



Hawkesbury City Council

ordinary  
meeting  
business  
paper

date of meeting: 31 July 2007

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”***

## **How Council Operates**

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

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

Ordinary Meetings of Council are held on the second Tuesday of each month, except January, and the last Tuesday of each month, except December. The meetings start at 5:00pm with a break from 7:00pm to 7:30pm and are scheduled to conclude by 11:00pm. These meetings are open to the public.

When a Special Meeting of Council is held it will usually start at 7:00pm. These meetings are also open to the public.

### **Meeting Procedure**

The Mayor is Chairperson of the meeting.

The business paper contains the agenda and information on the issues to be dealt with at the meeting. Matters before the Council will be dealt with by an exception process. This involves Councillors advising the General Manager at least two hours before the meeting of those matters they wish to discuss. A list will then be prepared of all matters to be discussed and this will be publicly displayed in the Chambers. At the appropriate stage of the meeting, the Chairperson will move for all those matters not listed for discussion to be adopted. The meeting then will proceed to deal with each item listed for discussion and decision.

### **Public Participation**

Members of the public can request to speak about a matter raised in the business paper for the Council meeting. You must register to speak prior to 3:00pm on the day of the meeting by contacting Council. You will need to complete an application form and lodge it with the General Manager by this time, where possible. The application form is available on the Council's website, from reception, at the meeting, by contacting the Manager Corporate Services and Governance on 4560 4426 or by email at [lmifsud@hawkesbury.nsw.gov.au](mailto:lmifsud@hawkesbury.nsw.gov.au).

The Mayor will invite interested persons to address the Council when the matter is being considered. Speakers have a maximum of five minutes to present their views. If there are a large number of responses in a matter, they may be asked to organise for three representatives to address the Council.

### **A Point of Interest**

Voting on matters for consideration is operated electronically. Councillors have in front of them both a "Yes" and a "No" button with which they cast their vote. The results of the vote are displayed on the electronic voting board above the Minute Clerk. This was an innovation in Australian Local Government pioneered by Hawkesbury City Council.

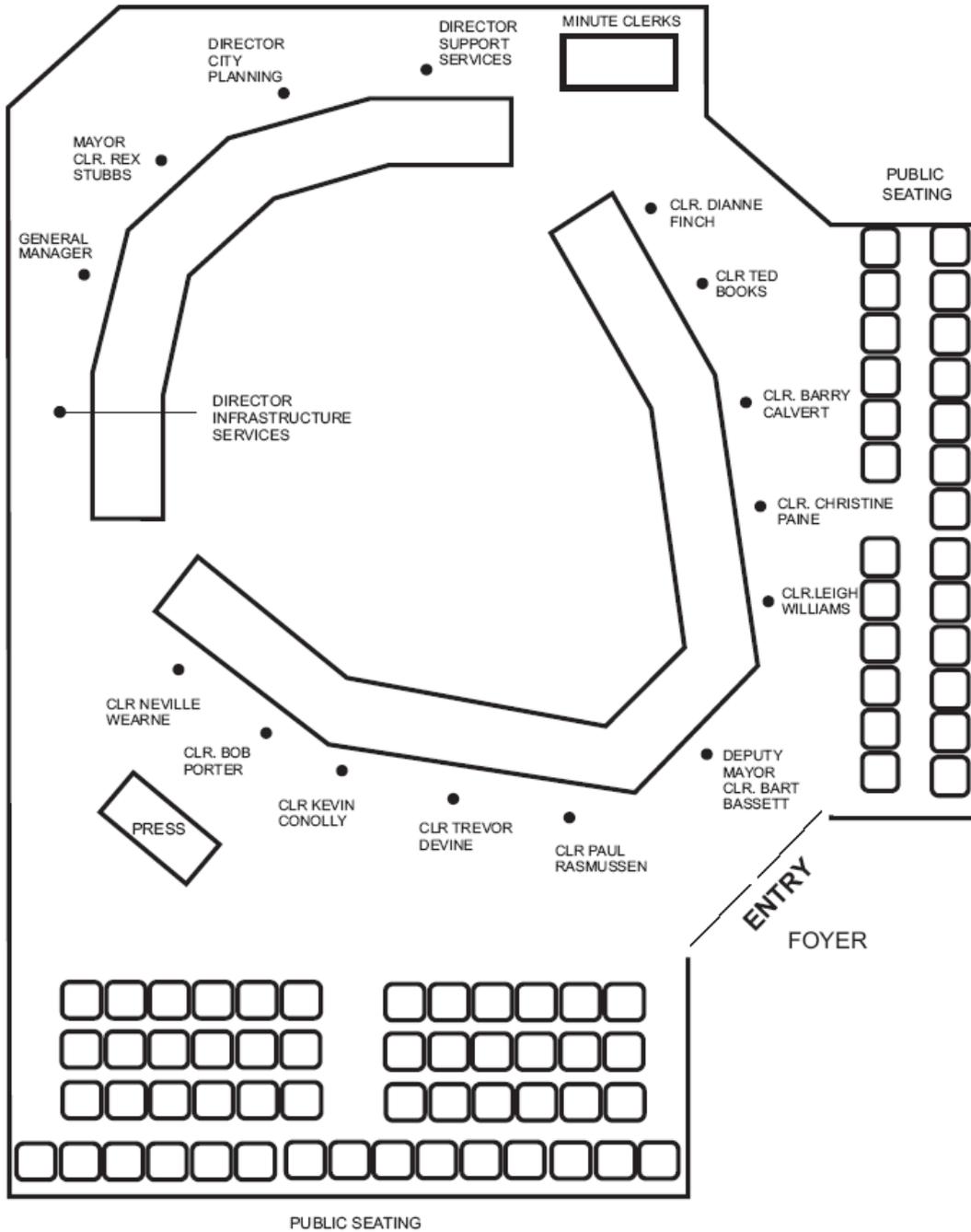
### **Website**

Business Papers can be viewed on Council's website from noon on the Friday before each meeting. The website address is [www.hawkesbury.nsw.gov.au](http://www.hawkesbury.nsw.gov.au).

### **Further Information**

A guide to Council Meetings is available on the Council's website. If you require further information about meetings of Council, please contact the Manager, Corporate Services and Governance on, telephone 02 4560 4426.

# council chambers



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confirmation of minutes

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**SECTION 1 - Confirmation of Minutes**

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QUESTIONS WITH NOTICE

**QWN - Carbon Trading Scheme - (80106, 95498, 107)**

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**Submitted by:** Councillor P Rasmussen

**BACKGROUND:**

Given that a carbon trading scheme may soon be introduced to Australia and that Hawkesbury City Council has large areas of native and planted vegetation in the form of national parks, wilderness, parks and gardens, tree plantations, crop farming, and privately owned stands of trees, there is a need to take stock of and bring to account the size and importance of our carbon portfolio.

The environmental and economic benefits of bringing to account our vast carbon portfolio and our net carbon position needs to be explored at the strategic level sooner rather than later.

**QUESTIONS:**

1. **Does the Hawkesbury City Council's ledger of accounts record the City's carbon portfolio? If not, why not?**

Hawkesbury City Council has a solid historical record of its greenhouse gas emissions through its involvement in the Cities for Climate Protection Program, and more recently through its receipt of regular energy and greenhouse gas performance reports as part of its subscription to the Planet Footprint Program for Local Government.

Involvement in these initiatives has been driven primarily through a need to better improve energy performance within the organisation, and to influence the community to improve its energy performance, with the overall objective being to reduce greenhouse gas emissions from within Council and from across the wider Local Government area.

***Cities for Climate Protection Program***

Hawkesbury City Council joined the Cities for Climate Protection Program (CCP) in April 2000. This program is designed to assist Local Governments reduce corporate and community greenhouse gas emissions through the achievement of five project Milestones. Since joining, Council has achieved the five Cities for Climate Protection Milestones.

A timeline of Council's progression through the CCP Program is shown below:

**April 2000**

Hawkesbury City Council joined CCP.

**November 2001**

*Milestone 1:* Completed an inventory and forecast for key sources of greenhouse gas emissions by Council and the community.

**April 2002**

*Milestone 2:* Council commits to reducing Corporate greenhouse gas emissions by 20% below 2000 levels by 2010 for corporate (Council) emissions, and by 20% below 1996 levels by 2010 for community emissions.

**June 2002**

*Milestone 3:* Developed and adopted a Greenhouse Gas Reduction Strategy to achieve the Corporate and Community emissions reduction goals.

**January 2003**

*Milestone 4:* Implemented significant sections of the Strategy, and awarded Milestone 4.

**May 2003**

*Milestone 5:* Monitor and report greenhouse emissions and implementation of actions and measures. Completed a reinventory and the preparation of an associated report.

As part of the CCP Program, Hawkesbury City Council has implemented numerous actions to reduce greenhouse gas emissions from both the Corporate and Community sector. An example of some of the Corporate measures implemented to date, include:

- Installed soft starters to pump stations
- Enabled energy star facility on all office equipment
- Promoted energy awareness among staff through staging of an 'Energy Week'.
- Formed a Technical Group to coordinate the progress of energy efficient programs within the organisation.

**2. If yes, where is the portfolio reported?**

Core data relating to the organisation's greenhouse gas emissions is held by Planet Footprint Pty Ltd, and is available to Council on request. Planet Footprint also provides Council with quarterly greenhouse gas performance reports which are stored on the organisation's network, as well as in hard copy form with the City's Senior Strategic Environmental Planner.

Planet Footprint has organised a workshop with key staff during August to identify ways for the organisation to manage and report on the greenhouse performance data it is receiving from Planet Footprint. Part of this workshop will involve examining processes for reporting greenhouse performance to Councillors, and for storing key performance data within the core performance databases of the organisation.

Prior to its participation in the Planet Footprint Program, the City received information on its greenhouse performance via development of emissions inventories required as part of its involvement with the Cities for Climate Protection Program. These inventories are summarised in reports that have been reported to Council, and inventory data resides in a database managed by the International Council for Local Environmental Initiatives (ICLEI) who manage the CCP Program.

Hawkesbury City Council has recently been awarded an Urban Sustainability Seed Funding grant of \$20,000 from the NSW Environmental Trust.

These funds will be used to engage the Institute for Sustainable Futures UTS, Sydney to assist with the preparation of a sustainability strategy.

Council has a strategic commitment to 'sustainable and liveable communities' and 'sustainable development' (Draft Strategic Plan 2007/2008, p.26), and is currently undertaking many activities that relate to the various dimensions of sustainability which includes the calculation of Greenhouse Gas.

However, a need has been identified to achieve a better integration of sustainability issues across Council. This would be achieved by:

- Assessing the current situation with regard to sustainability planning - including the identification of any gaps in Council's approach to addressing sustainability;
- Identifying opportunities to integrate sustainability into Council's governance framework and planning processes- with regards to monitoring and reporting outcomes;

- Embedding the community's vision into Council's approach to sustainability;
- Increasing the understanding of and commitment to sustainability (as a holistic framework with environmental, social and economic dimensions) among Council staff and Councillors; and
- Developing a strategic approach to sustainability, to guide and inform Council planning processes over the longer term.

3. **Does the City have an estimate of its net carbon position?**

The City has a solid understanding of its net carbon position, through information received from Planet Footprint and through development of greenhouse gas emissions inventories as part of the Cities for Climate Protection Program.

Cities for Climate Protection Program Emissions inventories are divided into both corporate (Council) and community emissions. The Corporate sector was divided into five categories:

- Buildings** - This sector accounted for emissions from Council owned and operated buildings.
- Vehicle Fleet** - Which accounted for emissions from fuel use of the Councils vehicles and plant machinery.
- Street Lighting** - This sector accounts for emissions resulting from street lighting, including Country Energy/Great Southern Energy street lighting and Council decorative park lighting.
- Water** - This sector accounted for emissions resulting from the energy used to pump water for reticulation on Council owned property.
- Waste** - The sector accounted for emissions that result from the breakdown of organic waste.

**Baseline Energy Use- Corporate**

The total greenhouse gas emissions for Hawkesbury City Council's Corporate sector for 2000 were **7511 tonnes CO<sub>2</sub><sup>e</sup>** (Figure 1).

Emissions increased by 16.8 per cent to **8777 tonnes CO<sub>2</sub><sup>e</sup>** in the 2002 year which is higher than the 2010 forecast total of **8667 tonnes CO<sub>2</sub><sup>e</sup>** (Figure 1).

Total costs of energy increased from the base to re-inventory year by 14.4 per cent. In 2000 Council paid **\$1,295,166** for energy and in 2002 the cost increased to **\$1,481,285** (Figure 2). This result is in contrast to the 'business as usual' forecast of **\$1,489,865** in energy costs by 2010.

**Figure 1 Total Corporate CO<sub>2</sub> Emissions**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

Figures 1 and 2 show the increase in emissions and energy costs in individual Corporate sectors between the base, re-inventory and forecast year. In terms of emissions, the Water/Sewerage and Buildings sectors showed the highest growth in emissions from 2000 to 2002, increasing by 21.2 per cent, and 17.6 per cent respectively. The Vehicles and Streetlighting sectors also increased by 13.7 and 13.3 per cent respectively while the waste sector showed no change from the base year overall.

**Figure 2 Base Year 2000 Inventory**

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The State Government has also realised that high energy users, including some local Councils, play a large and important role in reducing greenhouse gas emissions in the attempt to cease global warming and climate change. Ensuring all councils have calculated their Corporate Greenhouse Gas emissions may also provide a platform for the introduction of the Carbon Trading Scheme.

This is reflected in the Energy Savings Order 2005, which was gazetted on 28 October 2005 by the Minister for Utilities.

This Order requires business and government agencies with high energy use at a site and large local Councils to prepare a draft Energy Savings Action Plan (ESAP) and Water Savings Action Plan (WSAP) in accordance with section 34R of the Energy and Utilities Administration Act 1987, and submit it to the Minister for approval. Schedule 2 designates Hawkesbury City Council as an energy user and requires the Council to prepare both Plans.

The Energy Savings Action Plan (ESAP) has been developed in accordance with the DEUS Guidelines for ESAPs, as required by the *Energy Administration Amendment (Water and Energy Savings) Act 2005*.

The following summary represents the amount of energy and Greenhouse Gas Emissions expressed in the form of CO<sub>2</sub> across Council's high energy users.

**Table 1 Baseline Data 2005-2006**

Site	Baseline Energy Use per annum (GJ) 2005-2006	Greenhouse Emissions Tonnes (CO <sub>2</sub> )
Administration Building	1,818	497
Oasis Aquatic Centre	12,233	3,347
Deerubbin Centre	1,372	375
Sth Windsor STP	3,060	837
McGraths Hill STP	716	196
Streetlights	6,512	1,782
Dight St Offices	936	256
Fairy Road Pump Station	3,391	28
<b>Total</b>	<b>30,038</b>	<b>8,218</b>

The Plan is currently in draft format only, and there is still work to be completed during 2007 to ensure the ESAP becomes a powerful blueprint for change within Council. In particular, detailed monitoring of many sites has to be carried out to better understand the energy characteristics at those locations, and greater detail needs to be provided in developing sound business cases for actions.

This work will be carried out over coming months as Council receives further information from staff, contractors and consultants. It is also anticipated that the Plan will be adjusted and updated on a regular basis as Council receives more detailed and accurate information to help it put together effective business cases for further energy efficiency measures.

#### 4. If so, is that position in credit or deficit?

##### ***Council's Net Carbon Position.***

Figure 3 indicates from the 2000 year baseline data Council increased their CO<sub>2</sub> emissions by 16.9 % until 2002. The 2002 data includes Corporate and Community emissions based on the 2001 ABS data. This major increase was contributed by the inclusion of Council infrastructure. Several high consuming new buildings were measured since the base year which included the Stadium, Australiana Village, Bligh Park Child Care Centre and Youth & Community Centre.

However, measures implemented in the Corporate sector since the base year has achieved an abatement in the re-inventory year of 255 tonnes CO<sub>2</sub>. This was achieved by installing soft starters to pump stations, purchasing energy star printers, photocopiers and computers.

From 2002 to 2005/2006 Council decreased their Corporate CO<sub>2</sub> emissions by 6.3%. This was mainly achieved by improved energy efficiency such as:

- Retrofitting lights with high efficiency tubes;
- Installing sensors to control lighting;
- Installing control timers on appliances;
- Staff education through energy week; and
- Formulation of a internal steering team to implement identified actions.

The difference between the Cities for Climate Protection Baseline Data (2000, 2002 & 2010) and the Energy Savings Action Plan Baseline Data (2005 (Figure 3)) is the latter does not include corporate emission from Council's vehicle fleet, all stationary energy uses (other than the top ten), and pollution emissions from the Waste Management Facility.

Community data for this period will not be available until the business sector of the 2006 ABS information is released in early 2008.

The new 2005/2006 baseline data currently represent 94.8% of the 2010 target of CO<sub>2</sub> emissions. However, there are data gaps as previously discussed.

**Figure 3 Total Corporate CO<sub>2</sub> Emissions.**

**To View This Image,  
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Attachments Document (Maps)**

5. **Is Council's operations a net source or sink for carbon emissions?  
and**
6. **Is the City's net carbon position one of being a source or a sink of carbon?**

Council's operations are a net source for carbon emissions. Council can further improve its net carbon position by implementing the changes identified in the Draft Energy & Water Savings Action Plan and annually review corporate greenhouse gas emissions.

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By implementing the identified actions Council can decrease its CO<sub>2</sub> emissions. These savings are the net positive position that will be the tradable commodity when the Carbon Trading Scheme is introduced to Australia.

The City of Hawkesbury contains 68.9 % of National Parks. The only Council owned areas of potential carbon sinks include:

- Public Open Space (Existing Recreation) approx 0.12%;
- Open Space Proposed Recreation approx 0.01%; and some of the Special Use 5(a) 0.71%.

**7. Given the extensive nature of crop farming in our City, has farming been included into the strategic carbon balance sheet for our city?**

Farming emissions have not previously been included in the Community calculations as Council has historically little influence. Currently CCP is working on a "Victorian Rural Project" which will model rural emissions from farming and agriculture. However, if the model is adopted they will then incorporate those emissions into the community data.

