



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 11 November 2008

location: council chambers

time: 5:00 p.m.

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SECTION 4 - Reports for Determination

CITY PLANNING

Item: 228 CP - Music and Arts Festival (Annual Two (2) Day Event), Lot 1 DP 229549 & Lot 2 DP 229549 No. 216 Edwards Road, Lot 1 DP 1120860 No. 78 Powells Lane, Lot 2 DP 1120860 No. 77 Cornwells Lane and Lot 3 DP 1120860 No. 55 Cornwells Lane Richmond Lowlands NSW

Development Information

Applicant: Frontier Touring Company
Applicants Rep: Andrew Tatrai
Owner: Marshall Rural Pty Ltd
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Hawkesbury Development Control Plan 2002
Area: 69.541ha
Zone: Hawkesbury Local Environmental Plan 1989
Environmental Protection - Agriculture Protection (Scenic)
Environmental Protection 7(a) (Wetlands)
Advertising: 16 April 2008 to 2 May 2008
Date Received: 21 February 2008
Key Issues:

- ◆ Noise Impact
- ◆ Impact Upon Mapped Wetlands Areas
- ◆ Traffic Generation
- ◆ Car Parking
- ◆ Anti-Social Behaviour
- ◆ Adequacy of Information
- ◆ Adverse Impact on Amenity

Recommendation: Approval

REPORT:

Description of Proposal

The application seeks a Deferred Commencement Approval for a music and arts festival proposed to be held over a two (2) day period. The event is to take place in February or March of each year. The entertainment proposed to be provided on the site is to comprise over one hundred (100) Australian and International performers. The proposal is to incorporate the following:

- 3 stage areas
- 3 additional performance areas
- Modern art, sculpture and sustainable displays
- 1,015 camp sites (10 x 6m)
- 1,997 patron car spaces (6 x 3m) - vehicles accommodating 3 or more passengers
- 80 VIP & industry car parking spaces
- 46 artist and promoters car parking spaces
- 750 production staff parking spaces
- Coach parking area

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- Shuttle bus drop off and pick up areas
- Food and beverage service areas
- Merchandising stalls
- Portable amenities facilities

The entertainment schedule to be provided in conjunction with the proposal is to run between 12 midday and 12 midnight each day. Approval is sought for an ultimate attendance of up to 30,000 patrons, however, it should be noted that the first few events are not expected to reach this number. The camping area associated with the proposed event is proposed to be made available for patrons from Thursday prior to the event and up until Monday following the event.

In addition to the on-site car parking areas nominated above the proposal details that off street parking for up to 4,000 vehicles would be able to be provided at the Hawkesbury Showground with a shuttle bus service transporting patrons to and from the venue.

Background

A number of development approvals have been issued on the subject land in conjunction with the polo activities currently being undertaken on the site. The following approvals are of direct relevance to the subject application as the subject proposal involves use of land that is subject to various limitations that have been imposed under these consents:

Development Consent No. DA0594/05

Development Consent No. DA 594/05 was granted on 8 March 2006 for a recreational establishment consisting of a polo field on the subject land. This consent incorporated the requirement for establishment of vegetation buffer zones adjacent to the existing wetlands situated on the subject site. In addition, an area, located adjacent to the southern boundary of the land, was required to be fenced off to prevent livestock from entering the wetland/watercourse area.

Development Consent No. DA0703/07

Development Consent No. DA0703/07 was issued on 25 July 2008 for an animal establishment - stable complex and keeping of up to 40 horses. The documentation supporting the application details the extent of mapped wetland areas affecting the site comprising a combination of SREP No. 20 Wetland and Environmental Protection 7(a) Wetlands detailed in Hawkesbury Local Environmental Plan 1989.

An extensive landscaping strategy was developed by Abel Ecology for the mapped SREP No. 20 Wetland situated on the subject site in conjunction with this consent. The aim of the approved landscape strategy was to re-establish freshwater wetland aquatic vegetation incorporating fringing woodland habitat. The vegetated buffer zone extended 40 metres from the mapped wetland comprising of a densely planted 20 metre inner area and 20 metre maintained outer area that was enclosed by fencing to exclude entry of livestock.

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:

Section 79C "Matters for Consideration" Comments	Section 79C "Matters for Consideration" Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "HLEP 1989", SEPP 44 and SREP No. 20 in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	THE PROPOSAL IS NOT INCONSISTENT WITH THE PROVISIONS OF DRAFT HAWKESBURY LOCAL ENVIRONMENTAL PLAN AMENDMENT

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	NO. 153.
Section 79C (1) (a)(iii) – Provisions of any development control plan	REFER TO DISCUSSION ON HAWKESBURY DCP 2002 IN THIS REPORT
Section 79C (1) (a)(iii) – Provisions of the regulations	None applicable.
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	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed in the main body of this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality.</p>
Section 79C (1) (c) – the suitability of the site for the development	<p>Location - It is considered that the site is suitable for the proposed development subject to appropriate consent conditions.</p> <p>Physical - The site has some environmental constraints that require special consideration via proposed consent conditions. Subject to these conditions it is considered that the site is suitable for the proposed development.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	Submissions received are summarised in the main body of the report.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

SEPP No. 44 applies to land, where development consent is sought, having a total land area in excess of 1 hectare within the Hawkesbury Local Government Area

Having regard to the requirements of SEPP No. 44 it is noted that the proposal will not include the removal of trees or disturb any natural habitats that would be considered "core koala habitat". The subject land has been extensively modified in conjunction with former agricultural and polo related activities and accordingly it is considered that the proposal would not impact upon any potential core koala habitat areas.

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). This Policy aims "to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context." SREP 20 requires Council to assess development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

The subject land is situated within a scenic corridor of regional significance identified by SREP No. 20. In addition, the subject land contains part of a mapped wetland identified under this Plan. Given the level of information submitted in conjunction with the application relating to development within the riparian buffer zones situated adjacent to the mapped wetlands on the site, the proposal's compliance with the specific planning policies and recommended strategies was unable to be undertaken. As such, should the proposal be approved, consent conditions, designed to mitigate impacts of the development on these areas are proposed.

Hawkesbury Local Environmental Plan 1989**Clause 2 - Aims, objectives etc.**

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The proposed development is considered to be consistent with the general aims and objectives as outlined in Clause 2 of the LEP. In this regard, the temporary nature of this proposal (2 day event plus one or two days either side for setup and removal) indicates that it is not likely to significantly or permanently adversely impact on the surrounding environment.

The details submitted in conjunction with the application have not adequately addressed the specific limitations associated with existing mapped wetland areas that traverse the site. It is considered that suitable conditions of consent can require the proposal to be consistent with previous development approvals granted on the site in respect to the long term conservation and rehabilitation of these areas.

The external impact associated with the proposal having regard to noise disturbance to neighbouring residential land uses has been considered, in part, in the acoustic assessment submitted in conjunction with the application. Given that the application is seeking an "In principle" approval, the noise assessment has only been of a general nature. Deferred commencement conditions are proposed to ensure that this matter is adequately addressed.

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

The subject proposal is defined as a *place of assembly* by Hawkesbury Local Environmental Plan 1989. The performance, stage, display and ancillary areas, including the campsites, are considered to constitute a *place of assembly*.

The Environmental Planning and Assessment Model Provisions 1980 that have been adopted for the purposes of the LEP provide the following definition of place of assembly:

place of assembly means a public hall, theatre, cinema, music hall, concert hall, dance hall, open-air theatre, drive-in theatre, music bowl or any other building of a like character used as such and whether used for the purposes of gain or not, but does not include a place of public worship, an institution or an educational establishment;

Clause 9 – Carrying out of development

The land use matrix provided in respect of the Environmental Protection - Agriculture Protection (Scenic) and Environmental Protection 7(a) (Wetlands) zones provides the following:

	Environmental Protection Agriculture Protection (Scenic)	Environment Protection 7(a) Wetlands
Place of assembly	Permissible with consent	Prohibited

Council is only able to favourably consider the application as submitted in the Environmental Protection - Agricultural Protection (Scenic) zone as the use is not permitted in the Environmental Protection 7(a) (Wetlands) zone. As such, should the application be approved, it is recommended that conditions be imposed to restrict access to the areas zoned Environmental Protection 7(a) (Wetlands), consistent with previous development approvals relating to the site.

Clause 9A – Zone objectives

Environmental Protection - Agricultural Protection (Scenic) Zone

The stated objectives of the Environmental Protection - Agricultural Protection (Scenic) zone are detailed as follows:

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

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Comment: It is noted that the subject land is currently not being utilised for traditional agricultural activities. It is considered that the proposal, due to its temporary nature, will not have a significant impact upon the viability of the land to accommodate future agricultural land uses.

- (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 proposal has the potential to result in compaction of the site and temporary loss of ground cover given the level of pedestrian and vehicle movement associated with the event. Consent conditions requiring the rehabilitation of affected areas are recommended. It is noted that two (2) mapped wetlands traverse the site. To ensure that these areas are protected forty (40) metre riparian buffer zones, consistent with previous approvals on the site, will need to be applied adjacent to the wetlands excluding general pedestrian and vehicle movement.

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

Comment: The land that is currently adjoined by agricultural land uses and the proposal involving the staging of an annual music and arts festival will have the potential to introduce, short term, rural land use conflicts particularly having regard to adjacent properties that hold livestock. It is considered that, due to the temporary nature of this proposal, these impacts are manageable.

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

Comment: Given that the proposal will involve the construction of temporary structures associated with the event it is considered that there would be minimal impact upon the existing landscape values of the locality.

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

Comment: It is noted that the application seeks the construction of a number of pedestrian walkways across the mapped wetlands. Conditions requiring the control, removal and rehabilitation, in accordance with existing site approvals, of these areas are proposed should the application be approved.

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

Comment: Given that the proposal will involve the construction of temporary structures associated with the event it is considered that there would be minimal impact upon the existing scenic values of the locality.

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

Comment: The proposal will result in significant traffic movements associated with the event. The application was considered by the Roads and Traffic Authority and the recommendations of the Regional Development Advisory Committee are presented later in this report.

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

Comment: The information submitted with the application does not detail the provision of any outdoor advertising. A consent condition can be imposed to restrict advertising structures unless separately approved by Council. Note directional signage is permitted if this application is granted approval.

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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 proposal will not create unreasonable economic demands for the provision or extension of public amenities or services to the site as the applicant will be required to supply all necessary services to the proposed event at their own cost. It is likely that the proposal will have benefits to the local economy.

- (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: The proposal provides for the construction of temporary buildings/works on the site and will not have a significant impact upon the rural landscape character.

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

Comment: The proposed does not seek approval for an agricultural activity and, due to the temporary nature of the proposal, is not likely to adversely impact existing agricultural activities.

Environmental Protection 7(a) (Wetlands) Zone

The stated objectives of the Environmental Protection 7(a) (Wetlands) zone are detailed as follows:

- (a) *protect wetland areas from development that could adversely affect their preservation and conservation, and*

Comment: It is noted that the application seeks the construction of a number of pedestrian walkways across the mapped wetlands. Conditions requiring the control, removal and rehabilitation, in accordance with existing approvals on the site, of these areas are proposed should the application be approved.

- (b) *preserve wetland areas as habitats for indigenous and migratory wildlife.*

Comment: Limitations will need to be applied to the site concept layout in order to ensure that adverse impacts upon the wetland areas situated on the subject land are minimised. In this regard it is considered that minimum forty (40) metre riparian buffer zones be maintained surrounding these areas to ensure appropriate long term preservation.

Clause 18 – Provision of water, sewerage etc. services

It is noted that the subject land does not benefit from the provision of a reticulated water or sewerage system. The proposal does not seek the amplification of services to the site given the temporary nature of the event. In this regard the details submitted in conjunction with the application provide for the temporary installation of toilet and shower facilities to cater for patrons during the two (2) day event. Appropriate requirements could be included as conditions should the application be recommended for approval.

Clause 24 – Development in certain environmental and other zones

The structures that are detailed to be constructed for the music festival are of a temporary nature and are proposed to be removed at the end of the event. Accordingly, it is considered that the proposal will not contribute to a permanent adverse impact on the scenic quality of the area. The application of restrictions associated with this clause relating to height of buildings, external colours and materials are not warranted in this instance.

Clause 25 – Development of flood liable land

The predicted 1 in 100 year flood level for the locality has been calculated at approximately 17.4m AHD. The development site has ground levels ranging between approximately 9m to 13.5m AHD. The Hawkesbury Nepean Flood Study also predicts that the 1 in 5 year flood level is 12.5m in the immediate area. The structures proposed to be constructed on the subject site are temporary therefore no requirement exists for the materials used to be flood compatible.

Access to the subject property from Richmond is obtained from Triangle Lane, Cornwells Lane, Bensons Lane, Powells Lane, Edwards Road or Cornwallis Road. These Roads are located below the 1 in 100 year flood level thereby cutting off evacuation routes from the subject property to flood free land within Richmond.

Should Council recommend that the application be granted consent it is considered that a flood evacuation plan be prepared for the site given the flood liability of the land and the projected number of patrons for the music festival (maximum 30 000).

Clause 27 - Heritage items

The subject land contains an item of heritage significance being identified in Schedule 1 of HLEP 1989 as follows:

Georgian Farmhouse, No 216, lots 1 and 2, DP 229549. (25)

Given the temporary nature of the works and the physical separation from the heritage item it is considered that the proposal will not have a significant impact upon the heritage significance of the site.

Clause 36 – Clearing of land in certain environmental and other zones

The provisions of Clause 36 of HLEP 1989 provide that:

A person must not, on land in Zone No 7 (a) or 7 (d) or in the Mixed Agriculture, Rural Living, Rural Village, Environmental Protection—Agriculture Protection (Scenic) or Environmental Protection—Mixed Agriculture (Scenic) zone, fell trees, fill or otherwise alter the surface level of the land without the consent of the Council.

The details submitted in conjunction with the subject application indicate that it is intended to exclude most of the activity, with the exception of pedestrian walkways, from the mapped wetland areas. Appropriate consent conditions, should the application be approved, can be imposed to ensure exclusion, control and rehabilitation, consistent with the existing approvals on the site, of these areas.

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

The subject land has been identified as containing Class 4 and Class 5 land on the Acid Sulfate Soils Planning Map. It is considered that the proposed development does not fall within the definition of *works* contained in Clause 25(2) and as such the proposal will not impact the watertable.

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 insufficient information has been submitted with the application to comprehensively assess the environmental impacts associated with the application. It is noted however that the applicant

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has prepared the application on the basis of obtaining an "In Principle" approval in order to further develop the supporting documentation to accompany the submission.

Given the above, the assessment report has been prepared in order to identify the key issues relevant to the proposal, constraints associated with the site and address the issues raised in the submissions received following notification of 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 from 26 March 2008 to 2 May 2008. In response to this notification ninety (90) written submissions were received of which eighty nine (89) raised objection to the proposal. (It should be noted that the majority of these submissions were a "form letter" that was distributed to residents of Terrace Road for signing)

The principal matters raised in the submissions are summarised as follows:

1. Noise impact

Comment

A concept noise assessment has been submitted with the application as a full assessment could not be prepared until the full layout of the proposal is finalized. That layout could not be finalized until the applicant obtained "In Principle" consent. A deferred commencement consent condition is proposed to ensure that a full noise assessment is undertaken for the proposal that will deal with all proposed noise sources and potential receivers. The report will also be required to recommend suitable attenuation measures should the predicted noise levels be beyond acceptable standards. These may include, but not limited to, amplification limits/cutoffs should the level exceed specified levels, limitation of hours, positioning and location of noise sources, etc.

2. Difficulty in enforcement of hours of operation

Comment

The operators will be required to supply their own security to patrol the event. This may be a combination of user pays Police and/or private security. A compliance report will also be required to be submitted to Council following the event to monitor compliance.

3. Event will continue in excess of two days given the early arrival of campers, set up and removal phases associated with the event

Comment

Whilst the actual event will only be permitted to operate for the nominated time, it is not unreasonable to expect that time be made available for setup and removal of the temporary structures. This time will be limited to two days before and after the event. Noise and working hour restrictions will also apply on these days.

4. Burden on police, ambulance and hospital services

Comment

The event organisers have proposed in the application to make necessary arrangements for security and medical facilities. This will also be reinforced via a consent condition.

5. Inconsistent with maintenance of rural lifestyle values for the area

Comment

It is considered that due to the temporary nature of the event the impact of the proposal on the lifestyle values of the area is acceptable as it is not likely to be significant in the long term.

6. Inadequate supporting documentation

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Comment

It is true that the application documentation does not contain all required detail. However, the application is requesting a concept approval prior to the preparation of detailed documentation. A deferred commencement consent can be issued that will detail likely consent conditions whilst specifying specific matters, such as noise and traffic, that must be addressed prior to issue of an operational development consent.

7. *More appropriate purpose built venues exist for this type of events*

Comment

A number of other venues were discussed with the applicant prior to the submission of the current application. There were a variety of reasons related to the theme of the event that made other venues unsuitable for the applicant.

8. *Potential for increased use of drugs and other illegal substances*

Comment

There is no evidence, apart from anecdotal, that the proposal will result in increased use of illegal substances. The operators of the event are required to provide security that will be equipped to deal with such matters.

9. *Lack of suitable public transportation to support the event*

Comment

The applicant has had several discussions with Police and Public transport providers in relation to "park and ride" on public transport, shuttle buses and traffic control. Details of these matters will be required to be submitted for approval, as a deferred commencement consent condition, prior to the issue of the operational consent.

10. *Traffic congestion*

Comment

A Traffic Management Plan will be required to be submitted, as a deferred commencement consent condition, for approval by the RTA, Police and Council prior to holding an event.

11. *Proposed licensing for the service of alcohol on the site*

Comment

Event approval arrangements for the serving of alcohol on the site will need to be arranged via the Licensing Court by the applicant.

12. *Use of generators for power will cause continued noise impact*

Comment

These matters will be required to be addressed with mitigation recommendations if required, as part of the detailed noise assessment as part of the deferred commencement conditions.

13. *Unacceptable timeframe involving continuous disturbance*

Comment

Noted. The event is proposed to operate for 2 days per year with setup and removal times of approximately 4-5 days.

14. *Inability of surrounding road infrastructure to cater for anticipated traffic*

Comment

The draft traffic management plan proposes a temporary arrangement of conversion of the roads in the locality to one way to improve the carrying capacity of the roads. The full details of this proposal will be required to be submitted as part of a deferred commencement consent condition. The full operational

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consent will not be issued unless the deferred commencement consent condition is satisfactorily addressed.

15. *Construction of permanent amenity blocks may lead to increased frequency of events*

Comment

The structures and amenities proposed in the application are of a temporary nature only.

16. *Use of the site for camping would result in patrons being on the property in excess of two days as suggested in the application*

Comment

See comments in 3. above.

17. *Potential for damage to adjoining properties*

Comment

The operators of the event are required to provide security that will be equipped to deal with such matters. A development consent condition can be imposed that requires temporary fencing of the site to ensure that all patrons attending the event are secured on the site. This fencing would also be an advantage to the operators as the fencing would only allow patrons to enter the site via authorised entry points.

18. *Distress and possible panic and injury to valuable animals held on adjoining properties.*

Comment

A consent condition can be imposed to ensure that the operators contact adjoining property owners to make arrangements to reduce impacts that may distress animals on adjoining properties. The fencing required in 17 above can also be provided with material that would provide suitable visual screening of the event from adjoining properties and animals.

19. *Encroachment of thousands of persons many of which will be under the influence of alcohol and/or illicit substances poses a threat to safety of the community.*

Comment

See comments in 8. above.

20. *Disruption and interference to sporting events held on neighbouring land.*

Comment

Access to other properties by residents and visitors will be retained. This can be required as a condition of development consent.

21. *Natural topography will result in significant noise impact to elevated properties situated on Terrace Road as it provides a natural amphitheatre.*

Comment

See comments 1. above. Conditions requiring noise attenuation measures to be implemented and maintained at all times can be imposed should the application be granted consent.

22. *No details have been provided in relation to off site car parking*

Comment

The application has provided some information in relation to the on-site parking provision for the event, including 1,997 patron car spaces (6 x 3m) - vehicles accommodating 3 or more passengers, 80 VIP & industry car parking spaces, 46 artist and promoters car parking spaces, 750 production staff parking spaces, coach parking area and shuttle bus drop off and pick up areas. The applicant has stated that there is a possible 4,000 parking spaces available at the showground, however, details of these spaces have not yet been provided. These matters will be required to be detailed in the Traffic Management Plan

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required to be submitted for approval by Council, RTA and Police as part of the proposed deferred commencement consent condition.

23. *Consultation with adjoining property owners has not occurred*

Comment

The development application has been appropriately notified to adjoining owners. The applicant can be advised to liaise with adjoining property owners should the application be approved.

24. *Environmental investigation of the wetland areas located on the site has not been undertaken*

Comment

The environmental investigation and assessment has been appropriately addressed in previous development approvals relating to the site (DA 0594/05 and DA0703/07). Should this application be approved there will be conditions requiring the event to be excluded from the wetland areas in accordance with these approvals.

25. *The proposal may constitute a prohibited form of development within the zone*

Comment

The proposal is defined as a Place of Assembly and is a permitted use in the zone.

26. *Potential for accidents if patrons choose to swim in the river*

Comment

The operators of the event are required to provide security that will be equipped to deal with such matters.

27. *No details have been provided in relation to shower or on-site water facilities*

Comment

The application indicates that all facilities will be of a temporary nature and will be subject to a separate approval under Section 68 of the Local Government Act. Proposed consent conditions will require these matters to be addressed in accordance with appropriate Standards.

28. *The event should be relocated to the Hawkesbury Showground*

Comment

As mentioned previously in this report (Issues No.7 above) other venues have been discussed with the applicant prior to the application being lodged with Council. The application has been submitted to Council proposing to hold the event on the subject site. As such, the assessment must consider the details of the application as submitted.

29. *Significant waste generated by the proposal*

Comment

Should the application be approved a number of consent conditions are proposed to required waste from temporary showers, toilets, food vendors and other general waste to be appropriately handled.

30. *Unacceptable environmental impact upon the Hawkesbury River and surrounding areas*

Comment

Previous development approvals issued on the subject property have addressed the environmental impacts of development on the site. Should the current proposal be approved, development consent conditions will be imposed to require compliance with previous consents in relation to environmental impacts. Similarly, impacts from the proposed development would be mitigated via appropriate development consent conditions.

31. *Increase in anti-social behaviour*

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Comment

The operators of the event are required to provide security that will be equipped to deal with such matters.

32. *"The sound waves coming from the rock and roll bands and other entertainment at the proposed event are likely to damage the structure of the Terrace Escarpment and endanger the houses built on it"*

Comment

It is clear that the proposed event has the potential to create significant noise impacts unless appropriate noise controls are not in place. Should the application be approved, it is proposed that a more detailed noise study be undertaken prior to any operational consent being issued. From that noise study appropriate consent conditions can be formulated to mitigate much of the potential for adverse noise impacts.

It is not expected that noise levels would be such that there would be a threat to the physical stability of the escarpment.

33. *Damage to sub standard local roads due to anticipated traffic volumes*

Comment

Should the application be granted approval, consent conditions are recommended that require a road condition report and maintenance bond to be lodged with Council by the applicant. Upon completion of the event a road validation report would be required to be submitted prior to any refund of the bond.

34. *Continuous disturbance to residential properties though the use of coach transport to the venue*

Comment

The application, due to requesting "In Principle" approval, has not included all details regarding the number and frequency of bus services. Should the application be granted approval, a deferred commencement condition requiring a detailed Traffic Management Plan to be submitted for approval by Police, RTA and Council prior to an operational consent being issued. Depending on the issues addressed in the Traffic Management Plan, consent conditions limiting the number, frequency and times that buses run can be imposed.

35. *No contingency plan has been provided should the land be waterlogged through heavy rain*

Comment

A Risk Assessment Review of the event that details generic risks and procedures has been submitted with the application. Also, should the application be granted approval, the applicant must comply with all development consent conditions in relation to operation, mitigation of environmental impacts and rehabilitation of the site and surrounds. Should there be adverse weather conditions it is the responsibility of the applicant and operator to determine if, or when, those conditions are likely to prevent them from complying with development consent conditions and deciding to cancel the event.

36. *Bond should be provided from the promoters to cover all costs associated with police and ambulance services in addition to any clean up or damage to the area*

Comment

As mentioned previously, the applicant and operators are responsible for the costs of security and other services to the site. This is done via a "user pays" system with most service providers (Police, RTA, etc), or the operator supplies those services through private companies. A consent condition is proposed that requires the applicant to lodge a bond to cover any potential damage to Council's roads.

37. *"Last such festival in 1992 resulted in absolute havoc"*

Comment

It seems from the objections that the "festival" referred to in this case was a "Batchelors and Spinsters Ball" (B & S Ball). Whilst it is understandable that the objectors have concerns, a B & S Ball is a significantly different event to the one proposed in this application. The application states that the event proposed is

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based on the “Coachella Music & Arts Festival” that has run successfully for seven years in California. Unlike a B & S Ball the application proposes a mix of music over three days with camping and includes sculpture and art installations. The proposed event is aimed at an audience profile that is mainly “mature and families”.

38. *Run off of garbage, human and otherwise into the immediate area has not been adequately considered*

Comment

Should the application be granted approval, consent conditions are recommended that require the applicant to collect, store and appropriately dispose of all wastes generated from the event.

39. *Concern is raised as to on-site policing of alcohol and drug use*

Comment

The operators of the event are required to provide security that will be equipped to deal with such matters.

