requested by the Minister, reviewing or providing advice in respect of a proposed LEP. Where a JRPP is appointed as an RPA for a LEP, the Minister may also delegate plan making powers to the JRPP. JRPPs may also, in limited circumstances, be appointed by the Minister to exercise the functions of planning assessment panels under s.118 of the EP&A Act.

A regional panel is not subject to the direction or control of the Minister, except in relation to the procedures of a regional panel and to the extent provided for in the EP&A Act.

1.3. Commencement of JRPPs

Under the current Planning Reform Implementation Program, JRPPs are targeted to commence operation on 1 July 2009.

1.4. Support and Training

The Department of Planning will provide to Councils a detailed guideline to assist them prepare for the commencement of JRPPs. These guidelines will provide information on how JRPP matters are dealt with.

Prior to the commencement of the JRPPs, the DoP will conduct information sessions throughout the State for council staff, stakeholders and the community.

A Code of Conduct, based on the local government Model Code of Conduct, will be provided to all JRPP members.

Persons appointed as Panel members will be required to attend a training program that will be developed and provided by the DoP.

1.5. Council's role in relation to matters under consideration by the JRPP

The assessment of applications to be determined by the JRPPs is to be undertaken by the relevant council officers in which the proposed development is located. The council officers are to submit their assessment report and recommendations to the JRPP for determination.

Whilst the council will not be the determining body for JRPP matters, the council will have the opportunity to provide its views about any matters that are to be considered by a JRPP. The council's view may be provided to a JRPP by way of a submission in the same way that any other submissions about the matter are provided to a JRPP for its consideration in determining a matter.

The JRPP must consult the council prior to determining a matter which is likely to have significant financial implications for the council.

1.6. Consultation with stakeholders

The DoP is currently engaged in a consultation process regarding aspects of JRPPs. Elements of the policy may be varied as a result of the consultations or further reviews that may be undertaken.

The performance of JRPP will be monitored regarding the number and type of DAs determined by JRPP and timeframes. This information will provide the basis for any reviews or regional boundary adjustments.

2. Membership of JRPPs

The JRPPs are to consist of five members as follows:

State Members: Three State members appointed by the Minister, each having expertise in *one or more* of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

In appointing the State members, the Minister is required to have regard to the need to have a range of expertise represented among the panel's members. One of the State members will be appointed as the Chairperson of the JRPP. Each panel may elect a State member to be a Vice-Chairperson.

Council Members: Two council members appointed by each council that is situated in a part of the state for which a JRPP is appointed. At least one council nominee is required to have expertise in *one or more* of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. Important additional selection criteria are listed in Section 2. It will be a matter for each council to identify how the nominees are to be selected. Guidance for councils in selecting their nominees is available in Section 3.

The council nominees will automatically become members of the JRPP for matters in that council's local government area.

If a council within the area of a JRPP fails to nominate one or more council nominees, a JRPP may still exercise its functions in relation to the area of the council concerned.

Alternates: A council may, from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment.

3. Administrative and other matters

Administrative and technical support for the operations of the JRPPs will be provided by the PAC Panel Secretariat and through the Regional Branches of the Department of Planning.

JRPPs are independent bodies, accountable to the Minister, but otherwise not subject to the direction and control of the Minister. JRPP members will be required to act at all times in accordance with best practice probity and accountability requirements and to demonstrate impartiality in the exercise of their functions.