**8. Would it be possible to report Council's net carbon position on a yearly basis?**

Council's subscription to the Planet Footprint Local Government Program sees it receive energy related greenhouse gas performance reports every quarter, for all its built assets. These reports can be compiled and reported to Council on an annual basis if required. Council may consider extending its involvement with Planet Footprint to also have Planet Footprint track emissions from fleet and waste operations, enabling it to receive a full report on its net carbon position *every quarter*.

Council is also considering making a grant application to the Australian Greenhouse Office (AGO) to assist it to develop more frequent greenhouse gas emissions inventories that are consistent with those developed previously through its involvement with the Cities for Climate Protection Program. The development of more frequent full emissions inventories, together with the regular performance reports delivered by Planet Footprint, will enable Council to identify the total CO<sub>2</sub> abatement for implementing such reduction measures as:

- Cogeneration Plant;
- Reduction of lease back fleet to 4 cylinder engines;
- Review of the Emissions 20% target for 2010;
- Coordination of the Greenhouse Gas Reduction Strategy;
- Preparation for the Carbon Trading Scheme implementation;
- Monitoring success- subscription to "Planet Footprint";
- Green purchasing agreements;
- Energy efficient contracts with providers;
- Ensure energy efficient principles are included in design of new Council buildings;
- Installation of power factor corrections for electricity supply; and
- Implement Sustainability Strategy.

At its 13 April 2007 meeting, the Council of Australian Governments (COAG) agreed to:

*"establish a mandatory national greenhouse gas emissions and energy reporting system, with the detailed design to be settled after the Prime Minister's Task Group on Emissions Trading reports at the end of May".*

The Government recognises that Australia, like every country, has a responsibility to control and reduce its greenhouse gas emissions over time.

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The Australian Government will invest \$26.1 million over five years to set up a single, streamlined system for greenhouse and energy reporting by Australian companies, Minister for Environmental and Water Resources, Malcolm Turnbull, confirmed on 17 July 2007.

Many companies already involved in monitoring their emissions through other programmes with some having to prepare up to eight different reports will benefit from a single, streamlined national reporting system.

Local Government has been assured that the final National Greenhouse Gas Emission and Energy Reporting System, will enable a simple transfer of existing data. The system is expected to be in place by July 2008.

9. **Has any strategic thinking or work been done to model the financial benefits and potential revenue to our City of carbon credit trading? If not, why not?**

Council has been monitoring the recent efforts of Randwick City Council to establish a Local Government carbon trading scheme, including investigation by Randwick and its consultants as to the advantages, disadvantages and challenges to be overcome to establish such a scheme.

In particular, it has become obvious that any participation in a carbon or emissions trading scheme will require all participants to develop rigorous in-house systems and frameworks for management of the processes and data needed for effective trading. As such, we have focussed on building internal capacity to meet the demands of any trading scheme to ensure we can participate effectively once a local, state or Commonwealth scheme is in place and operational.

#### ***Strategic Direction***

In accordance with Council's Strategic Plan the following key performance indicators have been identified by an internal working party. These programs are to be developed, reviewed and adjusted on a regular basis in line with the review of the Management Plan so they remain relevant.

The targets are designed to be set at an organisation-wide level by a working group, and then guidance provided to individual business units to set department-specific targets as they see fit.

1. Develop broad and long term energy and water improvement objectives to provide strategic direction to the organisation's energy and water programs.
2. Include development of annual quantifiable energy and water targets as part of the corporate planning process.
3. Consider updating the Hawkesbury Sustainable Energy and Greenhouse Strategy to incorporate water management issues, to become an integrated Energy and Water Strategic Improvement Plan to meet DEUS and CCP requirements.
  - a. Develop revised plan.
  - b. Develop and document an associated process to ensure the actions contained in this plan feed seamlessly into the annual budgeting process.
  - c. Ensure this plan is updated on a regular (annual) basis as part of an overall management review of energy and water management issues.
4. Implement a simple and streamlined process to ensure management and staff consider the current energy and water issues and associated indicators, objectives and targets, when developing the management and operating plans and budgets, to ensure these plans include strategic programs to address these issues and meet these objectives. Aim to have the consideration of energy and water issues and outcomes a routine part of the annual planning process.

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5. Develop processes for the regular reporting of energy and water performance (against the objectives and targets) and program outcomes to staff and Commissioners. Consider developing energy and water 'report cards' that integrate with core business reporting processes.
6. Develop and implement a stand-alone Environmental Policy that effectively incorporates energy and water management issues to set the overall direction for HCC's environmental programs.

#### ***Annual Reporting***

In compliance with item two above, "Include development of annual quantifiable energy and water targets as part of the corporate planning process", Council at its Ordinary Meeting held on 30 August 2005 resolved to subscribe to the Planet Footprint Program for Local Government.

Planet Footprint is an international sustainability benchmarking organisation that operates a Local Government program whereby Councils receive regular reports detailing their energy and water consumption for all their facilities, as well as details of how they are performing against other Councils in their region and across Australia.

Planet Footprint's Local Government Program is comprised of two types of Reports - Service Detail Reports and Footprint Reports.

Service Detail Reports present all accounts for a Council in a comprehensive register that includes current and historical consumption, costs, green energy and greenhouse gas emissions. These reports are available on demand, as well as sent quarterly to Council.

Footprint Reports, which include Organisation Footprint Reports and Property Footprint Reports, build on the data compiled in the Service Detail Reports by presenting performance in terms of properties and assets for more in depth analysis (compared to the accounts, based Service Detail Reports).

The value of Planet Footprint lies in its ability to consistently provide highly analysed data to Councils to increase their capacity for improving environmental performance.

Footprint Reports are also where comparisons and benchmarking are carried out. It is envisaged to provide this transparent information on Council's web site as soon as possible.

**Table 1 Example of Quarterly Consumption results.**

**To View This Image,  
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Attachments Document (Maps)**

**Table 2 Example of Council's Quarterly Greenhouse Gas Emissions**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

Table 3 Indicates the monthly tonnage reports from Visy Recycling. These reports indicates Hawkesbury City Council's monthly totals of recycling in tonnes received and processed at the Blacktown Materials Recovery Facility. The monthly report also demonstrates the Greenhouse benefits, Energy Savings and Water Savings recovered by recycling waste resources.

These monthly reports will be available on Council's web site in the near future.

**Table 3**

**To View This Image,  
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Attachments Document (Maps)**

**ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF QUESTION WITH NOTICE Oooo**

**ORDINARY MEETING**  
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notices of motion

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**ORDINARY MEETING**

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**SECTION 3 - Notices of Motion**

**NM1 - Richmond Club's Future Proposal for Lot 274, DP 813232 - 25 Woodlands Road, Wilberforce - (3996, 92232, 90477, 90478)**

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**Submitted by:** Councillor B Porter  
Councillor N Wearne

**NOTICE OF MOTION:**

That Council have discussions with the Richmond Club Ltd with regard to the history of and the Club's future proposals for the property known as Lot 274 , DP813232 (No. 25 Woodlands Road, Wilberforce) in view of the fact that the property was originally sold by the Council to the then Wilberforce Sports and Recreation Club for the purposes of establishing a sports and recreation club.

**NOTE BY MANAGEMENT:**

In 1994 the Council sold the property referred to in the Notice of Motion to the Wilberforce Sports and Recreation Club. The purpose of the sale was for the Club to establish a sports and recreation club on the site with a development consent subsequently being issued for this purpose. As the development did not proceed this consent has now lapsed.

To assist the Club with the purchase of the property the Council agreed to make an interest free loan of \$80,000 available with such loan to be repayed by 2010 by payments of \$5,000.00 per year. These payments were initially made as required, however, it would appear that some difficulty was encountered by the Club during the late 1990's with payments going into arrears.

In 2001 the Club was amalgamated with the Richmond Club Ltd, including ownership of the property becoming that of the Richmond Club Ltd and requirements concerning the repayment of the interest free loan subsequently being transferred to the Club.

Since 2003 (in respect of repayments from 2002) the Richmond Club Ltd has made the annual payments of \$5,000.00 in respect of the interest free loan which was taken over by the Club at the same time. The amount outstanding on the loan at present is \$35,000.00 and whilst repayments are set at \$5,000.00 per annum the agreement requires the loan to be repaid in full by 2010.

The documentation in association with the sale of the property does not appear to have any provision concerning the future use of the property or what was to occur in the event of the initial proposal not proceeding.

**ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF NOTICE OF MOTION Oooo**

**ORDINARY MEETING**

Notices of Motion

**NM2 - Proposed Bells Line of Road Superhighway - (80104, 80105)**

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**Submitted by:** Councillor C Paine  
Councillor L Williams

**NOTICE OF MOTION:**

That Council:

1. Not support the proposed Bells Line of Road Superhighway.
2. Supports only safety improvements to the existing Bells Line of Road.
3. Supports the improvement of the existing rail crossing of the Blue Mountains.
4. Notifies interested parties and relevant Federal and State Government Ministers and local members of parliament of its opposition to the "superhighway".

**NOTE BY MANAGEMENT:**

When considering this matter in the past the Council, at its meeting held on 8 May 2001, resolved:

*"That:*

1. *This Council opposes the concept of any Super Highway Corridor being designated through the Hawkesbury Council's area (specifically Yarramundi, Grose Wold, Grose Vale, Bowen Mountain, Kurrajong, Kurrajong Hills, Kurrajong Heights and Bilpin and via a route that follows Bell's Line of Road) as proposed by the Central Western Regional Organisation of Councils (CENTROC).*
2. *Although cognisant of the need for improved transport communication for Central Western needs the use of rail and the existing continuing improvements to the Great Western Highway are supported as the best means of this desired improvement.*
3. *This Council supports the State Government's plan to retain the rural, agricultural tourist and recreational character of the Hawkesbury City Council area west of the river Hawkesbury."*

Subsequently, following the consideration of a Mayoral Minute the Council, at its meeting held on 9 July 2002, resolved:

*"That:*

- A. *That Council reaffirm its resolution of 8 May 2001. Bell's Line of Road - Proposed Upgrade Council, at the Ordinary Meeting of 8 May 2001, resolved:*
  - "1. *This Council opposes the concept of any Super Highway Corridor being designated through the Hawkesbury Council's area (specifically Yarramundi, Grose Wold, Grose Vale, Bowen Mountain, Kurrajong, Kurrajong Hills, Kurrajong Heights and Bilpin and via a route that follows Bell's Line of Road) as proposed by the Central Western Regional Organisation of Councils (CENTROC).*

## ORDINARY MEETING

### Notices of Motion

2. *Although cognisant of the need for improved transport communication for Central Western needs the use of rail and the existing continuing improvements to the Great Western Highway are supported as the best means of this desired improvement.*
  3. *This Council supports the State Government's plan to retain the rural, agricultural tourist and recreational character of the Hawkesbury City Council area west of the river Hawkesbury."*
- B. *That:*
1. *Council notes the considerable economic and environmental benefits of using rail for heavy transport. It therefore seeks that in reviewing the need for heavy transport access to Sydney/Newcastle/export terminals from the Central West that as part of the proposed study, consideration is given to an alternative utilising a rail link. It suggests that a rail link be examined, but not limited to the existing Sandy Hollow/Muswellbrook rail line/corridor as well as upgrading of the existing Great Western railway.*
  2. *Part of the study assess the improvement costs and economic benefits for Bell's Line of Road and the areas it serves, to be a safer road, but not a six lane heavy transport high speed highway.*
  3. *The study recognises the need to preserve and hold preserved those land areas now viably used for agricultural, horticultural and fruit production and those of World Heritage and National Park designation in the Hawkesbury and Blue Mountains regions leading to, along and near to Bell's Line of Road.*
  4. *The consultation process includes the Hawkesbury Local Government Area (LGA) via Council and community groups as an element of the study as they were excluded from the previous study."*

At the meeting of Council held on 12 April 2005 a Notice of Motion was considered in relation to this matter and Council resolved:

*"That:*

1. *That Council reaffirm its position on the proposed super highway down the Bells Line of Road as resolved on 8 May 2001.*
2. *Council defer further consideration on this matter until the release of the pending report on the Super Highway and the author of the report and Mr Ian Armstrong, MP and a representative from the RTA be invited to address the Council and community on the matter."*

On the 28 November 2006 Council considered a Mayoral Minute that incorporated correspondence received from the Kurrajong Heights Action Group and resolved:

*"That:*

1. *Council recognise the potential benefits to the residents of the Hawkesbury of an upgrade of the Bells Line of Road subject to satisfactory resolution of environmental and social issues.*
2. *Any upgrade should continue from Blacktown Road/Driftway between the M7 and the other side of the Hawkesbury River.*
3. *In relation to the immediate vicinity of Kurrajong Heights, Council support the resolution of the Kurrajong Heights Action Group.*

## ORDINARY MEETING

### Notices of Motion

4. *Discussions continue with Mr Ian Armstrong, Leader of the lobby group for upgrading Bells Line of Road to communicate concerns of Hawkesbury residents and to try to achieve amendments to the proposal which incorporates solutions to those concerns whilst achieving improvements to Bells Line of Road."*

The resolution of the Kurrajong Heights Action Group referred to in part 3 of the above resolution was as follows:

*"The meeting unanimously supported a resolution requesting all levels of government to ensure that any future upgrade of Bells Line of Road in Kurrajong Heights and its vicinity does not:*

1. *Bisect the village, requiring demolition of heritage-listed properties and having severe impact on other, residential, properties;*
2. *Pass through the Blue Mountains National Park, west of Kurrajong Heights, with the obvious impact this would have on the Park."*

Following an approach by the Bells Line Expressway Group a Mayoral Minute was submitted to the Council meeting held on 27 March 2007 and it was resolved:

*"That:*

1. *In the first instance, Council facilitate a presentation to Councillors and the public by the Bells Line Expressway Group in respect of their proposal, and any other proposals regarding the crossing of the Great Dividing Range also be given the same opportunity.*
2. *WSROC be requested to allow the Bells Line Expressway Group to present the case for the upgrading of Bells Line of Road, including the connection to the M2 and M7, at their next appropriate meeting, with it being noted that Council only supports an upgrade of the Bells Line of Road in terms of Council's previous resolution in this regard."*

The presentation referred to in the first part of the above resolution was held on 17 July 2007 and was attended by approximately 100 people, including Councillors, Council officers and representatives of the groups presenting to the meeting.

#### **ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF NOTICE OF MOTION Oooo**

ordinary

section 4

reports  
for determination

**ORDINARY MEETING**

**Meeting Date:** 31 July 2007

**SECTION 4 - Reports for Determination**

**ACTING GENERAL MANAGER**

**Item:138            AGM - New South Wales Electoral Commission - Indicative Costs for 2008 Local Government Elections - (79351, 107)**

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**REPORT:**

A letter dated 18 June 2007 has been received from the New South Wales Electoral Commission advising the indicative cost for conducting the 2008 Local Government Election for Hawkesbury City Council will be \$287,400. A copy of this letter is included as Attachment A to this report.

It will be noted that the Commission's letter indicates that following a review of a number of issues relating to the conduct of Local Government elections it was identified that the Commission was not conducting the elections on a "full cost recovery basis". It is also indicated that based on the work undertaken for other elections, having regard for the particular requirements of Local Government elections, prepared on a "full cost recovery basis" the cost, or charge by the Commission, for this Council would be as indicated above.

The costs involved in the 2004 Local Government election for this Council was \$135,648, including the payment of staff utilised on election day and a payment of \$37,381 to the Commission. Whilst some indirect costs may not have been charged to the election account at the time, it is not considered that this would significantly increase this total cost.

Based on the advice now received from the Commission the suggested cost for the 2008 Local Government election (\$287,400) represents an increase in the order of 110% (\$151,752) on the cost incurred by Council for the 2004 election.

In preparation for the cost of the 2008 election, an amount of \$30,000 has been placed in a reserve for this purpose and based on a similar amount being provided, as normal, in the 2008/2009 budget an amount of \$150,000 would have been available for the 2008 election. This would be \$137,400 less than the amount now being advised by the Commission as being required at the time for this purpose. Council will appreciate that it will be difficult to allocate this additional amount in what is an already tight budgetary situation.

Had the cost incurred for the 2004 election increased by a rate similar to the CPI, or the rate pegging increases approved by the State Government, the cost of the 2008 election would have been anticipated to have been in the order of \$160,000.

Whilst it is acknowledged that the cost of conducting the election may have increased at a rate greater than CPI or rate pegging, given the introduction of additional requirements; changes to and improvement of electoral processes over time; etc., it is difficult to suggest that an increase in costs in the order suggested, namely approximately 110% or \$151,752, can be justified even if, as indicated, this has been calculated on a "full cost recovery basis". This is particularly highlighted when it must be acknowledged that councils are restricted by rate pegging limits and the State Government regulates many charges councils levy and these are not done on a "full cost recovery basis".

As it is not considered that the increase in election costs as being indicated are reasonable it is suggested that Council should submit a motion to the upcoming Local Government Association Annual Conference calling on the State Government to review this direction and require the Commission to consider a more realistic cost structure for the 2008 Local Government elections, having regard to the costs incurred by councils in 2004. In addition, the Council could also make appropriate representations to the Premier and Minister in this regard.

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**Conformance to Strategic Plan**

This proposal is deemed to conform with the objectives set out in Council's Strategic Plan:

*Objective: "An informed community working together through strong local and regional connections."*

**Funding**

The costs advised by the New South Wales Electoral Commission for the conduct of the 2008 Local Government elections in Council's area represent a significant increase on the cost incurred for the 2004 election as well as a significant increase on the cost that would normally be expected for the 2008 election. Based on the advice received Council will need to allocate an additional \$137,400 in the 2008/2009 budget for this purpose in an already difficult budgetary climate.

**RECOMMENDATION:**

That Council:

1. Submit a motion to the 2007 Local Government Association Annual Conference calling on the State Government to review the direction advised by the New South Wales Electoral Commission in respect of the costs to be charged to councils for the conduct of the 2008 Local Government elections and require the Commission to consider a more realistic cost structure for the 2008 elections, having regard to the costs incurred by councils in 2004.
2. Make representations to the Premier and relevant State Minister in this regard.