Part C, Chapter 2 - Car parking and Access

Traffic Management Strategy

The site is not situated in an area that is serviced by public transportation and as such the transport strategy associated with the proposal relies entirely upon the existing road infrastructure to transport patrons to the event. The details submitted in the Traffic Management Plan prepared with the application provide the following traffic management strategy associated with the proposal:

The essence of the plan is that two modes of traffic control sets are envisaged – mode IN (during event patron access to the area) and mode OUT (during egress after the event). During the in period Bensons Lane will be converted to a one way carriageway traffic corridor to allow for uninterrupted access of patrons to the designated car park. The clock-wise traffic loop of Old Kurrajong Rd, Triangle Ln and Cornwall's Ln will be used for patron drop offs to camping area east from the car park. Performers and VIP access in will be via Triangle Ln northbound and into the event area. Suppliers and contractors would access via Cornwallis Rd and then via Edwards Rd. Ridges Ln will be closed during the event by a hard closure – concrete barriers installed in place at Junction with Kurrajong Rd.

RTA certified Traffic Controllers (TCs) and User Pays Police Constables will be engaged to implement and enforce the traffic scheme. The traffic arrangement is suggested for the out period with the difference that Bensons Ln will be converted to one-way southbound.

The Roads and Traffic Authority have advised that a Traffic Management Plan (TMP) is required to be prepared by an appropriately qualified traffic consultant and submitted to the RTA for approval prior to consent being granted.

Estimated Peak Arrival/Departure Times

The application provides the following having regard to anticipated peak arrival and departure times associated with the event:

Estimated Peak Arrival Times

It is envisaged that between 10:00hrs and 16:00hrs (Friday) and 10:00hrs and 16:00hrs (Saturday) of the event weekend the main part of patron would arrive. In effort to reduce any traffic volumes during In period patrons will be encouraged to arrive earlier by allowing arrivals from Thursday before the event weekend.

Estimated Peak Departure Times

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It is envisaged that after 22:00hrs on Sunday and between 10:00hrs and 16:00hrs on Monday the main fraction of patrons would depart from the event site. Patrons will be encouraged to depart later in order to alleviate stress on traffic.

No information has been provided as to the means proposed to *encourage* patrons to arrive early or to delay their departure to the event having regard to any proposed extension to entertainment to be provided on the site and any likely associated environmental impact. The Traffic Management Plan, required as a deferred commencement consent condition, will be required to address this issue.

The details submitted with the application provide that approximately 2,873 car parking spaces are proposed to be provided on the subject site. The break down of the on site car parking areas proposed is as follows:

- 1,997 patron car spaces
- 80 VIP & industry car parking spaces
- 46 artist and promoters car parking spaces
- 750 production staff parking spaces

Of the 1,997 spaces proposed to be situated at the south eastern portion of the site it is detailed that these will be made available to vehicles carrying three (3) or more persons only. A coach parking area is proposed immediately adjacent to the northern end of the car parking area. In addition to the above the applicant has advised that the camping area may provide additional on-site car parking.

It is noted that the application details that approximately 4,000 car parking spaces would be available in the Hawkesbury Showground to cater for the proposed event. Shuttle buses would then transport patrons to the site via Cornwells Lane. Having regard to the availability of the off-site car parking detailed in the submission no information has been provided in relation to any approvals for use of this area for this purpose or as to the adequacy of this area to accommodate the anticipated car parking demand associated with the event.

Should the application be recommended for consent the applicant will be required to demonstrate that the available car park is adequate for the event and that appropriate approvals have been obtained for parking within this area from Hawkesbury Showground prior to any such consent becoming operational. These details will be required to be included in the Traffic Management Plan submitted to satisfy the proposed deferred commencement consent condition.

Public Transport

The subject site has no direct access to public transportation infrastructure. In this regard it is noted that the closest services are associated with the rail network at Clarendon and East Richmond. A review of timetable information along this line during the peak departure period provides that late evening services during weekend periods leave Richmond Station at 10.18pm, 11.18pm and 12.18am with the next service commencing at 4.18am on Sunday morning or 4.46am on Monday morning.

Based upon the timetable information detailed above and the intention to provide entertainment until 12 midnight on each of the main event days there would be minimal opportunity for patrons to utilise the rail network to disperse from the area. As a result it is proposed that the event, should it be granted approval, cease earlier than midnight, say 11.30pm, to enable those leaving that evening to catch the available public transport. This earlier finish time would also assist in noise mitigation for surrounding properties.

Noise

Following an initial assessment of the application the applicant was requested to submit an acoustic report to address the anticipated noise impact of the proposal upon adjoining land uses. In response an acoustic assessment titled *Windsor XOX Festival February 2009 Richmond Lowlands – Noise Assessment* was prepared by Air Noise Environment, dated July 2008.

Noise Modelling Methodology

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The acoustic report incorporated the following methodology in its consideration of intrusive noise criteria:

It is understood that, as yet, no noise criteria have been established by Hawkesbury Council for this event. Therefore for the purposes of this assessment limits have been determined in accordance with the requirements of the NSW Department of Environment and Climate Change (DECC). These are defined in the 'Noise Guideline for Local Council', DECC 2007.

The Noise Guide for Local Government indicates methods suitable in assessing intrusive noise, as follows:

'Intrusiveness Criterion

LAeq, 15 minute is less than or equal to the rating background level plus 5 dB(A)

Where:

- *LAeq, 15 minute represents the equivalent continuous (energy average) A-weighted sound pressure level of the source over 15-minutes.*
- *LAeq, 15 minute is assessed at the most-affected point on or within the residential property boundary, or, if that is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence*
- *Rating background level is the short-term background level to be used for assessment purposes'*

However, the guide also indicates that an exception to the use of this criteria is where a Noise Control Notice is issued to specify an absolute noise level for a future event, such as a concert. The modelling in this report provides guidance to setting limits for a Noise Control Notice for the proposed event.

Although no specific criteria are established as part of the Noise Control Guide for Local Government, it does provide a case study for providing a Noise Control Notice, which provides an example operational criteria and guidance in preparing a noise management plan for a community music festival.

The conditions included the following:

- *specifying the acceptable noise limits as well as the operating times in advance of the event, the case study indicated that the L_{Amax} noise level from the concert activities must not exceed 75 dB(A) at the nearest residential boundary, and a finishing time of midnight;*
- *developing an implementing a noise management plan to optimise the noise levels achievable while minimising the impact on surrounding residential areas.*

These conditions have been utilised as a guide to assessing the modelled noise level predictions.

Background Noise Monitoring

The assessment undertaken in this report provided that background noise monitoring was undertaken at four (4) locations in October 2007, to the north, south, east and west of the polo field situated in the site with the average background noise levels in dB, detailed in Table 3.2 of this report, presented as follows:

Noise Parameter	Position 1	Position 2	Position 3	Position 4
L _{A90}	34.3	29.8	27.9	30.7
L _{Aeq}	45.5	41.5	45.6	52.7
L _{A10}	45.7	44.9	44.7	47.0
L _{A1}	59.0	52.9	59.6	67.4

To identify the anticipated noise levels the following approach was taken in the assessment submitted by the applicant:

To allow derivation of typical frequency spectra associated with the types of artist proposed to attend the XOX Festival, sound analysis of sample tracks from the type of artists likely to perform at the XOX Festival has been undertaken. The sampled tracks have been utilised in setting expected noise levels.

The frequency distribution and source noise level input to the noise model assuming that a noise level of 105 dB(A) at the mixer desk is achieved...

The noise modelling methodology adopted in the acoustic report, is described as follows:

For the purposes of predicting impacts from amplified music during the concert, an environmental noise model of the sources and surrounding region was developed. The model was developed using the proprietary software Cadna/A (Computer Aided Noise Abatement Model) developed by DataKustik.

Cadna/A has the ability to generate noise contours and graphical representations of noise propagation in the area surrounding the proposed venue. The model incorporates influences of meteorology, terrain, ground type and air absorption in addition to source characteristics to predict noise impacts at receptor locations. The meteorological scenarios considered in the modelling assume meteorological conditions as follows:

- *Temperature: 20°C*
- *Humidity: 50%*
- *Wind Speed: 1 m.s-1*
- *Stability Class D (a natural atmospheric scenario)*

Four wind directions were considered to predict noise levels associated with source-to-receptor winds (north, south, east and west).

Noise Exposure Forecasts

A series of noise exposure forecasts, labelled Figure 6, 7, 8 and 9 were included in the report identifying the predicted noise impact of the proposed event upon adjoining properties. These exposure forecasts were undertaken utilising the various wind directions described above.

The exposure forecasts are attached to this report as Attachment 3.

Limitations of Acoustic Assessment

An assessment of the information submitted in the acoustic report was undertaken and the following limitations in the report have been highlighted:

- a. The noise modelling only takes into account noise impacts from amplified music, it has not taken into account other noise sources such as traffic, crowd or equipment and plant noise.
- b. The guideline levels adopted in the assessment are based on a case study from the Noise Guide for Local Government which may not be suitable for the subject site. It is recommended that The New South Wales Environment Protection Authority Industrial Noise Source Policy 2000 should have been used as a guide for the report (noise levels are not to exceed 5dB LAeq, 15 minute above background levels when measured at receptor locations).
- c. In order to accurately assess background noise levels and the associated impact of the proposed development measurements undertaken from the receptor locations would need to be provided so that a relevant comparison would be able to be carried out.

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- d. The times that the background noise readings were taken were not stated.
- e. The background noise readings were taken in October which is not reflective of the background noise for the February- March period which is when the applicant proposes to run the festival.
- f. The results from the noise modelling only express the predicted receptor noise levels as L_{Amax} there is also a need to express the predicted noise in L_{Aeq} and L_{A1} .
- g. Inadequate detail has been provided in relation to the subwoofer speakers that are proposed to be mounted at stage level. Additional information regarding the suitability of this positioning would be required to be provided regarding the potential for noise rebound from the stage surface should the speakers reflect downward.
- h. The report recommends noise monitoring is to be carried out on the day of the event. However the report does not go into details/plans of this monitoring. Details would need to be submitted to Council on proposed noise monitoring to be carried out whilst the festival is occurring for example monitoring location, times, appropriate parameters.

Given the above, additional acoustic assessment would need to be undertaken addressing the above issues in order to accurately model the noise implications associated with the event. This assessment is proposed as a deferred commencement consent condition that must be satisfied prior to the operational consent being issued. Proposed development consent conditions addressing noise issues have also been recommended.

Safety, Security and Crime

The information accompanying the application did not include a Security Management Plan. Accordingly, an assessment relating to the strategies proposed to be implemented to ensure appropriate levels of security to event participants as well as the general community was not able to be undertaken. The preparation of a suitable Security Management Plan to ensure safety concerns are adequately addressed would need to be undertaken should the application be granted approval. This has been included in recommended consent conditions.

Natural Hazards

The subject land is located within an area that is subject to flood risk. This affectation does not prevent the development. Should the application be granted approval the preparation of an appropriate Emergency Evacuation Plans in respect to flood hazard would be required as a condition of consent.

Roads and Traffic Authority

In accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007 the application was referred to the Roads and Traffic Authority as the proposal constituted a traffic generating development. The application was considered by the Sydney Regional Development Advisory Committee (SRDAC) and the following comments have been provided:

The SRDAC has no objections to the proposed development. However the following points should be noted:

- *A traffic management plan (TMP) to be completed by an appropriately qualified traffic consultant and submitted to the RTA for approval prior to consent being granted.*
- *Because of the nature of the event there may be a fee for service incurred by the applicant for RTA personnel involved in traffic control.*
- *All works/regulatory signposting associated with the proposed special event development are to be at no cost to the RTA.*

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The traffic management plan required by the Roads and Traffic Authority was not requested from the applicant given the Application was requesting a concept approval. Should the application be granted approval this plan could be provided as a deferred commencement condition.

Department of Water and Energy

The application was forwarded to the Department of Water and Energy in accordance with the consultation requirements contained in SREP No. 20. The Department provided the following comments having regard to the proposal:

The Department of Water and Energy advises that no works are to be undertaken within 40m of the Nepean River and the mapped Ephemeral Wetlands on site.

If works are to be undertaken within these 40m zones, a Controlled Activity Approval will be required.

Appropriate conditions restricting works to outside these areas can be imposed should the application be granted approval.

Department of Environment and Conservation

The application was forwarded to the Department of Environment and Conservation in accordance with the consultation requirements contained in SREP No. 20. The Department provided the following comments having regard to the proposal:

1. Protection of wetland areas

The application identifies two wetland areas that are currently zoned 7a. The Hawkesbury Council Vegetation Mapping prepared by EcoLogical Consultants describes one of these as being Map Unit 52 wetland whilst the other wetland appears to be reduced in size but still visible in aerial photos.

Should Council consider granting consent to the application DECC recommends that these areas be adequately protected at all times during the construction period, during the Festival event itself and during any works that are undertaken after the Festival event has taken place to dismantle and remove the temporary equipment, machinery and other materials.

The fencing will have to be of an adequate quantity, size and strength to prevent any potential egress into or onto the wetlands themselves including an adequate buffer area. Fencing should be along the entire length and breadth of the wetland areas and include fencing along the walkways themselves to thoroughly prevent access to the wetland areas.

Any temporary walkways must be adequate to carry the expected loads of the event participant. Machinery should not be transported across the wetlands themselves. All walkways and fencing should be temporary and removed within a determined time following the event.

2. Hawkesbury Nepean River foreshore area

Council's vegetation mapping also describes vegetation occurring along the river bank as being alluvial woodland. This may qualify as the endangered ecological community River Flat Eucalypt Forest on Coastal Floodplains. DECC has previously identified that the Hawkesbury River corridor is highly sensitive for Aboriginal heritage.

To protect these values DECC supports restricting development from the top of bank of the Hawkesbury Nepean River for a distance of 40 metres. This will ensure that any riverbank vegetation and potential Aboriginal heritage values are appropriately protected. Similar provisions to the above for protection of wetland areas are recommended for fencing of the area to restrict access for both event participants and facilities or equipment.

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Appropriate consent conditions can be imposed should the application be granted approval.

Department of Planning

The Department of Planning has responded to the proposed application with the following remarks:

"The report submitted by the applicant does not give sufficient information regarding what kind of constructions will be built on the wetlands, if any."

As mentioned previously, should the application be granted approval, consent conditions would be imposed that required all development, with the exception of temporary walkways, to be excluded from the wetlands.

Public Authorities

In addition to the above the application was referred to the following:

- Ambulance Service of NSW
- State Emergency Services
- NSW Police

No response from these Authorities has been received to date. However, Council is aware that the applicant has had discussions with some of these Authorities and any issues that these authorities may have will be required to be addressed prior to issue of any operational consent.

Conclusion

The application has been assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979; Sydney Regional Environmental Plan No. 20; Hawkesbury Local Environmental Plan 1989; Hawkesbury Development Control Plan 2002 and other relevant codes and policies.

It is not unusual for a proposal, such as the subject application, to seek an in principle approval. There are many details that cannot be addressed satisfactorily unless the performers at the event are known (e.g. location of stage, likely noise generation (frequency)), and similarly, the performers and details cannot be finalised until the applicant has some certainty as to the event receiving approval. The "In Principle" issues of whether the event can proceed must be decided first, then the details of the application (as shown in the recommended consent conditions attached to this report) can then be adequately and appropriately finalised.

Due to the application seeking concept approval, the full detailed impacts of the noise and traffic impacts have not been completed. These details are proposed to be the subject of a deferred commencement consent condition should the application be granted approval.

As detailed within the main body of the report the subject site is traversed by two (2) mapped wetland areas that impose constraints on development of the land. The details submitted in conjunction with the application have not included environmental investigation details for the wetlands due to limited development of these areas (walkways only) and the details of these areas have previously been adequately addressed in the existing approvals on the site. Specific limitations associated with existing mapped wetland areas that traverse the site are proposed as consent conditions should the application be granted approval.

Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the

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matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

RECOMMENDATION:

That development application DA0116/08 at Lots 1 & 2 DP 229549, 216 Edwards Road, Lots 1, 2 & 3 DP 1120860, 78 Powells Lane, 55 & 77 Cornwells Lane, Richmond Lowlands for Music and arts festival (Annual two (2) day event) be granted a Deferred Commencement consent. The Deferred commencement consent conditions that must be satisfied prior to commencement of the consent are as follows:

Deferred Commencement Conditions

1. Submission of a comprehensive Acoustic Report prepared by a suitably qualified person is to be submitted to Council for approval. The Acoustic Report is to assess and recommend mitigation measures for all relevant matters including, but not limited to:
 - (i) Noise sources from all noise generators including amplified music, traffic, crowd (both during performances and from camping operations), power generation equipment and the like,
 - (ii) Background noise levels, and a record of the times taken, are to be established at receptor locations as follows:
 - a. Receptor group 1- Rural residences and residences along the shoreline of the Terrace Road to the north-east
 - b. Receptor group 2- Residences along Terrace Road to the north
 - c. Receptor group 3- Rural residences to the west
 - d. Receptor group 4- Suburban residences to the west
 - e. Receptor group 5- Residences in the suburban area to the south
 - f. Receptor group 6- Operator, and rural receptor to south along Bensons Lane
 - g. Receptor group 7- Residential receptors on the outskirts of suburban are to south west
 - (iii) Results of noise modelling are to express the receptor noise levels as LAeq and LA₁ as well as L_{Amax}.
 - (iv) Full details of speaker locations and orientation on stage structures, particularly subwoofer speakers,
 - (v) Details of proposed noise monitoring during the event, including location, times and parameters used,
 - (vi) Details of proposed mitigation measures to be incorporated during the operation of the event, including, but not limited to, multiple array speakers, limitation of bass frequencies (below 250Hz) sound limiting circuits or similar monitoring system.
2. A Traffic Management Plan (TMP) is to be completed by an appropriately qualified traffic consultant. Written consent to the TMP, from the RTA and Police, is to be submitted to Council.

The TMP is to address all relevant matters including, but not limited to:

- (i) Details of proposed traffic routes, directional signage and numbers and proposed location of traffic marshalls,
- (ii) On-site and off-site parking provision and manoeuvring areas, including written consent from owners of off-site parking areas,
- (iii) Details of proposed shuttle bus operations including frequency of service, times, route and drop off and pick up zones,
- (iv) Details of strategy to encourage patrons to arrive early or leave late from the event to reduce traffic stress,
- (v) Details of traffic control measures to ensure that access to all surrounding properties is maintained for residents and their visitors during the setup, operation of the festival and removal of facilities for the event.

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Upon satisfactory compliance with the above Deferred Commencement consent conditions, the following list of conditions is likely to apply to the consent. (Note: These conditions may vary depending on the information submitted to satisfy the deferred commencement conditions).

General Conditions

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
2. All development and uses associated with the proposed event, with the exception of temporary walkways, are to be excluded from the areas zoned as wetlands and buffer zone as shown in the document *"Landscape Plan for 216 Edwards Road, Richmond Lowlands"* prepared by Abel Ecology, dated 11 September 2008, as approved by DA0703/07. These areas are to be fenced with appropriate temporary fencing to ensure exclusion of patrons of the festival.
3. An Environmental Management and Rehabilitation Plan for the development site shall be prepared by an appropriately qualified person and submitted to Council for approval prior to the commencement of the festival. The Plan shall address (without being limited to) the following:
 - (i) Collection, storage and removal of waste from the site and surrounding area,
 - (ii) Collection and removal of effluent from food vendors and toilet and shower facilities,
 - (iii) The construction, and removal, of exclusion fencing around environmentally sensitive areas,
 - (iv) The construction, and removal, of temporary walkways through environmentally sensitive areas,
 - (v) Rehabilitation plan for all areas affected by walkways, fencing or damaged during the event,
 - (vi) Details of timeframes for the set up and removal of all facilities and equipment for the festival and site rehabilitation works.
4. A flood emergency evacuation and management plan for the arts festival is to be prepared by a suitably qualified person and submitted to Council for approval prior to the arts festival. The applicant shall contact Council and the NSW State Emergency Service for advice in the preparation of the plan. The Plan is to include, but limited to:
 - (i) Evacuation of persons and equipment from the site without burdening existing emergency services in the locality,
 - (ii) Traffic management in the case of evacuation routes being cut by floodwaters,
 - (iii) Staff training program for implementation of the evacuation plan,
 - (iv) The plan shall provide for advice to festival patrons of flood evacuation procedures and emergency telephone numbers.
 - (v) The evacuation procedures shall be fixed in a prominent location and maintained at all times during the setup, operation and dismantling of the festival.
5. A performance, damage and maintenance defects bond to the value of \$25 000 must be lodged with Council prior to the commencement of setup works for the festival. The bond is to cover all works within Council's public road reserves.

The bond can be in the form of an unconditional bank guarantee or cash deposit.

A bond lodgement and release fee is payable upon lodgement of the bond in accordance with Council's schedule of fees and charges.

The bond is refundable on application, three (3) months after the completion date of the proposed event subject to a satisfactory road maintenance validation report.
6. All site works shall be carried out in accordance with the Plan. Implementation of the Plan shall be supervised by an appropriately qualified person.

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7. Construction of the access, car park and drainage are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved by the Director City Planning or an Accredited Certifier.
8. Payment of a checking fee and a Compliance Certificate inspection fee when submitting Civil Engineering Plans for approval. Fees required if an Accredited Certifier is used will be provided on request. Fees to be determined when submitting engineering plans for approval.
9. A Traffic Guidance Scheme prepared in accordance with AS 1742-3 (2002) 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.
10. The applicant shall bear the cost of all restoration works to Council's property damaged during the course of the Festival. The applicant shall advise Council, in writing, of any existing damage to Council property before commencement of the development. A dilapidation survey of Council's assets, including photographs and written record, must be prepared by a suitably qualified person and submitted to Council prior to the commencement of any works for the festival.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.
11. All traffic management devices shall be installed and maintained in accordance with the approved traffic guidance scheme.
12. Off street car parking spaces together with access driveways and turning areas shall be provided. Access driveways and turning areas shall be all weather. Access and driveway widths are to comply with the requirements of Council's development Control Plan.
13. Vehicle entrances and exits shall be clearly signposted, including street number, and shall be visible from both the street and site at all times.
14. A turning bay is to be provided to allow vehicles to manoeuvre and leave the site in a forward direction.
15. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted. 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.
16. Erosion and sediment control devices are to be installed and maintained as required for the duration of the festival in accordance with the approved plan and Hawkesbury Development Control Plan chapter on Soil Erosion and Sedimentation.
17. Temporary security fencing is to be installed around the site used for the festival and all environmentally sensitive areas within the site to exclude unauthorised access into environmentally sensitive areas, adjoining properties and to the site. The perimeter fencing is to include material that will provide screening of the festival from the adjoining properties and public areas. This fencing and screening material is to be maintained for the duration of the festival.
18. Set up works for the festival are only permitted within five (5) days before the festival. All equipment, facilities and fencing are to be removed within five (5) days of the end of the festival.
19. Patrons of the festival are only permitted on the site during the festival duration and two (2) days before and after the festival dates.
20. The applicant/operator of the festival is to liaise with adjoining property owners and occupiers during the design and set up stages of the festival to ensure that adjoining properties are not adversely impacted in regards to access to their property and existing livestock is protected.

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21. No advertising signs or structures shall be erected, displayed or affixed on any building or land without prior approval

Noise

22. All entertainment and trading including the operation of a PA and speaker system is to cease at 11:30pm (to allow background noise levels to be achieved prior to midnight).
23. Noise from the music festival is not to emit *offensive noise* as defined by the Protection of the Environment Operations Act 1997 outside of the approved operating hours.
24. The noise readings are to be measured at any point in accordance with the New South Wales Environment Protection Authority Industrial Noise Source Policy 2000. The readings are additionally to comply with Australian Standard AS1055.2 Acoustics - *Description of measurement of environmental noise*.
25. Generators should be constructed, maintained and managed so that the $LA_{eq, (15min)}$ noise levels, measured at any point in accordance with the New South Wales Environment Protection Authority Industrial Noise Source Policy 2000, do not exceed 5dB $LA_{eq, (15min)}$ above background levels with respect to noise amenity of residential dwellings and associated outdoor areas.
26. Public address speakers/music speakers should be directed away from residential properties. Where speakers are mounted on poles, they are to be inclined downwards at an angle of approximately forty-five (45) degrees from the horizontal.
27. Only nominated people are permitted to use the PA system.
28. The PA system is not to be used for providing commentaries.
29. A sound limiting circuit or similar monitoring system is to be included for the PA/sound system to control the signal amplitude to a fixed level regardless of the loudness of the operator's voice, or the volume control of the amplifier.
30. Engage the services of a suitably qualified consultant to conduct noise monitoring whilst the proposed music festival is occurring. The results are to be produced in a formal acoustic report to be submitted to and received by Hawkesbury City Council within one month of the conclusion of the festival. The acoustic report is to comply with Australian Standard AS1055 *Acoustics - Description of measurement of environmental noise* and New South Wales Environment Protection Authority Industrial Noise Source Policy 2000.
31. Noise testing is to be conducted and included in the acoustic report provided to Hawkesbury City Council at the below specified testing locations. Noise monitoring is to be conducted using $LA_{eq, (15min)}$. The locations of monitoring to be documented in the acoustic report are to include:
 - a. Receptor group 1- Rural residences and residences along the shoreline of the Terrace Road to the north-east
 - b. Receptor group 2- Residences along Terrace Road to the north
 - c. Receptor group 3- Rural residences to the west
 - d. Receptor group 4- Suburban residences to the west
 - e. Receptor group 5- Residences in the suburban area to the south
 - f. Receptor group 6- Operator, and rural receptor to south along Bensons Lane
 - g. Receptor group 7- Residential receptors on the outskirts of suburban area to south west

(Note receptor locations taken from Acoustic Report prepared by *Air Noise Environment PTY LTD* dated July 2008).

32. When the noise level exceeds 5dB $LA_{eq, (15min)}$ above background levels, the acoustic consultant is to implement reduction strategies to reduce the noise level. The acoustic consultant is to conduct

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further noise testing using LA_{eq} , **L90**, LA_1 and LA_{max} at the subject site immediately after the reduction occurs until the noise level is reduced and meets guidelines levels, with the readings provided in the acoustic report.