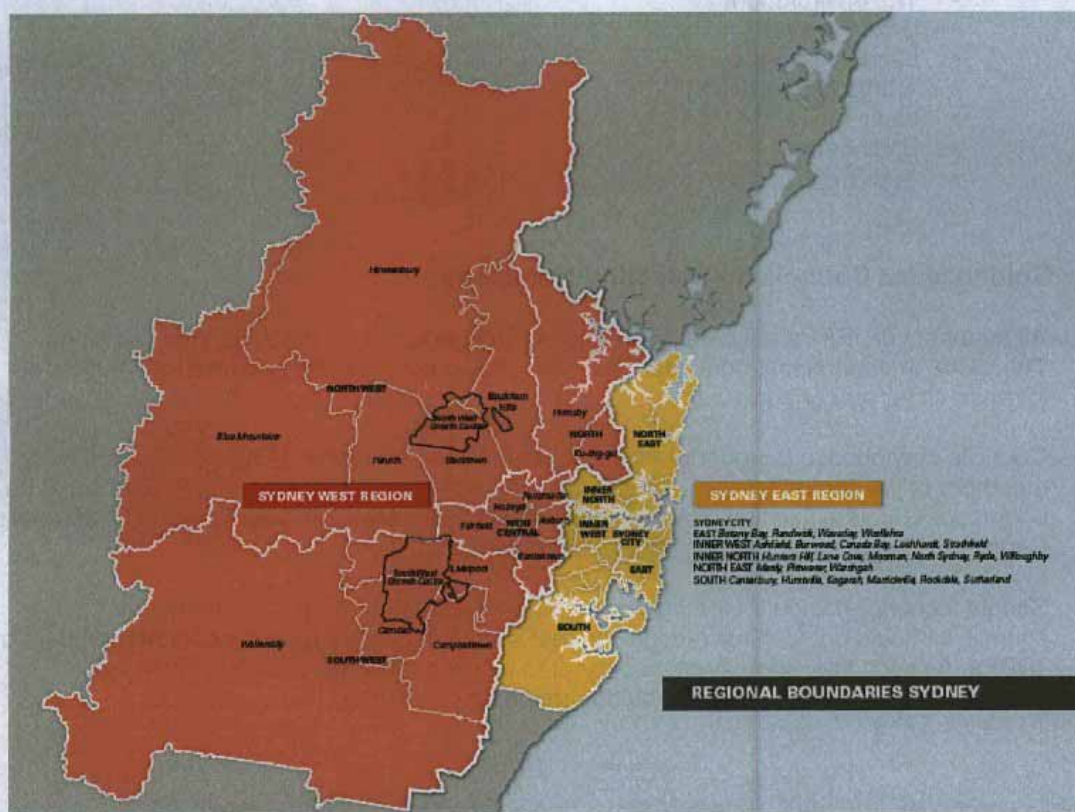
4. Coverage of JRPPs

Six regions are proposed, corresponding with the existing DoP regions. These are:

- Northern Region
- Hunter Region
- Southern Region
- Sydney Metro East Region; and
- Sydney Metro West Region.

Currently, it is proposed that matters in the Western Region will be covered by the existing Planning Assessment Commission (PAC). The JRPP provisions do not apply in the City of Sydney, where the Central Sydney Planning Committee (CSPC) will continue to function.

ORDINARY MEETING
Reports of Committees



5. Nominations of Council Members to the JRPP

In preparing nominations, councils should address each of the selection criteria below including an outline of the nominee's qualifications, skills, attributes and experience under each criterion, along with examples of their achievements relevant to the criterion.

The NSW Government is requesting councils to nominate two persons to become members of the relevant JRPP for the council's area. Each council should also nominate an alternate member, who could replace a council nominee if unavailable.

Selection criteria

It is important for the JRPP to consist of members from a diverse background with a broad range of skills and experience. The selection criteria include:

- Senior level experience in dealing with multiple stakeholders
- High level communication skills
- Capability to drive high profile outcomes in a credible and authoritative manner
- High level analytical skills; and
- Knowledge of the assessment of complex developments and planning matters; and

In addition, *at least one* of the two Council nominees must have a high level of expertise in *one or more* of the following fields:

- Planning
- Architecture
- Heritage
- The environment
- Urban design
- Land economics
- Traffic and transport
- Law
- Engineering
- Tourism.

6. Guidance for Councils in Selecting Nominees

All members of JRPPs will be expected to act independently in reaching their decisions. Therefore, in determining nominees, councils should consider the potential for conflicts of interest, either real or perceived.

Councils may choose to undertake a local Expression of Interest (EOI) process to identify members of the community who would make suitable members of the JRPP. This could be undertaken through existing channels such as Council's Mayoral Column in the local media, Council's website or newsletter (where applicable).

Should a council decide to nominate a member of its staff or an elected member of the council, it should do so in full recognition that such persons will be independent members of JRPPs. As such they should not be subject to influence by other council officers or Councillors on matters that are to be determined by a JRPP.

7. Responsibilities of Members

The responsibilities of JRPP members are to:

- Exercise their functions in accordance with statutory requirements as set out in the EP&A Act and associated regulations
- Comply with the approved JRPP Code of Conduct
- Promote a sense of confidence in the JRPPs as independent decision making bodies
- Establish and maintain effective working relationships with the councils in the relevant JRPP region
- Foster a positive working relationship with other JRPP members, the Panel Secretariat and the Department of Planning
- Follow approved JRPP procedures and participate in regular reviews of procedures, to ensure efficient and effective practices are adopted
- Perform their functions with integrity, impartiality, honesty, conscientiousness, care, skill, diligence; and
- Participate in/chair panel meetings or hold public hearings or panel meetings in a timely, efficient and cost-effective manner while having proper regard to the issues.