**ATTACHMENTS:**

**AT - 1** Copy of letter dated 18 June 2007 from New South Wales Electoral Commission.

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**AT - 1 Copy of letter dated 18 June 2007 from New South Wales Electoral Commission.**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

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Please Refer to the Separate  
Attachments Document (Maps)**

**oooO END OF REPORT Oooo**

**ORDINARY MEETING**

**Meeting Date:** 31 July 2007

**CITY PLANNING**

**Item:139 CP - Pitt Town Investigation 2006 - Independent Report - (95498)**

**Previous Item:** 41, Ordinary (13 March 2007)  
214, Ordinary (12 September 2006)

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**REPORT:**

**Background**

Council at its meeting of 13 March 2007 considered a report concerning the submission received from the Johnson Property Group in August 2006 seeking further rezoning at Pitt Town. The report outlined the assessment of the independent planning consultant, Neil Selmon Consulting Services Pty Ltd and the key issues for Council's consideration. It was recommended that Council adopt the findings of the Neil Selmon Report and not amend Hawkesbury Local Environmental Plan 1989 to allow additional residential development at Pitt Town.

At this meeting Council resolved:

*"That Council:*

- 1. Conduct a site inspection at Pitt Town.*
- 2. Request further advice from the Department of Planning after the State Election on 24 March 2007 and the subsequent appointment of the Minister for Planning."*

In accordance with the above resolution a letter was sent to the Director General of the Department of Planning on 4 April 2007. On 1 May 2007 a meeting was convened by the Department of Planning and attended by the Director General of the Department of Planning, senior Departmental staff, a NSW Heritage Office representative, representatives of the Johnson Property Group, Hawkesbury Council Mayor, Deputy Mayor and senior staff. The Department undertook to provide further advice in relation to Council's resolution. Despite following up this matter on a regular basis, to date a response has not been received from the Department of Planning.

An amended proposal was submitted by the Johnson Property Group on 29 May 2007 and was referred to Neil Selmon Consulting Services for assessment. The proposal now requests Council to resolve to prepare a Local Environmental Plan to allow for a total of 1107 allotments. The initial submission sought approval for a total of 1265 allotments.

A site inspection was carried out on 5 July 2007 and attended by nine Councillors, the Director of City Planning and the Senior Strategic Planner.

**Selmon Consulting Services Pty Ltd**

Mr Selmon's report was lodged with Council on 23 July 2007 and should be considered as an addendum to the February 2007 Selmon report. Both reports are attached to this Business Paper for Council's consideration.

The report recommends that:

- 1. In the absence of any amended advice from the Department of Planning regarding acceptable parameters for an amendment to existing planning controls, Council not resolve to prepare a draft LEP pursuant to Section 54 of the Environmental Planning*

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*and Assessment Act 1979 to alter the planning controls affecting the Pitt Town Investigation Area, as proposed in the 29 May 2007 submission from the Johnson Property Group.*

2. *Should Council resolve to undertake a review of development densities at Pitt Town, such review should include all of the land in the Pitt Town Investigation Area and have regard to the issues raised by relevant agencies and the community, including but not limited to the boundary of any subsequent LEP amendment, the significant heritage values of the Pitt Town cultural landscape, the limitations imposed by the need to safely evacuate existing and future residents should this be required in time of flood, and the funding and provision of appropriate infrastructure to service the level of additional population that any such review may recommend.*
3. *Council advise the applicant, Department of Planning and NSW State Emergency Service of its decision.*

### Options for Dealing with Pitt Town

There are several options available for Council to consider in relation to the future planning for Pitt Town.

#### Option 1

Proceed with the most recent proposal submitted by the Johnson Property Group. The land included in the proposal to allow for further development is based on land ownership/control, that is the land controlled by the Johnson Property Group and not on sound planning principles. It is unlikely that this option will be supported by the Department of Planning and the NSW Heritage Office as it is contrary to best practice.

#### Option 2

Develop Pitt Town in accordance with Amendment 145. The land was rezoned in August 2006, generally consistent with Council's original Master plan for the locality and the original proposal by the Johnson Property Group, to allow residential development and has the potential for approximately 631 lots. Facilities and services have been provided for this level of development, including open space, road and intersection upgrades, community facilities and regional infrastructure. This option is essentially a "do nothing" option.

#### Option 3

Investigate ways of achieving higher densities within the current footprint of Amendment 145 as indicated in the Selmon Report. This option would have further regard to heritage and flooding issues; utilising higher densities adjacent to the existing village; giving consideration to the proposed North West Subregional Plan (due for exhibition in October 2007); and using the Pitt Town Local Environmental Study (prepared by Connell Wagner on behalf of Council) and the growth scenarios in that study for strategic justification for change. Much of this work would be undertaken as part of the Landuse Strategy work that Council has already resolved to commence.

This option is the preferred option in this case as the density review can then be reviewed on sound planning principles and practice (as preferred by the Department of Planning) rather than being driven by the interests of a single or minority group of land owners.

### Conclusions

On 18 August 2006 the Minister of Planning gazetted Amendment 145 to Hawkesbury Local Environmental Plan 1989. This amendment provides for approximately 631 additional lots adjacent to the village of Pitt Town and was based on the Local Environmental Study, consultation with the community and negotiation with various government agencies.

Amendment 145, the Hawkesbury Development Control Plan, Section 64 and Section 94 Plan contain suitable provisions for services and facilities for the predicted number of allotments. If more development

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proceeds, it stands to reason that more services and facilities would be required. The decision to allow more development should be based on sound town planning principles, including good urban design. The promise of additional services and facilities is not suitable justification for allowing further development beyond the footprint of Amendment 145.

Increasing the lot yield may result in a reduced per lot contribution, however, this must be balanced against several key factors, including whether there is a real need for more development at Pitt Town or whether infrastructure funding could be more efficiently utilised in other locations in the Hawkesbury LGA and Northwest Metropolitan subregion; whether additional densities can be accommodated while protecting heritage values and the rural character of the village; and whether the additional risk to new residents and potential loss of safety margin for existing residents during evacuation in time of flood is warranted. Council will recall that throughout the process of preparing Amendment 145, the community was clearly divided on whether the level of change was acceptable or not.

There seems to be some community support for the current proposal by the Johnson Property Group. However, it is unclear what information that the community has used as a basis for that support. To date the original and amended rezoning application by Johnson Property Group (JPG) has not been publicly exhibited by Council and the proposed infrastructure provision and costing provided by JPG has not been fully reviewed by Council staff as there has been no resolution by Council to proceed with the rezoning. This is particularly the case in relation to the Pitt Town by-pass. The applicant has proposed a Planning Agreement with Council to provide a range of infrastructure including the by-pass. However, the by-pass road is not Council owned and is controlled by the RTA. In this case the applicant cannot enter into such an agreement as Council is not the owner or consent authority for that infrastructure. Until all the detail is agreed upon for a Planning Agreement, which has not yet been finalised, supporting the application on proposed infrastructure provision alone would be premature.

Given the above considerations and the detailed assessment contained within the Selmon Report it is recommended that Council not resolve to prepare a new draft local environmental plan to allow further residential development at Pitt Town.

### **Conformance to Strategic Plan**

The proposal does not conform to the Strategic Plan.

### **Funding**

There are no funding implications for the independent assessment as the costs were met by a Deed of Agreement.

Should Council resolve to prepare a new draft local environmental plan to allow further development at Pitt Town, staff resources to undertake other work within the City Planning Division will be affected, including the Employment Land Strategy, the Land Use Strategy and preparation of the standard LEP Template

The cost to Council for the provision of additional services and facilities and the ongoing maintenance of new assets has not been fully investigated. The applicant has proposed a Planning Agreement for the provision of local infrastructure, but the actual costings of the items listed in the draft agreement have not been fully investigated. Nor has the cost to complete a review of the Water Management Plan, Development Control Plan, Section 94 Plan and related documents. This work is significant, substantial and integral to the preparation of a new draft local environmental plan

### **RECOMMENDATION:**

That:

1. The report of independent town planner, Neil Selmon Consulting Services Pty Ltd be received.

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2. Council resolve not to prepare a draft local environmental plan pursuant to section 54 of the Environmental Planning and Assessment Act 1979 to alter the planning controls affecting the Pitt Town investigation area as proposed in the 29 May 2007 submission from the Johnson Property Group.
3. Council advise the applicant, Department of Planning and NSW State Emergency Service of its decision.
4. Council review densities using the Connell Wagner Local Environmental Study as a basis in Pitt Town as part of the Landuse Strategy work following finalisation of the North West Subregional Strategy by the State Government.

**ATTACHMENTS:**

**AT - 1** Second Selmon Report - July 2007 - *(Distributed Under Separate Cover)*

**AT - 2** First Selmon Report - February 2007 - *(Distributed Under Separate Cover)*

**oooO END OF REPORT Oooo**

**ORDINARY MEETING**

**Meeting Date:** 31 July 2007

**Item:140**            **CP - Certificate of Identification - (Swimming Pools Act 1992) - (95498, 79351, 96329)**

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**REPORT:**

**Background**

The Swimming Pools Act 1992, requires that Council Officers carrying out investigation and/or taking action regarding non compliance with the Swimming Pools Act 1992, in particular, any swimming pool (and any barrier or other means of restricting access to any swimming pool) located on a property, be authorised by Council under the Seal of the Authority. Therefore, authority is now sought for the relevant document for these officers to be executed with the Seal of Council.

**Conformance to Strategic Plan**

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

*"Objective: Establish processes and develop flexible plans that will enable the City to response to change".*

**Funding**

No impact on budget.

**RECOMMENDATION:**

That appropriate authorities for the following Officers of Council acting as inspectors of Council in accordance with the Swimming Pools Act 1992 and empowering each of them to enter any premises in or on which he or she suspects that a swimming pool is situated and to examine the premises and, in particular, any swimming pool (and any barrier or other means of restricting access to any swimming pool) situated on the premises be executed under the Seal Of Council:

- John Newton, Building Coordinator.
- Greg Miles, Senior Building surveyor.
- Michelle Cooke, Building surveyor.
- Michael Russo, Building surveyor.

**ATTACHMENTS:**

There are no attachment to this report.

**oooO END OF REPORT Oooo**

## ORDINARY MEETING

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**Item:141 CP - Renewal of Licence Agreements - Peppercorn Place Disability and Aged Services Centre - (95498, 96328, 78340, 74210, 74201, 74214, 74216, 74213)**

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### REPORT:

This report has been prepared to seek Council's approval to renew and execute Licence Agreements between Council and tenants occupying Peppercorn Place.

### Background

- The Peppercorn Place Disability and Aged Services Centre was officially opened in May 2001. Peppercorn Place is a purpose built facility, which currently houses eight community organisations providing programs for frail older people, younger people with a disability and their carers.
- Council has executed a licence agreement with each organisation (tenant) of Peppercorn Place. This agreement specifies the usage charge (based on the floor space occupied) to be paid by each tenant. The income collected from tenants is intended to cover the total cost of building outgoings. This arrangement enables tenants to occupy Peppercorn Place on a rent-free basis - the user charges levied against tenants are used solely to cover the operating and day-to-day maintenance costs of the building so that the building operates at no cost to Council.
- In July 2002 Council resolved to delegate care, control and management of Peppercorn Place to the Board of Peppercorn Services Inc. The Board is now responsible for the invoicing and collection of user charges and the payment of all outgoings associated with the operation of the building. The Board also manages Peppercorn Community Transport Service, which is located at Peppercorn Place, and the Peppercorn Life Skills Centre which operates out of the new South Windsor Family Centre.

### Current Situation

The licence agreements entered into with tenants have fallen due for renewal. Acting on behalf of Council, and under advice from Council's solicitors, new licence agreements have been drawn up for the two year period 1 January 2007 to 31 December 2008. The increased cost of outgoings on the building over the past two year period have been incorporated into the revised user charges levied against tenants. This has meant that there has been a 24.6% increase within the new licence agreements to cover increases in electricity, cleaning, building maintenance, risk management and building refurbishment costs. It should be noted that user charges have not been increased since 2001 (apart from standard CPI adjustments).

The revised agreements have been forwarded to each tenant, and the increase in user charges has been agreed to by each tenant. The following annual user charges (GST inclusive) have been levied for each tenant;

Anglican Retirement Villages	\$7,886.34
Bridges Disability Services Inc.	\$29,076.74
Hawkesbury Neighbour Aid	\$3,943.24
Home Care Service of NSW - Macquarie Branch	\$13,335.03
Nepean Migrant Access Inc	\$3,424.44
Peppercorn Services Inc	\$14,431.69
Sydney West Area Health Service - Fern Haven Day Care	\$8,206.44
Sydney West Area Health Service - Senior Day Care	\$12,300.16

Although Peppercorn Services Inc is acting on behalf of Council in relation to the management of Peppercorn Place the building remains the property of Hawkesbury City Council. The licence agreement therefore nominates Hawkesbury City Council as the 'Licensor' which is entering into an agreement with each 'Licensee' (tenant). As such each licence agreement requires the affixing of the Seal of Council.

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Licence Agreements were due for renewal on 1 January 2007. Due to delays in the return of signed copies of the Licence Agreement by some tenants the matter can only now be reported to Council.

**Conformance to Strategic Plan**

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

*"A network of towns, villages and rural localities connected by well-maintained public and private infrastructure which supports the social and economic development of the City".*

**Funding**

There are no funding implications arising from this report.

**RECOMMENDATION:**

That the licence agreements for the period 1 January 2007 to 31 December 2008 between Hawkesbury City Council and each tenant of Peppercorn Place be executed under the Seal of Council.

**ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF REPORT Oooo**

## ORDINARY MEETING

Meeting Date: 31 July 2007

**Item:142** CP - Agricultural Shed - 198 Yarramundi Lane, Agnes Banks - (DA0979/06, 95498, 96329, 13399, 103509, 100489)

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### Development Information

**Applicant:** Falson & Associates Pty Limited  
**Owner:** Mr D Bugeja  
**Stat. Provisions:** Hawkesbury Local Environmental Plan 1989  
Hawkesbury Development Control Plan  
**Area:** 8ha  
**Zone:** Environmental Protection - Agriculture Protection  
Hawkesbury Protection - Agriculture Protection (Scenic) under Hawkesbury Local Environmental Plan 1989  
**Advertising:** Not Required under DCP provisions  
**Date Received:** 6 December 2006

**Key Issues:** ♦ Development without consent.

**Recommendation:** Approval

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### REPORT:

#### Introduction

Development consent is sought for the use of a rural shed. The building that is subject of this application is currently in existence and has not previously received development consent.

On 29 May Council made the following resolution:

*That Development Applications seeking approval for buildings already under construction or completed without consent be the subject of a report to Council and not approved under delegated authority.*

In accordance with the above resolution, in respect to retrospective approvals, the application is being reported to Council.

#### Description of Proposal

The application involves the approval of the use of a structure erected without consent as a rural shed. The structure has been constructed without Council approval. The shed is constructed of metal and houses pumps and tanks associated with the use of the land for the purposes of intensive agriculture (hydroponics).

The shed has a floor area of 116 square metres and is approximately 3.63 metres in height above ground level and is located 110 metres from Yarramundi Lane.

#### Background

The land has a past history of intensive agriculture. Aerial photographs reveal an orchard existed in 1997 and market gardening occurred after that time.

15 June 2005 Anonymous complaint received in relation to shed under construction.

21 June 2006 Complaint received regarding unlawful and unsafe structure.

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23 June 2005	Response sent to complainant from Council Officer, Mr John Pye.
11 November 2005	Correspondence forwarded to owner of premises regarding the unlawful works and the process for obtaining consent. A period of thirty days was given to lodge an application.
13 April 2006	Notice of Intention to Serve an Order under Section 121H of Environmental Planning and Assessment Act 1979 served upon owners requiring the demolition of the unlawful structure.
4 July 2006	Order under Section 121H of Environmental Planning and Assessment Act 1979 issued requiring demolition of structure.
13 July 2006	Correspondence received from Mr Glenn Falson (Planning Consultant acting on behalf of the owner) requesting a stay of the Order pending further discussion with his client.
14 July 2006	Correspondence of response sent to Glenn Falson advising a submission must be received by 1 August 2006.
18 July 2006	Correspondence from Glenn Falson advising a Development Application is being prepared.
13 September 2006	Email to Council's Ms Louise Gee received from Glenn Falson stating he is under the impression that the unlawful shed has existed for over 20 years. Mr Falson asked the question of whether a DA was necessary in this case.
20 October 2006	Fax from Council's Regulatory Services Manager, Mr Garry Baldry to Glenn Falson requesting evidence of the previous existence of the structure.
26 October 2006	Email from Glenn Falson to Garry Baldry conceding that aerial photographs depict the shed not being in existence in 2003.
6 December 2006	Development Application No. 979/06 lodged with Council (subject of this report).

### Statutory Framework - Unlawful Structures

The Environmental Planning and Assessment Act 1979 does not make provisions for development consent to be granted retrospectively but under section 109A of the Act there is a distinction between the *unlawful erection of a structure* and the *unlawful use of land or a structure*. Section 109A reads:

1. *the use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except:*
  - (b) *the granting of development consent to that use.*

Therefore, the development application is required to be considered on its merits and should the use of the structures be deemed consistent with relevant planning controls then an application for a Building Certificate is required to be submitted to Council.

As previously mentioned, the Act does not provide for retrospective approval for unlawful structures but a person may obtain a Section 149A Building Certificate from Council. The certificate differs from a development consent or building approval for a structure, in that it confers certain forms of legal immunity on the structure (Section 149E of the Act) rather than granting consent for the structure. It is important to note that the Section 149A certificate does not make an unlawful structure lawful but simply makes it immune from certain types of legal action for a period of seven years.

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**Matters for Consideration Under Section 79(c) of the Environmental Planning and Assessment Act 1979**

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are addressed as follows:

<b>Section 79C "Matters for Consideration" Comments</b>	<b>Section 79C "Matters for Consideration" Comments</b>
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on "HLEP 1989" and SREP No. 20 in this report.
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	<b>THERE ARE NO DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS APPLYING TO THE SUBJECT LAND.</b>
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	<b>REFER TO DISCUSSION ON HAWKESBURY DCP 2002 IN THIS REPORT</b>
<b>Section 79C (1) (a)(iii) – Provisions of the regulations</b>	None applicable.
<b>Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</b>	(i) The environmental impacts of the proposed development on the natural and built environment are addressed in the main body of this report.  (ii) The proposed development will not have a detrimental social impact in the locality.  (iii) The proposed development will not have a detrimental economic impact in the locality.
<b>Section 79C (1) (c) – the suitability of the site for the development</b>	<b>Location</b> – The site is considered suitable for the proposed development.  <b>Physical</b> - The site does not contain any significant environmental constraint.
<b>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b>	There are no submissions made in accordance with the Act or Regs.