33. Provide Hawkesbury City Council with the time splice graphs for the noise monitoring to be made available on request. Provide in the acoustic report the additional parameters including L_{max} , L_1 , L_{10} , and L_{90} .
34. Provide a noise complaints hotline by the festival organisers to be made available to the surrounding area in case noise nuisance occurs. Provide a manager onsite at all times in case the noise level is required to be reduced. The manager if so required by an authorised officer, the acoustic consultant or the NSW Police Force, must have the authority to order the reduction of noise level produced.
35. Where noise complaints are received, the acoustic consultant/ organisers are to arrange noise monitoring to be conducted at the affected property using $LA_{eq, (15min)}$. When the noise level exceeds the noise level requirements set by Hawkesbury City Council, reduction strategies are to be implemented to reduce the noise level to the requirement set by Hawkesbury City Council, with the readings provided in the acoustic report. Numbers, locations and noise monitoring readings from complaints received are to be included in the acoustic report.
36. Develop a written emergency response plan prior to the event documenting all issues covered in the Australian Emergency Manuals Series *Safe and healthy mass gatherings*. A response plan should additionally be developed prior to the event in the case of a water or food borne contamination.
37. All portable gas cylinders used throughout the subject sites must be secured both top and bottom, by ropes or chains to a structural post, wall, or similar anchor point.
38. An adequate supply of potable water must be supplied with respect to toilet, shower and refreshment facilities (non-potable water should not be used without prior approval).
39. No pyrotechnical display of any kind is to occur without prior approval from WorkCover and independent consent from Hawkesbury City Council.
40. Dust suppression and minimisation strategies must be employed to manage potential dust nuisances within the sites. This is to apply to parking areas, access roads and within the festival site.
41. Mosquito repellent is required to be made available to prevent possible cases of mosquito borne diseases.
42. Sunscreen is required to be made available to prevent potential adverse sun exposure.
43. Strategies must be adopted to prevent any light spillage from the festival onto any surrounding residential property boundaries.

Food stalls/premises

44. All food vendors are to be registered with Hawkesbury City Council and notified with the NSW Food Authority prior to the event.
45. A registration certificate through Hawkesbury City Council must be obtained and displayed for all food premises, stalls or food vending vehicles.
46. Food premises, stalls or food vending vehicles must comply with the appropriate food standards including but not limited to the Food Safety Standards, Hawkesbury City Council's Temporary Food Code and Food Act 2003. Inspections may be conducted by Council's Environmental Health Officers prior or during the event.
47. Food premises, stalls or food vending vehicles must obtain a copy of and abide by the NSW Food Authority's *Food Handling Guidelines for Temporary Events* and Hawkesbury City Council's *Food*

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Safety Guidelines for Charities & Community Organisations.

48. Food premises, stalls or food vending vehicles must have an adequate supply of potable water. Provision of a supply of potable water for sinks and hand basins is essential. Non-potable water is not permitted to be used within the subject sites.
49. Food premises, stalls or food vending vehicles must have hand washing facilities supplied with warm water, with liquid soap and paper towel. Potable water must be used for hand washing.
50. Food premises, stalls or food vending vehicles must have a temperature measuring device onsite that is capable of measuring to $\pm 1^{\circ}\text{C}$.
51. Food products are required to be stored in vermin and insect proof storage areas. All foods are to be protected and covered.

Waste

52. All liquid waste (including hand washing) is to be collected, stored appropriately and disposed of at a waste facility licensed to accept such waste.
53. Solid waste products are to be stored in sealed bins or containers and disposed of as required/necessary. The waste shall be transported and disposed of by appropriately licensed facilities.
54. Fats and oils generated from the caterers are to be collected in appropriate storage containers and transported and disposed of at an appropriate facility to accept such waste (Hawkesbury City Council's waste facility does not accept liquid waste). The waste shall be transported and disposed of by appropriately licensed facilities.
55. Amenities are required to be provided for (based on proposed 30,000 patrons) people attending. Male facilities - 60 water closets, 15 urinals, 100 hand basins. Female facilities - 180 water closets and 100 hand basins. Maintain a constant supply of toilet paper, soap, and paper towel at all times, and at all toilets throughout the event.
56. Showers for washing are required to be provided at a rate of gender specific showers of a minimum of 1 per 100 people attending.
57. Separate toilet facilities are to be provided for food handlers.
58. Disabled toilets are required to be provided in appropriate numbers.
59. Toilet locations must be well-marked and well-lit.
60. All showers and toilets including portable toilets are required to be cleaned as appropriate.
61. Portable toilets are required to be pumped out at least every 24 hours or more frequently if required.
62. Ensure that the effluent from the portable toilets is removed off the site to an appropriate facility to accept such waste. The waste shall be transported and disposed of by appropriately licensed facilities.
63. All waste generation is required to be transported to an appropriate waste facility to accept such waste (No waste generated from this event is to be transported to Hawkesbury City Council's waste facility). The waste shall be transported and disposed of by appropriately licensed facilities.
64. Toilet facilities are required to be provided at a maximum distance of 75 metres from any camping sites, areas of entertainment and refreshment areas.

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65. The operator 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.
66. The development shall be limited to the area shown on the submitted plans.
67. 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 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.

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.

ATTACHMENTS:

AT - 1 Locality Plan

AT - 2 Site Layout Plan

AT - 3 Predicted Noise Exposure Forecast Maps

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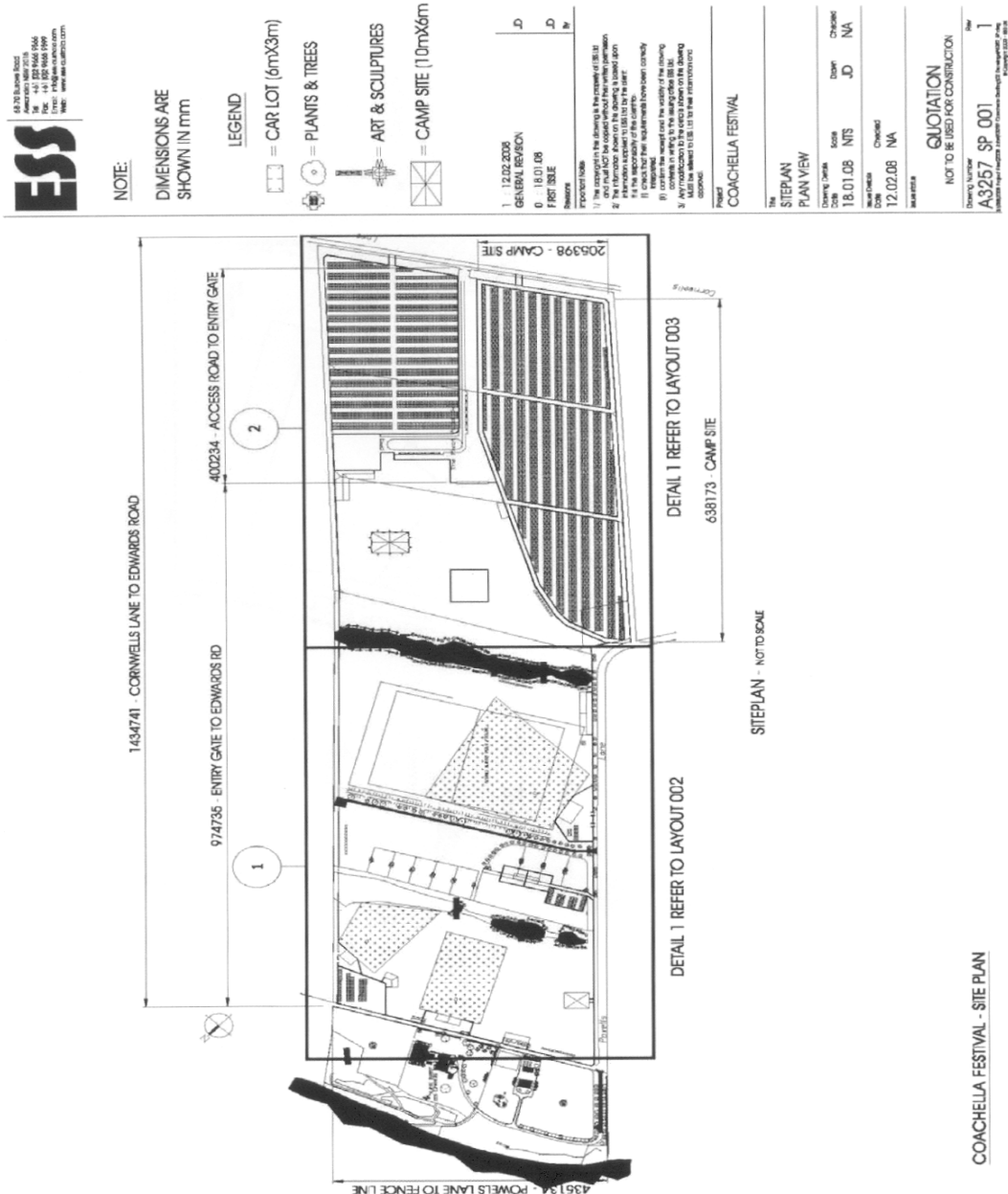
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AT - 1 Locality Plan



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AT - 2 Site Layout Plan



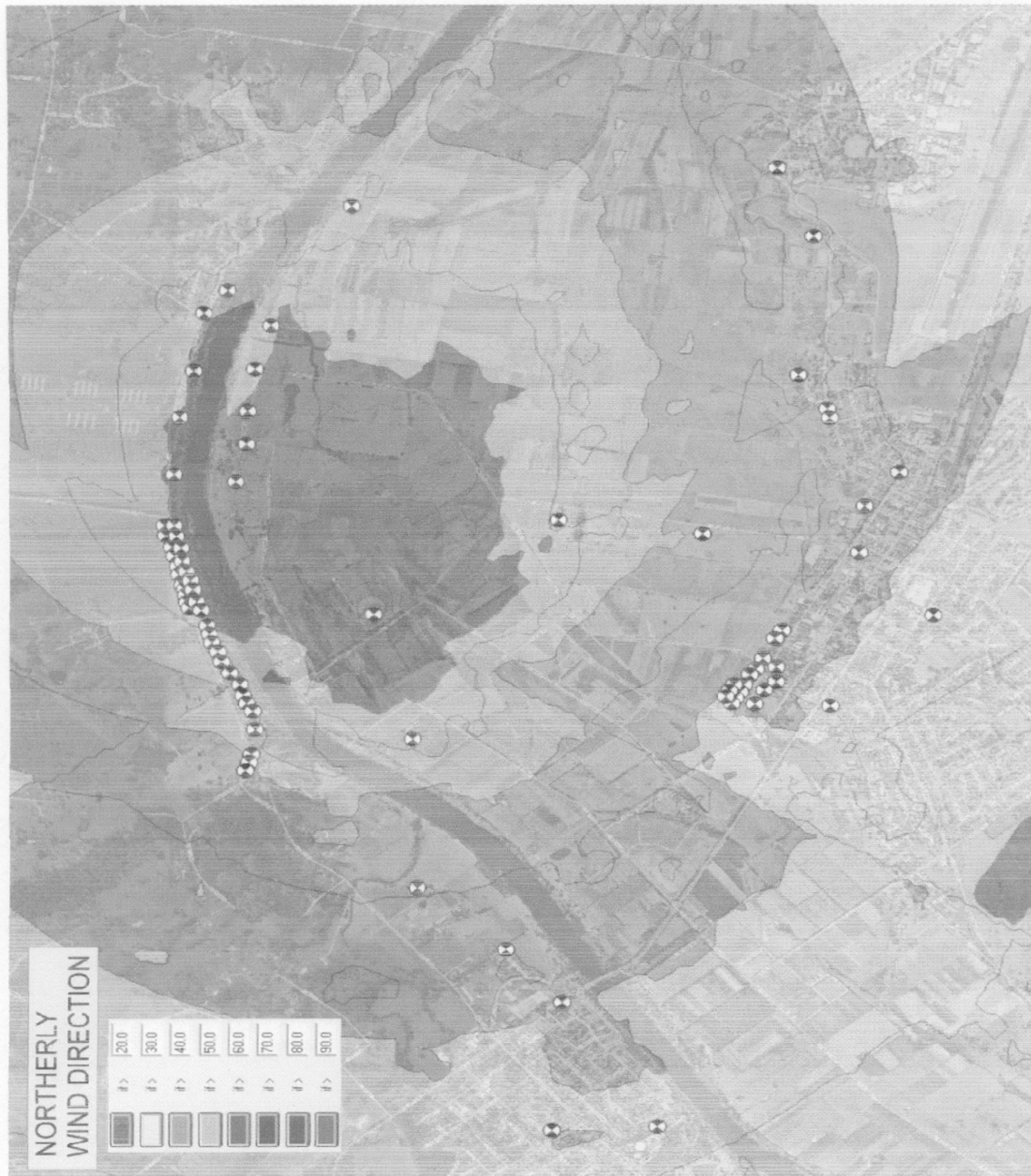
AT - 3 Predicted Noise Exposure Forecast Maps

FIGURE 6: Noise Contours ($L_{Amax, adj,T}$) Jack Johnson 'Sleep through the static', Northerly Wind Direction

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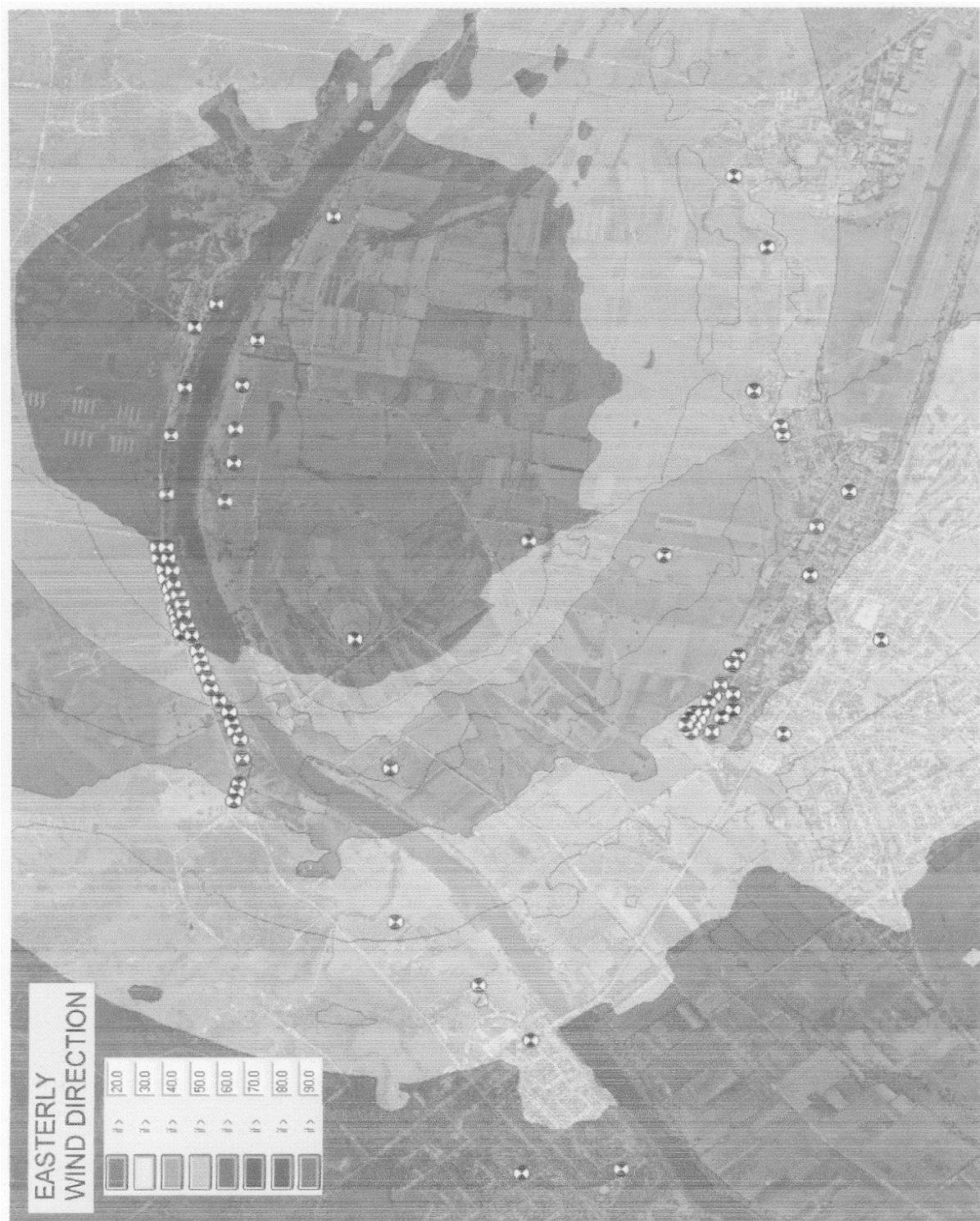


FIGURE 7: Noise Contours ($L_{Amax, adj, T}$) Jack Johnson 'Sleep through the static', Easterly Direction



FIGURE 8: Noise Contours ($L_{Amax, adj,T}$) Jack Johnson 'Sleep through the static', Southerly Wind Direction

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FIGURE 9: Noise Contours ($L_{Amax, adj, T}$) Jack Johnson 'Sleep through the static', Westerly Direction

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Item: 229 **CP - Development Application - Rural Shed - 269 Grono Farm Road, Wilberforce - (DA0406/08, 18449, 18450, 95498)**

Development Information

Applicant: Dr W & Mrs A MacKay
Owner: Dr W & Mrs A MacKay
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 11.2ha
Zone: Environmental Protection - Agricultural Protection (Scenic)
Advertising: Not required under Notification Chapter of the DCP
Date Received: 27 May 2008

Key Issues: ♦ Retrospective approval

Recommendation: Approval

REPORT:

Description of Proposal

The application seeks approval for a retrospective use of an existing structure as a rural shed. The structure is 12.37m x 7.5m (93sqm) and has a height of 3.076 to 3.6 metres. The structure is located approximately 190 metres from Grono Farm Road and 30 metres from the northern property boundary.

A photo of the structure and aerial photo is on display in the Council Chambers.

The structure is used to store various equipment and materials associated with the farming and equestrian activities on the site.

The application was called to Council by former Councillor Devine.

Recommendation

Approval with conditions

History

BA981/91 Rural shed (not constructed)
MA190/98 Rural Shed (constructed)
DA224/06 Retrospective approval for alteration to existing shed and stables.

The structure, the subject of the application, was constructed approximately eight years ago.

Council Policies, Procedures and Codes to Which the Matter Relates

Hawkesbury Local Environmental Plan 1989
Sydney Regional Environmental Plan 20
Hawkesbury Development Control Plan

Section 79C Matters for Consideration

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

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Issue	Comments (in point form)
Any Environmental Planning Instrument (EPI)	<ul style="list-style-type: none">• Proposal is permissible in the zone• Proposal is consistent with relevant EPI's
Any draft EPI that has been placed on public exhibition	<ul style="list-style-type: none">• Consistent
Any DCP in force	<ul style="list-style-type: none">• Consistent and complies with the rules set out in the Rural Shed Chapter of the Hawkesbury DCP except for the siting (See comments below)
Any matters prescribed by the Regulations	<ul style="list-style-type: none">• Consistent
Likely impacts, including environmental, on both natural and built environments and the social and economic impacts of the locality	<ul style="list-style-type: none">• Minimal impact on the natural and built environments
The suitability of the site	<ul style="list-style-type: none">• Site is suitable for the proposed development
Any submissions (see attached scheduled for details)	<ul style="list-style-type: none">• Not applicable as notification not required
The public interest	<ul style="list-style-type: none">• Approval would be consistent with the public interest

Rural Shed Chapter of the DCP

The structure complies with the rules contained in the Rural shed chapter except for siting. The rule does not permit sheds to be erected in front of the dwelling on the property. The shed is located approximately 190 metres from Grono Farm Road and is located in front of the dwelling as shown on the site plan (AT2).

The aims and objective of this rule is to:

- Integrate rural sheds with the landscape so that they compliment the rural character of an area and are not visually dominant.
- Preserve the natural environment.
- Sheds shall not be visually prominent or intrude into the skyline
- The siting of the rural shed will be chosen to minimise unnecessary disturbance to the natural environment.

While the shed is located in front of the dwelling house, it is setback a considerable distance from Grono Farm Road and the nearest property boundary and will meet the aims and objectives of this rule. The location will have no impact on the natural environment. In this case the variation is supported.

Conclusion

The development is consistent with the rules of the Rural Shed chapter of the Hawkesbury DCP. The structure is relatively small and has no significant impact on the natural or man made environment. The matter of the works being undertaken without any formal approval will be considered in accordance with Council's Enforcement Policy.

Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the

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matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

RECOMMENDATION:

That development application DA0406/08 at 269 Grono Farm Road, Wilberforce for Retrospective approval for the use of the structure as a rural shed be approved subject to the following conditions:

General Conditions

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions
2. The development shall comply with the provisions of the Building Code of Australia at all times.
3. Submission of an application under Section 149(D) (Building Certificate) for the structure within 60 days from the date of this consent.

Use of the Development

4. No internal or external alterations shall be carried out without prior approval of Council.
5. The rural shed shall not be occupied for human habitation/residential, industrial or commercial purposes.

Advisory Notes

- *** Non-compliance with any condition of this development consent may result in a penalty notice being issued by Council.

ATTACHMENTS:

AT - 1 Locality Plan

AT - 2 Site Plan

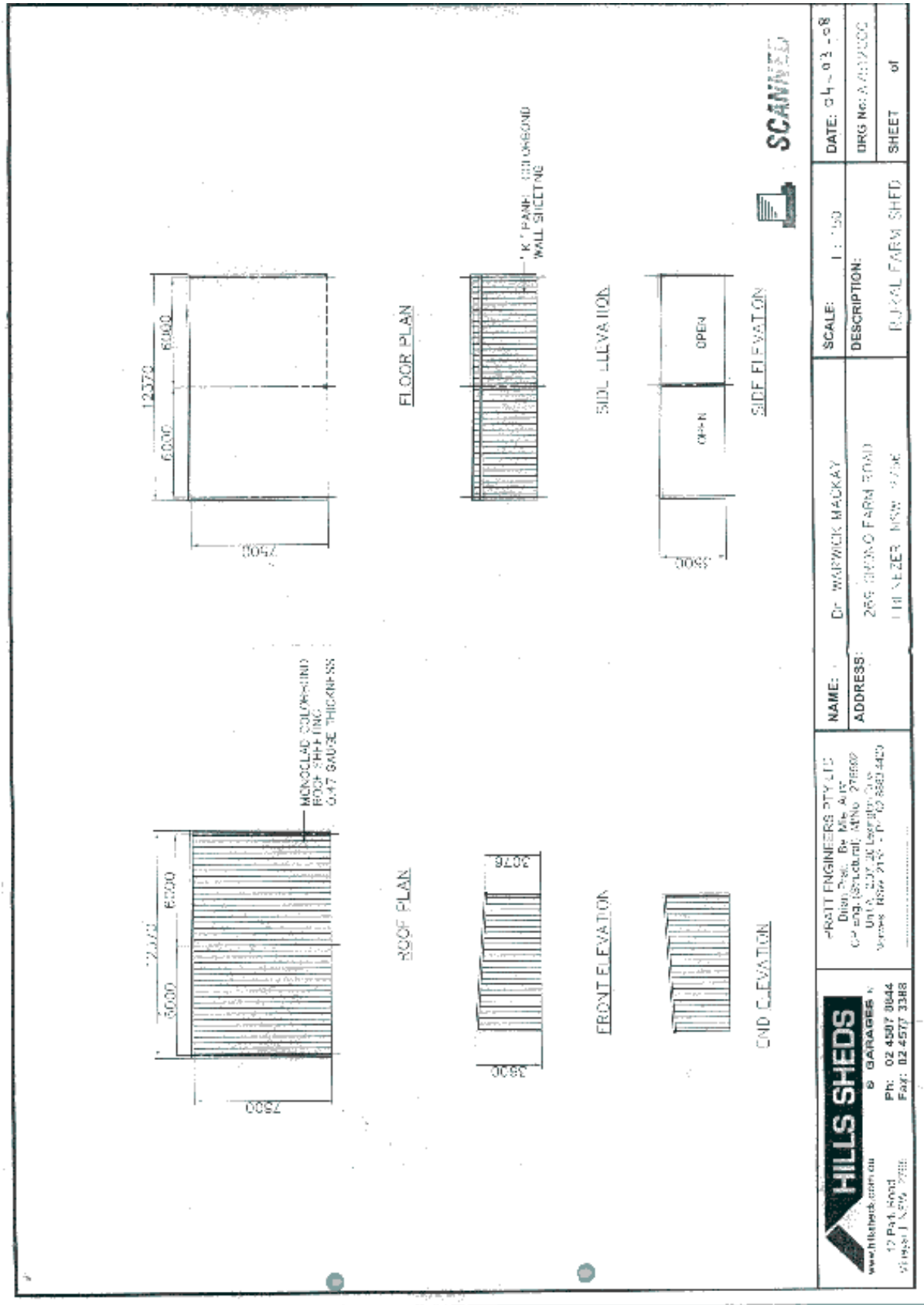
AT - 3 Floor Plan / Elevations

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AT - 3 Floor Plan / Elevations



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Item: 230 **CP - Section 96 Application to Modify Development Consent DA0134/95, Lot 2, DP628806, No. 6102 Singleton Road, Mellong - Tinda Creek - (95498, 79347, 27001)**

Previous Item: 151, Ordinary (29 July 2008)

Development Information

Applicant: Birdon Contracting Pty Ltd
Applicants Rep: Umwelt Environmental Consultants
Owner: Birdon Contracting Pty Ltd
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 90 hectares
Advertising: 14 September 2006 to 29 September 2006
Date Received: 17 July 2006

Key Issues: ♦ Lapsing of Consent
 ♦ Compliance with Conditions of Consent

Recommendation: Refusal

REPORT:

Council has received an application under Section 96 of the Environmental Planning and Assessment Act to modify Development Consent DA0134/95. The modification involves:

1. Amend Condition 1 by changing the wording of the condition to reflect the plan and documentation of the Environmental Impact Statement dated 1 November 1995.
2. Amend Condition 27 by changing the wording of the condition to require a Site Environmental Management Plan (EMP) to be prepared and reviewed at least every 12 months.
3. Amend Condition B3 to increase the maximum annual production from 100,000 tonnes per year to 125,000 tonnes.