8. Appointment Terms and Conditions

8.1. Statutory Position

JRPPs are statutory bodies representing the Crown. Each council within a JRPP region is to nominate two members (and an alternate member) to sit on the JRPP with respect to matters that are within that council's area.

8.2. Term of Appointment

The term of appointment for council panellists is up to three years. Councils may nominate a shorter time period if they desire.

8.3. Remuneration

A JRPP member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

8.4. Private Interests

As part of the consideration of nomination of members to a JRPP, it is suggested that councils require nominees to declare any private interests that may conflict with the public duties they would be required to perform if nominated to a JRPP.

8.5. Pecuniary Interests

If a member of a JRPP has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP, and the interest appears to raise a conflict with the proper performance of the member's duties in relation to consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the JRPP. Unless otherwise determined, the member must not be present during any deliberations by the panel with respect to the matter or take part in any decision of the panel with respect to the matter.

8.6. Other Matters

- i. **Dealing with the Media:** A protocol will be prepared whereby the Chairperson can comment on decisions and respond to questions.

- ii. **Disclosure or misuse of information:** Members are required under the Act not to unlawfully disclose or use any information received in connection with carrying out their duties under the Act.
- iii. **Appropriate use of Secretariat Resources:** The JRPP must use resources provided by the Panel Secretariat and the DoP in an effective and efficient manner; and not use such resources for private purposes.
- iv. **Removal from office:** A council may remove any of its nominees from office at any time. The Minister may remove a State or council member from office if the Independent Commission Against Corruption (ICAC) recommends that consideration be given to the removal of the member because of corrupt conduct by that member.
- v. **Vacancies:** A vacancy in the office of a member occurs if the member:
 - Dies, or
 - Completes a term of office and is not reappointed, or
 - Resigns the office by instrument in writing addressed to the Minister or applicable council, as the case requires, or
 - In the case of a council nominee, is removed from office by an applicable council or by the Minister where ICAC recommends removal, or
 - In the case of a State member is removed from office by the Minister or by the Governor under Chapter 5 of the *Sector Employment and Management Act 2002*, or
 - Is absent from three consecutive meetings of the regional panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the panel or unless the member is excused from the panel for having been absent from those meetings, or
 - Becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - Becomes a mentally incapacitated person, or
 - Is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more and is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- vi. **Regulations:** Regulations may be made in relation to the procedures of regional panels in exercising their functions, the provision of information and reports by regional panels and other matters.

9. Notification of council members

Each council should provide advice of the two persons it has nominated to become members of the relevant JRPP for its area.

Such advice should be provided by **Friday 5 June, 2009** in writing to:
 Director-General
 NSW Department of Planning
 GPO Box 39
 Sydney NSW 2001

INFRASTRUCTURE SERVICES

Item: 103 IS - Proposed Tree removal at No. 15 Lieutenant Bowen Road, Bowen Mountain, for the Purpose of Providing a Piped Drainage System - (79346, 20994)

REPORT:

The construction of a stormwater drainage line within the established drainage easements of the properties; No.15 Lieutenant Bowen Road, No.3 and No.5 Red Gum Crescent, Bowen Mountain has been identified in the 2008/2009 Works Programme. The construction of an underground piped drainage line, for approximately the full length of the easements/side boundary, is proposed to alleviate stormwater flooding experienced within these and adjoining properties.

The situation relating to this drainage issue is not unique in the Bowen Mountain area. When the Bowen Mountain subdivision was approved, there was very little integrated drainage provided, with pipelines being constructed under roads and then allowed to discharge onto properties. At times, drainage easements were provided, but regularly they were only identified as proposed easements for drainage where Council has not only had to provide the funds to construct any drainage infrastructure, but also compensate the property owner for the formalisation of the easement. These situations are being corrected over time as they become evident, usually through properties having flooding problems.

Currently the underground drainage line across Lieutenant Bowen Road in the vicinity of Maple Street, discharges into No.15 Lieutenant Bowen Road and flows through an informal open drain into No.3 Red Gum and No.5 Red Gum Crescent, and onto Red Gum Crescent, with some flow entering the underground drainage line in the vicinity of No.5 Red Gum Crescent with the remaining flows dispersing overland through other properties. The proposed drainage line will connect these 2 existing under road pipes. Refer to Attachment 1 - Drainage Design Plan 08130E1 Rev. C Prepared by Barker Ryan Stewart for details of the proposed drainage line.