**a) the provisions of:****i) any environmental planning instrument (i.e. LEPs, REPs & SEPPs)****Sydney Regional Environmental Plan 20 - Hawkesbury Nepean River (No 2 - 1997)**

The subject site falls within the Middle Hawkesbury Nepean River Catchment area defined by SREP No. 20 (No. 2 - 1997). It is considered that the proposal is consistent with the aims and objectives of the Plan.

**Hawkesbury Local Environmental Plan 1989 (LEP)****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 LEP.

**Clause 5 - Definitions and Environmental Planning and Assessment Model Provisions 1980**

The proposal is defined as *rural shed* under the provisions of Hawkesbury Local Environmental Plan 1989. Clause 5 of Hawkesbury Local Environmental Plan 1989 provides the following definitions:

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*rural shed means a building or structure used for the storage of the property of the occupiers of the subject land or property associated with an agricultural use or other permissible land use conducted on the same parcel of land, but does not include a building or structure elsewhere specifically defined in this clause or a building or structure used for a purpose elsewhere specifically defined in this clause.*

**Clause 9 - Carrying out development**

Clause 9 of Hawkesbury Local Environmental Plan 1989 provides a Land Use Matrix specifying the permissibility or otherwise of particular forms of development. The Land Use Matrix permits rural sheds within the Environmental Protection - Agriculture Protection (Scenic) and Rural Living zones.

**Clause 9A - Zone objectives**

The proposed development is considered to be consistent with the objectives of the Environmental Protection - Agriculture Protection (Scenic) and Rural Living zones. The proposal's degree of compliance with stated objectives of the Environmental Protection - Agriculture Protection (Scenic) zone are detailed as follows:

*Environmental Protection - Agriculture Protection (Scenic) Zone*

**(a) to protect the agricultural potential of rural land in order to promote, preserve and encourage agricultural production,**

*Comment:* The land currently accommodates an intensive agricultural use. It is argued that the proposal will improve the management of the agricultural use of the land. It is considered that the proposal is consistent with this objective.

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

**(i) that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as streams and wetlands, and**

**(ii) that satisfies best practice guidelines and best management practices,**

*Comment:* The application does not seek consent for agricultural use of the land. The application involves the regularisation and use of a structure currently situated on the site.

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

*Comment:* The proposal, seeking consent for a rural shed, is not considered to create or contribute to rural land use conflicts.

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

*Comment:* The proposal will not have a significant impact upon the existing agricultural character of the area.

**(e) to preserve river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other local features of scenic quality,**

*Comment:* It is considered that the proposal is compatible with the scenic quality of the rural area and will not have a detrimental impact upon the locality.

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**(f) to protect hilltops, ridge lines, river valleys, rural landscapes and other local features of scenic significance,**

*Comment:* It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

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

*Comment:* The proposed use will not cause a significant increase in traffic movements associated with the site. In addition it is noted that the site does not adjoin a main or arterial road.

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

*Comment:* No advertising structures are proposed in conjunction with the application.

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

*Comment:* The existing services available to the site will not be required to be augmented in conjunction with the proposal.

**(j) to preserve the rural landscape character of the area by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping,**

*Comment:* It is considered that the existing rural landscape character of the area would not be adversely impacted as a consequence of the proposal. It is noted that landscape treatment is proposed to be provided adjacent to the existing structure to assist in softening visual impact.

**(k) to encourage existing sustainable agricultural activities.**

*Comment:* The proposal does not impact upon the continuation of the existing agricultural activity being undertaken on the subject land.

**Clause 18 - Provision of water, sewerage etc services**

Services are available and are capable of being augmented to accommodate the proposal.

**Clause 24 - Development in certain environmental and other zones**

This clause requires the consent authority to consider height, siting and the colour of building materials to ensure buildings are compatible with the surrounding landscape and therefore maintain consistency with the scenic qualities of the locality.

The work the subject of this application has already been constructed. In this regard, Council has limited opportunity to require alterations to the height and siting of the structure. Notwithstanding this, the height of the structure is considered acceptable so as not to adversely impact the scenic quality of the area. In addition, the siting of the structure is considered reasonable given the size of the land and the nature of the agricultural activities undertaken on the land. The buildings have been sited in a location where they will be beneficial for the existing agricultural activity and have a minimal impact on the scenic quality of the locality. The colours associated with the structures are appropriate.

Landscaping is proposed as part of the application to assist in screening the structure from Yarramundi Lane and Crowleys Lane. The landscaping will soften the impact of the structure and improve the scenic quality of the area.

The applicant has provided reasons for the owners failure to obtain prior development consent (as required under this Clause of the Local Environmental Plan) as being unaware that consent was required to be obtained for a relatively small structure in the middle of their property. It should be noted that ignorance of a Law is not accepted as a defence for non-compliance. However, in this case approval of the application would seem appropriate.

**Clause 25 - Development of flood liable land**

The structure being used as a rural shed is permissible under this clause of the Local Environmental Plan and the development is constructed of flood compatible materials.

In the event of flooding, the structure is likely to suffer damage and could possibly be completely demolished. It is considered unlikely that the structure would result in severe damage to downstream properties. There are no required evacuation measures to be considered as part of this assessment as the application only relates to a shed.

**Clause 28 - Development in the vicinity of heritage items**

This clause states that the Council shall not grant consent to an application to carry out development in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

The subject land is situated adjacent to two (2) items of local heritage significance being identified in Schedule 1 of Hawkesbury Local Environmental Plan 1989 as "Bronte", Portion 46, Parish of Ham Common, DP 752032. (444), and "Blue Gardens", No. 254, Lot 4 DP 738221. (505).

"Blue Gardens" is located on No 254 Yarramundi Lane and is approximately 550 metres from the proposed structure and "Bronte" is located on No 248 Castlereagh Road and is approximately 800 metres away from the proposed structure.

It is considered that there is sufficient spatial separation between the subject structure and the existing heritage items so that the impact of the proposed shed is not demonstrable upon the setting and character of the heritage items.

**Clause 37A – Development on land identified on Acid Sulphate Soils Planning Map**

The land is identified as Class 5 Land on the Acid Sulphate Soils Planning Map and is approximately 400 metres from Class 1 land.. As the proposal does not involve significant earthworks, no impact upon the watertable is anticipated on adjacent Class 1, 2, 3 and 4 Land and therefore the development is acceptable under this clause of the Local Environmental Plan.

**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 relevant draft environmental planning instruments that are applicable to the proposal or the land.

**iii) any development control plan applying to the land**

Hawkesbury Development Control Plan 2002 affects the land.

**Part A, Chapter 1 - Purpose and Aims**

The proposed development is considered to be consistent with the general aims and objectives of Hawkesbury Development Control Plan 2002.

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**Part A, Chapter 2 – General Information**

It is considered that sufficient information has been submitted with the application for Council to assess the application.

**Part A, Chapter 3 - Notification**

The application was not required to be notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002.

**Rural Sheds**

The aim of this Chapter is to enable the erection of sheds on rural properties in a manner that compliments the rural character of the landscape and has minimal impact on the scenic qualities of an area and to provide design principles for the construction of these buildings.

It is noted that Amendment No. 108 to Hawkesbury Local Environmental Plan 1989 was gazetted since the adoption of Hawkesbury Development Control Plan 2002 that had the effect of changing a number of zone names amongst other changes. Accordingly, the land currently zoned Environmental Protection - Agriculture Protection (Scenic) was previously zoned Environmental Protection (Scenic) 7(d1). As such the application has been considered on the provisions relating to this zoning in the Development Control Plan.

The following is an assessment of the proposal against these design principles:

<b>Design Principles</b>	<b>The Proposal</b>	<b>Compliance</b>
<b>Siting</b>		
Sheds shall be located no closer to the road than the existing dwelling house on the property.	The shed is located in front of the dwelling by approx. 230 metres. The shed is setback approximately 110 metres from Yarramundi Lane.	NO.
Cut and fill shall be limited to 2m of cut and 900mm of fill	No alterations to ground levels.	YES
Sheds are not to be erected on land which has a slope in excess of 10%	The land is generally flat	YES
The erection of rural sheds should involve minimal disturbance to native vegetation.	No vegetation was required to be removed.	YES
<b>Size</b>		
In Environmental Protection zones the applicant will need to justify the size of any shed exceeding 170m <sup>2</sup> in terms of the use of the shed and the land, as well as measures taken to minimise the impact on neighbours and the general area.	The structure is associated with the use of the land.  An existing shed has been constructed with approval at 360 square metres in area. The approval was issued mid 2003 for a use also associated with the agricultural use of the land.	YES

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<b>Design Principles</b>	<b>The Proposal</b>	<b>Compliance</b>
<b>Height</b>		
In other zones, the total height of rural shed exceeding 5 metres shall be justified in terms of the use of the shed and the visual impact of the development.	The maximum height of the proposal is 3.63 metres.	YES
The total height of "barn style" sheds may exceed 5m based on individual merit.	Flat roof design	N/A
<b>Form</b>		
Rural sheds with standard roof form will be limited to rectangular shapes.	Rectangular shape proposed	YES
Sheds of other roof forms, for example barn style, will be encouraged.	N/A	N/A
<b>Colour</b>		
The colour of a rural shed will match or blend in with those of existing buildings.	The colour of the shed is grey, which is not out of character with older rural sheds.	YES
On vacant land the colour for rural sheds shall be taken from the natural environment.	N/A	N/A
<b>Type of Building Materials</b>		
Building materials used in the construction of rural sheds are to be new, prepainted and non-reflective	The materials used are recycled corrugated iron. The iron is dulled and non-reflective.	NO
The use of corrugated iron will be considered subject to size, height, design and location of the rural shed.	The shed is constructed of corrugated iron, however the location of the shed is in front of the dwelling. The size and height of the shed are conducive to the use of corrugated iron.	YES
Any part of a building below the 1-in-100 year flood level is to be constructed of flood compatible material.	The shed is constructed of steel posts and metal cladding. It is considered to be flood compatible materials.	YES
<b>Landscaping</b>		
Plantings are to be a mix of trees, shrubs and ground cover.	A landscape plan has been submitted.	YES
Trees shall include species that at maturity have a height above the ridgeline of the shed.	Maximum suggested height of proposed landscaping is approx. 3 metres.	YES

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<b>Design Principles</b>	<b>The Proposal</b>	<b>Compliance</b>
Shrub mass shall provide adequate screening.	The proposed plants would provide sufficient screening	YES
Plants endemic to the area are to be chosen.	Native planting are proposed.	YES

**Assessment of Non-Compliances with DCP.**

**Siting** - The shed is located in front of the dwelling, however the dwelling is setback towards the rear of the 8ha premises. The shed is located approximately 110 metres from Yarramundi lane and is required to house pumps associated with the agricultural use of the land. The visual impact of the shed in it's current location is considered to be acceptable given the setback distances.

**Type of Building materials** - the materials used for the structure are recycled corrugated iron. These have been weathered due to age and the appearance is non-reflective. The use of corrugated iron is sympathetic to the rural character of sheds and is considered to be acceptable in this circumstance.

In view of the above matters of non-compliance with Hawkesbury Development Control Plan, the proposal is justified in terms of it non-compliances and the departures from the DCP are not considered sufficient to justify a refusal of the application.

**iv) any matters prescribed by the regulations**

There are no matters that are discernable that affect the proposal.

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

**Context And Setting**

The development is of relatively low scale, bulk and size and therefore is acceptable in its context and setting.

**Heritage**

Two heritage buildings are in the vicinity, however the impact of the proposal on the heritage items is not considered to be significant.

**Natural Hazards**

The land is affected by flooding and the proposal is likely to suffer severe damage in the event of a large flood event. However, the structure is a non-habitable building and this risk is acceptable to the owner.

**Cumulative Impact**

The cumulative impact is not considered to be demonstrable.

The likely impacts of the development are considered acceptable given the relatively small scale of the development and the fact that the development is existing. See also below for additional matters.

**c) the suitability of the site for the development**

The site is considered suitable for the development as proposed.

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

The application was not required to be notified under Hawkesbury Development Control Plan and hence no submissions were received.

Council should be aware that this matter of the unlawful shed came to the attention of Council staff mid 2005 due to a complaint from a local resident.

**e) the public interest**

The proposed development is not contrary to the public interest.

**RECOMMENDATION:**

That:

- A. A Penalty Infringement Notice be issued under the Environmental Planning and Assessment Act for breaches of the Act, and
- B. That Development Application No. 0979/06 for a rural shed be approved subject to the following conditions:

**General**

- 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. A Section 149A Building Certificate Application is to be lodged with Council for the structure.
- 3. A structural engineer shall inspect and certify that the structural alterations identified in the report prepared by C.G.Hilder Pty Ltd dated 5 March 2007 have been completed. The structural engineer shall provide a certificate, which is to be submitted to Hawkesbury City Council certifying that the structure is capable of withstanding the loads likely to be imposed upon it, including wind loadings.
- 4. The landscaping works shall be completed within a period of six months from the date of consent.

**Use**

- 5. No internal or external alterations shall be carried out without prior approval of Council.
- 6. The development shall be limited to the area shown on the submitted plans.
- 7. The subject development, including landscaping, is to be maintained in a clean and tidy manner.

**ATTACHMENTS:**

- AT - 1** Locality Plan
- AT - 2** Elevations Plans
- AT - 3** Floor Plan

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**AT - 1 Locality Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

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**AT - 2 Elevations Plans**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

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**AT - 3 Floor Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

**oooO END OF REPORT Oooo**

**ORDINARY MEETING**

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**Item:143** CP - Truck Depot, Lot 2, DP 220161, 251 Windsor Road, Vineyard NSW 2795 - (95498, 83535, 88784, DA0633/06)

**Previous Item:** 40, Ordinary (13 March 2007)

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**REPORT:**

**Introduction**

At its meeting of 13 March 2007, Council considered a proposal for a truck depot on Lot 2 DP 220161, No. 251 Windsor Road, Vineyard.

The staff report concluded that the proposal is inconsistent with the provisions of Hawkesbury Local Environmental Plan 1989, including the objectives of the Rural Living zone and will have an adverse impact on the rural character and the amenity of the adjoining property and therefore recommended that the application be refused for the following reasons:

1. *The proposed development is likely to have an adverse impact on the amenity of residents in the immediate locality.*
2. *The proposed development is inconsistent with the established character of the locality.*
3. *The design of the development is not acceptable in terms of bulk, height and external finish.*
4. *The proposed development is inconsistent with objective (a), (c) & (f) of the Rural Living zone contained within Hawkesbury Local Environmental Plan 1989.*
5. *The proposed development is inconsistent with the Objects contained within Section 5 of the Environmental Planning and Assessment Act, 1979.*
6. *In the circumstances, approval of the development would not be in the public interest".*

The Council resolved at the meeting:

*"That:*

1. *Consultation be undertaken with the RTA and the applicant in relation to the likelihood of the need for a service road.*
2. *A further report be submitted to Council providing suitable conditions of consent, on a 'Without Prejudice' basis."*

**Consultation with RTA and Applicant**

Council Officers wrote to the Roads and Traffic Authority and to the applicant on 20 March 2007 seeking comment in relation to the likelihood of the need for a service road along Windsor Road in the vicinity of the subject land.

On 28 June 2007, a further letter was sent to the Roads and Traffic Authority seeking their comments and advising that should no response be received by 13 July 2007, it will be assumed that the Roads and Traffic Authority has no comment in this respect.

No response from the RTA has been received to date.

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**Proposed Conditions of Consent**

Following are conditions of consent should the application be approved:

**General**

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
2. No excavation, site works or building works shall be commenced prior to the issue of an appropriate Construction Certificate.
3. The approved use shall not commence until all conditions of this Development Consent have been complied with.
4. The building shall not be used or occupied prior to the issue of an Occupation Certificate.
5. The development shall comply with the provisions of the Building Code of Australia at all times.
6. The development shall comply with the Environmental Planning and Assessment Act, 1979 at all times.
7. The accredited certifier shall provide copies of all Part 4 certificates issued under the Environmental Planning and Assessment Act, 1979 relevant to this development to Hawkesbury City Council within 7 (seven) days of issuing the certificate. A registration fee applies.

**Prior to Issue of Construction Certificate**

8. 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 \$580.00 shall be paid to Hawkesbury City Council.

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

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

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

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

10. Construction of the access, car park, dam, filling are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved by the Director of Environment and Development or an Accredited Certifier.
11. Payment of a Construction Certificate checking fee of \$210.00 and a Compliance Certificate inspection fee of \$350.00 when submitting Civil Engineering Plans for approval. This amount is valid until 30 June 2008. Fees required if an Accredited Certifier is used will be provided on request.
12. Submission of a landscaping plan. Landscaping shall include a mixture of trees, shrubs and groundcover, and be comprised of species native to the locality. Landscaping is to be carried out within the front boundary of the property to screen the development from Windsor Road.

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### Prior to Commencement of Works

13. 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.
14. A copy of receipt of payment of Long Service Levy shall be provided to the Principal Certifying Authority prior to any works commencing on site. Payments can be made at Long Service Corporation offices or most Councils.
15. 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.
16. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.
17. 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.
18. A sign displaying the following information is to be erected adjacent to each access point and to be easily seen from the public road. 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

19. External colours and material of the new work are to match the existing.
20. 8 off-street car parking spaces, together with access driveways and turning areas, shall be constructed, paved, line marked, signposted and maintained, as shown on the approved plan.
21. Vehicle entrances and exits shall be clearly signposted, including street number, and visible from both the street and site at all times.
22. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted.
23. Site and building works (including the delivery of materials to and from the property) shall be carried out only on Monday to Friday between 7am – 6pm and on Saturdays between 8am – 4pm.
24. The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:
  - (a) Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
  - (b) Building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site.