The report contains a more detailed discussion of the proposed changes.

This report was considered by Council at the meeting of 29 July 2008 where the matter was deferred due to a third party Court appeal in relation to the matter. That appeal was dismissed by the Court on 21 October 2008.

Background

In 1986 Council approved a development for the purpose of creating a dam on the site. The extraction of sand from the site also took place. The lease operator sought to formalise the sand mining activity and lodged a Development Application (DA0134/95), which is the current subject of this matter. The application proposed the following:

- Sand extraction from 50,000 tonnes up to 100,000 tonnes annually.
- Life span 25 years.
- Truck movements of 8 (eight) up to 16 (sixteen) daily.
- Final landform being rural grazing and large lake.
- Extraction relates to the rear portion of the site only.

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Council considered this application at the General Purpose Committee Meeting on 26 November 1996 and resolved at the Ordinary Meeting on 10 December 1996 to issue a staged development consent for Stage 1, with the remaining stages being a Deferred Commencement approval subject to the conditions to be completed at Stage 1.

The decision to issue a staged and deferred commencement approval was in recognition of concerns raised by the residents and government agencies as to the potential for the development to pollute.

Any stage after Stage 1 would only be permitted where the operator can illustrate that revegetation/rehabilitation is taking place, in accordance with the approved plan and with an acceptable time frame. A third party appeal was lodged by N. Diamond for Tinda Creek Spiritual and Environment Centre in the Land and Environment Court against Council's decision on the application and the wording of particular conditions of consent. A mediation conference was held with all parties and, as a result of the conference, the Appellant discontinued the proceedings and the Appeal was withdrawn.

An application to modify the development consent was lodged in December 1998. The application proposed to amend Condition 3 to extend the time period to complete Stage 1. This application was considered and approved at the Ordinary Meeting of the 14 December 2004.

A third party appeal was lodged by Mr N Diamond and the matter was considered by the Court who issued Court Orders in relation to the matter.

In April/May 2005 Council Officers identified that the operation had extended beyond the area shown on the approved plans. Council wrote to the applicant and in response to the matter the operator chose to lodge an application under S96 of the EPA Act which is the current application.

The Proposal

The application proposes to modify the wording of Conditions 1, 24 and B3.

Condition 1

The condition currently states:

"The development shall be carried out in accordance with Plan No. PS91/E130 dated April 1996 and documentation of Environmental Impact Statement dated 1 November 1995 as amended."

The amended wording proposed by the applicant is:

"The development shall be carried out within the Extraction Area shown on Drawing No. SK 2 Job No. PS91/E130 and in accordance with documentation of Environmental Impact Statement dated 1 November 1995 as amended by conditions of consent and the Environmental Management Plan referred to in Condition 27."

The applicant has provided the following argument for the proposed modification:

"The first reason for seeking this modification is that since consent was granted there has been confusion as to which plan Consent Condition 1 is referring to as PS91/E30 is the Job Number used by Port Stephens Design Service who prepared the EIS not a discrete plan number. As a result there are many figures and plans shown a range of things that have PS91/E130 on them."

The second reason for seeking this modification is that the configuration of the extraction area and operating procedures will change over time as a result of ongoing extraction and improved extraction techniques. These changes are most appropriately addressed as part of the Environmental Management Plan (EMP) required by Condition 27. This has been recognised by Council in its fax of 3 March 2005 to Birdon Contracting which states:

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"The EMP should be reviewed regularly at least 12 months and adjusted if necessary due to any change in operating procedures. The staging plans should be attached and that the EMP may need to be altered with each stage."

The suggested wording change to Condition 1 will enable the development to be undertaken within the extraction area as defined in the EIS and in accordance with the current EMP.

Condition 27

The Condition currently states:

"A site environmental management plan shall be prepared within one month of the date of this approval, to address:

- a. On site materials management*
- b. Daily operating procedures*
- c. Erosion and sediment controls*
- d. Emergency contingency plans*
- e. On site drainage processes to ensure water quality.*

The amended wording proposed is:

A site Environmental Management Plan (EMP) shall be prepared within one month of the date of this approval and reviewed at least every 12 months thereafter. The EMP shall address:

- a. Extraction staging and rehabilitation*
- b. On-site material management*
- c. Daily operating procedures*
- d. Erosion and sediment controls*
- e. Emergency contingency plans*
- f. On-site drainage processes to ensure water quality."*

The applicant has indicated in accordance with Council's fax of 3 March 2005, it is suggested that the wording of Condition 27 be modified to provide for 12 monthly reviews and to address changes to staging plans.

Condition B3

Condition B3 states:

"The sand extraction not exceeding a yield of 100,000 tonnes per year"

The amended condition is:

"The sand extraction not exceeding a yield of 125,000 tonnes per year"

In support of this variation the applicant has indicated:

Modification is also sought to amend Condition B3 to increase maximum annual production from 100,000 tonnes per year to 125,000 tonnes per year. No changes are sought to Condition B4 which limits total extraction to 2,000,000 tonnes over a period of 25 years.

The reasons for the proposed modification to condition B3 are as follows:

- *Sand extraction under DA0134/95 commenced at the site in the 1995/1996 financial year. Over the eleven years to the end of the 2005/2006 financial year, a total of*

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652,617 tonnes of sand was extracted from the site at an average rate of approximately 59,000 tonnes per year. In 2004/2005 annual production reached 94,157 tonnes with 89,720 tonnes being produced in 2005/2006. As at the end of May 2006 there was approximately 2.3 million tonnes of identified sand resource remaining in the 22 hectare area covered by the EIS (Port Stephens Design Services 1995) and approximately 1.3 million tonnes that could still be extracted from the site under development Consent Condition B4. Development consent DA0134/95 is valid until December 2021.

- *As set out above in the first eleven years of operation, average annual sand production of 59,000 tonnes per year was below the maximum permissible level of 100,000 tonnes/year and below the average extraction rate of 80,000 tonnes that would be required to remove two million tonnes of sand over a 25 year period. Over the last three to five years the demand for sand from the site has been steadily increasing with the quarry production approaching maximum permissible production levels in 2004/2005. The demand for sand remains strong and as a result demand for sand from Tinda Park is likely to exceed 100,000 tonnes per year.*
- *Since consent was granted in 1996, the legal load limit for trucks has increased from 25 tonnes to 33 tonnes. As a result of this change, it is possible to transport up to 132,000 tonnes of sand per year from the site with the same number of truck movements as would have been required in 1996 to transport 100,000 tonnes of sand. It is understood that the 100,000 tonne per year limit imposed by Condition B3 was based on limiting truck movements to and from the site.*
- *Analysis of operations at the site shows that an annual production level of in excess of 125,000 tonnes per year could be achieved using the same equipment, operating hours and truck movements that are currently permitted on site under the existing development consent.*

Birdon Contracting seeks to modify condition B3 to increase the maximum permissible annual production from 100,000 tonnes per annum as set out clause B3 of Development Consent DA0134/95 to 125,000 tonnes per annum. This would enable the quarry to be able to respond to increased market demand whilst still remaining in the overall bounds of the development consent which limit production over the life of the quarry to two million tonnes as provided for in Condition B4."

Statutory Provisions

The site is zoned Mixed Agriculture under Hawkesbury Local Environmental Plan 1989 within Mixed Agriculture zoning, extractive industries are permissible with Council consent.

Community Consultation

The application was publicly exhibited and advertised from 7 August - 22 August 2006, in accordance with the provisions of the Environmental Planning and Assessment Act (EPAA) and associated Regulations. The EPAA and Regulations required:

- i) A Notice to be placed in a local newspaper circulating in the area;
- ii) Site sign being erected on the site;
- iii) Letter to adjoining and surrounding property owners and occupants, as well as those persons who previously made submissions on the initial application.

During the exhibition period:

- Four respondents provided submissions in respect to the application.
- Four submissions from Public Authorities.

The submission from the respondents raised the following issues:

- Loss of water to Tinda Creek caused by the current mining operation.
- Lack of compliance with the current conditions of consent.
- Lack of annual environmental reports for the mining activity.
- Lack of any ground water monitoring bores.
- Proposal is to increase the approved area of mining from 14ha to 22ha and not substantially the same operation approved.
- Drawing submitted SK2 does not specify the approved extraction area.
- Illegal use of adjoining Lot 1 for a diversion channel and the dredge pond encroaching into the northern boundary buffer.
- Illegal clearing of land adjacent to existing mining area.
- Matters raised by the main respondent, Mr Diamond, are outlined separately elsewhere in the report.

These matters will be discussed in the report.

Planning Assessment

Section 96E

Section 96(2) of the EPA Act States:

"A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *It is satisfied that the development to which the consent as modified relates substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *It has notified the application in accordance with:*
 - i. *The regulations, if the regulations so require, or*
 - ii. *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be."*

The modification proposes to extend outside the area identified on the plans approved by the Development Consent.

A submission has been made by the Environmental Defenders Office Ltd argues that the modified development as proposed is not substantially the same development and cannot be considered under Section 96 of the EPA Act.

The matter of whether a modification can be considered under Section 96 is a matter of fact and not a question of law.

When Council is considering if the modifications can be dealt with by way of a S96 Modification the following matters are to be considered

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- *Is the change in the proposed area of extraction so substantially different as to constitute a new development.*

The original EIS document proposed the extraction of 3,000,000 tonnes (Approval granted for 2,000,000 tonnes) of sand and in Section 3.1 indicated it affected an area of approximately 22ha or 25% of the property.

The applicant's consultant (Port Stephens Design Services) provided a further letter and plans that indicated the development site area of 14ha. The applicants current consultant (Umwelt) has indicated that the two base maps in the EIS (Figures 7.5 and 7.6) show a proposed extraction area of approximately 14.5ha (Figure 7.5) and 15.6ha (Figure 7.6).

The EIS in sections 5.1.3 and 5.25 indicates the ultimate aim is to excavate an area of approximately 15ha and convert it into a lake.

Based on the above the approved development of the sand quarry involved 2,000,000 tonnes of sand over an area of approximately between 14 to 15.6ha.

The applicant's current consultant has modified the extraction sequence as shown in the Attachment to this report. The proposed modified sequence now occurs over approximately 15.6ha area.

The area under the existing silt pond and processing plan area is not proposed to be extracted due to the depth of silt that exists in this area.

The final landform shown in the Attachment consists of a lake/pond with a surface area of approximately 14.6ha with the area currently occupied by the silt pond and processing plant being rehabilitated.

The modified area of extraction has overall not substantially altered from what was contained and approved in the EIS being between approximately 14ha to 15.6ha of land. The amended sequence of mining is approximately 15.6ha. The applicant wishes to transfer a section of the area approved for mining but not yet mined to another section of the site.

The total area to be mined remains substantially the same.

As a result the modified area for sand extraction is not considered to be substantially different based on the area of extraction and would not constitute a new development application.

- *Is the proposed rate of change of tonnage extracted substantially different so as to constitute a different development application.*

The modification application does not propose to increase the total amount to be mined as approved by the Development Consent being 2,000,000 tonnes. The modification does seek to increase the maximum tonnage per year from 100,000 to 125,000. This is due to the increase in weight the cartage trucks can now haul on public roads.

The overall traffic movement of trucks will not alter.

The increase in yearly tonnage may shorten the life of the quarry. As a result the total tonnage to be extracted does not change and it is considered the modification is not substantially different so as to constitute a different development application.

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The table below shows a comparison of the approved and modified development based on extracted area and total tonnage to be removed.

	Area of Extraction	Total Tonnage
Approved	14.5-15.6ha	2,000,000
Amended	15.6ha	2,000,000

When one compares what was approved with the original DA with the modified application the modified application is seen to be substantially the same and not substantially different to the approved development.

It is considered that the application can be considered under Section 96 of the EPA Act.

Lapsing of the Consent

A legal opinion from the Environmental Defenders Office Ltd to Mr Diamond has been submitted which indicated that as no approval was granted as required by Condition 4 prior to the works commencing the Development Consent DA0134/95 has lapsed.

Condition 4 States:

"Erosion and sedimentation devices shall be installed and maintained during construction and ongoing operations. Details shall be submitted and approved by the Department of Land and Water Conservation prior to any works commencing."

Erosion and sediment control plans were submitted to Council as part of the original development application. These plans were the subject of discussions during a mediation conference prior to the application being considered by Council. The outcome of the mediation conference was the inclusion of the second sentence in the condition that requires the approval of the Department of Land and Water Conservation.

Council does not have any records of amended plans being submitted and approved by the Department of Land and Water (Now Department of Water and Energy) as required by this condition. The Department of Water and Energy (DWE) have been consulted on two separate occasions to ascertain whether amended plans were lodged with the Department, and Council has received three separate letters from DWE in relation to this matter with at least two of those letters providing conflicting advice.

The first contact from Council resulted in a letter being received 25 June 2007 stating:

"A review of files in this matter has found that in 1996/97 the Department provided advice to Council, received copies of the Erosion and Sedimentation Plans (as required under DA134/95 Consent Condition 4) and undertook discussions and inspection of the site. In its working with Council the Department did not raise any significant concerns in this matter, implying support for the plan and its implementation."

Despite no request being sent from Council a second letter from the Department was received, dated 17 September 2007, stating:

"While DLWC received and reviewed plans (December 1995 and July 1996), there is no indication that DLWC received details as required by Condition 4 or provided the approval sought by Condition 4, subsequent to the consent determination."

These two letters provided conflicting advice and the matter was discussed with the applicant to clarify the situation. On 5 November 2007 the applicant submitted additional information in relation to the application that included a Statutory Declaration, dated 22 October 2007, that detailed the applicant's recollection of the facts in relation to compliance with Condition 4 of the development consent. This Statutory Declaration was referred to the DWE on 30 November 2007 as there was a reference to erosion and sediment control

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plans that had been recently viewed in the Department's Parramatta office. The response from DWE, received at Council on 7 March 2007, stated the following:

"Notwithstanding claims made by Mr Bruce in his declaration, the Department is unable to locate any documentary evidence to support Mr Bruce's claims.

Discussions with staff involved in the Tinda Creek matter at the time in question have also failed to substantiate Mr Bruce's claims of a verbal approval by a Department Officer."

Although the details in the Statutory Declaration by the applicant are not questioned, there does not appear to be satisfactory evidence that indicates that the Condition 4 requirement to submit erosion and sediment control details and obtain the approval of the Department of Land and Water Conservation has been complied with.

The requirements of Condition 4 of the Development Consent must be complied with prior to any works commencing on the site following issue of the approval. As this requirement has not been complied with, the Development Consent has, technically, not been commenced and, as such, it is considered that the Development Consent has lapsed.

Loss of Water to Tinda Creek

Concerns have been raised in respect to the mining activity causing the loss of water to Tinda Creek that flows through some adjacent properties.

In response to this issue Council commissioned Mr Chris Jewell to undertake an independent assessment of the impact on the ground water and the existing creek system and local water bodies that are adjacent to the sand mining operations. The assessment was to provide Council with advice to assist in resolving some of the issues in relation to this matter.

Mr Jewell met with the respondents and applicant on site to hear their concerns and inspect the quarry operation and the respondents properties. At the meeting all persons were given the opportunity to express their concerns on the ground water and flows in Tinda Creek.

A further meeting was held with all the persons who attended the site meeting and the consultant to discuss the final report that was presented to Council.

The report has discussed the potential impact on the groundwater system and includes site water balances for a range of scenarios as indicated below:

- Pre-development
- Current Operational
- Final Operational
- Post Closure
- Post Closure (proposed)

The quarry has the potential to impact on the groundwater water balance and the water balance assessment provides values for:

- Precipitation
- Evapotranspiration
- Bare Soil evaporation
- Open water evaporation
- Export
- Outflow to Tinda Creek

The conclusion of the report is produced below.

"Although an assessment of the site water balance indicates that it is unlikely that, to date, the quarry has had a significant impact on the water balance of Tinda Creek, as the operation proceeds, evaporative losses from the ponds will increase and the reduction in outflow from the upper catchment to Tinda Creek will become significant. If the site is closed with a water-table window lake remaining, then a long-term reduction of the order of 37 percent of the original outflow from the catchment upstream of the quarry is possible. Losses will be higher if the final landform includes a lake extending across the entire 22ha site.

It is unlikely that the site operation will impact on groundwater quality provided that the requirements of the site's Environment Protection Licence are followed. Any impact on ground water quality would be manageable within the site boundaries provided that it was detected promptly, by a groundwater monitoring program."

The final landform involves a lake of approximately 15ha.

The report also proposed a number of recommendations which are produced below:

"7.1 General Recommendations

It is recommended that:

- *Dams and drains on the site and adjacent properties that do not serve any useful purpose should be removed. If necessary the assistance of the Department of Water and Energy in implementing this recommendation should be sought.*
- *A groundwater monitoring program be implemented, and this program include the construction of six properly designed and constructed groundwater monitoring boreholes, and regular monitoring of groundwater levels and groundwater quality.*
- *The recommendations of Umwelt (2006a) with regard to regrading of the diversion drains be implemented.*
- *A new environmental management plan for the sand operation be prepared, incorporating the recommendations of this report, including those for groundwater monitoring, and that the plan be reviewed by Council.*
- *An annual independent audit of the implementation of the Environmental Management Plan be carried out.*
- *An appropriate quarry closure plan detailing the eventual closure of the site at the completion of extraction operations be prepared now. This requirement is consistent with good industry practice. The plan should seek to minimise long-term impacts on the hydrology of Tinda Creek.*
- *Council does not consent to changes to the approved development that result in a larger area of open water in the final landform that is currently approved, unless the proponent can demonstrate, using a more sophisticated and site-specific water balance than is presented in this report, that the final landform will not result in lower catchment outflows to Tinda Creek. Preparing a better water balance would require the collection of site-specific hydrological data over a period of several years.*

7.2 Ground Monitoring Recommendations

It is recommended that a network of six groundwater monitoring boreholes be installed. Appropriate locations are shown on Figure 4, but some flexibility in siting is possible.

Monitoring boreholes should be 12 metres deep, screened from 2 to 12 metres, and be constructed as standard groundwater monitoring wells, with:

- *50-mm uPVC screw-jointed casing and screen*

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- *an appropriate filter pack*
- *bentonite annular seals*
- *lockable monuments*

Groundwater levels should be monitored monthly.

Groundwater quality should be monitored six-monthly.

Groundwater quality monitoring should include pH, conductivity, nitrate, ammonia and Total Petroleum Hydrocarbons (TPH).

Groundwater quality monitoring should be reported annually."

Matters raised by Mr Diamond's Submissions

Mr Diamond has in respect to the S96 application and the quarry operation has lodged at least 30 submissions. Some of these submissions were lodged multiple times with Council, Councillors or individual staff. The submissions were lodged as a letter with a number of attachments which involved former submissions or copies of letters from other Government Authorities.

A review of the submissions received from Mr Diamond has found that there are common issues raised in each submission, but expressed in different ways. To clarify the matters raised they have been summarised into groups as follows:

General Complaints Against Individuals (Councillors and Former Staff)

1. Council at its meeting of 14 December 2004 was misled and lied to when it was stated that the mine is not operating in groundwater.
2. Formal complaints against former Council staff, including the former General Manager, former Director, former Manager and town planner and a current Councillor.
3. The previous undertaking by a former General Manager to independently investigate complaints has not been undertaken.
4. Council has never investigated any of the complaints made.
5. Complaint by Danny Pullicin (an adjoining neighbour to the quarry) has not been investigated.
6. Council reports re Tinda Creek have been fabricated to protect Birdon Contracting, either negligence or a Councillor was paid to do work for previous owner.
7. Fraud by Council staff for not collecting correct fees for S96 applications.
8. Council has not verified the EDO legal advice dated 27 September 2006.
9. General complaints re staff handling of supervision and compliance with consent.
10. Several allegations that involve persons "associated" with the quarry.
11. Staff may be personally liable for fines.

Complaints re Original Application and Consent

1. No consent from Crown, as owner of the land, to operate beyond 15.24 metres below natural surface.
2. EIS (1984) made false statements re excavations not in creek.

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3. November 1995 EIS claimed six monitoring bores to be installed.
4. Birdon did not install ground water monitoring bores as agreed to in mediation conference December 1996.
5. Council retrospectively approved Birdon Contracting's application on 10 December 1996 ignoring legal and ethical responsibilities.
6. The approval was for staged development and each stage required sign off prior to granting separate approval for each subsequent stage of work. Work in each stage should not commence until this separate approval issued.
7. Applicant failed to supply archaeological study.

Complaints regarding existing Section 96 application

1. The current Section 96 application states the quarry is operating to a finished area of 22 ha. However, the Port Stephen's letter of 4 June 1996 states only 14ha.
2. Diagram SK2, submitted with the Section 96 application, is not the approved document. (See page 2 of Hawkesbury Nepean Catchment Management Trust letter of 12/1/96). Approved plan PS91E130 shows approved dimensions.
3. Legal advice that consent has lapsed, therefore Section 96 cannot be processed.
4. S96 application used to cover up out of area works.
5. Council cannot grant consent for illegal use of unlicensed water.
6. Under Act and Regs any alterations or modifications to a designated development consent, including the current S96 applications requires an EIS.
7. Current S96 is not the same development under the Act (See Lloyd J decision re BHSC v Dixon Sands).
8. Issues have not been dealt with by Chris Jewell report (specialist report on advice requested by Council) specifically:
 - a. Tinda Creek is not flowing
 - b. Council and Jewell report fail to deal with the State Government Policy on ground water eco dependent creeks.
 - c. Failure of Council & Chris Jewell to have access to all relevant information including working file of the former General Manager.
 - d. Failure of report to deal with Birdon not installing 6 ground water bores.
 - e. River & Foreshore Improvement Act issues not considered.
 - f. States that the Water Act 1912 is the appropriate Act to use in this matter.
 - g. Asks for Chris Jewell report to be revised with above matters considered. Also asks for report to be peer reviewed by Lionel Ethridge or ERM.
9. Suggests that S96 application is false and makes threats that if these are not withdrawn Mr Diamond will notify the Department and the Police.
10. Comments regarding the Statutory Declaration by Tom Bruce, indicating that Mr Diamond questions some of the statements.

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Dealing with legal advice

1. Legal advice received from Birdon Contracting, dated 9 November 2000, was not considered properly or professionally. (Council had not viewed documents advice relied upon)
2. Pike Pike & Fenwick of 30/8/05 advised certain action and it was not taken.
3. EDO advice (dated September 2006) that consent had lapsed was not acted upon.

General Matters

1. Council has failed to enforce/comply with the conditions of Land & Environment Court matters 40230 of 2005 & 40430 of 2005.
2. There has been fraud in non payment and non indexation of Section 94 contributions.
3. Council corruptly ignored breaches since 1984.
4. The bypass channel is incorrectly installed and not approved.
5. The natural swamp under the power lines has been illegally filled and Council has done nothing to rectify and covered this up.
6. GM has not instructed solicitors correctly.
7. Council file must be modified as it is false and incorrect.
8. Diamond is being threatened because he is pursuing compliance.
9. Request meeting with Chris Jewell (water balance consultant engaged by Council) to explain connection between creek and pond 15m below groundwater and illegal use of 150 ML when only licensed for 40ML.
10. Council ignored responsibility under SREP 20 re erosion control plans and the ground water issues (see Page 19, 31 & Clause 6, Part 2 on page 16 re erosion and control prior to commencement).
11. Requests reports from investigations into 5 items listed in Clr Bassett's undertaking of 13 July 2006.
12. Fraud in quantity survey used to calculate tonnages excavated and survey was done after the land was levelled.
13. Council staff have ignored tree clearing.
14. Allegations of drug dealing, standover tactics, arson, death threats from the operators or persons related to the quarry operations.

Consent Condition Compliance

1. Council has failed to enforce conditions of development consent.
2. Condition 4 not complied with, therefore consent has lapsed. Comments related to Statutory Declaration by Tom Bruce stating that it is misleading and false.
3. Condition 27 required an environmental management plan but this has not been submitted.
4. Condition 17B – requires submission of monitoring program details for ground and creek water quality & contingency plan.
5. The quarry is working out of the development approved area.

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6. Quarry using more water than licence permits.
7. The Tinda Creek quarry is operating on Lot 1 (by-pass channel & test bores) and Lot 3 (Test Bores) and Council should take action for this to cease. Should be operating only on Lot 2 DP 628806.
8. No EPA or DLWC licences until 2004.
9. On 4 December 2004 Council insisted that erosion & sedimentation control plan should be submitted re conditions 1, 2, 3, 4, 17b and 27. This not yet done.
10. Council staff failed to properly instruct solicitors re erosion & sedimentation plans and compliance with conditions 27 or 17b.
11. Auditor has defrauded Council in not mentioning the shortfall in S94 fee collection.

Comments on specific issues raised by respondent

General Complaints against individuals (Councillors and former staff)

1. Council at meeting of 14 December 2004 was misled and lied to when it was stated that the mine is not operating in groundwater.

The tapes from the Ordinary meeting of 14 December 2004 and the General Purpose Committee meeting of 27 November 2004 have been reviewed. Whilst not all of the tapes were audible, much of the comments and debate relating to the Tinda Creek quarry matter was audible. The comments on the tape used words to the following effect:

"In my expert opinion, the operation runs fairly well. Does not appear to be any escape from the mining operation sites which is a wet dredge operation adjacent to a dam which flows into where the dredging is operating. The tailings, the extraction area drains to a separate set of dams and is sealed. No water escapes. Tinda is some distance away from the operation. No sedimentation."

There was no evidence found on the tape that advice or comments on groundwater in the fashion suggested was given at the Council meeting.

2. Formal complaints against former Council staff, including the former General Manager, former Director, former Manager and town planner and a Councillor.