The easements within these properties are all 2.44 metres wide. Due to the construction of the proposed 375mm diameter stormwater pipeline, all vegetation (including several trees and shrubs on No.5 Red Gum Crescent and a large eucalypt at No. 15 Lieutenant Bowen Road in the vicinity of Pit [1/4] will need to be removed from within the easements. No.3 Red Gum Crescent has no vegetation.

There are no alternative paths for the construction of the drainage line. Furthermore it is important to confine the construction and placement of the pipeline within the designated easements. Retention of the trees will not be possible due to the terrain of the site in that it is not possible to go around the trees within the 2.44 metre wide easement.

Constructing the drainage line in the vicinity of the root structure of the eucalypt at No.15 Lieutenant Bowen Road was not recommended by Council's Arborist as the removal of a large number of roots would make the tree unstable and cause its health to fail. This in turn would be a safety issue for the surrounding properties.

In accordance with Council's Tree Preservation Order (TPO) a Development Application (DA) was submitted seeking approval for the removal of the trees within the private properties at No.5 Red Gum Crescent and No.15 Lieutenant Bowen Road. The property owners affected were consulted and site meetings undertaken to ensure that they understood the design requirements, the preferred alignment of the proposed drainage line as well as the trees to be removed. Consent was provided by both property owners, at which time they signed the DA forms required.

DA approval was subsequently granted on 1 April 2009 for DA0144/09. The eucalypt at No.15 Lieutenant Bowen Road requires specialist removal and this was arranged to be undertaken on 27 April 2009 by specialist contractors. To maximise efficiencies of the specialist equipment and personnel required to

remove this large tree within a confined area, this project was coordinated to be undertaken with another project in Kurrajong, resulting in cost sharing and savings. The removal of the smaller trees and shrubs within No.5 Red Gum Crescent are to be undertaken by the drainage contractor.

At the request of Councillor Williams, following representation by a neighbour to property No.15 Lieutenant Bowen Road, a site meeting was undertaken on 22 April 2009 with the Councillor, the property owner from No.13 Lieutenant Bowen Road and a Council Officer. At this meeting the property owner from No.13 Lieutenant Bowen Road expressed an objection to the removal of the eucalypt located within No.15 Lieutenant Bowen Road and was also upset that they had not been notified as an adjoining owner in relation to the removal of this tree. It must be noted that in accordance with Council's DA process for TPO's, adjoining property owners are not required to be notified.

As a result of this site meeting, and at the request of Councillor Williams, the removal of the eucalypt scheduled for 27 April 2009 was put on hold to enable further investigation and consultation with the affected property owners. Subsequently, a further site visit was undertaken on 13 May 2009, with representatives of Council, at which time another examination of the eucalypt was undertaken by Council's Arborist. The findings listed below, combined with the need to carry out the drainage works support the removal of the eucalypt. Photos of the eucalypt will be displayed at the meeting.

a) Photos 1 to 4 show poor branch unions due to past poor lopping practices and may result in major branch failure at any time;

- Photo 1 – Cavity 1: 400mm deep and 300mm wide
- Photo 2 – Cavity 2: 300mm x 300mm
- Photo 3 – Cavity 3: Dry Rot 300mm x 300mm
- Photo 4 – Cavity 4: 250mm x 300mm

b) Photos 5 and 6 show major damage to the trunk.

In accordance with the DA approval, the removal of the eucalypt located at No.15 Lieutenant Bowen Road is recommended based on its current condition and the need to undertake the proposed drainage line to alleviate the stormwater flooding issues to properties in this vicinity.

Conformance to Strategic Plan

The proposal is deemed to conform with the strategic directions set out in Council's Strategic Plan i.e:

"Strategic Direction: Establish a framework to define and equitably manage the infrastructure demands of the City."

Funding

Funding is currently available in the 2008/09 Works Programme.

RECOMMENDATION:

That in accordance with DA0144/09 approval be granted, the Eucalypt located at No. 15 Lieutenant Bowen Road, Bowen Mountain be removed to allow the proposed drainage works outlined in the Drainage Design Plan 08130E1 Rev. C Prepared by Barker Ryan Stewart to be undertaken.

ATTACHMENTS:

AT - 1 Drainage Design Plan 08130E1 Rev. C Prepared by Barker Ryan Stewart

ORDINARY MEETING
Reports of Committees



ordinary
meeting

end of
business
paper

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