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- (c) Builders waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.
25. Mandatory inspections shall be carried out and Compliance Certificates issued only by Council or an accredited certifier for the following components of construction:
- Note: Structural Engineer's Certificates, Drainage Diagrams and Wet Area Installation Certificates are NOT acceptable unless they are from an accredited person.**
- (a) commencement of work (including erosion controls, site works and site set out);
- (b) piers;
- (c) steel reinforcement prior to pouring concrete;
- (d) framework, after the installation of all plumbing, drainage and electrical fixtures, and after the external cladding and roof covering has been fixed prior to fixing of internal linings and insulation;
- (e) on completion of the works.
26. Council records indicate that the building site is at a level of approximately 12 metres AHD. All materials used in the construction below the level of 17.3 metres AHD shall be capable of withstanding prolonged immersion in water without swelling or deteriorating.
27. 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.
28. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
29. Inspections shall be carried out and compliance certificates issued by Council or an accredited certifier for the components of construction detailed in Hawkesbury Development Control Plan Appendix B Civil Works Specification, Part II, Table 1.1.
30. A concrete access minimum width 4.5 metres shall be constructed for the full length of the internal driveway proposed to link between the existing layback and footway crossing servicing Lot 2. The driveway shall be a minimum thickness of 150mm and be reinforced with F82 mesh.
31. A concrete manoeuvring area shall be constructed to the dimensions shown on stamped plan DA1 281. The manoeuvring area shall be a minimum thickness of 150mm and be reinforced with F82 mesh.
32. Portable fire extinguisher/s containing an extinguishing agent suitable for the risk being protected shall be installed in accordance with AS 2444 E1.6 in the following locations:
- (a) Adjacent to exits

### **Prior to Issue of Occupation Certificate**

33. Compliance with all conditions of this development consent.
34. Implementation of the approved landscape plan

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35. The following Fire Safety Measures shall be provided and installed in the building/property by a suitably qualified person and a Certificate of Installation shall be provided to the owner/agent:

### 1. Portable Fire Extinguishers

FSM2i

#### Installation

Compliance with:

1. Performance requirements and deemed-to-satisfy provisions of Section E of the BCA.
2. AS 2444 "Portable Fire Extinguishers and Fire Blankets - Selections and Locations".
3. AS 1841 "Portable Fire Extinguishers".
4. AS 1850 "Portable Fire Extinguisher - Classification Rating and Performance Testing."
5. AS 4265 "Wheeled Fire Extinguishers".

FSM2m

#### Maintenance

Compliance with the following, as appropriate:

1. AS 1851.1 "Maintenance of Fire Protection Equipment, Portable Fire Extinguishers and Fire Blankets".
2. AS/NZS 1851.13 "Maintenance of Fire Protection Equipment - Wheeled Fire Extinguishers".

### **Prior to Occupation:**

Prior to requesting an occupation certificate the owner/agent shall certify that each of the essential fire safety measures specified in this statement:

- (a) has been installed and assessed by a properly qualified person, and
- (b) was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which the certificate is issued.

***A copy of the Fire Safety Certificate to be completed is available from Council.***

*(This Certificate cannot be signed by persons who inspected and/or tested the installed services)*

*A copy of the Initial Certificate and the Annual Certificate, together with the relevant Fire Safety Schedule must be forwarded to the Council and the Commissioner of the New South Wales Fire Brigades. A copy of this Certificate, together with the relevant Fire Safety Schedule must be prominently displayed in the building.*

### **Annually:**

The Fire Safety Measures are to be regularly serviced/maintained and the owner/agent (including subsequent owners) shall certify annually that each of the fire safety measures specified in this statement has:

- (c) Been assessed by a properly qualified person, and
- (d) Found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the certificate is issued.

### **Use of the Development**

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

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37. All fire safety equipment and fixtures shall be regularly serviced and maintained. The owner or their agent shall certify annually that each of the fire safety measures specified in this statement has:
  - (a) been assessed by a properly qualified person, and
  - (b) found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the certificate is issued.
38. Operating hours shall be limited to 6:00am to 6:00pm Mondays to Saturdays.
39. 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.
40. No advertising signs or structures shall be erected, displayed or affixed on any building or land without prior approval.
41. The development shall be limited to the area shown on the submitted plans.
42. Any external lighting shall be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.
43. All vehicles shall be driven in a forward direction at all times when entering and leaving the premises.
44. All waste materials shall be regularly removed from the property.

**Advisory**

- \*\*\* The applicant shall make themselves aware of the Discrimination Against People with Disabilities Act (DDA) and assess their responsibilities and liabilities with regards to the provision of access for all people.
- \*\*\* Non-compliance with any condition of this development consent may result in a penalty notice being issued by Council.
- \*\*\* The applicant is advised to consult with:
- (a) Sydney Water Corporation Limited
  - (b) Integral Energy
  - (c) Natural Gas Company
  - (d) a local telecommunications carrier
- regarding their requirements for the provision of services to the development and the location of existing services that may be affected by proposed works, either on site or on the adjacent public roads.
- \*\*\* The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- \*\*\* The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

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**Options**

The staff recommendation in relation to this application is for refusal as expressed in the report of 13 March 2007, and reiterated in the "Introduction" section of this report. Council has the option of accepting the previous staff recommendation for refusal or approving the application with the conditions as provided in this report.

**RECOMMENDATION:**

That the information be received.

**ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF REPORT Oooo**

**ORDINARY MEETING**

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**Item:144**            **CP - Development Application for Colour Bond Fence and Retaining Wall - 20 William Cox Drive, Richmond NSW 2753 - (DA0197/07, 78735, 100500, 96329, 95498)**

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**Development Information**

**Applicant:**            Mr P G and Mrs V Millington  
**Owner:**                Mr P G Millington  
**Stat. Provisions:**    Hawkesbury Local Environmental Plan 1989  
                              Hawkesbury Development Control Plan  
**Area:**                    566 m2  
**Zone:**                    Hawkesbury Local Environmental Plan 1989 - Housing  
**Advertising:**        12 June 2007 to 26 June 2007  
**Date Received:**      13 April 2007

**Key Issues:**            ♦ Part of work commenced without approval  
                              ♦ One submission received

**Recommendation:**    Approval

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**REPORT:**

**Introduction**

Development consent is sought for a 1.8m colorbond fence and the use of a retaining wall. The retaining wall that is subject to this application is currently in existence.

On 29 May Council made the following resolution:

*"That Development Applications seeking approval for buildings already under construction or completed without consent be the subject of a report to Council and not approved under delegated authority."*

In accordance with the above resolution, in respect to retrospective approvals, the application is being reported to Council.

**Description of Proposal**

The proposed 1.8m high colourbond fence is to be located on the northern and eastern property boundary with a return back to the residence. This brings the fence in line with the front of the building.

The retaining wall is a minimum of 540mm high to a maximum height of 860mm along the North eastern and south eastern boundaries.

The property is such that there is a definite difference between the level of the block and Council's footpath. The land appears to have been previously retained by a retaining wall and the land would have been cut at the time of subdivision.

The property is a corner block and the dwelling is situated to face the corner rather than one or the other of the streets. The right hand corner of the residence is closest to Grand Flaneur Drive having a set back of 7.5m. The left-hand corner having a setback of four metres, with this side being the largest side and the front entry of the residence facing William Cox Drive.

The dwelling is positioned to front the corner of the allotment with very little usable rear yard.

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The applicant has proposed the fence in order to eliminate a security problem, create a useable space and provide for a front area that is aesthetically in keeping with the district.

The reasons given by the applicant for the application are:

- Majority of open space is located forward of the dwelling. The applicant is trying to make use of the side yard.
- The position of the dwelling does not provide a reasonable rear yard.
- The existing neighbours garage blocks the northerly aspect and overshadows the small rear yard.
- With an increasing family a secure yard is needed for the children.
- The existing telephone box on the corner provides a lot of noise and the front lawn is used as a short cut by pedestrians.
- The telephone box is a security problem to the property as without a clear boundary the booth occupants have access into the applicant's property.

### Background

The applicant originally proposed a fence to the side boundary and in line with the front of the building. During assessment of the application it was brought to the Council's attention that landscaping was occurring.

The applicant was retaining the existing front yard. As the levels proposed were a maximum height of 860mm, a development consent was required.

The owner of the property was approached and advised that approval was required and that the work was to cease. The applicant claimed that they were not aware that approval was required. The owner considered that the work was landscaping, similar to what is in the street, and as such did not require consent.

Once informed, the application was subsequently amended and renotified. However, subsequent inspection revealed that the retaining wall was completed and the footpath made safe.

As the work had been done without Council approval the application is required to be reported to Council.

### Statutory Framework - Unlawful Structures

The Environmental Planning and Assessment Act 1979 does not make provisions for development consent to be granted retrospectively but under section 109A of the Act there is a distinction between the *unlawful erection of a structure* and the *unlawful use of land or a structure*. Section 109A reads:

1. *the use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except:*

(b) *the granting of development consent to that use.*

Therefore, the development application is required to be considered on its merits and should the use of the structures be deemed consistent with relevant planning controls then an application for a Building Certificate is required to be submitted to Council.

As previously mentioned, the Act does not provide for retrospective approval for unlawful structures but a person may obtain a Section 149 Building Certificate from Council. The certificate differs from a development consent or building approval for a structure, in that it confers certain forms of legal immunity

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on the structure (Section 149E of the Act) rather than granting consent for the structure. It is important to note that the Section 149 certificate does not make an unlawful structure lawful but simply makes it immune from certain types of legal action for a period of seven years.

**Matters for Consideration Under Section 79(c) of the Environmental Planning and Assessment Act 1979**

**a) The provisions of:**

**i) any environmental planning instrument ( ie LEPs, REPs & SEPPs)**

The proposal is not inconsistent with any relevant REPs or SEPPs.

**Hawkesbury Local Environmental Plan 1989**

Hawkesbury Local Environmental Plan (LEP) 1989 applies to the land.

*The aims and objectives of this plan are:*

- (a) to provide the mechanism for the management, orderly and economic development and conservation of land within the City of Hawkesbury,*
- (b) to provide appropriate land in area, location and quality for living, working and recreational activities and agricultural production,*
- (c) to protect attractive landscapes and preserve places of natural beauty, including wetlands and waterways,*
- (d) to conserve and enhance buildings, structures and sites of recognised significance which are part of the heritage of the City of Hawkesbury for future generations, and*
- (e) to provide opportunities for the provision of secure, appropriate and affordable housing in a variety of types and tenures for all income groups within the City.*

The development is consistent with the general aims and objectives of this plan.

The subject property is zoned **Housing** under Hawkesbury Local Environmental Plan 1989

The objectives of this zone are as follows:

- (a) To provide for low density housing and associated facilities in locations of high amenity and accessibility,*

**Comment:**

This objective does not relate to this proposal

- (b) to protect the character of traditional residential development and streetscapes,*

**Comment:**

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

- (c) to ensure that new development retains and enhances the existing character,*

**Comment:**

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

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- (d) *to ensure that development is sympathetic to the natural amenity and ecological processes of the area,*

**Comment:**

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

- (e) *to enable development for purposes other than residential only if it is compatible with the character of the living area and has a domestic scale and character,*

**Comment:**

It is considered that the proposal is compatible with the area and is domestic in scale and character.

- (f) *to control subdivision so that the provision for water supply and sewerage disposal on each resultant lot is satisfactory to the Council,*

**Comment:**

This objective does not relate to this proposal

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

**Comment:**

This objective does not relate to this proposal

Under Clause 9 b) of the LEP from the land Matrix set out the fence and the retaining wall are

*"development that requires consent, but may be exempt or complying"*

As the retaining wall is to be located along the boundary, it does not fit the exempt or complying development criteria and therefore is permitted only with Consent.

A fence along a side boundary is deemed exempt under Councils LEP and as it is behind the line of the building is permitted to be 2.4 metre above ground.

However, in this instance the fence proposed is 1.8m from the inside ground level and will be a maximum of 2.6 metre from the footpath due to the difference in the existing levels.

The applicant is proposing a variation of a further height of 260mm. This height would only extend for a distance of approximately four metre.

As both the material and colour of the fence and wall are different, this would breakup the overall appearance of the structure. Also there is a tree located on the footpath which would add to the aesthetics of the proposal.

As the corner location of the property is prominent when entering the estate, in order to reduce to bulk it is recommended that the fence be reduced to 1600mm from the internal ground level.

As the pedestrians line of sight would not extend into the applicants yard, privacy would still be achieved.

The backfill that would be required to tidy up behind the retaining wall (less than 300mm depth) is deemed exempt under the Council's LEP 9B Exempt Table.

An engineers Certificate for the wall would not be required as the wall is not greater than one metre. However, as the work has been undertaken without approval or construction inspections, a statutory declaration that the work has been completed to the manufactures specifications is required.

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- i) **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 relevant draft EPI's that affect the land or the proposal.

- iii) **any development control plan applying to the land**

***Hawkesbury Development Control Plan 2002***

*Part A, Chapter 1 - Purpose and Aims*

The proposed development is considered to be consistent with the general aims and objectives of Hawkesbury Development Control Plan 2002.

*Part A, Chapter 2 – General Information*

It is considered that sufficient information has been submitted with the application for Council to assess the application.

*Part A, Chapter 3 - Notification*

The application was notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002. The notification period extended between 3 May 2007 to 17 May 2007 and notification for the revised plans between 12 April 2007 to 26 April 2007. In response to this notification two written submissions were received from the same respondent.

*Residential Development*

*Fencing and retaining Walls*

Part D, Chapter 1.19 of the DCP relates to (front) fences and retaining walls.

*To ensure that fences and boundary retaining walls should be compatible with the character of the location and integrated with the design of the buildings.*

The retaining wall design is considered to be in character with the other walls in the area, and colorbond fencing is typical for the district.

Photos (Photos 1 to 4) of the retaining walls in the district will be displayed on the board in the Council Chambers.

These retaining walls are containing the front yards, where the land has been cut to create the footpath. Stone and brick are predominate in the area. However, the property beside the applicants has its' land retained by a koppers log wall approximately 700mm high.

Photos 5 to 7 (Refer to the board in the Council Chambers) show the applicants property with the wall under construction. The close proximity of the telephone box, the location of the respondents driveway and the small section that is proposed to be fenced, in relation to the wide clear frontage of the dwelling.

- iv) **Any Matters Prescribed by the Regulations**

There are no matters discernable that are prescribed by the Regulations that affect the development.

- b) **The Likely Impacts the Development, Including Environmental Impacts on Both the Natural and Built Environments, Social and Economic Impacts in the Locality**

The development is not considered to be out of character with the surrounding landscape and it is unlikely that the development will have any adverse environmental impact on the locality.

**Noise and Vibration**

The development will contribute to the reduction of noise to the existing residence and the amenity of the property.

**Safety, Security and Crime**

The development will have significant benefit to applicants property as both the retaining wall and the fence define the boundary and prevent the constant trespass on the property that the applicant is experiencing due to the telephone box on the footpath.

**c) The Suitability of the Site for the Development**

The site is suitable for the development.

**d) Any Submissions Made in Accordance with the EPA Act or Regulations**

Two Submissions by the same respondent were received by Council during the exhibition period.

Respondent:

*"Application is not consistent with Hawkesbury Development Control Plan"*

**Comment**

The proposal is considered to be consistent with the objectives of the DCP.

**Respondent:**

*"Plan provided by the applicant to Council does not reflect of the nature of the work to be carried out."*

**Comment**

The amended Plans indicate the work to be done.

**Respondent:**

*"Safety issues regarding egress from my property to the street."*

**Comment**

Line of sight when reversing a vehicle from a driveway is across the footpath area and is not taken across a neighbouring property. The fence would not impact on the line of site for the egress from the adjoining property. However, the applicant has chosen to splay the corner adjacent to the respondent's driveway in order to address the respondents concerns.

**Respondent:**

*"Loss of streetscape amenity."*

**Comment;**

The fence and retaining wall are not out of character with the area. This is evident in the photos that will be displayed in the Council Chambers.

**Respondent;**

*"The Hawkesbury City Council DCP 1.9.f provides for walls to be not taller than 500mm"*

**Comment**

Under Clause 9 b) of the LEP from the land Matrix set out for the fence and the retaining wall are "development that requires consent, but may be exempt or complying". The DCP provisions provide guidelines to ensure development is compatible to the area. As the retaining wall is to be located along the boundary, it does not fit the exempt or complying development criteria and therefore requires Consent. The proposed retaining wall and fence are considered to be consistent with similar development in the local area.

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**Respondent;**

*"The plans provided show no provision for fill at 20 William Cox Drive"*

**Comment**

The plans provided indicate the work to be done. The block is being tidied up in a similar manner to adjoining and surrounding properties. The retaining wall will contain the existing cut of the property and in parts the area behind the wall back filled to provide a level lawn. The backfill that would be required to tidy up behind the retaining wall (less than 300mm depth) is deemed exempt under the Council's LEP 9B Exempt Table.

**e) The Public Interest**

The matter is not considered to be contrary to the general public interest.

**Conformance to Strategic Plan**

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

*"Objective: A prosperous community sustained by a diverse local economy that encourages innovation and enterprise to attract people to live, work and invest in the City"; and*

*"Sustainable and liveable communities that respect, preserve and manage the heritage, cultural and natural assets of the City".*

**Funding**

No impact on Budget.

**RECOMMENDATION:**

That:

- A. A penalty notice be issued under the Environmental Planning and Assessment Act for breaches of the Act, and
- B. Development Application No. DA097/07 for a retaining wall and fence be approved subject to the following conditions:

**General**

- 1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
- 2. No excavation, site works or building works shall be commenced prior to the issue of an appropriate Construction Certificate.
- 3. The development shall comply with the provisions of the Building Code of Australia at all times.
- 4. The development shall comply with the Environmental Planning and Assessment Act, 1979 at all times.

**Prior To Commencement of Works**

- 5. Submit to Council a statutory declaration that the work has been completed to the manufactures specifications.