These complaints and allegations are in the form of statements and were not backed by any form of proof from the respondent. However, the respondent has been advised previously by the current General Manager that no action could be taken under Council's code of conduct as there would be limited, if any, sanctions that could be taken against former employees even if any allegations, hypothetically, gave rise to concern. Mr Diamond was also advised that if he had evidence of corrupt conduct of any former staff that he should refer these complaints to the ICAC.

3. Council has never investigated any of the complaints made.
4. The previous undertaking by a former General Manager to independently investigate complaints has not been undertaken.

See response above. The respondent has made a variety of allegations about Councillors and Management but has not supplied sufficient details or proof of any of the allegations. Much of the information supplied has been in the form of "draft Affidavits" that contain a range of statements but lack evidence. The respondent was formally requested by Council's former General Manager for additional information which has not been provided.

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The respondent has also submitted to Council a letter forwarded to the Independent Commission Against Corruption (ICAC) in which he has made allegations about corrupt conduct by Council staff and Councillors. The response from the ICAC, in part, was as follows:

"You have not provided any information to support your claims despite being requested to do so."; and,

"The Assessment Panel has determined that your complaint not be investigated as you failed to provide any information to support your allegations and which might tend to indicate corrupt conduct."

The respondent has made numerous allegations and complaints that are attached to this file. A review of the file indicates that preliminary investigations were made regarding most of these allegations but did not find substantive evidence to warrant the matter to proceed. The respondent was also requested to supply specific evidence to substantiate the allegations but this evidence has not been provided. Given the lack of substantive evidence and detail of these allegations, it is not proposed to take those matters further.

5. *Complaint by Danny Pullicin (an adjoining neighbour to the quarry) has not been investigated.*

Council received, on 15 May 2006, an email request for information or assistance in ensuring that the Tinda Creek remains flowing. The letter states:

"As Council is aware the Birdon Sand Mine has Tinda Creek on its site we would appreciate if council can check The Tinda creek and confirm its no flow status is only due to climate conditions.... For the first time in 20 years we are witnessing this wetlands (in the adjoining National Park) drying up."

A response was sent to Mr Pullicin on 6 September 2006 stating that the NSW EPA was the regulatory authority for the water use at this site. It should also be noted that the climatic conditions at that time, as verified in the letter from Mr Pullicin, were extreme. Council monitoring of the quarry operation at that time did not indicate that water use had changed significantly from the last 20 years to indicate that the drop in water flow could be wholly contributed to the quarry operation.

Mr & Mrs Pullicin met with the Mayor (Councillor Stubbs) and a Council Officer concerning this issue and it was agreed that Council would engage an independent consultant to investigate the matter. Mr Chris Jewell undertook the independent assessment and Mr Pullicin was involved in the process and provided a copy of the final report.

6. *Council reports re Tinda Creek have been fabricated to protect Birdon Contracting, either negligence or a Councillor was paid to do work for previous owner.*

See comments regarding complaints above. These allegations are made as statements in letters or affidavits with no evidence to support the claims. It seems that these statements were made based on the respondent not agreeing with the reports or conclusions rather than being based on evidence to contradict the reports.

7. *Fraud by Council staff for not collecting correct fees for S96 applications*

Fees for development applications and section 96 applications are set by Statute and relate to the value of the development with section 96 application fees being either a percentage of the original application fee or, where a building is involved, a modified scale of fees based on the estimated value of the development.

At the time of acceptance of the original application (1994), Council did not have a system for checking the estimated value, quoted by the applicant on the original application form, of developments. At the time of lodgement of the current section 96 modification application, the fee was based on the appropriate percentage, as set in the Environmental Planning and Assessment Regulation 2000, of the original development application fee.

Council has relied in the past on the honesty of applicants to provide a realistic estimate of development costs when lodging an application. This approach has been applied to all development applications lodged with Council. An allegation of fraud implies that the way of calculating the fees for the subject or original development application was changed to enable the applicant to be charged a lower rate. As the way of calculating fees for all development applications was the same at the time of lodging the original development application and in the absence of any evidence to indicate the contrary, there does not seem to be any fraud in the collection of application fees.

It should be noted that Council does recognise that the estimated costs of development quoted on the application form may not be a true reflection of the actual costs. Council is developing a scale of building and development costs with the intention of using this scale of costs as a baseline for checking the estimated costs of developments.

8. Council has not verified the EDO legal advice dated 27 September 2006

The Environment Defenders Office (EDO) provided a legal advice to Mr Diamond on 27 September 2006. This advice was subsequently forwarded to Council. The advice is titled "*Lapsing of consent - failure to comply with conditions*" and deals with two separate matters being "*The Colo Heights Quarry Consent*" and "*The Mangrove Mountain Quarry Consent*". It is assumed that the "Colo Heights Quarry" referred to is the subject quarry at Tinda Creek.

The EDO letter refers to Mr Diamond's letter of 5 September 2006 (not provided to Council) and provides comments on a number of development consent conditions, legislation and case law. The letter concludes the following:

"Failure to comply with conditions in the Colo and Mangrove Mountain consents that expressly require compliance "prior to works commencing" may lead to lapse of development consent. It is uncertain whether failure to comply with other conditions would have resulted in the lapse of the consent."

It is unclear what the instruction to the EDO are and to what information the EDO had access in order to provide the advice. Mr Diamond was requested verbally to provide that detail but the information was not provided.

It is not usual practice for Council to verify all advice, legal or otherwise that is submitted. Any advice submitted to Council is reviewed and if it is considered that further consideration or additional legal advice is required then advice is sought from Council's solicitors. On this occasion additional advice has been received from Council's solicitors.

The issue of effects of the matter of compliance with conditions and lapsing of consent is addressed elsewhere in this report.

9. General complaints re staff handling of supervision and compliance with consent.

This complaint is general in nature and does not specifically nominate individual staff. The complaint refers to the way the development consent has been enforced and compliance matters pursued.

The file indicates that there have been a number of inspections of the quarry and assessments in relation to compliance with development consent conditions. (The detail of condition compliance is addressed elsewhere in this report). The areas of non-compliance were discussed with the applicant/operator and additional information requested. The follow up of these requests could have been more actively pursued by staff at the time. However, it is noted that over the years since approval was granted, due to staff changes, a number of different staff have managed the file. This seems to have led to some confusion or misunderstandings as to what was requested previously.

It is conceded that the supervision of the file has not been optimal. However, this has led to this review and an undertaking by the current staff to improve this supervision depending on the outcome of this review and the Section 96 application.

10. Several allegations that involve persons "associated" with the quarry.

A number of allegations have been made in regards to the conduct of persons working or "associated" with the quarry. It seems that these allegations have been sent to Council as a form of 'character reference' for the operators of the quarry and the relevance of these allegations to the development consent or the functions and authority of Council is unclear. These allegations are of a civil or criminal nature and the respondent is advised to pursue these allegations with the appropriate authorities.

11. Staff may be personally liable for fines, staff may be held responsible for misleading statements made in applications if the application is accepted.

These statements are examples only of some of the statements made in a number of the letters by the respondent. Whilst it seems that the respondent is simply pointing out the responsibilities of the staff in these matters, the context and use of some of the statements, ie, when used in conjunction with statements suggesting legal action by the respondent, may be viewed as threats against staff unless certain action, that is consistent with the respondent's requests, is taken. These statements have no relevance to the assessment of the current Section 96 application.

Complaints re original application and consent

1. No consent from Crown, as owner of the land, to operate beyond 15.24 metres below natural surface.

The original development application stated that the proposed excavation for the mining operation was to a depth of 20 metres below the natural surface. At the time of assessment and not until after the determination of the development application it was not realised that the title to the land was limited to a depth of 15.24 metres below the natural surface.

In a report to Council on 14 December 2004 there was discussion regarding a site survey, by a registered Surveyor, Mr Matthew Freeburn, for the purpose of estimating the natural surface of the site prior to the quarry operation commencement to determine the depth and volume of the excavation. This survey, and recent discussions with the quarry operators, indicates that the depth of the excavation has not yet reached a depth of 15.24 metres below the natural surface.

It may be the intention of the quarry operators to ultimately extend the excavation below the 15.24 metre level. The operator was advised by Council staff that this would not be possible without the consent of the Department of Lands as owner or a licence from the Department to use that portion of land. A letter was received by Council on 9 May 2008 from the Department of Lands making an offer of a licence authorising the use or occupation of land. Prior to any excavation or occupation of the land 15.24 metres below the natural surface the licence will need to be finalised.

2. EIS (1984) made false statements re excavations not in creek

The current development consent was based on an Environmental Impact Statement (EIS) dated November 1995. An EIS was prepared in 1985 for a previous development application for the construction of a Dam and extraction of sand from the site. A review of the 1984 file indicates that there were some issues in relation to the statements made in the EIS that were addressed in the assessment of that application. Development consent for DA 0192/85 was issued in November 1986. Following extensions granted by Council, that consent expired in 1991. It is unclear what relevance the EIS dated 1985, relating to a separate, now expired development consent, has to the current application and approval.

3. November 1995 EIS claimed six monitoring bores to be installed.

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4. Birdon did not install ground water monitoring bores as agreed to in mediation conference December 1996.

The November EIS stated that *"In addition, a series of bores will be installed to monitor groundwater behaviour."* (Section 5.1.4. Hydrology. P23). The only other reference to bores in the EIS is in Figure 7.4 - Exploratory Drilling Plan. This plan indicates the location of six exploration bores undertaken as part of the investigation of the sand material for the operation. In addition there are no conditions that require six bores to be installed. Should the section 96 application be approved, the operator has agreed to the installation of monitoring bores.

5. Council retrospectively approved Birdon Contracting on 10 December 1996 ignoring legal and ethical responsibilities.

It is understood that the development application, DA 0134/95, related to an operation that was already operating without approval. (In this case some works had continued following the expiration of a previous approval granted in 1985) The application was prepared and lodged with Council in accordance with the requirements at the time and the application was determined in December 1996. There does not seem to be any legal requirements that has been breached in this process and the time limit for any legal challenge of the issue of the consent has expired. It is clear that the respondent does not agree with the operation of the quarry at this time. However, there is no indication on the file that the assessment and determination of the development application did not follow the correct process.

6. The approval was for staged development and each stage required sign off prior to granting separate approval for each subsequent stage of work. Work in each stage should not commence until this separate approval issued.

Condition 3 of the development consent states:

"The development approval being limited to a period of two years. Subsequent stages will require formal submission, under Section "B" of this consent, to Council and supported by evidence that the operation has complied with the conditions of the State (sic) 1 consent."

Whilst the condition states certain requirements regarding staging, the condition does not require a "sign off" and separate approval for each subsequent stage. The condition does require a "submission" to Council addressing several conditions nominated in the consent.

The respondent has argued that the intent of the condition, as discussed in the assessment report for the original development application to Council, was that each stage required a sign off and subsequent development approval of each following stage. The respondent also asserts that a letter from a Council officer at the time of the determination of the application also states that subsequent stages require separate approval prior to proceeding.

Whilst the review of the Council officer's letter may be interpreted in the way that the respondent asserts, there is doubt regarding that interpretation. However, when the wording of the condition is reviewed it is clear that, apart from the obvious typing error (State rather than stage) the condition is clear regarding the requirements for staging. It is clear from the above condition that, whilst there is a requirement to receive a submission, or "sign off" at a particular stage, the condition does not require a separate approval to be granted for each subsequent stage of development.

This matter was addressed in the report to Council on 14 December 2004. The report states, in part, the following:

"Council's legal opinion has suggested that the letter dated 15 December 1998 from the applicant seeking an extension of the development consent was an application for modification as it then stood and was made in accordance with the requirements of the regulations as they stood then. ...As a result the application was made prior to the lapsing of the consent and that Council can still make a determination of the application."

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The Section 96 application relating to condition 3 of the consent, referred to above, was determined at the meeting of 14 December 2004. The timeframe for any challenge to the validity of that determination has now expired.

7. Applicant failed to supply archaeological study.

The EIS dated November 1995 submitted with the application, contained advice from Dr H Brayshaw, dated 4 August 1992, in relation to the proposal. This advice referred to a previous study undertaken for the site in August 1984 by the same firm. The advice concluded "*Under these circumstances it is our view that no further archaeological investigation is warranted.*" Additional and amended detail was submitted for the application on 6 June 1996 with a covering letter from Port Stephens Design Services. In that letter the following statement was made:

"Archaeological Survey Consultant has confirmed Development Area covered by study."

This conclusion was considered reasonable considering the advice from the National Parks and Wildlife Service dated 6 February 1992, contained in the EIS dated November 1995 that states:

"The archaeological study undertaken in 1984 for the previous operation was considered to be adequate."

In this regard, the applicant has satisfied the requirement to supply an archaeological study. This information was considered as part of the assessment information prior to the determination of the application in December 1996.

Complaints regarding existing Section 96 application

1. The current Section 96 application states the quarry is operating to a finished area of 22 ha. However, the Port Stephen's letter of 4 June 1996 states only 14ha.

This matter is discussed in another section of the report.

2. Diagram SK2, submitted with the Section 96 application, is not the approved document. (See page 2 of Hawkesbury Nepean Catchment Management Trust letter of 12/1/96). Approved plan PS91E130 shows approved dimensions.

It is clear that there are differences in the information submitted with the original application and the Section 96 application. That is the whole intention of the applicant in the submission of the Section 96 application. The assessment of the information submitted with the Section 96 application against the information in the original application is compared as part of the assessment of the application. The letters and statements will be considered as part of the assessment of the current Section 96 application elsewhere in this report.

3. Legal advice that consent has lapsed, therefore Section 96 cannot be processed.

The legal advice referred to is the EDO advice submitted to Council in September 2006. This matter is addressed elsewhere in this report.

4. S96 application used to cover up out of area works.

It is correct that the quarry is operating outside the area originally approved in December 1995. The primary purpose of the Section 96 application is to make application to Council to vary the original approval to rectify that encroachment and propose a revised quarry area. It should be noted that the application is for a variation to the quarry location and not the overall quantity extracted from the site or the overall finished area.

This has been discussed elsewhere in the report.

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5. Council cannot grant consent for illegal use of unlicensed water.

This statement is correct. Council is not the consent authority for the extraction of groundwater. The Department of Water and Energy is the authority that licences the use of groundwater bores and water extraction. The original development consent contains a condition that requires the operator to comply with other Government Agencies permits or licences. Should a Section 96 application be approved for the site, this condition will remain and Council will advise the Department of the quarry variation so that the Department can review the water use on the site.

6. Under Act and Regs any alterations or modifications to a designated development consent, including the current S96 applications requires an EIS.

A Section 96 application, by definition in the Act, must be "substantially the same development" as originally approved. It is not a 'development application' but rather an application to modify an approval. Should this not be the case then a matter cannot be dealt with as a Section 96 modification application and would require a separate development consent.

In the case *Contrite Quarries Pty Ltd v Wingecarribee Shire Council (2000) 108 LGERA 166* Lloyd J concluded that the requirement for an Environmental Impact Statement in the case of designated development applied only in the case of a "development application". In this judgement, Lloyd J states:

"Part 2 of Schedule 3 provides that in the case of alterations or additions to designated development, if in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impact, compared with the existing or approved development, then it is exempted from the provisions of Schedule 3. The requirement for an Environmental Impact Statement arises from section 78A of the Act. Subsection (8) provides:

'(8) A development application must be accompanied by:

- a if the development application is in respect of designated development - an Environmental Impact Statement prepared by, or on behalf of the Applicant in the form prescribed by the Regulations, or ...'*

In my opinion, subsection 78A(8) does not apply in this case. The requirement for an Environmental Impact Statement in the case of designated development applies only in the case of a development application. This is an application for modification of an existing development consent. In my opinion, section 78A has no application, and neither does Schedule 3."

It is clear from the above quote from the judgement in the *Contrite* case that a separate EIS is not required when an application is a section 96 modification application. This has been verified by Council's solicitors.

7. Current section 96 application is not the same development under the Act (See Lloyd J decision re BHSC v Dixon Sands).

It is assumed that the case the respondent is referring to is *Baulkham Hills Council v Dixon Sands (Penrith) Pty Ltd & ors (1998) NSWLEC 316 (18 December 1998)* as this was the only case that Baulkham Hills Council and Dixon Sands were involved in where the hearing Judge was Lloyd J.

This case judgement has been reviewed. Without discussing the detail of the case, the matter related to an application to the Court by Council for an order restraining the use of the land for the purpose of an extractive industry as the development consent had expired. The original development consent contained a condition that limited the consent to a five year period. The operator lodged a section 96 application, two months prior to the consent expiring, requesting an extension to the consent for twelve months to enable them to prepare another development application for the quarry. The operator then commenced legal proceedings against the Council for not determining the application within the timeframe.

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Whilst there are some general similarities with this case and the Tinda Creek quarry, i.e, they are both quarries that are designated development, there does not appear to be any relevance of the case with the current section 96 application before Council. The previous case related to an application to extend the time of an expired development consent. The current application is to modify the area within which the quarry can operate.

The respondent seems to be attempting to apply a "question of law" to the section 96 application when the matter is a "question of fact". The question of whether an application may be dealt with is an individual merit decision that is made by the Council and involves a detailed factual comparison between the development as originally approved and the nature and degree of the proposed alterations. In the case of the current section 96 application, the matter of amending the quarry operation area, within the area studied as part of the original EIS, is considered to be a matter that may be dealt with via a section 96 application.

This matter is discussed in more detail elsewhere in the report.

8. Issues have not been dealt with by Chris Jewell report (This was a specialist advice report on groundwater requested by Council staff to assist in the application assessment) specifically:

a. Tinda Creek is not flowing

The consultant visited the site and was provided with the necessary information to address the brief for the required work. At the time of visiting the site the creek was flowing. However, the consultant was aware of the extreme drought conditions that prevailed prior to the site inspection.

b. Council and Jewell report fail to deal with the State Government Policy on ground water eco dependent creeks.

The report was commissioned to provide some specialist advice to Council staff. The report was not intended to be the full assessment of the application but to merely provide advice on some matters to staff.

The conclusions and recommendation of the report are discussed elsewhere in the report.

c. Failure of Council & Chris Jewell to have access to all relevant information including working file of former General Manager.

The consultant and staff were provided access to all relevant information in order to undertake the necessary work.

The consultant was also provided the information submitted by Mr Diamond and the applicant after the site inspection.

d. Failure of report to deal with Birdon not installing 6 ground water bores.

As mentioned previously, the EIS required additional bores should certain conditions prevail. These conditions have not occurred and, as such the bores have not been required to date. The Jewell report has recommended the installation of monitoring bores (less than six) and the applicant has agreed, should the Section 96 modification application be approved, to comply with the recommendation of the report.

e. River & Foreshore Improvement Act issues not considered.

f. States that the Water Act 1912 is the appropriate Act to use in this matter.

These two comments have been made in relation to the section 96 modification application. The provisions of these Acts, whilst they apply to aspects of the original operation and

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development approval, they are of only minor relevance to the modification application. Licences are required for the use of groundwater and approval is required for works that interfere with an aquifer. The appropriate approvals and licences are a requirement of the existing development consent condition No.30. This condition would not be amended should the section 96 application be approved and the operator is responsible to ensure that the appropriate licences and approvals are obtained. A copy of the section 96 application was referred to the Department of Water and Energy for comment.

- g. Asks for Chris Jewell report to be revised with above matters considered. Also asks for report to be peer reviewed by Lionel Ethridge or ERM.

As mentioned previously, the Jewel report was commissioned by Council staff to assist and provide some specialist advice in the assessment of the application. The report is to be used for advice in the assessment of the application only and does not form part of the application. The findings of the report are not necessarily adopted and only the relevant parts of the report are used in the assessment. It is not considered that it is necessary to expend additional money reviewing a report that is only commissioned for advice.

9. Suggests that S96 application is false and makes threats that if these are not withdrawn Mr Diamond will notify the Department and the Police.

The provisions of Section 283 of the Environmental Planning and Assessment Regulation 2000 provides for the making of false or misleading statements. Council, as provided by the Act and Regulations, accepts statements made in applications as being true unless there is evidence that shows this to be incorrect. It should be noted that this does not mean that Council always agrees with the statements and assertions made in any application. That is the whole purpose of Council making an assessment.

During the assessment of the application the details of the application have been reviewed, investigated and assessed and there is no evidence that the application is "false". It should also be noted that there is a difference between making a "false" statement and not agreeing with statements made in an application. Following assessment of some of the allegations made by the respondent, it seems that there may be some confusion in this regard.

10. Comments regarding the Statutory Declaration by Tom Bruce, indicating that Mr Diamond questions some of the statements.

It is not suggested that the respondent or Council should agree with all statements made by applicants or others. However, the applicant for the current Section 96 modification application has, in response to requests for additional information by Council staff, submitted a properly executed Statutory Declaration. This Statutory Declaration sets out the applicants understanding of events in relation to compliance with Condition 4 of the development consent. Whilst the respondent is entitled to an opinion of this Statutory Declaration, the assertion from the respondent that this Statutory Declaration is false is difficult to reconcile as the document asserts the applicant's recollection of events that occurred a number of years ago.

Dealing with legal advice

1. Legal advice received from Birdon Contracting, dated 9 November 2000, was not considered properly or professionally. (Council had not viewed documents advice relied upon)

The legal advice received from Birdon dated 9 November 2000 related to the staging of the consent and the validity of the request for extension. This matter has been considered on several occasions by staff and by Council's solicitors (In particular Abbot Tout letter 12 July 2002). Whilst the specific letter from Birdon is not referenced, the substantive issues relating to the advice have been adequately addressed. This led to the approval by Council of the Section 96 application on 14 December 2004.

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2. *Pike Pike & Fenwick of 30 August 2005 advised certain action and it was not taken.*

The Pike Pike and Fenwick letter of 30 August 2005 refers to the Land and Environment Court matter that is discussed in point 1 of "General Matters" below. The letter also suggests that the matter of a Section 96 application be followed up by Council. Whilst this matter did take some time, a Section 96 application was followed up as it has resulted in the lodgement of the Section 96 application currently before Council.

3. *EDO advice (dated September 2006) that consent had lapsed was not acted upon.*

The letter from the Environment Defender's Office (EDO) provided comments, in response to Mr Diamond's letter of 5 September 2006 (not provided by Mr Diamond) on two separate developments being "Colo Heights Quarry and Mangrove Mountain Quarry". The letter provides a background to development consent conditions for both developments to provide advice "*in particular whether the consents have legally commenced if consent conditions are not complied with.*" In the case of the subject development there are comments on conditions 3, 4 and 27. (Whilst these three conditions are mentioned the letter focuses on Condition 4 of the development consent.) Condition 3 has been addressed by Council via a Section 96 application previously in 2004. The EDO letter makes the following comments about Condition 27:

"Condition 27 of the Colo Consent requires:

'a site environmental management plan shall be prepared within one (1) month of the date of this approval, to address:

((a) to (e) list matters the subject of the environmental management plan)"

However, there is no reference to the fact that works could not commence before this plan was prepared."

The letter focuses on Condition 4 which states:

"Erosion and sedimentation control devices shall be installed and maintained during construction and ongoing operations. Details shall be submitted and approved by Department of Land and Water Conservation prior to any works commencing".

The EDO letter contains quotes from the Environmental Planning and assessment Act 1979 and quotes from a number of individual cases that dealt with development consent conditions that required compliance "*prior to works commencing*" in support of the EDO conclusion. The conclusion of the EDO letter states:

"Failure to comply with conditions in the Colo and Mangrove Mountain consents that expressly require compliance "prior to works commencing" may lead to lapse of development consent.

It is uncertain whether failure to comply with other conditions would have resulted in the lapse of the consent"

Advice from Council's solicitors has been obtained in relation to the EDO letter, particularly in relation to Condition 4 of the Tinda Creek development consent. A variety of questions and responses to this matter have been discussed and the outcome of this advice is discussed in the "Consent Condition Compliance, Condition 4" section of this report.

General Matters

1. *Council has failed to enforce/comply with the conditions of Land & Environment Court matters 40230 of 2005 & 40430 of 2005.*

The matters referred to (40230 of 2005 & 40430 of 2005) are consent Orders issued by the Land and Environment Court. Both of these matters are identical in the Orders. However, 40230 states Neville Diamond as the applicant with Birdon Contracting Pty Limited, Poyneed Pty Limited and

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Hawkesbury City Council as the first, second and third respondent respectively, and 40430 has Neville Diamond and Peter Kent as the first and second applicant respectively with the same respondents as 40230.

The Orders issued for these matters set out the undertakings by the Applicant, and the respondents. The undertaking for the Applicant (objector to the current Section 96 application) in both these Orders are as follows:

- a. *"The Applicant will not commence any further court proceedings in respect to the development approval dated 23 December 1996 for DA 134/95.*
- b. *The Applicant shall not commence any further proceedings in respect of or in relation to the issues raised by the applicant in the proceedings herein.*
- c. *The Applicant will not commence any further proceedings in respect to the section 96 application which was approved on 14 December 2004.*
- d. *The Applicant will not lodge any objection to or raise any issue of fact or law in respect to the proposed Section 96 Application and or Development Application or any approvals given to such applications with respect to the relocation of part of the diversion channel of Tinda Creek onto Lot 1 DP 628806 to amend the excavation area on Lot 2 DP 628806.*
- e. *That the Applicant will immediately stop all representations and contact with DIPNAR to prevent the issue of a Water Licence to the First Respondent or the impositions of any conditions of such licence."*

The undertaking of the First Respondent (applicant for the current Section 96 application currently with Council) are as follows:

- a. *"Implement the recommendations of its consultant "Eco Wise" in respect to the water issues relating to the operation of the quarry the subject of these proceedings.*
- b. *To comply with the conditions of the Development Approval.*
- c. *To take all reasonable steps to obtain a Water Licence for the site and shall comply with the conditions of such Licence relating to the site.*
- d. *To regrade within six months of the date hereof (9 September 2005) the diversion channel where required to assist with the flow of Tinda Creek."*

The undertaking of the Third Respondent (Hawkesbury City Council) is as follows:

"The Third Respondent will properly monitor and enforce as appropriate the compliance of the First Respondent with the conditions of the Development Approval."

In relation to compliance with these Orders it is clear that the Applicant (by lodging in excess of 30 submissions to the Section 96 application) has not complied with the Orders, in particular part d. in relation to not lodging objections to the proposed section 96 application. The section 96 application referred to is the application currently before Council.

The First Respondent has undertaken some of the matters in the Order and has not complied as yet with the others. The recommendations of "Eco Wise" have not been implemented as that consultant is no longer used by the First Respondent. However, the First Respondent has engaged another consultant to undertake the necessary works.

The Council's responsibility to "properly monitor and enforce" the conditions of approval have partly been undertaken, albeit protracted. (However, it should be noted that there is no timeframe placed on this undertaking). Monitoring of the quarry operations has been more regularly undertaken over

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the last 12 to 18 months and condition compliance requests have resulted in the current Section 96 application.

The comments that "*Council has failed to enforce/comply with the conditions*" of the Orders is not correct. Whilst the enforcement actions have been slow to date, there is no evidence to indicate that the Orders have been ignored or overlooked. In this case it seems that the respondent (Mr Diamond) does not agree with the time it has taken to deal with these matters.

2. *There has been fraud in non payment and non indexation of Section 94 contributions.*

This allegation relates to condition No. 8 of the development consent that requires the payment of Section 94 contributions based on a set rate per tonne of extracted material. The nexus for the contribution is based on the damage made by haulage trucks to the roads along the principle haulage route. The contributions, including interest earned, are forwarded to the RTA on a semi regular basis. The rate, as specified by the condition of consent, is to be indexed each year.

The quarry operator has been paying the contribution on a regular basis and provides the appropriate receipts. However, the operator has not reviewed the contribution rate since the issue of the development consent in December 1996. When the respondent advised current staff of this non-indexation in 2007, the matter was addressed and the rate has been indexed. A calculation of the outstanding contributions has also been undertaken and the operator has been requested to pay the outstanding contributions. This matter is being followed up as a separate compliance matter and legal proceedings to recover the amount will be commenced if necessary.

See response to the following Item 12 in relation to total tonnages excavated from the site.

3. *Council corruptly ignored breaches since 1984.*

The Macquarie Dictionary defines Corrupt as "*Guilty of dishonesty, especially involving bribery*". For behaviour to be corrupt, that behaviour would need to be intentionally dishonest and would involve bribery or some "reward" for acting in a particular way.

The review of the files for DA 0192/85 and DA 0134/95 have found various areas of non-compliance since the commencement of works in 1986. Throughout this time the areas of non-compliance have been followed up, with varying intensity, by a number of different staff. The staff changes over the years, combined with low resources to follow up these incidents and the fact that the applicant has lodged a number of different applications, resulting in the resolution of some matters being drawn out over the years have contributed to the, at times, slow compliance of the development.

Whilst it is true that the compliance enforcement for this quarry over the years could have been more robust, there is no evidence that the compliance enforcement was, or is, corrupt behaviour.

4. *The bypass channel is incorrectly installed and not approved.*

It is unclear if any of the operation is operating on the adjoining property being Lot 1. If this is the case, then those works must either be the subject of another development application (as the current section 96 application cannot deal with works on another property) or the works must be removed from the property and the property be reinstated.

The application plans do not indicate that the existing bypass channel is located incorrectly. It should also be noted that the current application is to relocate the bypass channel and the existing channel will no longer be required.

5. *The natural swamp under the power lines has been illegally filled and Council has done nothing to rectify and covered this up.*

A review of the file for DA 0192/85 indicates that some works were undertaken in the area within the electrical easement located on the property. These works were ultimately granted approval.

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Following inspection of the current operation, it is not evident when or if any further works have been undertaken in this area.

6. GM has not instructed solicitors correctly.

The manner in which anyone seeks and instructs solicitors is a matter between the solicitor and their client. In the case of Council, there are a variety of matters in which a legal opinion is sought to determine an appropriate course of action. The manner in which the instruction is given relates to the particular issue at hand. It seems that, following various inspections of the file, the instructions were adequate and the respondent simply does not agree with the decisions made.

7. Council file must be modified as it is false and incorrect.

The Council file for this matter, like all development application files in Council, is simply a record of correspondence and process for the application. The file contains internal and external correspondence and file notes by various staff that give a background to how many decisions have been made. It would seem that the respondent does not agree with the decisions made over the life of the file and is implying that the file has been falsely compiled. The review of the file has not found any evidence that the content is false or incorrect but it is acknowledged that the respondent may not agree with many of these views, actions or decisions. In this sense the file is a record of fact and events rather than opinion.

8. Diamond is being threatened because he is pursuing compliance.

This is a civil matter that the respondent should seek their own legal advice to resolve and is not relevant to this application.

9. Request meeting with Chris Jewell (water balance consultant engaged by Council) to explain connection between creek and pond 15m below groundwater and illegal use of 150 ml when only licensed for 40ml.

Council staff, to assist the assessment of the current section 96 application, sought the advice of an independent consultant Mr Chris Jewell. A report was provided by Mr Jewell and provided to the applicant, their consultant and to objectors to the development. At the request of the respondents a meeting was held on 18 September 2007 with the applicant, respondents and Council staff to discuss the report.

The meeting discussed the methodology and recommendations of the Jewell report. The applicant was provided with the opportunity to discuss the findings as were the respondents. The purpose of the meeting was for all interested parties to submit their comments on the report and for Council staff to hear all these comments so that a recommendation could be formulated.

The comments provided at the meeting differed widely, ranging from the applicant claiming that the amount of groundwater used was lower than that stated in the Jewell report and the respondents claiming that the water use was higher than that estimated in the Jewell report. The applicant's engineer submitted evidence to support their claims. The respondents claimed that the quarry was using significantly more groundwater than was stated in the Jewell report and relied on a comment made by a Department of Land and Water Conservation officer in a letter.

As the Jewell report was commissioned to provide advice on certain aspects of the assessment, it is not considered to be of benefit to engage the consultant, at the expense of ratepayers, further. Council staff have considered the report and the claims from both parties and have made a recommendation that should be contained in a consent condition if the current section 96 application is approved.

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10. Council ignored responsibility under SREP 20 re erosion control plans and the ground water issues (see Page 19, 31 & Clause 6, Part 2 on page 16 re erosion and control prior to commencement).

The development consent for DA0134/95 contains the following condition:

"Erosion and sedimentation control devices shall be installed and maintained during construction and no-going operations. Details shall be submitted and approved by Department of Land and Water Conservation prior to any works commencing."

The fact that this consent condition has been placed on the development consent indicates that Council did not ignore it's responsibility under SREP 20.

11. Requests reports from investigations into 5 items listed in Clr Bassett's undertaking of 13 July 2006

This request from the respondent refers to undertakings that were made in 2006. The respondent was questioned about this matter as the undertaking could not be found on Council's records. It was found that these undertakings were made verbally. However, the matters raised by the respondent are summarised as follows:

1. *Council has failed to enforce consent conditions and has not investigated non-compliance as set out in Court case 40230 of 2005 and 40430 of 2005.*

See comment to 1. in *General Matters* above.

2. *Explanation of Section 94 "fraud" and non-compliance with consent conditions.*

See comment to 2. in *General Matters* above and comments in the "Consent Condition Compliance" section of this report.

3. *Allegations that staff lied to Council in the meeting of 14 December 2004.*

See comment to 1. in the *General Complaints against individuals* section previously in this report.

4. *Complaints against former staff and Councillors.*

See comment to 2. in the *General Complaints against individuals* section previously in this report.

5. *Independent investigation into the respondent's allegations against staff and Councillors.*

See comment to 3. and 4. in the *General Complaints against individuals* section previously in this report.

12. Fraud in quantity survey used to calculate tonnages excavated and survey was done after the land was levelled.

In a report to Council on 14 December 2004 there was discussion regarding a site survey, by a registered Surveyor, Mr Matthew Freeburn, for the purpose of estimating the natural surface of the site prior to the quarry operation commencement to determine the depth and volume of the excavation. This survey was undertaken by a Registered Surveyor for the purposes of estimating the original natural ground level and estimating the volume of material excavated. It is appropriate to use a Registered Surveyor for this type of work as they are suitably qualified for the purpose of a volume estimate.

Understandably, the volumes calculated were within a range as the natural surface was estimated for the purpose of the excavation. The volume of excavated material calculated from Council records, based on monthly reports submitted by the operator of the quarry, was within the range of

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volume estimated by the Registered Surveyor and was discussed in the report to Council referred to above.

13. Council staff have ignored tree clearing.

If the current Section 96 application is approved and there has been tree clearing within the approved area then that clearing may be approved as part of the consent. If that is the case then the appropriate fine for unauthorised clearing (\$600) should also be considered. If there has been unauthorised clearing outside the approval (if granted) area then this can be investigated as a separate compliance matter.

A review of the file indicates a variety of photographs of the site at different stages of the development and indicate only a sparse, if any, tree cover in some areas. Careful evidence would need to be collected to establish if the clearing has been within or external to the approved area. The respondent has not provided any evidence and the exact area approved for works has not yet been established.

14. Allegations of drug dealing, standover tactics, arson, death threats from the operators or persons related to the quarry operations.

These allegations are of a civil nature and the respondent is recommended to obtain their own legal advice for this matter.

Consent Condition Compliance

1. Council has failed to enforce conditions of development consent.
2. The quarry is working out of the development approved area.
3. Condition 4 has not been complied with, therefore the consent has lapsed. Comments related to Statutory Declaration by Tom Bruce stating that it is misleading and false.
4. On 4/12 04 Council insisted that erosion & sedimentation control plan should be submitted re conditions 1, 2, 3, 4, 17b and 27. This not yet done.
5. Council staff failed to properly instruct solicitors re erosion & sedimentation plans and compliance with conditions 27 or 17b.
6. Condition 27 required an environmental management plan but this has not been submitted
7. Condition 17B – requires submission of monitoring program details for ground and creek water quality & contingency plan
8. Quarry using more water than licence permits.
9. No EPA or DLWC licences until 2004

The issues raised above relate to individual consent conditions. The following provides comments on each individual consent condition compliance.

Condition 1

"The development shall be carried out in accordance with Plan No. PS91/E130 dated April 1996 and documentation of Environmental Impact Statement dated 1 November 1995 as amended."

Comment: The existing operation has expanded outside the original approved area. The operators have lodged a Section 96 application (current application) to modify this condition to incorporate the existing and proposed operation area.

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Condition 2

"The area to be used being limited to the area shown on the submitted plans."

Comment: As per the comments for condition 1. The Section 96 application is proposed to rectify this non-compliance.

Condition 3

"The development approval being limited to a period of 2 (two) years. Subsequent stages will require formal submission under Section B of this Consent to Council and supported by evidence that the operation complies with condition of Stage 1 Consent"

Comment: This matter was the subject of a Section 96 application that was approved by Council in December 2004.

Condition 4

"Erosion and sedimentation control devices shall be installed and maintained during construction and ongoing operations. Details shall be submitted and approved by Department of Land and Water Conservation prior to any works commencing"

Comment: Erosion and sediment control plans were submitted to Council as part of the original development application. These plans were the subject of discussions during a mediation conference prior to the application being considered by Council. The outcome of the mediation conference was the inclusion of the second sentence in the condition that requires the approval of the Department of Land and Water Conservation.

Council does not have any records of amended plans being submitted and approved by the Department of Land and Water (Now Department of Water and Energy) as required by this condition. The Department of Water and Energy (DWE) have been consulted on two separate occasions to ascertain whether amended plans were lodged with the Department, and Council has received three separate letters from DWE in relation to this matter with at least two of those letters providing conflicting advice.

The first contact from Council resulted in a letter being received 25 June 2007 stating:

"A review of files in this matter has found that in 1996/97 the Department provided advice to Council, received copies of the Erosion and Sedimentation Plans (as required under DA134/95 Consent Condition 4) and undertook discussions and inspection of the site. In its working with Council the Department did not raise any significant concerns in this matter, implying support for the plan and its implementation."

Despite no request being sent from Council a second letter from the Department was received, dated 17 September 2007, stating:

"While DLWC received and reviewed plans (December 1995 and July 1996), there is no indication that DLWC received details as required by Condition 4 or provided the approval sought by Condition 4, subsequent to the consent determination."

These two letters provided conflicting advice and the matter was discussed with the applicant to clarify the situation. On 5 November 2007 the applicant submitted additional information in relation to the application that included a Statutory Declaration, dated 22 October 2007, that detailed the applicant's recollection of the facts in relation to compliance with Condition 4 of the development consent. This Statutory Declaration was referred to the DWE on 30 November 2007 as there was a reference to erosion and sediment control plans that had been recently viewed in the Department's Parramatta office. The response from DWE, received at Council on 7 March 2007, stated the following:

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"Notwithstanding claims made by Mr Bruce in his declaration, the Department is unable to locate any documentary evidence to support Mr Bruce's claims."

"Discussions with staff involved in the Tinda Creek matter at the time in question have also failed to substantiate Mr Bruce's claims of a verbal approval by a Department Officer."

Although the details in the Statutory Declaration by the applicant are not questioned, there does not appear to be satisfactory evidence that indicates that the Condition 4 requirement to submit erosion and sediment control details and obtain the approval of the Department of Land and Water Conservation has been complied with.

The requirements of Condition 4 of the Development Consent must be complied with prior to any works commencing on the site following issue of the approval. As this requirement has not been complied with, the Development Consent has, technically, not been commenced and, as such, it is considered that the Development Consent has lapsed.

Condition 5

"All necessary works being carried out to ensure that stormwater flow from adjoining properties is not impeded".

Comment: Site inspections indicate that this condition is being satisfied.

Condition 6

"All trucks arriving and leaving the site shall have their load/trays suitable covered to prevent spillage from the truck onto the road".

Comment: There is no indication that this condition is not being complied with. This issue is an ongoing management measure.

Condition 7

"Council reserves the right to impose a condition to have a mechanism installed whereby wheels of trucks leaving the site are washed to minimise dust and debris being deposited on roads, however, it shall monitor the operation for 3 (three) months without such a facility to ascertain whether such is required".

Comment: This condition has not been acted upon by Council (It should also be noted that this condition is unlawful and should be removed if a Section 96 application is approved).

Condition 8

"Payment of Section 94 Contribution under the provisions of the Environmental Planning and Assessment Act 197 towards the repair, reconstruction and maintenance of the roads based on 46.78 cents per tonne of material to leave the site. This contribution will be used for roadworks external to the site and towards the RTA's road maintenance program."

"The contribution will be based on monthly tonnage to leave the site, with the applicant to submit to Council records of material removed. The said contribution will be paid on a monthly basis at the rate nominated and will be reassessed annually based on the Sydney Consumers' Price Index".

Comment: The operator has been paying Section 94 contributions on a monthly basis as required. However, the base rate at which the contribution amount has been calculated has not been adjusted with the CPI since the commencement of the development consent.

This matter has been identified and the outstanding contribution amount, plus interest, has been calculated and a request for payment and a Notice of Intention to serve an Order, has been sent to the operator. This matter is the subject of ongoing action regarding the payment of the outstanding amount.

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Condition 9

"Dust control measures, e.g. vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas".

Comment: Site inspections indicate that this condition is being satisfied.

Condition 10

"Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by running water to be stored clear of any drainage line, easement or natural watercourse".

Comment: Site inspections indicate that this condition is being satisfied.

Condition 11

"Submission of a building application, plans and specifications complying with the Building Code of Australia for any future building construction".

Comment: Two relocatable buildings have been located on the site (amenities and site office building). The necessary applications and approvals have been issued for these structures.

Condition 12

"No advertising structures to be erected, displayed or affixed on any building or land without prior approval. Any unauthorised advertising structure will be removed at the expense of the advertiser".

Comment: At the last inspection there were no advertising signs. There is a site identification sign at the front of the site and advisory/ directional signs within the site.

Condition 13

"The development shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste products or otherwise".

Comment: At the time of the last inspection the activity was operating without significant impact on the surrounding area. There is no recent evidence of complaints from the neighbourhood.

Condition 14

"Operating hours shall be limited to 7.00am to 5.00pm Mondays to Fridays and 7.00am to 1.00pm Saturdays. Any alteration of these hours will require the approval of the Director Environment and Development".

Comment: There is no indication from site inspections or records of complaint that the mining operation is not complying with this condition.

Condition 15

"All waste materials to be stored and disposed of at regular intervals to the satisfaction of the Director Environment and Development".

Comment: There is no evidence that the operation is not complying with this condition.

Condition 16

"A waste management plan shall be submitted for consideration with the building application. Such plan shall address any builder's waste and waste generated during day-to-day operations and shall include types and quantities, recycling, reuse, storage and disposal".

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Comment: Condition not applicable with the location of relocatable buildings.

Condition 17

- (a) *An ambient water quality analysis is to be carried out in accordance with the Australian Water Quality Guidelines for Fresh and Marine Waters - "Protection of Aquatic Ecosystems", and submitted to Council on an annual basis for every three months' testing and results.*
- (b) *Submission of details on a monitoring program for ground and creek water quality and a contingency plan should the proposed water quality controls fail".*

Comment: This condition has not been fully complied with to date. The matters in this condition are to be addressed if the Section 96 application is approved.

Condition 18

"No fertilizers or pesticides are to be used without prior consultation with Council".

Comment: There was no evidence at the last inspection that these are used on the site.

Condition 19

"Maximum number of on-site employees, other than employees/contractors involved in truck haulage, shall be restricted to 15 (fifteen). Any increase in employment would require reassessment of the adequacy of on-site facilities for sewerage, water, car parking and the like".

Comment: At the last inspection of the site this condition was complied with.

Condition 20

"All road and driveway surfaces shall be regularly watered to dampen the surface in order to reduce dust generation".

Comment: At the last inspection the road had been watered to reduce dust generation. No evidence that this condition is not being complied with.

Condition 21

"Local grass seeds shall be collected from surrounding areas to be used as part of the revegetation program".

Comment: The applicant has written to Council in the past explaining that due to severe weather conditions it is difficult to collect seed from local species. The operator has used other similar or identical seeds and mixes in the establishment of ground cover vegetation.

Condition 22

"The intersection of the existing driveway and Putty Road shall be upgraded generally in accordance with the amended Plan No. PS91/E130 (1 of 3) dated April 1996. All works to be carried out to the requirements and under the supervision of the RTA and any fees, securities or contributions paid".

Comment: The intersection works are adequate for the development and this condition has been complied with.

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Condition 23

"All drainage channels shall be constructed to avoid turbulence and scouring".

Comment: The last site inspection was following recent rains. Some of the channels on the site showed some evidence of scouring. Temporary channels have been implemented in the current working areas and repairs to the scoured areas are being undertaken on an ongoing basis as required. This condition has been complied with

Condition 24

"(a) Revegetation Plan shall include the use of seed mixes (including endemic plant material) which reflect the changing seasons and provide short to medium term soil stability. Native grasses should be used as a supplementary secondary stabiliser. No Kikuyu grass to be used".

"(b) A qualified Bush Regenerator shall be engaged to specify and supervise all revegetation works".

Comment: The rehabilitation plan approved provides details of the rehabilitation measures and methods to be implemented. As mentioned in the condition 21 comments, some of the seed mixes used have been varied due to difficult local conditions. The last site inspection has indicated that the rehabilitation works are establishing and the operator is implementing suitable management measures to ensure survival of these works.

Condition 25

"Banks of the diversion drainage channel and perimeter mounding shall not exceed a slope of 1:3(V:H)".

Comment: Site inspection has indicated that the channels are generally no greater than 1:3 (V:H).

Condition 26

"The batter of the ponds and dam shall not exceed a slope of 1:3 (V:H)".

Comment: Site inspection has indicated that the pond walls are generally no greater than 1:3 (V:H).

Condition 27

"A site environmental management plan shall be prepared within 1 (one) month of the date of this approval, to address:

- (a) on-site materials management;*
- (b) daily operating procedures;*
- (c) erosion and sediment controls*
- (d) emergency contingency plans'*
- (e) on-site drainage processes to ensure water quality".*

Comment: The operator has submitted several versions of an environmental management plan to Council. Staff have reviewed these plans and advised the operator where changes should be undertaken. The operator is preparing a more comprehensive environmental management plan.

It should be noted that the consent condition, whilst requiring the preparation of the environmental management plan, the condition does not require the plan to be approved by Council. As such, technically this condition has been complied with. However, the operator is prepared to work with Council staff to finalise a suitable plan for the quarry operations.

Condition 28

"A professional archaeological survey being carried out for the site by a suitably qualified person to particularly assess the site's Aboriginal Heritage potential".

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Comment: The operator provided a letter from Brayshaw McDonald Pty Ltd, Consultant Archaeologists who carried out a survey of the site in conjunction with the extraction of sand for an agricultural dam. The survey in 1984 focussed on the north western quarter of the extraction area. The consultant indicated that no further archaeological investigation is warranted.

Condition 29

"All general stormwater shall be diverted around the work site other than any controlled inflow to maintain water levels within the work site".

Comment: Site inspection revealed that stormwater diversion drains in place are complying with the condition.

Condition 30

"All water falling on or contained within the work site shall be retained within the work site and not permitted to leave the site otherwise in accordance with a license issued by the EPA".

Comment: The operator has obtained licences for the use of groundwater that are issued by the Department of Environment and Climate Change. At the last site inspection there was no indication that water within the work site is permitted to escape the site beyond the levels that are permitted in any licence issued by the Department.

Condition 31

"The erection of truck warning signs with distance plates located 200m on approved sites to the access to the development".

Comment: This condition has been satisfied.

Condition 32

"The payment of a Bond or Bank Guarantee of \$50,000 for rehabilitation and restoration of the extractive industry operation. Should the plan of rehabilitation not be carried out in accordance with the plan, this money will be used for such work. The Performance Bond for rehabilitation of the site will be reviewed annually with a review of the conditions of consent".

Comment: A Bank Guarantee for \$50,000 was lodged in May 1997, but has not been reviewed to date. Should the Section 96 application be approved, this bond amount may require review.

Condition 33

"The applicant (extractor) is to lodge an annual report indicating compliance or otherwise with the conditions of approval of the consent and conformance with any other permits or licenses as issued by the EPA and the Department of Land and Water Conservation".

Comment: The operator has submitted a number of condition compliance letters to Council on 21 December 1998, 18 January 2000 and 1 May 2002. In April 2004 a submission was lodged with Council that was titled as an annual report.

Compliance with this condition has been low. However, much of this seems to be due to the submission of two Section 96 applications and the protracted assessment process for those two applications and the wording and structure of the development consent generally. The development consent is difficult to assess compliance in all areas due to the wording of the conditions being difficult to measure compliance, and some of the conditions are vague and not specific in their intent. If the Section 96 application is approved some of these (but not all) may be reworded to make clearer.

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10. The Tinda Creek quarry is operating on Lot 1 (by-pass channel & test bores) and Lot 3 (Test Bores) and Council should take action for this to cease. Should be operating only on Lot 2 DP 628806.

The development consent relating to DA 0134/95 relates to Lot 2 DP 628806. Council's records do not indicate that there are any approvals for excavation works on the adjoining properties. It is considered that the undertaking of test bores, as referred to in the submission and following inspection of the "test bores", consent for those works is not required.

The diverting of the overland flows as a "by-pass channel" are works required by the development consent and should relate to Lot 2 only. To date there is no survey evidence that the diversion works are encroaching on the adjoining property. It should be noted that the current application proposes to relocate the diversion channel to the south of the quarry operations.

Should the application be approved a condition should be imposed that requires these works to be located in relation to the boundaries and, should they encroach onto the adjoining property, these works are to be relocated. Should the application not be approved, these works should be included in any remediation Order issued on the property owner.

11. Auditor has defrauded Council in not mentioning the shortfall in S94 fee collection.

The contributions for Section 94 projects are committed to identified projects which are only undertaken when the appropriate fees are collected. Whilst estimates of income are included in the budget process for Section 94 income, this income has no impact on Council's overall budget and auditing process. The Auditor has undertaken the audit in the appropriate manner.

Conclusion

The report has provided a detailed assessment of all the matters raised by the respondents.

The application can be considered under the provisions of Section 96 as the modification is considered to be substantially the same development approved.

The legal advice provided by the EDO in respect to the lapsing of the consent has been considered and discussed with Council's solicitors.

Based on the evidence provided by the Department of Water and Energy it appears that this condition of consent has not been complied with as no approval from the Department has been obtained.

As a result based on the legal opinion and advice from Council's Solicitors the Development Consent DA0134/95 has lapsed and, as there is no current consent, Council cannot modify a Development Consent that has lapsed.

Planning Decision

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

RECOMMENDATION:

That:

1. The application under S96 to modify Development Consent DA0134/95, Lot 2, DP 628806, No. 6102 Singleton Road, Mellong be refused as, due to non-compliance with Condition 4 of the original consent, the consent has lapsed and Council is unable to consider the application.

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2. A Notice of Intention to serve an Order be issued on the operator to cease operations due to there being no current consent for the operation.
3. A survey plan is to be submitted to Council within two months, showing the location of diversion works in relation to the property boundary. Should any works be located outside the property boundary of Lot 2 DP 628806, those works are to be removed immediately and the land rehabilitated to its natural state.

ATTACHMENTS:

AT - 1 Locality Plan

AT - 2 Amended Sequence Plan

AT - 3 Amended Final Plan

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AT - 1 Locality Plan



AT - 3 Amended Final Plan



oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 11 November 2008

Item: 231 **CP - Rural Industry - S96 Modification to Increase Hours for Production and Loading, Lot 4 DP244901, 3 Putland Place, Oakville NSW 2765 - (MA0380/98A, 95498, 10204)**

Development Information

Applicant: Robert J Sinclair
Applicants Rep: N/A
Owner: Mr Robert & Mrs Julie Sinclair
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Hawkesbury Development Control Plan
Area: 2.446ha
Zone: Rural Living
Rural Living Under Hawkesbury Local Environmental Plan 1989
Advertising: 25 July 2008 to 8 August 2008
Date Received: 26 May 2008

Key Issues: ♦ Amenity
 ♦ Noise

Recommendation: Approval Subject to Conditions

REPORT:

Introduction

This application seeks to modify Development Consent MA380/98, which gave approval for 'the erection of hydroponic growing tables for the growing of lettuce' on the subject land.