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6. The fence shall be set out by a Registered Surveyor. The Survey Certificate of the fence showing the position of the fence under construction and in compliance with the approved plans shall be lodged with the principal certifying authority. Any easements must be shown on the Survey Certificate.
7. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.
8. 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.
9. The approved plans must be submitted to a Sydney Water Quick Check agent or customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For quick Check agent details, please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au), see Building Developing and Plumbing then Quick Check or telephone 13 20 92.
10. The consent authority or a private accredited certifier must either:
  - Ensure that Quick Check agent/Sydney Water has appropriate stamped the plans before the issue of any Construction Certificate; or
  - If there is a combine Development/Construction Certificate application or Complying Development, include the above condition as one to be met prior to works commencing on site.

### During Construction

11. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted.
12. Site and building works (including the delivery of materials to and from the property) shall be carried out only on Monday to Friday between 7:00am - 6:00pm and on Saturdays between 8am - 4pm.
13. The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:
  - (a) Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
  - (b) Building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site.
  - (c) Builders waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.
14. Mandatory inspections shall be carried out and Compliance Certificates issued only by Council or an accredited certifier for the following components or construction:

**Note: Structural Engineer's Certificates, Drainage Diagrams and Wet Area Installation Certificates are NOT acceptable unless they are from an accredited person.**

- (a) on completion of the works;

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**Use of the Development**

15. Any external lighting shall be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.

**Advisory Notes**

\*\*\* The applicant is advised to consult with:

- (a) Sydney Water Corporation Limited
- (b) Integral Energy
- (c) Natural Gas Company
- (d) a local telecommunications carrier

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

\*\*\* 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 applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

**ATTACHMENTS:**

**AT - 1** Locality Plan

**AT - 2** Site Plan

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**AT - 1 Locality Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

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**AT - 2 Site Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

**oooO END OF REPORT Oooo**

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**Item:145**            **CP - Use of Existing Site Office As a Dwelling, Extension to Rural Shed (Exceeding 170sqm) and Garage - 25 Crowleys Lane, Agnes Banks NSW 2753 - (DA0765/06, 95498, 96329, 77499)**

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**Development Information**

**Applicant:** Mr F Bugeja, Mrs L Bugeja and Mr J Bugeja  
**Applicants Rep:** Falson & Associates Pty Ltd  
**Owner:** Mr F Bugeja, Mrs L Bugeja and Mr J Bugeja  
**Stat. Provisions:** Hawkesbury Local Environmental Plan 1989  
Hawkesbury Development Control Plan  
**Area:** 14.14 ha  
**Zone:** Hawkesbury Local Environmental Plan 1989  
Environmental Protection - Agriculture Protection (Scenic) and Rural Living  
**Advertising:** 26 April 2007 to 10 May 2007  
**Date Received:** 20 September 2007

**Key Issues:**            ♦ Development without consent

**Recommendation:** Approval

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**REPORT:**

**Description of Proposal**

**Introduction**

Development consent is sought for the use of an approved site office as a dwelling, extension to a rural shed and garage. The buildings that are subject of this application are currently in existence and are only partly approved as detailed in the background.

On 29 May Council made the following resolution:

*"That Development Applications seeking approval for buildings already under construction or completed without consent be the subject of a report to Council and not approved under delegated authority."*

In accordance with the above resolution, in respect to retrospective approvals, the application is being reported to Council.

**Conversion of Site Office as Dwelling**

Approval is sought for conversion of an approved site office as a dwelling house. The dwelling contains two bedrooms, living room, kitchen/dining room, laundry and bathroom. The building is of single level construction with the walls consisting of painted weatherboard with aluminium framed window and colorbond steel being used as the roofing material. A minimum 3 metre setback has been provided to the south eastern boundary of the site. The building has a floor area of 81.6sqm.

**Rural Shed Extension**

The application seeks approval for a 63.24m<sup>2</sup> extension to a farm shed through the provision of a 5.27 metre wide addition adjacent to the north western wall of the building. The addition has a height ranging from 3.8 metre to 4.6 metre which is less than the height of the main shed building ranging from 5 metre at gutter level to 6.1 metre at uppermost ridge. The addition will increase the total floor area of the shed from

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360sqm to 423.24sqm. The wall and roof material used in conjunction with the addition is to comprise of colorbond steel. The shed is to maintain a minimum 6 metre setback to the south western boundary of the site.

### Garage

The application also seeks consent for a double garage situated between the proposed dwelling house and shed. The garage is 6.8 metre wide and has a depth of 6 metre providing a total area of 40.8 metre. The height of this structure ranges from 2.4 metre at gutter level to 3.3 metre at uppermost ridge level. The wall and roof material consists of colorbond steel. Two roller shutter doors provide access.

### Background

30 October 2002	Development Consent No. DA0825/02 issued for the erection of a farm shed (storage of machinery and vegetables) and the relocation of a site office
30 April 2003	S96 approval issued for reconfiguration of internal walls and plumbing works of the site office so as to provide worker facilities consisting of rest room, lunch room, store rooms, bathroom, kitchen, office and access ramp
3 December 2004	Correspondence received providing that the site office was being used as a dwelling
28 January 2005	Correspondence to owners seeking compliance with consent conditions regarding habitation of site office
11 November 2005	Correspondence to owners of property requiring lodgement of Development Application for shed extension and arrange inspection of property to determine compliance with consent conditions relating to habitation of site office (applications required to be submitted 30 days of date of letter)
6 December 2005	Correspondence from Falson & Associates advising engagement to prepare development application documentation for conversion of site office to dwelling and shed extension and requesting additional time for submission of applications
6 December 2005	Facsimile to Falson & Associates granting extension until 5 January 2006
13 April 2006	Notice of Intention to Serve Order Under Section 121H of EPA & Assessment Act for: <ul style="list-style-type: none"><li>• Cessation of use of site office for human habitation</li><li>• Demolition of shed extension</li></ul>
21 September 2006	Development Application No. DA0765/06 lodged with Council (subject of this report)

### Statutory Framework - Unlawful Structures

The Environmental Planning and Assessment Act 1979 does not make provisions for development consent to be granted retrospectively but under section 109A of the Act there is a distinction between the *unlawful erection of a structure* and the *unlawful use of land or a structure*. Section 109A reads:

1. *the use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except:*
  - (b) *the granting of development consent to that use.*

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Therefore, the development application is required to be considered on its merits and should the use of the structures be deemed consistent with relevant planning controls then an application for a Building Certificate is required to be submitted to Council.

As previously mentioned, the Act does not provide for retrospective approval for unlawful structures but a person may obtain a Section 149 Building Certificate from Council. The certificate differs from a development consent or building approval for a structure, in that it confers certain forms of legal immunity on the structure (Section 149E of the Act) rather than granting consent for the structure. It is important to note that the Section 149 certificate does not make an unlawful structure lawful but simply makes it immune from certain types of legal action for a period of seven years.

**Matters for Consideration Under Section 79(c) of the Environmental Planning and Assessment Act 1979**

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are addressed as follows:

<b>Section 79C “Matters for Consideration” Comments</b>	<b>Section 79C “Matters for Consideration” Comments</b>
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on “HLEP 1989” and SREP No. 20 in this report.
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	There are no draft environmental planning instruments applying to the subject land.
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	Refer to discussion on Hawkesbury DCP 2002 in this report
<b>Section 79C (1) (a)(iii) – Provisions of the regulations</b>	None applicable.
<b>Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</b>	(i) The environmental impacts of the proposed development on the natural and built environment are addressed in the main body of this report.  (ii) The proposed development will not have a detrimental social impact in the locality.  (iii) The proposed development will not have a detrimental economic impact in the locality.
<b>Section 79C (1) (c) – the suitability of the site for the development</b>	<b>Location</b> – The site is considered suitable for the proposed development.  <b>Physical</b> - The site does not contain any significant environmental constraint.
<b>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b>	There are no submissions made in accordance with the Act or Regs.

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

The subject site falls within the Middle Hawkesbury Nepean River Catchment area defined by SREP No. 20 (No. 2 - 1997). It is considered that the proposal is consistent with the aims and objectives of the Plan.

***Hawkesbury Local Environmental Plan 1989 (LEP)***

*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 LEP.

*Clause 5 - Definitions and Environmental Planning and Assessment Model Provisions 1980*

The proposal is defined as *dwelling*, *rural shed* and *garage* under the provisions of Hawkesbury Local Environmental Plan 1989. Clause 5 of Hawkesbury Local Environmental Plan 1989 provides the following definitions:

***garage*** means a fully enclosed building for housing a car.

***rural shed*** means a building or structure used for the storage of the property of the occupiers of the subject land or property associated with an agricultural use or other permissible land use conducted on the same parcel of land, but does not include a building or structure elsewhere specifically defined in this clause or a building or structure used for a purpose elsewhere specifically defined in this clause.

In addition to the definitions contained in Clause 5 Hawkesbury Local Environmental Plan adopts the following definition for a dwelling contained in the Environmental Planning and Assessment Model Provisions 1980:

***dwelling*** means a room or suite or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

*Clause 9 – Carrying out development*

The property is zoned Environmental Protection - Agriculture Protection (Scenic) with a small portion of the site zoned as Rural Living under the provisions of the Hawkesbury LEP 1989.

Clause 9 of Hawkesbury Local Environmental Plan 1989 provides a Land Use Matrix specifying the permissibility or otherwise of particular forms of development. The Land Use Matrix permits dwellings, rural sheds and garages within the Environmental Protection - Agriculture Protection (Scenic) and Rural Living zones.

*Clause 9A – Zone objectives*

The proposed development is considered to be consistent with the objectives of the Environmental Protection - Agriculture Protection (Scenic) and Rural Living zones. The proposal's degree of compliance with stated objectives of the Environmental Protection - Agriculture Protection (Scenic) zone are detailed as follows:

***Environmental Protection - Agriculture Protection (Scenic) Zone***

**(a) to protect the agricultural potential of rural land in order to promote, preserve and encourage agricultural production,**

*Comment:*

The land currently accommodates an intensive agricultural use. It is argued that the proposal will improve the management of the agricultural use of the land. It is considered that the proposal is consistent with this objective.

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- (b) **to ensure that agricultural activities occur in a manner:**
- (i) **that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as streams and wetlands, and**
  - (ii) **that satisfies best practice guidelines and best management practices,**

*Comment:*

The application does not seek consent for agricultural use of the land. The application involves the regularisation and use of buildings currently situated on the site.

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

*Comment:*

The proposal, seeking consent for a dwelling, shed extension and garage, is not considered to create or contribute to rural land use conflicts.

- (d) **to ensure that development retains or enhances existing landscape values that include a distinctly agricultural component,**

*Comment:*

The proposal will not have a significant impact upon the existing agricultural character of the area.

- (e) **to preserve river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other local features of scenic quality,**

*Comment:*

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

- (f) **to protect hilltops, ridge lines, river valleys, rural landscapes and other local features of scenic significance,**

*Comment:*

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

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

*Comment:*

The proposed use will not cause a significant increase in traffic movements associated with the site. In addition it is noted that the site does not adjoin a main or arterial road.

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

*Comment:*

No advertising structures are proposed in conjunction with the application.

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

*Comment:*

The existing services available to the site will not be required to be augmented in conjunction with the proposal.

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- (j) **to preserve the rural landscape character of the area by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping,**

*Comment:*

It is considered that the existing rural landscape character of the area would not be adversely impacted as a consequence of the proposal.

- (k) **to encourage existing sustainable agricultural activities.**

*Comment:*

The proposal does not impact upon the continuation of the existing agricultural activity being undertaken on the subject land.

*Rural Living Zone*

The proposal's degree of compliance with stated objectives of the Rural Living zone are detailed as follows:

- (a) **to provide primarily for a rural residential lifestyle,**

*Comment:*

The application seeks the approval of a dwelling on the portion of land zoned "Rural Living".

- (b) **to enable identified agricultural land uses to continue in operation,**

*Comment:*

The proposal does not involve any alteration to the agricultural activity undertaken on the subject land.

- (c) **to minimise conflict with rural living land uses,**

*Comment:*

It is not envisaged that the proposal would result in any significant degree of conflict with existing rural living land uses on adjacent land.

- (d) **to ensure that agricultural activity is sustainable,**

*Comment:*

The proposal does not involve any alteration to the agricultural activity undertaken on the subject land.

- (e) **to provide for rural residential development on former agricultural land if the land has been remediated,**

*Comment:*

The site is not considered to exhibit any characteristics that would preclude residential use of the land. In this regard a preliminary site investigation is required to demonstrate that no contamination hazard exists for the proposed use of the approved site office as a dwelling.

- (f) **to preserve the rural landscape character of the area by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping,**

*Comment:*

It is considered that the existing rural landscape character of the area would not be adversely impacted as a consequence of the proposal.

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- (g) **to allow for agricultural land uses that are ancillary to an approved rural residential land use that will not have significant adverse environmental effects or conflict with other land uses in the locality,**

*Comment:*

The proposal does not involve any alteration to the existing intensive agricultural use of the land it being noted that the majority of this use is situated on adjacent Environmental protection - Agriculture Protection (Scenic) zone.

- (h) **to ensure that development occurs in a manner:**

(i) **that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as streams and wetlands, and**

(ii) **that satisfies best practice guidelines and best management practices,**

*Comment:*

The proposal is not anticipated to have an adverse impact upon water catchments, land surface conditions and important ecosystems.

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

*Comment:*

The proposed use will not cause a significant increase in traffic movements associated with the site. In addition it is noted that the site does not adjoin a main or arterial road.

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

*Comment:*

The existing services available to the site will not be required to be augmented in conjunction with the proposal.

*Clause 18 – Provision of water, sewerage etc services*

Services are available and are capable of accommodating the proposal.

*Clause 24 – Development in certain environmental and other zones*

This clause requires the consent authority to consider height, siting and the colour of building materials to ensure buildings are compatible with the surrounding landscape and therefore maintain consistency with the scenic qualities of the locality.

The buildings have been sited in a location where they will be beneficial for the existing agricultural activity and have a minimal impact on the scenic quality of the locality. The colours associated with the structures are appropriate.

*Clause 25 - Development of flood liable land*

The site is affected by the 1:100 year flood event (18.1 metres). The structures are sited on the highest part of the site, on land between 16 and 19 metre contours. In this regard the shed extension is situated on land situated at 16 metre whilst the dwelling is located above 18 metre AHD. It is considered that the proposal is satisfactory having regard to the provisions of this clause.

*Clause 28 - Development in the vicinity of heritage items*

The subject land is situated adjacent to an item of local heritage significance being identified in Schedule 1 of Hawkesbury Local Environmental Plan 1989 as "Bronte", Portion 46, Parish of Ham Common, DP

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752032. (444). It is considered that the proposal would not have an adverse impact on this item or its setting.

*Clause 34 - Suspension of certain laws etc*

The plan of subdivision applying to the subject land provides a Positive Covenant that requires the following:

*Any residence to be constructed on the lot herein burdened must be constructed wholly within the area shown as "A" on the abovementioned plan with a floor level of not less than 18.3 metres above Australian Height Datum.*

The dwelling is not situated wholly within the identified area. It is noted that the provisions of Clause 34 of Hawkesbury Local Environmental Plan 1989 enable the consent authority to consider the application irrespective of such restriction.

*Clause 37A – Development on land identified on Acid Sulphate Soils Planning Map*

The land is identified as Class 5 Land on the Acid Sulphate Soils Planning Map. As the proposal does not involve significant earthworks no impact upon the watertable is anticipated on adjacent Class 1, 3 and 4 Land.

**Hawkesbury Development Control Plan 2002**

*Part A, Chapter 1 - Purpose and Aims*

The proposed development is considered to be consistent with the general aims and objectives of Hawkesbury Development Control Plan 2002.

*Part A, Chapter 2 – General Information*

It is considered that sufficient information has been submitted with the application for Council to assess the application.

*Part A, Chapter 3 - Notification*

The application was notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002. The notification period extended between 26 April 2007 to 10 May 2007. In response to this notification no written submissions were received.

*Residential Development*

*Building Height*

Chapter 1.3 in Part D of Hawkesbury Development Control Plan 2002 prescribes a maximum ceiling height of seven metres and an overall maximum height of 10 metres. The subject proposal is able to satisfy this requirement as detailed in the following table:

	<b>Dwelling</b>	<b>Garage</b>
Ceiling Height (maximum)	3.6m	-
Maximum Height	4.5m	3.3m

In addition, it is noted that the proposal is able to satisfy the building height plane provisions contained in the development control plan.

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Setbacks

The dwelling and garage maintain a minimum side boundary setback of three metres. The setbacks are considered satisfactory.

Car Parking

Hawkesbury Development Control Plan 2002 provides the following car parking rate for dwelling houses:

*Dwelling House: 1.5 covered spaces (dwellings 55 to 85sqm)*

In this regard it is noted that the a two car garage has been provided on site. Accordingly, the nominated car parking requirement is satisfied.

Rural Sheds

The aim of this Chapter is to enable the erection of sheds on rural properties in a manner that compliments the rural character of the landscape and has minimal impact on the scenic qualities of an area and to provide design principles for the construction of these buildings.

It is noted that Amendment No. 108 to Hawkesbury Local Environmental Plan 1989 was gazetted since the adoption of Hawkesbury Development Control Plan 2002 that had the effect of changing a number of zone names amongst other changes. Accordingly, the land currently zoned Environmental Protection - Agriculture Protection (Scenic) was previously zoned Environmental Protection (Scenic) 7(d1). As such the application has been considered on the provisions relating to this zoning in the Development Control Plan.