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

Background

MA 380/98 approved 'the erection of hydroponic growing tables for the growing of lettuce' on 18 November 1998. The approved development included a rural industry for the processing and packaging of lettuces. The supporting documentation submitted with the application provides the parameters by which the development was approved, being:

"Our business processes lettuces into salad mix. Briefly, our operations involve the cutting of lettuces, washing, rinsing and drying then packing of the finished salad mix product into 150g bags, and 2 kg and 3 kg cartons. Our business is wholesale only and as such there is no retailing of the product from our production site. We source our lettuces from two local growers who deliver each production day. Our development application for the growing of hydroponic lettuce will let us grow around 15% to 20% of our requirements, on site.

We deliver the finished salad mix product 6 days per week on one delivery run utilising a 2 tonne truck, refrigerated, which leaves at 3.00am.

Our hours of operation are

A) Loading 2.00am to 3.00am Monday to Saturday inclusive.

B) Production 7.30am to around 4.30pm Monday to Saturday inclusive.

We currently have three employees each day, with this increasing to four when we grow lettuces on-site."

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The growing of lettuce on the site has never been undertaken.

Since approval of the application, a number of complaints have been made in respect to the operation of the development. In this respect, the main concerns have been in relation to the hours of operation, noise and lighting.

Recently, Development Consent DA 697/07 was approved (15 May 2008) for the demolition of an existing shed, the erection of a new shed and the use of an existing unlawful annex for the purpose of providing shelter over an existing loading area associated with the building used for the rural industry.

The Proposal

This application seeks to modify Development Consent MA 380/98, which gave approval for 'the erection of hydroponic growing tables for the growing of lettuce' on the subject land.

The Section 96 modification proposes an increase in the hours of operation of the rural industry, and provides the following explanation:

"At the time of the Olympics in 2000 our customers requested that their deliveries be made around 1 hour earlier. After the Olympics, they liked the earlier deliveries and requested that they be continued. Also, we have a larger volume of deliveries on our busy days - Monday, Thursday and Friday, compared to Tuesday and Saturday which are quite quiet. Therefore we load earlier some days compared to others. Please note, the DURATION of the loading has not changed. Our loading is in a band of 1:30am to 3:30 am Monday to Saturday with a duration of one hour. The only change to this could be Christmas week and Easter week where we may need to start half an hour earlier, due to a larger volume of deliveries.

Production is 7:00am to around 4:00pm Monday to Saturday. Again, the only exceptions to the production hours would be Easter and Christmas weeks where we may run a little over this.

We currently have a 5 tonne G.V.M truck, although when the lease on the truck expires we will probably replace it with a smaller one.

Further, I arrange and label the stock in cool rooms pertinent to customers orders, and leave the run-sheet, invoices, and next day's production sheet in the processing shed each night Sunday to Friday: This would generally take around 30 minutes.

Some of my older children also bag croutons and bacon chips for our Caesar salad product in the processing shed once or twice per week, usually at night. This normally takes 30 to 45 minutes.

Employees are now 3 Full Time, 3 part-time plus myself. (I'm not counting my children here.)

Statutory Situation

Assessment Of Section 96(2)

This application is to be determined under the provisions of s96(2) - *Other Modifications* - of the EPA & A Act, 1979.

s.96(2)

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*

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Comment:

It is considered that the development as modified is substantially the same as the approved development.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Comment:

N/A

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*

Comment:

The modification application was notified in the same manner as the original development application in accordance with the requirements of Hawkesbury Development Control Plan - Notification Chapter.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment:

Following notification of the application, three (3) submissions were received. The matters raised in these submissions are discussed further in this report.

s.96(3)

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79c(1) as are of relevance to the development the subject of the application

Comment:

The relevant matters for consideration under s.79C(1) of the EP&A Act are discussed below.

s.96(4)

Modification of a development consent in accordance with this section is not to be construed as the granting of development consent under this Part but a reference in this or any other Act to a development consent is a reference to the development consent so modified.

Comment:

The application is for the modification of development consent MA 380/98.

s.96(5)

Development consent of the kind referred to in section 79B(3) is not to be modified unless the requirements of section 79B(3)-(7) have been complied with in relation to the proposed modification as if the proposed modification were an application for development consent.

Comment:

The proposed modification is not located on land that is, or is a part of, critical habitat, or is likely to significantly affect a threatened species, population, or ecological community, or its habitat. Therefore section 79B(3) - (7) do not apply.

a) the provisions of:

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

The relevant environmental planning instruments are:

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

General Provisions of HLEP 1989

Clause 2 - Aims, Objectives etc,

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

Clause 5 - Definitions

The activity was approved under the HLEP 1989 definition of 'rural industry' which means:

"handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality;"

'Rural industry' is prohibited within the Rural Living zone. However prior to the gazettal of Amendment No. 108 to Hawkesbury Local Environmental Plan 1989 (which introduced the Rural Living zone), rural industries were permitted with development consent on the subject land.

Therefore the activity is best defined as an 'identified land use'. Identified land use means *"a land use for which a consent or approval has been granted by the Council on or after 22 December 1989 and that was in operation on the date of commencement of Hawkesbury Local Environmental Plan (Amendment No. 108)." (18.8.2006)*

Clause 9 - Carrying Out Development

The subject land is zoned Rural Living under the provisions of Hawkesbury Local Environmental Plan 1989. 'Identified land use' is permissible with development consent within the Rural Living zone.

Clause 9A - Zone Objectives

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

These objectives are as follows:

- (a) to provide primarily for a rural residential lifestyle,
- (b) to enable identified agricultural land uses to continue in operation,
- (c) to minimise conflict with rural living land uses,
- (d) to ensure that agricultural activity is sustainable,
- (e) to provide for rural residential development on former agricultural land if the land has been remediated,
- (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,
- (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,
- (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,
- (i) to prevent the establishment of traffic generating development along main and arterial roads,
- (j) to ensure that development does not create unreasonable economic demands for the provision or extension of public amenities or services.

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Development Consent MA 380/98 approved loading hours between 2:00am and 3:00am in the morning. Whilst this is not consistent with the rural residential amenity of the locality, these hours have been approved. It is considered that the extension of the loading hours to 1:30am to 3:30am to allow flexibility in delivery times will have no additional adverse impacts on the amenity of the neighbourhood. The duration of truck loading will remain at one (1) hour.

The proposed new production hours will have no adverse impact on the amenity of the area.

The proposed modified development will not create any landuse conflicts within the locality, and is considered to be generally consistent with the objectives of the Rural Living zone.

Specific Provisions of HLEP 1989

Clause 18 - Provision of water, sewerage etc. services

Clause 18(1) states that development consent will not be granted unless satisfactory arrangements have been made for the provision of water, sewerage, drainage and electricity to the land.

Comment:

Services to the property exist and are considered adequate for the proposal.

Conclusion

The proposed modified development is consistent with Hawkesbury Local Environmental Plan 1989 including the Rural Living zone objectives.

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

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

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 apply to the proposed development as modified.

iii) any development control plan applying to the land

Hawkesbury Development Control Plan.

The proposed modified development is consistent with the requirements of Hawkesbury Development Control Plan.

iv) any matters prescribed by the regulations

There are no relevant matters that are applicable to the proposed modification.

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

The relevant matters for consideration under Section 79C of the EP & A Act follow:

Context And Setting

Adjoining land uses comprise of predominantly rural residential uses. It is considered that the scale and operation of the proposed modified rural industry will have no unreasonable impacts on the amenity of the adjoining properties, and is in character with the area.

Noise and Vibration

It is considered that the proposed modified development will have no additional unreasonable impacts on the locality with respect to noise, as discussed in detail further in this report.

c) the suitability of the site for the development

The land is suitable for the proposed modified development.

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

Public Submissions

Following notification of the proposal, three (3) submissions were received. The matters raised in these submissions are addressed below:

Inconsistent with Hawkesbury Local Environmental Plan 1989

Hawkesbury Local Environmental Plan 1989 prohibits the activity within the Rural Living zone. *Any extension of hours of operation, is in any reasonable view, an extension of the business over and above what was approved in 1998 and would fly in the face of the objectives for a rural living zone.*

Comment:

As discussed previously, the activity is defined as 'identified land use' which is permissible within the Rural Living zone. It is considered that the modified development will have no additional adverse impacts on the locality, and is generally consistent with the objectives of the Rural Living zone.

Lighting

Comment:

Any nuisance resulting from external security lighting was addressed as part of Development Consent DA 697/07, which was approved 15 May 2008. This included:

- the construction of a screen nib wall to the front of the annex to the building used for the rural industry. The nib wall will assist in blocking light spill from inside the annex;
- security lighting being directed into the subject property towards the existing factory building; and
- the provision of landscaping along a portion of the northern boundary shared with property 52 Chapman Road.

Noise from loading and unloading. Noise from trucks entering and leaving the premises in the middle of the night. Noise from the processing area.

Comment:

Loading and unloading is carried out within the annex attached to the rural industry building. The nib wall to be constructed to the front of the annex (as required by DA 697/07) will assist in reducing noise emanating from the area due to loading and unloading operations. It is considered reasonable that the construction of this nib wall be required as part of this application given that loading of products for deliveries is carried out in the early hours of the morning.

Development Consent DA 697/07 for a 'shed and annex to an existing shed' was approved 15 May 2008. It is noted that Conditions 27 and 28 of this Consent state:

- "27. *Any loading and unloading undertaken between the hours of 10pm and 7am is not to be undertaken with a forklift that has a warning beeper. In this regard a walk-behind forklift that does not have a warning beeper may be used.*
28. *When vehicle are being loaded or unloaded on the site, noise from the activity is to be minimised in that vehicle engines are not to be left idling during the activity.*

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These conditions were imposed to minimise the impacts of noise from the loading of products. These conditions will be reiterated with approval of this modification to ensure that these measures are complied with should DA 697/07 not be carried out.

The truck used for the deliveries is only small.

It is considered that noise emanating from the truck entering and leaving the property and from the processing area is minimal, and will have no significant adverse impact on the amenity of adjoining properties.

Intensification of the activity

Comment:

The applicant advised that "*current production levels are lower than they were in 1998*". However, a comparison of the operation details provided for the activity in 1998 and in the current application reveals that:

- the number of employees have changed from three (3) employees per day to three (3) full time employees, three (3) part time employees plus the owner;
- the use of a 2 tonne truck has changed to requiring a 5 tonne truck.

This application seeks to change the hours of operation only. The application does not include changes to production levels, number of employees, or increased truck movements. Any intensification of the approved use requires the approval of Council and, until such an approval is granted, the activity is required to be conducted in accordance with the original consent.

It is considered reasonable, as part of this modification application, that additional conditions of consent be imposed to clarify the parameters under which the development was approved, and may include:

- The number of employees is restricted to three (3) employees plus the owner.
- The activity shall utilise one two (2) tonne truck for deliveries of product.
- Only one truck movement is permitted between the hours of 1:30am and 3:30am and only for the delivery of product.
- The loading of the delivery truck between the hours of 1:30am and 3:30am shall not exceed 1 hour in duration between these hours.

Non Compliance with Conditions of Consent

Respondents have raised issue with non compliance of conditions of consent in respect to hours of operation.

Comment:

Noted.

Planning Decision

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

RECOMMENDATION:

That Development Consent MA 380/98A be amended in the following manner:

Insert the following new conditions:

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13. The number of employees is restricted to three (3) employees plus the owner.
14. The activity shall utilise one two (2) tonne truck for deliveries of product.
15. Operating hours shall be limited to:

Loading	1:30am to 3:30am Monday to Saturday inclusive.
Production	7:00am to 4:00pm Monday to Saturday inclusive.
16. Only one truck movement is permitted between the hours of 1:30am and 3:30am and only for the delivery of product.
17. The loading of the delivery truck between the hours of 1:30am and 3:30am shall not exceed 1 hour in duration between these hours.
18. Any loading and unloading undertaken between the hours of 10pm and 7am is not to be undertaken with a forklift that has a warning beeper. In this regard a walk-behind forklift that does not have a warning beeper may be used.
19. When vehicle are being loaded or unloaded on the site, noise from the activity is to be minimised in that vehicle engines are not to be left idling during the activity.
20. 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.
21. 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.

ATTACHMENTS:

AT - 1 Locality Plan

ORDINARY MEETING**Meeting Date:** 11 November 2008**Item: 232****CP - Community Sponsorship Program - (2008/2009 Round 2) - (96328, 95498)****REPORT:**

This report has been prepared to advise Council of applications for financial assistance received from community groups and individuals to be determined under Round 2 of the Community Sponsorship Program for 2008/2009.

Background

On 13 March 2007 Council resolved to adopt a Sponsorship Policy, prepared in accordance with the guidelines issued by the Independent Commission Against Corruption. To give effect to the Sponsorship Policy, criteria and administrative arrangements for a Community Sponsorship Program were developed with implementation commencing in 2007/2008.

The adopted financial estimates for 2008/2009 include an allocation of \$59,000 for the Community Sponsorship Program. Pursuant to Council's resolution of 29 April 2008, \$18,000 of this amount has been set aside as a contribution to the staging of the Hawkesbury City Eisteddfod.

At its Ordinary Meeting on 29 July 2008 Council resolved to approve expenditure of \$ 37,389 for Round 1 2008. A further \$2,000 was approved by Council on 9 September 2008 (an out-of-policy approval) as a contribution towards the refurbishment of the Doctor's Rooms at Wisemans Ferry. A balance of \$19,611 was therefore available for further funding rounds.

Community Sponsorship Program (2008/2009) – Round 2

In accordance with Council's Community Sponsorship Policy, applications for community sponsorship under Round 2 of the Community Sponsorship Program 2008 - 2009 were called for in late September 2008 and closed on 31 October 2008.

11 applications were received. Table 1 summarises the applications received, the proposed level of financial assistance and whether a special conditions is proposed to be attached to the provision of funding.

	Applicant	Type ⁽¹⁾	Proposal	Amount Recommend	Special Condition
1	Rachael Westbrook	MA	Representative equestrian	100	Nil
2	NSW Cancer Council	ES	Relay for Life	3,000	Nil
3	OMNi	MA	OMNi Shindig 2009	500	Nil
4	Wally Eggleton	MA	Representative swimming	100	Nil
5	Bede Polding College	MA	Student's travel to Thailand	500	Nil
6	Maraylya Public School	CF	Presentation Night	341	Nil
7	Rotary Clubs of Richmond + Windsor	SG	Australian Golfing Fellowship Tournament - Rotarians	2,000	Nil
8	Nepean Migrant Access Inc	SG	Hawkesbury Harmony Day 09	1,000	Nil
9	Hawkes District Cricket Assoc	MA	2008 Creak Shield Team	500	Nil
10	Bowen Mountain Association	SG	Community Visual Arts Festival	2,000	Yes
11	Camp Quality	MA	Refund of Council Fees for hire of McQuade Park - <i>esCarpade</i>	185	Nil
			TOTAL	10,226	

⁽¹⁾ MA = Minor Assistance
CF = Access to Community Facilities

ES = 3 Year Event Sponsorship
ICF = Improvement to Council Facility

SG = Seeding Grant

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Table 1 - Requests for financial assistance Round 2 of 2008/2009 Community Sponsorship Program

The applications received were assessed against the applicable criteria outlined in Council's Community Sponsorship Program. This criteria reflects the provisions of Council's adopted Sponsorship Policy and the amounts recommended for approval are consistent with the Policy. A more complete summary of the assessment of applications against the Community Sponsorship Program is appended to this report - including the details of special conditions to be applied to the recommended financial assistance (Attachment 1).

Should Council approve the provision of the proposed financial assistance, Council's standard Sponsorship Agreement will need to be executed for Applications 2 (NSW Cancer Council), 7 (Rotary Clubs of Richmond and Windsor), 8 (Nepean Migrant Access Inc) and 10 (Bowen Mountain Association Inc). Sponsorship Agreements are not required for the other recommended applicants.

There are sufficient funds to cover the total recommended amount of \$10,226 for Round 2 of the 2008/2009 Community Sponsorship Program leaving a balance of \$9,385 for allocation in further rounds.

Conformance to Strategic Plan

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

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

Funding

Funding allocations recommended in this report are available within current budget provisions.

RECOMMENDATION:

That Council:

1. Approve payments of Section 356 Financial Assistance to the organisations or individuals listed, and at the level recommended in Table 1 of this report.
2. Approve the execution of Council's standard Sponsorship Agreement for Applications 2, 7, 8 and 10 as identified in Table 1 of this report.
3. Note the Special Condition recommended for Application 10 as identified in Table 1 and Attachment 1 of this report.

ATTACHMENTS:

AT - 1 Assessment of Applications under Round 2 Community Sponsorship Program 2008/2009.

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AT - 1 Assessment of Applications under Round 2 Community Sponsorship Program 2008/2009

	Applicant	Sponsorship Type (1)	Description	Assessment Criteria								Amount requested (or previously approved for ES Sponsorship)	Amount recommended	Comments
				Local service	Not-for-profit	Not funded by State/Federal Agency	Co-contribution provided	Reflects agreed community priority	Meets sponsorship criteria	Financially sustainable	Documentation provided			
1	Rachael Westbrook	MA	Represent Hawkesbury at Aust Equestrian Federation National Inter-school championships.	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	100	Fulfills criteria for Minor Assistance allocation
2	NSW Cancer Council	3Y	To stage Hawkesbury Relay for Life – 24 hour walk to raise awareness of cancer and its impacts.	✓	✓	✓	✓	✓	✓	✓	✓	3000	3000	Refer Council resolution – Ordinary meeting 12/7/2005 Item 205. If approved would represent Year 1 of proposed 3 year Sponsorship Agreement
3	OMNI	MA	OMNI 2009 Shindig – Annual event bringing older men together to share stories and friendships.	✓	✓	✓	✓	✓	✓	?	✓	500	500	Fulfills criteria for Minor Assistance allocation. Event to be held on Wilson Island (OMNI received \$500 in 07/08 for 'blokes day' event).
4	Wally Eggleton	MA	Represent district at Pacific School Games (swimming) in Canberra	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	100	Fulfills criteria for Minor Assistance allocation
5	Bede Polding College	MA	5, Year 10/11 students travelling to Thailand to complete 2 weeks of community work as part of International Student Volunteers Prog.	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	500	Fulfills criteria for Minor Assistance allocation. Funds will be used to subsidise individual student's travel expenses. (Bede Polding received \$500 in 07/08 for similar project involving different students .
6	Maraylya Public School	CF	Annual Presentation Night at Windsor Function Centre	✓	✓	✓	✓	✓	✓	✓	✓	not specified	341	Community Sponsorship policy provides for 50% of the hire to be subsidised.
7	Rotary Clubs of Richmond and Windsor	SG	Hosting Australian Golfing Fellowship of Rotarians Annual Tournament and dinner.	✓	✓	✓	✓	✓	✓	✓	✓	2000	2000	Function to welcome attendees around Australia to Hawkesbury to participate in golfing tournament.
8	Nepean Migrant Access Inc	SG	Celebration of Harmony Day 2009	✓	✓	✓	✓	✓	✓	✓	✓	1000	1000	Event to be held at Hawkesbury Regional Museum.
9	Hawkesbury District Cricket Association	MA	Participation of Creak Shield Representative Team in inter-districts association shields	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	500	Fulfills criteria for Minor Assistance allocation. Sponsorship Policy allows a maximum of \$500 per team
10	Bowen Mountain Association Inc	SG	Purchase picture hanging frames for Community Visual Arts Festival.	✓	✓	✓	✓	✓	✓	✓	✓	2000	2000	Special Condition – Funding subject to liaison with, and approval from, Council's Building Services Dept
11	Camp Quality	MA	Refund of Council Fees for hire of McQuade Park for staging of esCarpage event.	✓	✓	✓	✓	✓	✓	✓	✓	185	185	Fulfills criteria for Minor Assistance allocation
			TOTAL										10,226	

oooO END OF REPORT Oooo

ordinary

section 5

reports
of committees

ORDINARY MEETING
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SECTION 5 - Reports of Committees

ROC - Local Traffic Committee - 15 October 2008 - (95495, 80245)

Minutes of the Meeting of the Local Traffic Committee held in the Large Committee Room, Windsor, on Wednesday, 15 October 2008, commencing at 3.00pm.

ATTENDANCE

Present: Councillor B Bassett (Chairman)
Mr J Suprain, Roads and Traffic Authority
Mr R Williams, MP (Hawkesbury)
Mr J Christie, Officer of Messrs A Shearan, MP and J Aquilina, MP

Apologies: Mr R Elson, Department of Transport
Snr Constable Michelle Simmons, NSW Police Service

In Attendance: Mr C Amit, Manager, Design & Mapping Services

SECTION 1 - Minutes

Councillor B Bassett welcomed everyone to the meeting during the new term of Council and advised the Committee that he is the Chairman of the Local Traffic Committee and the alternate delegate is Councillor Tiffany Tree.

Item 1.1 Minutes of Previous Meeting

The Minutes of the meeting held on 20 August 2008 were confirmed.

Item 1.2 Business Arising

1.2.1 LTC - 20 August 2008 - QWN - 4.4 - Intersection of George Street and Richmond Road (Hawkesbury Valley Road), Windsor - Traffic Lights

Mr J Suprain advised that approval for the right turn arrow (green phase) is expected within the near future.

1.2.2 LTC - 20 August 2008 - QWN 4.5 - Putty Road, Mellong/Tinda Creek Locality - Wildlife Warning Signs - (80245)

Mr J Suprain advised that the NPWS has informed the RTA to use general Wildlife Signs in this area as there are no specific types of animals in this area. The signs will be installed in the near future.

SECTION 2 - Reports for Determination

Item 2.1 LTC - 15 October 2008 - Item 2.1 - Proposed 15 minute Parking adjacent to Pitt Town Post Office, Pitt Town (Hawkesbury) - (80245; 80293)

REPORT:

Introduction

Representation has been received from the Pitt Town Progress Association Inc., requesting a 15 minute restricted parking zone outside the Pitt Town Post Office in Bathurst Street, Pitt Town (Dataworks Document No. 2887331).

The Pitt Town Progress Association Inc. advise that with the construction of the new shopping complex on the opposite side of the road, parking has become very limited and people wishing to use the post office are having difficulty in obtaining a parking space. The requested 15 minute restricted parking zone will provide sufficient time for the customers of the Post Office to access their mail or the Post Office shop.

Discussion

The Pitt Town Post Office is located at No. 82 Bathurst Street and situated between Chatham Street and Eldon Street, Pitt Town. The available parking in this section of Bathurst Street is unrestricted and allows for approximately 29 parking spaces (parallel parking - kerb side). The Post Office is located within residential properties on the south-western side of Bathurst Street. The current development on the opposite side of the road, is located at No. 77 Bathurst Street, which on completion will be combined with the existing service station at No 71 Bathurst Street. This new combined development will provide for 29 parking spaces (off-road). This will provide for a total of 58 unrestricted parking spaces in this vicinity.

Notwithstanding the provision of the additional parking spaces within the development site, there will be a greater demand for the unrestricted parking in Bathurst Street by staff working in these premises. This is evident by the current demands placed on the on-street parking by the construction workers.

The request for short term parking adjacent to the Post Office will benefit the business by ensuring a higher turn over of vehicles. The restricted parking zone will be limited to the frontage of No. 82 Bathurst Street only. The owner of the Post Office advises that they do not intend to relocate into the new shopping complex and requested that the proposed 15 minute restricted parking zone be made a permanent zone.

RECOMMENDATION:

The existing two (2) unrestricted parking spaces along the frontage of No. 82 Bathurst Street, Pitt Town, adjacent to the Pitt Town Post Office, be replaced with a 15 minute parking zone (8.30 to 6.00pm Mon-Fri and 8.30am to 12.30pm Saturday).

APPENDICES:

There are no supporting documents for this report.

ORDINARY MEETING
Reports of Committees

**Item 2.2 LTC - 15 October 2008 - Item 2.2 Bicycle Racing Events for 2009 - Oakville
(Hawkesbury) - (80245, 82935)**

REPORT:

Introduction:

An application has been received from the Parramatta Cycling Club seeking approval to conduct Amateur Bicycle Racing Events in Oakville during 2009. The racing events will be conducted along the following route:

Route - Oakville

Commencing at Oakville Public School, Oakville, and proceeding along Hanckel Road

Turning left into Old Pitt Town Road

Turning left into Saunders Road

Turning left into Smith Road

Turning left into Ogden Road and finishing at Oakville Public School.

The route distance is approximately 7.2 kilometres

(Refer to Appendix 1: Plan TR007/08 - Bicycle Racing Event - Route - Oakville).

The Parramatta Cycling Club (PCC) has indicated that the cycling events will be held on twelve (12) separate Saturdays, during the period of 11 April 2009 to 26 September 2009. Each event will be conducted between 2.00pm and 4.00pm. There will be approximately 60 to 85 competitors competing in 5 separate groups. The groups have on average 15 competitors but is limited to 25 competitors. Each group will be spaced approximately 5 minutes apart. Approximately 30 spectators are expected. Traffic control arrangements will be in place with no road closures required.