The following is an assessment of the proposal against these design principles:

Design Principles	The Proposal	Compliance
<b>Siting</b> Cut and fill shall be limited to 2m of cut and 900mm of fill	The site is generally level. Compliance with this requirement has been achieved.	Yes
Sheds shall be located no closer to the road than the existing dwelling house.	The proposal satisfies this requirement locating the shed extension adjacent to the rear property boundary behind the dwelling.	Yes
Sheds are not to be erected on land which has a slope in excess of 10%	The portion of the site where the shed extension is located is generally level and accordingly satisfies this requirement.	Yes
The erection of rural sheds should involve minimal disturbance to native vegetation.	The portion of the site where the shed extension is located is clear of any vegetation.	Yes
<b>Size</b> The maximum size of sheds in rural 1(c) and 1(c1) zones shall not exceed 170m <sup>2</sup> . The cumulative total of all outbuildings shall not exceed 170m <sup>2</sup> on any one property in these zones.	NA	NA

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<b>Design Principles</b>	<b>The Proposal</b>	<b>Compliance</b>
In 1(a), 1(b), 7(d), 7(d1) and 7(e) zones applicant will need to justify the size of any shed exceeding 170m <sup>2</sup> in terms of the use of the shed and the land, as well as measures taken to minimise the impact on neighbours and the general area.	423.24 m <sup>2</sup>	Refer to reasons outlined below
<p><b>Height</b> The total height of a rural shed erected in Rural 1(c) and 1(c1) zones shall be no more than 5m or no higher than the height of the ridgeline of the dwelling house on the same property, whichever is less.</p> <p>In other zones the total height of a rural shed exceeding 5m shall be justified in terms of the use of the shed and the visual impact of the development.</p> <p>The total height of 'barn style' sheds may exceed 5m based on individual merit.</p>	<p>NA</p> <p>4.6m to ridge of extension.</p> <p>NA</p>	<p>NA</p> <p>Yes</p> <p>NA</p>
<p><b>Form</b> Rural sheds with standard roof form will be limited to rectangular shapes.</p> <p>Sheds of other roof forms, for example barn style, will be encouraged.</p>	<p>The shed (inclusive of extension) is rectangular with dimensions of 35.27m X 12m.</p> <p>NA</p>	<p>Yes</p> <p>NA</p>
<p><b>Colour</b> The colour of a rural shed will match or blend in with those of existing buildings.</p> <p>On vacant land the colour for rural sheds shall be taken from the natural environment.</p>	<p>N/A, no other buildings exist on site.</p> <p>"Mist Green" colour. The colour scheme blends in with the natural environment.</p>	<p>N/A</p> <p>Yes</p>
<p><b>Type of Building Materials</b> Building materials used in the construction of rural sheds are to be new, prepainted and non-reflective.</p> <p>The use of corrugated iron will be considered subject to the size, height, design and location of the rural shed.</p> <p>Any part of a building below the 1-in-100 year flood level is to be constructed of flood compatible materials.</p>	<p>Colorbond material associated with extension.</p> <p>N/A</p> <p>The shed extension is situated within the predicted 1:100 year flood level. The materials used satisfy this requirement.</p>	<p>Satisfactory.</p> <p>'</p> <p>N/A</p> <p>Yes</p>

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<b>Design Principles</b>	<b>The Proposal</b>	<b>Compliance</b>
<b>Landscaping</b> Plantings are to be a mix of trees, shrubs and ground cover.  Trees shall include species that at maturity have a height above the ridgeline of the shed.  Shrub mass shall provide adequate screening.  Plants endemic to the area are to be chosen.	Existing vegetation considered satisfactory.  As above  As above  As above	Satisfactory.

**Variation to Rural Shed Design Controls**

**Size**

The applicant has provided the following having regard to the size of the shed:

*Whilst the shed is relatively large it will not be a dominant built form in the locality particularly given the number of other large sheds in its vicinity and the distance of it from the road and dwellings on adjoining lands.*

*The size of the shed is commensurate with the existing use of the property and the requirement to house equipment associated with the agricultural use of it.*

*It is noted that there is no size restriction on agricultural sheds within Council's LEP. The increase in size of the shed is minimal in the circumstances.*

The site is currently used for intensive agriculture and the shed is required as an ancillary building to support the primary use. The shed has been sited to minimise its visual impact on the locality having regard to the use of the site. Accordingly, the shed extension is considered reasonable in the circumstances.

**RECOMMENDATION:**

That:

- A. A penalty notice be issued under the Environmental Planning and Assessment Act for breaches of the Act, and
- B. Development Application No. DA0765/06 for a Dwelling House, Rural Shed Extension and Garage - use existing site office as a dwelling, extension to rural shed (exceeding 170sqm) and garage be approved subject to the following conditions:

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**General Conditions**

- 1. The development is to be carried out in compliance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of consent:

<b>Architectural Drawing Number</b>	<b>Dated</b>
06337-01	11/07/2006
06337-02	11/07/2006
06337-03	11/07/2006
06337-04	11/07/2006
<b>Document Name</b>	<b>Dated</b>
Statement of Environmental Effects - Proposed Dwelling, Garage and Rural shed Extension: 25 Crowley's Lane Agnes Banks	09/2006

- 2. The development shall comply with the provisions of the Building Code of Australia. A report detailing compliance with the Building Code of Australia is to be prepared by a suitably qualified consultant.
- 3. The approved use shall not commence until all conditions of this Development Consent have been complied with.
- 4. The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.
- 5. Submission of a certificate from an engineer certifying the structural adequacy of the dwelling, the garage and shed addition. The certificate is also to consider wind loading.
- 6. A Section 149A Building Certificate Application is to be lodged with Council for the structures within 28 days of the date of this consent notice.
- 7. A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 shall be supplied to the principal certifying authority prior to commencement of any works required to satisfy compliance with the Building Code of Australia.
- 8. The approved plans must be submitted to a Sydney Water Quick Check agent or customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For quick Check agent details, please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au), see Building Developing and Plumbing then Quick Check or telephone 13 20 92.
- 10. All roofwater shall be drained to appropriate water storage vessel/s.
- 11. An automatic fire detection and alarm system shall be installed within the building in accordance with the Building Code of Australia for Class 1A and 1B Dwellings. Alarms and Detectors shall be installed by a licensed electrician and multiple alarms shall be interconnected, an certificate of the installation shall be provided prior to occupation of the building or addition.
- 12. Any water tanks, outbuildings or other ancillary structures shall be finished in colours and materials of earth tones of low reflective quality to blend in with the natural landscape.
- 13. The habitable floor levels shall be at or above the 1% AEP flood level of 17.3 metre AHD. A survey certificate is to be submitted for the proposed dwelling demonstrating compliance with this requirement.
- 14. A report demonstrating the proposed dwelling's compliance with the intent of BASIX requirements is to be submitted to Council.

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**Use Of The Development**

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

**Advisory Notes**

\*\*\* The applicant is advised to consult with:

- (a) Sydney Water Corporation Limited
- (b) Integral Energy
- (c) Natural Gas Company
- (d) a local telecommunications carrier

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

\*\*\* The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

**ATTACHMENTS:**

**AT - 1** Locality Plan

**AT - 2** Site Plan

**AT - 3** Floor Plans/Elevation Plans

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**AT - 1 Locality Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

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**AT - 2 Site Plan**

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Attachments Document (Maps)**

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**AT - 3 Floor Plans/Elevation Plans**

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**Item:146**            **CP - Tourist Facility - 1619A Bells Line of Road, Kurrajong Heights NSW 2758 - (DA0215/07, 95498, 96329, 38269, 38268, 73916)**

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**Development Information**

**Applicant:** Mr J and Mrs A McMillan  
**Applicants Rep:** McKinlay Morgan & Associates  
**Owner:** Mr J and Mrs A McMillan  
**Stat. Provisions:** Hawkesbury Local Environmental Plan 1989  
Hawkesbury Development Control Plan  
**Zone:** Environmental Protection - Agriculture Protection (Scenic) Under Hawkesbury Local Environmental Plan 1989.  
**Advertising:** 4 May 2007 to 18 May 2007  
**Date Received:** 26 April 2007

**Key Issues:**            ♦ Development without approval

**Recommendation:** Approval

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**REPORT:**

**Introduction**

Development consent is sought for the use of two (2) existing structures as a Rural Tourist Facility (Bed and Breakfast accommodation). The buildings that are subject of this application are currently in existence and are used for Bed and Breakfast accommodation.

On 29 May Council made the following resolution:

*"That Development Applications seeking approval for buildings already under construction or completed without consent be the subject of a report to Council and not approved under delegated authority."*

In accordance with the above resolution, in respect to retrospective approvals, the application is being reported to Council.

**Description of Proposal**

The application proposes to use two existing structures on the site for Bed and Breakfast accommodation.

The structure known as "Clyde" which was a previous shed contains two bedrooms, living /kitchen room, and bathroom.

The structure known as "Murrah" was constructed several years ago without any formal Council approval contains one bedroom living/kitchen room and bathroom.

The two structures are located some distance from the property boundaries and cannot be seen from any surrounding property due to the existing vegetation.

Access to the site is from a Crown Road which adjoins Bells Line of Road. The site is approximately one kilometre along the Crown Road from Bells Line of Road.

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**Background**

The property owners contacted Council officers to discuss the uses of the structures and when it was found no approval had been granted for their use and in the case of “Murrah” for the construction the owners submitted the necessary application to seek Council approval.

**Matters for Consideration Under Section 79(c) of the Environmental Planning and Assessment Act 1979**

**Statutory Framework - Unlawful Structures**

The Environmental Planning and Assessment Act 1979 does not make provisions for development consent to be granted retrospectively but under section 109A of the Act there is a distinction between the *unlawful erection of a structure* and the *unlawful use of land or a structure*. Section 109A reads:

1. *the use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except:*
  - (b) *the granting of development consent to that use.*

Therefore, the development application is required to be considered on its merits and should the use of the structures be deemed consistent with relevant planning controls then an application for a Building Certificate is required to be submitted to Council.

As previously mentioned, the Act does not provide for retrospective approval for unlawful structures but a person may obtain a Section 149 Building Certificate from Council. The certificate differs from a development consent or building approval for a structure, in that it confers certain forms of legal immunity on the structure (Section 149E of the Act) rather than granting consent for the structure. It is important to note that the Section 149 certificate does not make an unlawful structure lawful but simply makes it immune from certain types of legal action for a period of seven years.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are addressed as follows:

<b>Section 79C “Matters for Consideration” Comments</b>	<b>Section 79C “Matters for Consideration” Comments</b>
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on “HLEP 1989” and SREP No. 20 in this report.
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	<b>THERE ARE NO DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS APPLYING TO THE SUBJECT LAND.</b>
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	<b>REFER TO DISCUSSION ON HAWKESBURY DCP 2002 IN THIS REPORT</b>
<b>Section 79C (1) (a)(iii) – Provisions of the regulations</b>	None applicable.
<b>Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</b>	(i) The environmental impacts of the proposed development on the natural and built environment are addressed in the main body of this report.  (ii) The proposed development will not have a detrimental social impact in the locality.

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<b>Section 79C “Matters for Consideration” Comments</b>	<b>Section 79C “Matters for Consideration” Comments</b>
	(iii) The proposed development will not have a detrimental economic impact in the locality.
<b>Section 79C (1) (c) – the suitability of the site for the development</b>	<b>Location</b> – The site is considered suitable for the proposed development.  <b>Physical</b> - The site does not contain any significant environmental constraint.
<b>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b>	There are no submissions made in accordance with the Act or Regs.

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

Sydney Regional Environmental Planning Policy (SREP) 20 aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The policy requires a consent authority to consider, in determining an application for development on affected land, the general planning considerations outlined in Clause 5 of the policy as well as the specific planning policies and related recommended strategies outlined in Clause 6 of the policy. If the proposed development is specifically listed in Part 3 of the policy, the development is required to comply with the relevant development controls and address any listed matters for consideration.

It is considered that the proposal is consistent with the aims and objectives of the Plan.

**Hawkesbury Local Environmental Plan 1989 (LEP)**

*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 LEP.

*Clause 5 – Definitions and Environmental Planning and Assessment Model Provisions 1980*

The proposal is defined as a *Rural Tourist Facility* under the provisions of Hawkesbury Local Environmental Plan 1989. Clause 5 of Hawkesbury Local Environmental Plan 1989 provides the following definitions:

***Rural Tourist Facility*** means a building or place in a rural area that is used to provide low scale holiday accommodation, recreation or education for the travelling or holidaying public and may consist of holiday cabins, horse riding facilities, refreshment rooms or the like.

*Clause 9 – Carrying out development*

Clause 9 of Hawkesbury Local Environmental Plan 1989 provides a Land Use Matrix specifying the permissibility or otherwise of particular forms of development. The Land Use Matrix permits rural tourist facility within the Environmental Protection - Agriculture Protection (Scenic)

*Clause 9A – Zone objectives*

The proposed development is considered to be consistent with the objectives of the Environmental Protection - Agriculture Protection (Scenic). The proposal's degree of compliance with stated objectives of the Environmental Protection - Agriculture Protection (scenic) zone are detailed as follows:

**Environmental Protection - Agriculture Protection (Scenic) Zone**

- (a) ***to protect the agricultural potential of rural land in order to promote, preserve and encourage agricultural production,***

*Comment:*

The land currently accommodates a rural residential use consisting of a dwelling and associated outbuildings. It is considered that the proposal is consistent with this objective and protects agricultural potential due to the low scale of the proposed development..

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

- (i) ***that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as streams and wetlands, and***

- (ii) ***that satisfies best practice guidelines and best management practices,***

*Comment:*

The application does not seek consent for agricultural use of the land. The application involves the regularisation and use of buildings currently situated on the site.

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

*Comment:*

The proposal, seeking consent for a rural tourist facility (B&B accommodation), is not considered to create or contribute to rural land use conflicts.

- (d) ***to ensure that development retains or enhances existing landscape values that include a distinctly agricultural component,***

*Comment:*

The proposal will not have a significant impact upon the existing landscape and agricultural character of the area.

- (e) ***to preserve river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other local features of scenic quality,***

*Comment:*

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

- (f) ***to protect hilltops, ridge lines, river valleys, rural landscapes and other local features of scenic significance,***

*Comment:*

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

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

*Comment:*

The proposed use will not cause a significant increase in traffic movements associated with the site.

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

*Comment:*

No advertising structures are proposed in conjunction with the application.

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

*Comment:*

The existing services available to the site will not be required to be augmented in conjunction with the proposal.

- (j) to preserve the rural landscape character of the area by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping,**

*Comment:*

It is considered that the existing rural landscape character of the area would not be adversely impacted as a consequence of the proposal.

- (k) to encourage existing sustainable agricultural activities.**

*Comment:*

The proposal does not impact upon the continuation of the existing agricultural activities being undertaken in the surrounding area.

*Clause 18 – Provision of water, sewerage etc services*

Services are available and are capable of being augmented to accommodate the proposal.

*Clause 24 – Development in certain environmental and other zones*

This clause requires the consent authority to consider height, siting and the colour of building materials to ensure buildings are compatible with the surrounding landscape and therefore maintain consistency with the scenic qualities of the locality.

The buildings have been sited in a location where they will have a minimal impact on the scenic quality of the locality. The colours associated with the structures are appropriate.

*Clause 43 – Rural Tourist Facility*

This clause requires Council to consider the following matters:

- (a) The proposed development will have no significant adverse effect on the present and potential agricultural use of the land and the lands in the vicinity.**

*Comment:* The land is not productive agricultural land at present and given the site constraints unlikely to be used in the future for agriculture.

- (b) The proposed development will be compatible with the rural environment and of minimal environmental impact.**

*Comment:* The proposed development is compatible with the rural area and will have minor impact.

- (c) Adequate separation distances will be incorporated to minimise the potential for land use conflict between the proposed development and the existing or potentially conflicting land uses, such as intensive agriculture on adjoining land.**

*Comment:* The buildings provide adequate separation distance from the adjoining lands and the potential for conflict is considered low.

The use has been operating from the site for several years without any known impacts.

- (d) The proposal incorporates adequate landscaping and screen planting for visual amenity as viewed from a public road or dwelling house on other land in the vicinity.**

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Comment: The development retains the existing vegetation on site which provides adequate screening for visual amenity from the Crown Rd and the adjoining properties.

- (e) *All proposed buildings and other uses are clustered so as to reduce impact on the rural amenity.*

Comment: The buildings are clusters close to each other on the site and the existing vegetation on site helps reduce the visual impact.

- (f) *There will be no significant adverse visual impact of the proposed development on the scenic quality of the area.*

Comment: The development retains the existing vegetation on site, which provides adequate screening for visual amenity for the area.

***Hawkesbury Development Control Plan 2002***

*Part A, Chapter 1 - Purpose and Aims*

The proposed development is considered to be consistent with the general aims and objectives of Hawkesbury Development Control Plan 2002.

*Part A, Chapter 2 – General Information*

It is considered that sufficient information has been submitted with the application for Council to assess the application.

*Part A, Chapter 3 - Notification*

The application was notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002. In response to this notification no written submissions were received.

***NSW Rural Fire Service***

The application was referred to the NSW Rural Fire Service as Integrated Development under the EPA Act. The NSW RFS has approved the development subject to conditions which are included in the recommendation.

**Conclusion**

The proposed uses involving Bed & Breakfast accommodation has been operating from the site for a period of time.

The use is consistent with the objectives of the zone and will have only a minor environmental impact. The proposed development is also consistent with the bush fire requirements of the NSW Rural Fire Service.

**RECOMMENDATION:**

That:

- A. A penalty notice be issued under the Environmental Planning and Assessment Act for breeches of the Act, and
- B. Development Application No. DA0215/07 for a Rural Tourist Facility be approved subject to the following conditions:-

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### General

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. The development shall comply with the provisions of the Building Code of Australia at all times.
3. An application under Section 149(d) of the EPA Act (Building Certificate) shall be submitted within 30 days from the date of this consent for each of the cottages (one application for the Clyde and one for the Murrah cottages). You are advised to contact one of Council's Building Surveyors prior to submitting the Building Certificate application to determine the information to be submitted with that application.
4. Each cottage shall be provided with a minimum 30,000 litre water storage tank located and fitted with the appliances as outlined by the NSW RFS conditions attached to this consent.
5. An automatic fire detection and alarm system shall be installed within each cottage (Clyde & Murrah) in accordance with the BCA.
6. Alarms and detectors shall be installed by a qualified licensed electrician and shall be connected to an alarm connected to the main dwelling on the property.
7. A certificate of the installation shall be provided prior to the issue of the building certificate for each cottage.
8. The Building Legislation Amendment (Smoke Alarm) Act 2005 requires smoke detectors to be provided in all existing buildings in which people sleep.  
  
Suitable smoke detection/alarms are to be provided to the existing portion of the building, in accordance with the abovementioned legislation or the Building Code of Australia, and should be incorporated with any proposed smoke alarms required by the addition to the building.
9. A Sewer Management Facility System application shall be submitted to and approved by Council within 30 days from the date of this consent.

### Prior to Works Commencing

10. A Traffic Management Plan prepared in accordance with AS 1742-3 (1996) by an appropriately qualified person shall be submitted to Council. Where the works affect Roads and Traffic Authority controlled roads, the Traffic Management Plan is to be approved by the Roads and Traffic Authority before submission to Council.
11. Payment of a compliance certificate inspection fee of \$541.00 this amount is valid until 30 June 2008

### During Construction

12. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
13. Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved plan and Hawkesbury Development Control Plan chapter on Soil Erosion and Sedimentation.
14. The road shoulders and full width sealed pavement of 5.5 metres width shall be constructed from the intersection with Bells Line of Road to the southern most access driveway to the development site. The road shall widen to nine metres at the intersection with Bells Line of Road.

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### Use of Site

15. No internal or external alterations shall be carried out without prior approval of Council.
16. 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.
17. The rural tourist facility shall be limited to the area shown on the submitted plans.
18. No advertising signs or structures shall be erected, displayed or affixed on any building or land without prior approval.
19. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
20. All waste materials shall be regularly removed from the property.
21. The rural tourist facility buildings shall not be used for permanent occupation as a residence.
22. The rural tourist facility buildings shall only be used for short term tourist accommodation with a maximum of two months in any one period.
23. A copy of the guest register is to be provided to Council every 6 months.

### NSW Rural Fire Service

24. The property around each building (Clyde and Murrah Cottages) shall be maintained in perpetuity as an 'Inner Protection Areas' (IPA) for a minimum distance of 30 metres as outlined within 'Planning for Bush Fire Protection 2006' and the Service's document "Standards for asset protection zones'.
25. Each dwelling (Clyde and Murrah Cottages) shall fully comply with the requirements of Level 1 construction as required by Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas'.
26. Roofing to both dwellings shall have leafless guttering and valleys which are to be screened with non corrosive mesh to prevent the build up flammable material. Any materials used shall have a Flammability Index no greater than five.
27. Access is to comply with Section 4.1.3(1) of 'Planning for Bush Fire Protection 2006'.
28. In recognition of no reticulated water supply to both existing dwellings (Clyde and Murrah Cottages) shall each have a minimum of 3kW (5hp) petrol or diesel powered pump and a dedicated 10,000 litre water supply tank dedicated solely for fire fighting purposes. The tank shall be positioned no closer than 10 metres and no further than 20 metres from each dwelling. A 65mm Storz fitting and lever action ball valve shall be installed in the tank. Suitable access to within six metres of the dedicated water supply for a Category 1 heavy bushfire tanker shall also be provided. In addition, a 30 metre long x 19mm diameter fire hose and reel should be installed adjacent to the pump and be capable of covering all points of the existing dwelling. The hose reel should be supplied, via the petrol/diesel powered pressure pump, from the dedicated fire fighting water supply.
29. The openable section of all windows to the existing residential dwelling shall be screened with non corrosive steel mesh to prevent the entry of wind blown embers and reduce the radiant heat impact upon the glass.
30. Roofing to the existing residential dwelling shall have leafless guttering and valleys which are to be screened with non corrosive mesh to prevent the build up of flammable material. Any materials used shall have a Flammability Index no greater than 5.

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31. A Bush Fire Evacuation Plan is to be prepared and submitted to the District RFS office of the NSW Rural Bush Fire Service. The evacuation plan is to detail the following:
- a) under what circumstances will the complex be evacuated.
  - b) where will all persons be evacuated to.
  - c) roles and responsibilities of persons co-ordinating the evacuation.
  - d) roles and responsibilities of persons remaining with the complex after evacuation.
  - e) a procedure to contact the NSW Rural Fire Service District Office/NSW Fire Brigade and inform them of the evacuation and where they will be evacuated to.

**ATTACHMENTS:**

**AT - 1** Locality Plan

**AT - 2** Site Plan

**AT - 3** Floor Plan

**ORDINARY MEETING**

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**AT - 1 Locality Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

**ORDINARY MEETING**

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**AT - 2 Site Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

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**AT - 3 Floor Plan**

**To View This Image,  
Please Refer to the Separate  
Attachments Document (Maps)**

**oooO END OF REPORT Oooo**

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**SUPPORT SERVICES****Item: 147 SS - Monthly Investments Report - June 2007 - (96332)****REPORT:**

According to Clause 212 of the Local Government (General) Regulation 2005 the Responsible Accounting Officer must provide the Council with a written report setting out details of all money that the Council has invested under Section 625 of the Local Government Act 1993. The report must include a certificate as to whether or not investments have been made in accordance with the Act, the Regulations and the Council's Investment Policy.

The following table lists the investment portfolio held by Council at 30 June 2007 in a form compliant with legislative and policy requirements.

All investments have been made in accordance with Section 625 of the Local Government Act 1993, Clause 212 of the Local Government (General) Regulation 2005 and Council's Investment Policy.

**June 2007**

The following table indicates that Council held \$33.3 million in investments as at 30 June 2007. Details of the financial institutions or fund managers with which the investment was made, date investments were taken out, the period to maturity, the rate of return achieved and the credit rating of the investments are provided below.

Investment Type	Lodgement Date	Interest Rate %	Principal	Rating	Total
<b>On Call</b>					
CBA	30-Jun-07	6.20%	\$1,260,000.00	A1+	\$1,260,000.00
<b>Term Investments</b>					
CBA – Term Deposits	28-Jun-07	6.30%	\$1,000,000.00	A1+	
CBA – CPI Linked Note	4-Apr-07	9.00%	\$500,000.00	A1+	
<b>Bankwest</b>	28-Jun-07	6.42%	\$1,000,000.00	A1+	\$2,500,000.00
<b>Managed Funds</b>					
ANZ Cash Plus Fund	30-Jun-07	6.78%	\$946,256.96	AA	
Merril Lynch Diversified credit fund	30-Jun-07	5.61%	\$2,039,688.99	A	
Macquarie Income Plus Fund No 1	30-Jun-07	6.42%	\$6,824,861.35	A	
Aberdeen Cash-Plus Fund	30-Jun-07	5.87%	\$7,890,154.67	A	
Perpetual Credit	30-Jun-07	5.81%	\$6,632,035.30	A	
ING Enhanced Cash	30-Jun-07	6.76%	\$5,250,970.00	A	\$29,583,967.27
<b>TOTAL INVESTMENT AS AT 30 JUNE 2007</b>					<b>\$33,343,967.27</b>

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**Managed Funds**

Bench Mark – June 2007	6.49%	Bench Mark - last 12 months	6.42%
Actual - June 2007	5.95%	Actual -last 12 months	6.63%

**Performance by Type**

Category	Balance	Average Interest	Difference to Benchmark
Cash at Call	\$ 1,260,000.00	6.20%	-0.29%
Term Deposit	\$ 2,500,000.00	6.81%	0.32%
Managed Funds	\$ 29,583,967.27	5.95%	-0.54%
	\$ 33,343,967.27	6.32%	-0.17%

**Investment Commentary**

The investment portfolio decreased slightly by \$0.26m for the month. The decrease was partly due to funds being transferred from the On Call account to the General Operating Account to allow for the End of Year creditors run. During June, income received including rates payments amounted to \$6.4m, while payments to suppliers and staff costs amounted to \$5.2m.

Managed Fund performance was below the benchmark (UBS Australia) Bank Bill Index in June 2007 with an average return after fees of 5.95%, compared with the index of 6.49%. The managed funds portfolio has achieved a return after fees for the past 12 months of 6.63%, which outperformed the (UBS Australia) Bank Bill Index of 6.42% for the corresponding 12-month period.

The investment portfolio is diversified across a number of investment types. This includes a number of managed funds, term deposits and on-call accounts.

The investment portfolio is regularly reviewed in order to maximise investment performance and minimise risk. Comparisons are made between existing investments with available products that are not part of Council's portfolio. Independent advice is sought on new investment opportunities.

**Conformance to Strategic Plan**

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

*"Objective: Maximise return on Council's investment portfolio"*

**Funding**

Funds are invested with the aim of achieving budgeted income in 2006/2007.

**RECOMMENDATION:**

That the information be received and noted.

**ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF REPORT Oooo**

**Item: 148      SS - Public Library Funding from NSW State Government - (82780, 95496)**

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**REPORT:**

The purpose of this report is to inform Council that the 2007/2008 NSW State Budget reduced funding to NSW public libraries by \$1.2m, and that the effects of this reduction on the consequent 2007/2008 funding of Hawkesbury City Library Service is at present unknown.

**Summary**

The NSW public library network is a cohesive, state-wide network based on cooperation between council public libraries and the State Library of NSW.

Local Government meets 90% of the costs of the network. The Local Government and Shires Association submitted a 2007 State Election Public Library Policy Platform which outlined the increasing pressures on public libraries and their Councils and sought an increase to the \$25.5m public libraries grants and subsidies. This paper was obviously unsuccessful as the 2007/2008 NSW State Budget reduced funding to NSW public libraries by \$1.2m.

**The Role of Council Public Libraries**

Changing demographics, community demand for a wider variety of library services and programming, an increased variety of collection formats, new technologies and e-government have all created challenges for the delivery of public library services in the 21<sup>st</sup> century and increased pressures on library budgets.

Public libraries are no longer solely store houses of information. They play an important educational, cultural and social role within the community. Hawkesbury City Library Service is recognised for its accessible programs, technology and collections which support Council's vision.

Since 1980 there have been emerging trends that have impacted on public libraries including Hawkesbury City Council's which include:

- Places of social capital which facilitate social cohesion. Public libraries are well established and recognised community hubs that offer insurance against the information and digital divides.
- Ageing of the community resulting in far greater demand for Home Library Services to individuals and nursing homes, as well as specific collections for older residents and people with a disability.
- Changes to education by the NSW Board of Studies which now promotes cooperative learning, research and group interaction. School libraries have limited hours and collections so students flock to their local library to do research, work on school projects, borrow books on the Premiers Reading Challenge book list and use the on-line databases.
- The growth of life-long learning which recognises the philosophy that people continue to learn and want to learn throughout their lives, often for employment progression and job satisfaction. Public libraries are increasingly used by students doing distance education and on-line learning.
- New Information Technologies has been a costly impact on libraries. Though it was once envisaged that on-line access to information would see a decrease in the use of libraries this has not happened. More space has been required to locate the technology for public access, which needs to be constantly expanded and updated to keep pace with demand.
- Australian government agencies are making increasing use of the Internet for service delivery and the public are using libraries to access this information for content and process transaction.

**Council Public Libraries Funding**

In 1980 State Government funding accounted for 23.6% of total funding required to operate the NSW public library network. Since that time this contribution has declined significantly and in 2006/2007

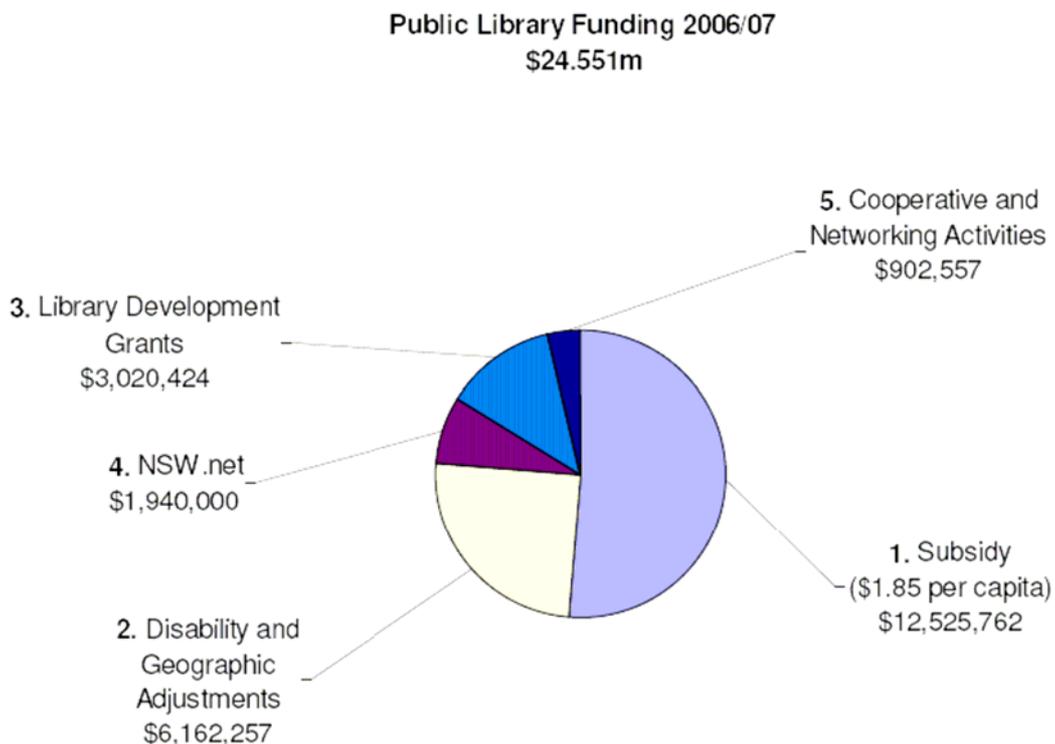
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comprised approximately 7.8% of total funding. With the most recent cut of \$1.2m it has declined even further. This cut is particularly disappointing with the news from Victoria that an extra \$2m is being added to the annual Government subsidy, taking the annual figure to \$30m compared to NSW total funding of \$23.53m.

In 2006/2007 the state funding to the Hawkesbury of \$169,440 represented 7.7% of the Hawkesbury City Library Service budget of \$2,207,225.

The Minister for the Arts, Frank Sartor will be reviewing with the State Library how the 2007/2008 funding is distributed. Last year's funding was distributed as follows:



A change to the Subsidy or Disability and Geographic Adjustments will have an impact on what the Hawkesbury receives. A change in the Library Development Grants may also have an impact as the Hawkesbury City Library has submitted a grant application for \$166,000 in the current funding round.

It is therefore recommended that the Mayor, through the State Members, seek a discussion with the Minister for the Arts, Frank Sartor to express Council's concern at the reduction in state funding to public libraries and the possible adverse impact on the Hawkesbury of any future changes to how the remaining \$23.53m is distributed. It also recommended that an appropriate motion be submitted to the 2007 Local Government Association Annual Conference seeking an increase in funding for public libraries at least in line with the CPI annually.

**Conformance to Strategic Plan**

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

*"Objective: Work in partnership with community and government to implement community plans to meet the social, health, safety, leisure and cultural needs of the City"*

**Funding**

Budget will be impacted by any reduction in funding.

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**RECOMMENDATION:**

That:

1. The Mayor, through the State Members, seek a discussion with the Minister for the Arts, Frank Sartor to express Council's concern at the reduction of \$1.2m in state funding to public libraries and the possible adverse impact on the Hawkesbury of any future changes to how the remaining \$23.53m is distributed.
2. A motion be submitted to the 2007 Local Government Association Annual Conference requesting the State Government to increase funding to public libraries at least in line with the CPI annually.

**ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF REPORT Oooo**

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**CONFIDENTIAL REPORTS**

**MM - Selection of Consultant - Recruitment for Position of General Manager - (79351)**

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**Reason for Confidentiality**

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

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

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

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**Item: 149            IS - Tender No. 011/FY07 - Reconstruction and Bitumen Sealing of the Remaining Gravel Section of St Albans Road - (95495, 79344, 106075)**

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**Reason for Confidentiality**

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

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

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

**ORDINARY MEETING**

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**Item: 150            SS - Property Matter - Lease to Action Insurance Brokers Pty Ltd - 1 Christie Street, Windsor - (102354, 95496, 96333)**

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**Reason for Confidentiality**

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

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

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

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ordinary

section 5

reports  
of committees

**ORDINARY MEETING**  
Reports of Committees

**SECTION 5 - Reports of Committees**

**ROC - Floodplain Risk Management Committee Minutes - 30 April 2007 - (86589)**

The meeting commenced at 4:00pm.

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**Present:** Councillor Devine  
Councillor Porter  
Councillor Conolly  
Councillor Books  
David Avery  
Kevin Jones  
David Scott  
Bill McMahon  
John Miller  
Greg Murphy  
Peter Cinque  
Geoffrey Bessell

**Apologies:** Les Sheather

**In Attendance:** Matt Owens  
Philip Pleffer  
Janet Jordan (minutes)

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**REPORT:**

**DECLARATION OF INTEREST**

Nil received.

**CONFIRMATION OF MINUTES**

**RESOLVED** on the motion of Councillor Devine and seconded by Councillor Porter that the Minutes of the Floodplain Risk Management Committee held on 19 February 2007, be confirmed subject to the following corrections:

1. Deletion of David Avery from list of those present.
2. Section 4: Reports for Information, Item 2: FPMC-1-1867 Flood Height.

Motion amended to read:

*"Resolved on the Motion of Councillor Devine, seconded by Councillor Books"*

**BUSINESS ARISING**

**Item 2 1867 Flood Height**

**ORDINARY MEETING**  
Reports of Committees

Following the Committee's Recommendation, Mr David Avery of the Department of Natural Resources gave a PowerPoint presentation detailing how the 1:100 year flood calculation of 17.3m AHD was determined pointing out that the decision was made on the best information available at the time.

**Item 3: Dredging of Hawkesbury River**

Committee members were advised that this matter is to be addressed in the forthcoming Flood Risk Management Study and Plan for the Hawkesbury-Nepean River.

**SECTION 4 - Reports for Information**

**Item: 1 Summary of New Guideline and Changes to Section 117 Direction and EP&A Regulation on Flood Prone Land**

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**DISCUSSION**

Mr Phillip Pleffer summarised the report for the Committee including Ministerial Directions regarding Flood Prone Land, implications for the Hawkesbury and Section 149 Planning Certificate Amendments.

**MOTION:**

RESOLVED on the motion of Councillor Conolly, seconded by Councillor Devine

*Refer to COMMITTEE RECOMMENDATION*

**COMMITTEE RECOMMENDATION:**

That the information be noted.

The meeting closed at 5:30pm.

**oooO END OF REPORT Oooo**



ordinary  
meeting

end of  
business  
paper

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