The proposed dates are:

- 11 April 2009
- 25 April 2009
- 09 May 2009
- 23 May 2009
- 13 June 2009
- 27 June 2009
- 11 July 2009
- 25 July 2009
- 08 August 2009
- 22 August 2009
- 05 September 2009
- 26 September 2009

Discussion:

It would be appropriate to classify the event as a “**Class 2**” special event under the “Traffic Management for Special Events” guidelines issued by the Roads & Traffic Authority as this event may disrupt minor traffic and transport systems along the specified route. Traffic volume and road width details are as shown in the following table:

Route - Oakville		
Road Name	ADT (Year)	Sealed Carriageway Width (m)
Hanckel Road	1498 (2002)	5.7
Old Pitt Town Road	1264 (2002)	6.0
Saunders Road	718 (2000)	5.4 – 5.8
Smith Road	342 (1999)	6.2
Ogden Road	190 (1999)	7.5

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The event organiser should assess the risk and address the suitability of the route as part of the risk assessment considering the road width, number of bicycles, traffic volume and bicycles travelling close to the edge of the sealed travelling lane.

The event organiser has provided the following information in relation to this event: Appendix 2 (Dataworks Document No: 2890370):

- i) Details of the Special Event - Traffic template;
- ii) RTA - Special Event Transport Management Plan Template;
- iii) Proposed Road Racing Schedule 2009,
- iv) Traffic Control Plans (TCP)
- v) Copy of Insurances which are valid to 30 November 2008;
- vi) Course Map/Plan
- vii) Advice that an application has been made to the NSW Police Service.
- viii) Amendment to the last race date from 27 September 2009 to 26 September 2009. (Dataworks Document No. 2900082)

RECOMMENDATION:

That:

1. The Bicycle Racing Events planned for:

- 11 April 2009
- 25 April 2009
- 09 May 2009
- 23 May 2009
- 13 June 2009
- 27 June 2009
- 11 July 2009
- 25 July 2009
- 08 August 2009
- 22 August 2009
- 05 September 2009
- 26 September 2009

by the Parramatta Cycling Club along the Oakville Route, be classified as a "Class 2" special event under the "Traffic and Transport Management for Special Events" guidelines issued by the RTA.

2. The safety of all road users and personnel on or affected by the event is the responsibility of the event organiser.
3. It is strongly recommended that the event organiser become familiar with the contents of the RTA publication "Guide to Traffic and Transport Management for Special Events" (Version 3.4) and the Hawkesbury City Council special event information package that explains the responsibilities of the event organiser in detail.
4. No objection be held to this event subject to compliance with the following conditions:

Prior to the event:

- 4a. the event organiser is to obtain approval to conduct this event, from the NSW Police Service; **a copy of the Police Service approval to be submitted to Council;**
- 4b. the event organiser **is to submit a Transport Management Plan (TMP) for the entire route incorporating the Traffic Control Plan (TCP) submitted to Council** for acknowledgement;

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- 4c. the event organiser is to **submit to Council a copy of its Public Liability Policy** in an amount not less than \$10,000,000 **noting Council as an interested party on the Policy** and that Policy is to cover **both on-road and off-road activities**;
- 4d. the event organiser is to advertise the event in the local press stating the entire route/extent of the event and the traffic impact / delays expected due to the event, two weeks prior to the event; **a copy of the proposed advertisement to be submitted to Council** (indicating the advertising medium);
- 4e. the event organiser is to notify the details of the event to the NSW Ambulance Service, NSW Fire Brigade / Rural Fire Service and SES at least two weeks prior to the event; **a copy of the correspondence to be submitted to Council**;
- 4f. the event organiser is to directly notify relevant bus companies, tourist bus operators and taxi companies operating in the area, and all the residences and businesses which may be affected by the event, at least two weeks prior to the event; The event organiser is to undertake a letter drop to all affected residents and businesses in proximity of the event, with that letter advising full details of the event; **a copy of the correspondence to be submitted to Council**;
- 4g. the event organiser is to assess the risk and address the suitability of the entire route as part of the risk assessment considering the possible risks for all participants; This assessment should be carried out by visual inspection of the route / site by the event organiser prior to preparing the TMP and prior to the event;
- 4h. the event organiser is to carry out an overall risk assessment for the whole event to identify and assess the potential risks to spectators, participants and road users during the event, and design and implement a risk elimination or reduction plan in accordance with the Occupational Health and Safety Act 2000; (information for event organisers about managing risk is available on the NSW Sport and Recreation's web site at <http://www.dsr.nsw.gov.au>);
- 4i. the event organiser is to submit the completed "Special Event - Traffic Final Approval" form to Council;

During the event:

- 4j. access is to be maintained for businesses, residents and their visitors;
- 4k. all traffic controllers / marshals operating within the public road network are to hold appropriate certification as required by the RTA;
- 4l. the cyclists are to be made aware of, and are to follow all the general road user rules whilst cycling on public roads;
- 4m. in accordance with the submitted TMP and associated TCP, appropriate advisory signs, and traffic control devices are to be placed along the route, during the event, under the direction of a traffic controller holding appropriate certification as required by the RTA;
- 4n. the competitors and participants are to be advised of the traffic control arrangements in place, prior to the commencement of the event; and,
- 4o. all roads and marshalling points are to be kept clean and tidy, with all directional signs to be removed immediately upon completion of the activity

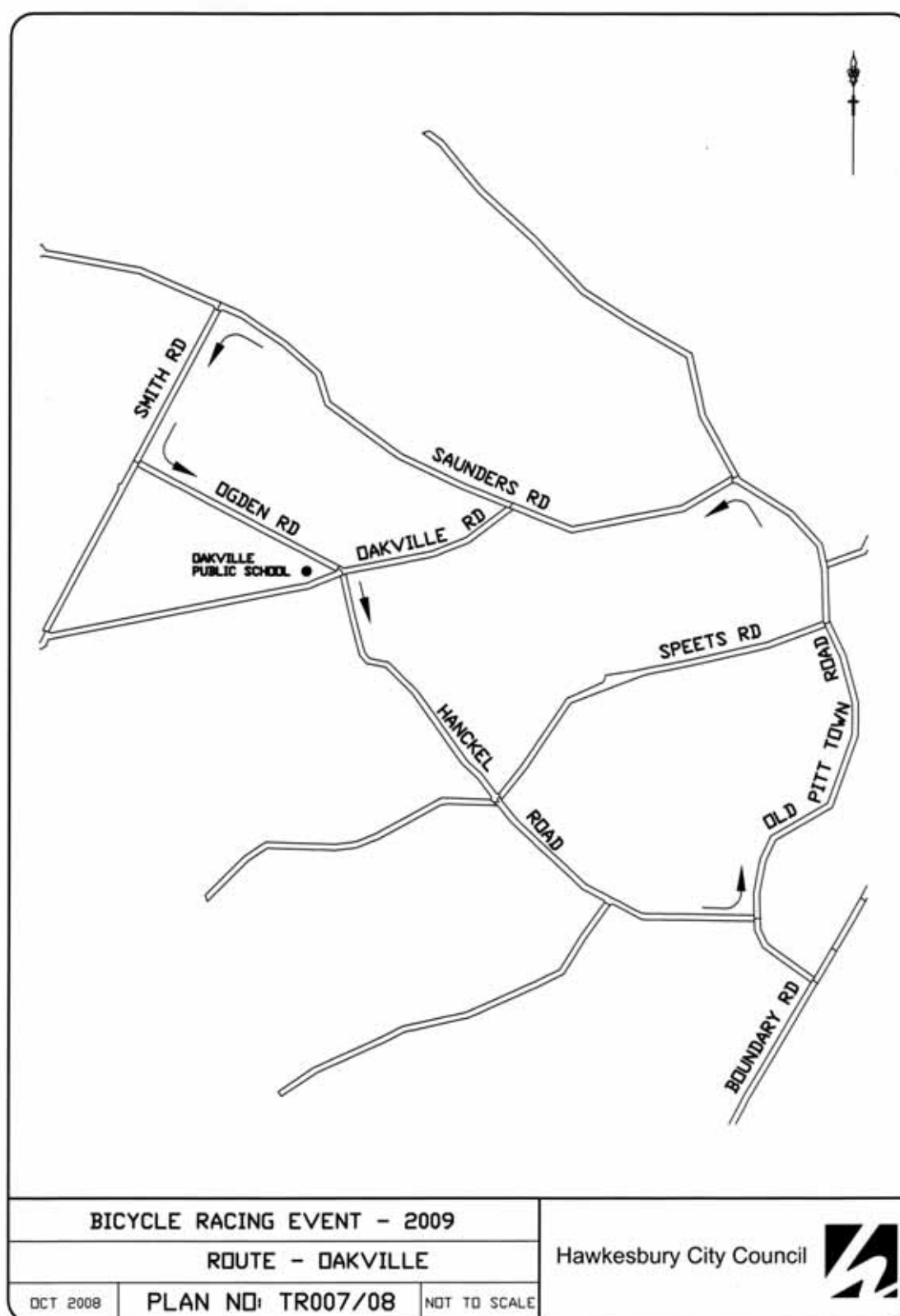
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APPENDICES:

AT - 1 Bicycle Racing Event, Route - 2009 - Oakville, Plan TR007/08

AT - 2 Special Event Application - (Dataworks Document No. 2890370) - *see attached*.

AT - 1 Bicycle Racing Event, Route - 2009 - Oakville, Plan TR007/08



Item 2.3 LTC - 15 October 2008 - Item 2.3 Bicycle Racing Event for 2009 - East Kurrajong (Hawkesbury) - (80245, 82935)

REPORT:

Introduction:

An application has been received from the Parramatta Cycling Club seeking approval to conduct an Amateur Bicycle Racing Event in East Kurrajong on Sunday 2 August 2009. The racing event will be conducted along the following route

Route - East Kurrajong

Commencing at Stanley Park, East Kurrajong, and proceeding along East Kurrajong Road
Turning left into Putty Road (RTA),
Turning left into Blaxlands Ridge Road,
Turning left into Comleroy Road,
Turning left into East Kurrajong Road and finishing at Stanley Park.
The route distance is approximately 32.5 kilometres
(Refer to Appendix 2: Plan TR008/08 – Bicycle Racing Event - Route - East Kurrajong).

The Parramatta Cycling Club has advised that this event will be a One Day Event, conducted between 9.00am and 2.00pm. There will be approximately 150 competitors competing in graded events. There will be approximately 50 competitors competing in 3 separate groups. Approximately 50 spectators are expected. Traffic control arrangements will be in place with no road closures required.

Discussion:

It would be appropriate to classify the event as a “**Class 1**” special event under the “Traffic Management for Special Events” guidelines issued by the Roads & Traffic Authority as this event may disrupt major traffic and transport systems along the specified route. Traffic volume and road width details are as shown in the following table;

Route - East Kurrajong		
Road Name	ADT (Year)	Sealed Carriageway Width (m)
East Kurrajong Road	906 (1995)	5.6 – 6.4
Putty Road (RTA)	RTA (Not Available)	RTA (Not Available)
Blaxlands Ridge Road	694 (1995)	6.0 – 7.5
Comleroy Road	2184 (1998)	6.0 – 6.8

The event organiser should assess the risk and address the suitability of the route as part of the risk assessment considering the road width, number of bicycles, traffic volume and bicycles travelling close to the edge of the sealed travelling lane.

The event organiser has provided the following information in relation to this event: Appendix 2 (Dataworks Document No: 2896889):

- i) Details of the Special Event - Traffic template;
- ii) RTA - Special Event Transport Management Plan Template;
- iii) Traffic Control Plans (TCP)
- iv) Copy of Insurances which are valid to 30 November 2008;
- v) Course Map/Plan
- vi) Advice that an application has been made to the NSW Police Service.

RECOMMENDATION:

That:

1. The Bicycle Racing Event planned for Sunday, 2 August 2009 by the Parramatta Cycling Club along the East Kurrajong Route, be classified as a **"Class 1"** special event under the "Traffic and Transport Management for Special Events" guidelines issued by the RTA.
2. The safety of all road users and personnel on or affected by the event is the responsibility of the event organiser.
3. It is strongly recommended that the event organiser become familiar with the contents of the RTA publication "Guide to Traffic and Transport Management for Special Events" (Version 3.4) and the Hawkesbury City Council special event information package that explains the responsibilities of the event organiser in detail.
4. No objection be held to this event subject to compliance with the following conditions:

Prior to the event:

- 4a. the event organiser is to obtain approval to conduct this event, from the NSW Police Service; **a copy of the Police Service approval to be submitted to Council;**
- 4b. The event organiser is to obtain approval from the RTA as this is a **"Class 1"** event which traverses along a classified road; **a copy of the RTA approval to be submitted to Council;**
- 4c. the event organiser **is to submit a Transport Management Plan (TMP) for the entire route, incorporating the submitted Traffic Control Plan (TCP), to Council and the RTA for acknowledgement;**
- 4d. the event organiser is to **submit to Council a copy of its Public Liability Policy** in an amount not less than \$10,000,000 **noting Council and the RTA as interested parties on the Policy** and that Policy is to cover **both on-road and off-road activities;**
- 4e. the event organiser is to advertise the event in the local press stating the entire route/extent of the event and the traffic impact / delays expected due to the event, two weeks prior to the event; **a copy of the proposed advertisement to be submitted to Council** (indicating the advertising medium);
- 4f. the event organiser is to notify the details of the event to the NSW Ambulance Service, NSW Fire Brigade / Rural Fire Service and SES, at least two weeks prior to the event; **a copy of the correspondence to be submitted to Council;**
- 4g. the event organiser is to directly notify relevant bus companies, tourist bus operators and taxi companies operating in the area and all the residences and businesses which may be affected by the event, at least two weeks prior to the event; The event organiser is to undertake a letter drop to all affected residents and businesses in proximity of the event, with that letter advising full details of the event; **a copy of the correspondence to be submitted to Council;**
- 4h. the event organiser is to assess the risk, and address the suitability of the entire route as part of the risk assessment considering the possible risks for all participants; This assessment should be carried out by visual inspection of the route / site by the event organiser prior to preparing the TMP and prior to the event;
- 4i. the event organiser is to carry out an overall risk assessment for the whole event to identify and assess the potential risks to spectators, participants and road users during the event and design and implement a risk elimination or reduction plan in accordance with the Occupational

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Health and Safety Act 2000; (information for event organisers about managing risk is available on the NSW Sport and Recreation's web site at <http://www.dsr.nsw.gov.au>);

- 4j. the event organiser is to submit the completed "Special Event - Traffic Final Approval" form to Council;

During the event:

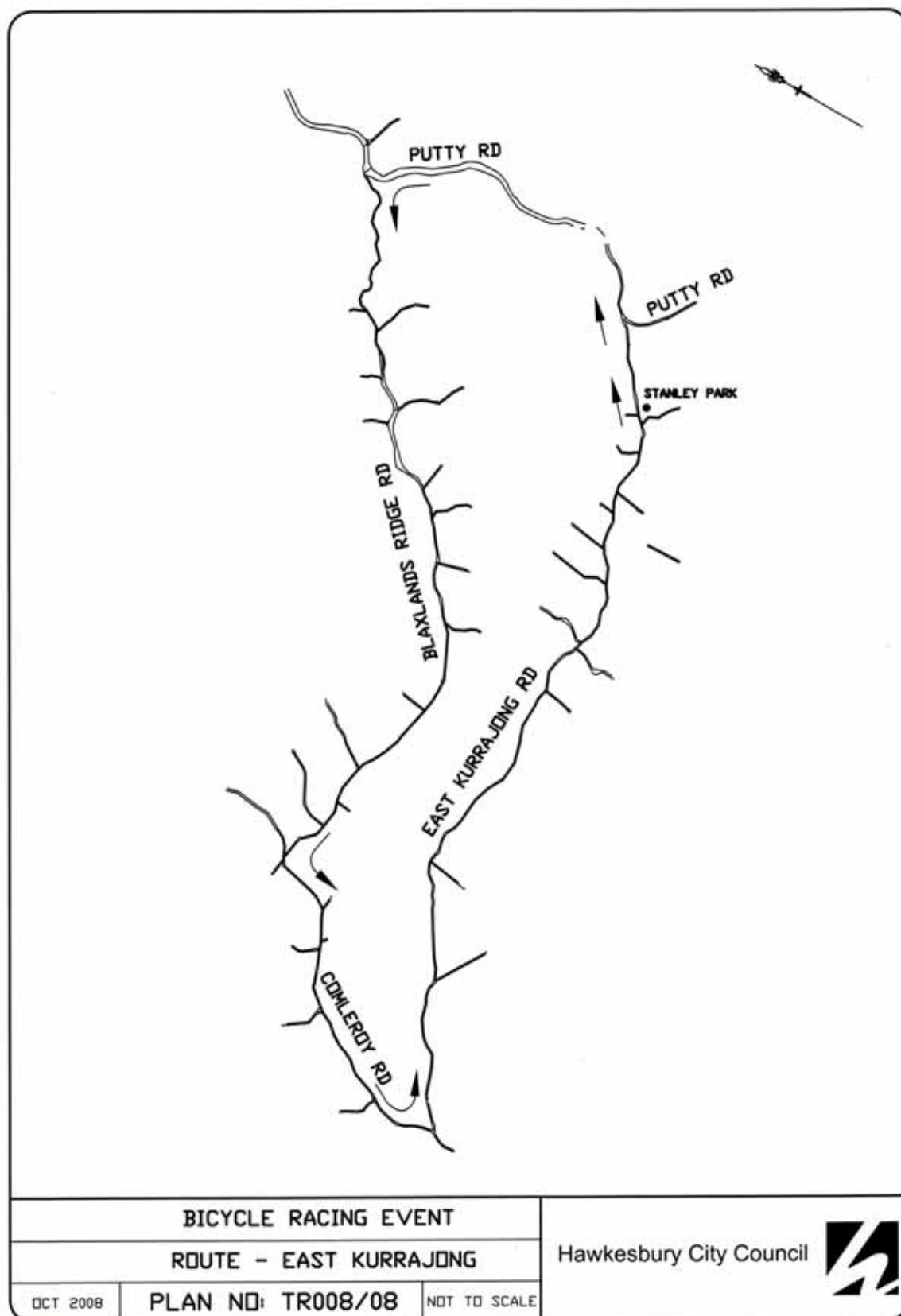
- 4k. access is to be maintained for businesses, residents and their visitors;
- 4l. all traffic controllers / marshals operating within the public road network are to hold appropriate certification as required by the RTA;
- 4m. the cyclists are to be made aware of, and are to follow all the general road user rules whilst cycling on public roads;
- 4n. in accordance with the submitted TMP and associated TCP, appropriate advisory signs, and traffic control devices are to be placed along the route, during the event, under the direction of a traffic controller holding appropriate certification as required by the RTA;
- 4o. the competitors and participants are to be advised of the traffic control arrangements in place, prior to the commencement of the event; and,
- 4p. all roads and marshalling points are to be kept clean and tidy, with all directional signs to be removed immediately upon completion of the activity.

APPENDICES:

AT - 1 Bicycle Racing Event, Route – East Kurrajong, Plan TR008/08

AT - 2 Special Event Application - (Dataworks Document No.2896889) - *see attached*.

APPENDIX - 1 Bicycle Racing Event, Route - East Kurrajong, Plan TR008/08



Item 2.4 LTC - 15 October 2008 - Item 2.4 - Intersection Investigation at Pitt Lane and Riverview Street, North Richmond (Londonderry) - (80245, 107731)

REPORT:

Introduction:

Representation has been received from a resident of Riverview Street, North Richmond (Dataworks Document No. 2903434), advising of traffic incidents at the intersection of Pitt Lane and Riverview Street, North Richmond. This includes drivers who corner recklessly from Pitt Lane (NE approach) into Riverview Street.

Discussion:

Riverview Street forms a 'T' – intersection with Pitt Lane, whereby there is un-impeded traffic flow from Riverview Street into the south western leg of Pitt Lane. The north-eastern leg of Pitt Lane allows only one-way traffic flow towards Riverview Street and is governed with a Give Way sign at this intersection. Pitt Lane, is a Minor Distributor Road, which extends from Bells Line of Road to Flinders Place. Riverview Street is a Major distributor Road which extends from Pitt Lane to Grose Vale Road. Both roads are located within the North Richmond commercial precinct.

The main point of complaint is that drivers travelling along the NE section of Pitt Lane into Riverview Street, corner recklessly. The request was to provide a traffic island in Riverview Street to slow these vehicles down when undertaking this right turn manoeuvre out of Pitt Lane. This route is utilised as a "rat-run" to avoid the signalised intersection of Bells Line of Road and Grose Vale Road. This matter has been referred onto Windsor Police to add to their areas of patrol.

The northern travelling lane of Pitt Lane (NE approach) at its intersection with Riverview Street is restricted with a concrete island from the centre line to the kerb line. This restricts vehicles entering Pitt Lane from Riverview Street, noting that Pitt Lane is a One-Way street.

A review of this intersection has indicated that the provision of a traffic island in Riverview Street to restrict the turning movements and speed out of Pitt Lane is not feasible. The position of the traffic island whilst restricting and controlling the movements of a standard motor vehicle would have an adverse effect on the manoeuvrability of delivery vehicles.

To restrict the movement of the general motor vehicle, consideration also needs to be given to delivery vehicles, and such restriction is not feasible given that Pitt Lane provides access to the main shopping centre as well as the businesses located on both sides of Pitt Lane. Currently delivery vehicles utilise both Pitt Lane as well as Grose Vale Road to enter this business area.

Table 1: Pitt Lane and Riverview Street Road Section Data:

Road Section	Road Width and K&G	Block Length	Speed Limit	Traffic Flow	ADT(year)	85 th % Speed
Riverview Street (between Grose Vale Road & Pitt Lane)	11.30 metres K&G both sides	336m	50 kph	2- Way	3836 (Sep 1996)	52 kph
Pitt Lane (NE Leg) (between Bells Line of Road and Riverview Street)	9.00 metres (and 4.45 metres at the intersection of Riverview Street) K&G both sides,	112m	50 kph	1- Way	1902 (Aug 2005)	35 kph
Pitt Lane (SW Leg) (between Riverview	8.10 metres	36m	50 kph		705 (Nov 1997)	N/A

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Reports of Committees

Street and Flinders Place)	K&G both sides			2- Way		
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The RTA Road Traffic Accident Database indicates there have been no accidents at this intersection during the period from 2002 to 2006. There have been 2 minor accidents in Riverview Street, east of Grose Vale Road. Given that there have been no accidents at this intersection, it is considered that an intersection treatment is not warranted.

It is proposed to replace the existing Give Way signs governing the North Eastern leg of Pitt Lane at Riverview Street with Stop signs, which will force vehicles to stop prior to entering Riverview Street and minimise the incidence of vehicles cornering recklessly.

RECOMMENDATION:

That the existing Give way signs governing the North Eastern leg of Pitt Lane at Riverview Street, North Richmond, be replaced with 'B' Size Stop signs (R1-1B) and the existing Holding line be adjusted accordingly.

APPENDICES:

There are no supporting documents for this report.

SECTION 3 - Reports for Information

Item 3.1 LTC - 15 October 2008 - Item 3.1 - Response by RTA to Special Events - Information Services - (Hawkesbury, Londonderry and Riverstone) - (80245, 74282, 80419)

Previous Item: Item 4.6, LTC (19 September 2007)

REPORT:

At the Local Traffic Meeting on 19 September 2007, Councillor Bassett advised that following a recent presentation by the Roads and Traffic Authority to stakeholders regarding special events; advice was to be sought from the Roads and Traffic Authority as to the establishment of a specific contact phone number/email address to be promoted by Council for individuals/organisations to contact in the course of running a special event.

Mr J Suprain tabled advice regarding an appropriate email address, methodology as to verification of approved providers balanced against privacy issues, and advising that Class 1 Special Event applications are to be forwarded direct to the Transport Management Centre.

Following recommendation by the Local Traffic Committee, Council, at its meeting held on 09 October 2007 resolved the following:

"That representations be made to the Roads and Traffic Authority to secure establishment of a designated telephone contact number."

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Correspondence has been received from the Roads and Traffic Authority (Dataworks Document No.2877164) advising the following:

"Please note all enquiries for Class 1 Special Events can be directed to the following phone number: 02 8396 1400"

RECOMMENDATION:

That

1. The information be received.
2. The information "all enquiries for Class 1 Special Events can be directed to the following phone number: 02 8396 1400", be included on Council's website.

APPENDICES:

There are no supporting documents for this report.

SECTION 4 - General Business

Item 4.1 LTC - 15 October 2008 - Item 4.1 - Windsor Bridge - Warning Signs on Putty Road Approach - (80245)

Councillor B Bassett

REPORT:

Advised that Councillor B Porter had requested that the RTA investigate the installation of warning signs on the Putty Road approach onto Windsor Bridge, to indicate Narrow Bridge and Reduce Speed. This should also include improvement of the sight distance onto the bridge.

RECOMMENDATION:

That the matter be referred to the RTA.

APPENDICES:

There are no supporting documents for this report.

ORDINARY MEETING
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Item 4.2 LTC - 15 October 2008 - Item 4.2 - School Zone Signs - South Windsor Public School - (80245)

Mr J Christie

REPORT:

Advised that the School Zone sign in Church Street, South Windsor, north of the School is missing, with the sign south of the School not visible to motorists due to the surrounding vegetation.

RECOMMENDATION:

That the matter be referred to the RTA.

APPENDICES:

There are no supporting documents for this report.

Item 4.3 LTC - 15 October 2008 - Item 4.3 - Upgrade of Pitt Town Road and Pitt Town Bypass - Funding Source - (80245)

Councillor B Bassett

REPORT:

Requested the RTA to investigate if funding is available similar to that sourced from the sand mining companies within the Maroota area, currently utilised to upgrade Old Northern Road and Wisemans Ferry Road. These trucks are known to travel along Pitt Town Road into the McGraths Hill area within the Hawkesbury LGA.

Mr Williams advised that the funding was sourced by Baulkham Hills Shire Council from the sand mining companies for the RTA to upgrade these roads.

RECOMMENDATION:

That the matter be referred to the RTA.

APPENDICES:

There are no supporting documents for this report.

ORDINARY MEETING
Reports of Committees

SECTION 5 - Next Meeting

The next Local Traffic Committee meeting will be held on 19 November 2008 at 3.00pm in the Large Committee Room.

The meeting terminated at 4.05pm.

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ordinary
meeting

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