



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 30 August 2011

location: council chambers

time: 6:30 p.m.



mission statement

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

How Council Operates

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

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

Ordinary Meetings of Council are held on the second Tuesday of each month, except January, and the last Tuesday of each month, except December. The meetings start at 6:30pm and are scheduled to conclude by 11:00pm. These meetings are open to the public.

When an Extraordinary Meeting of Council is held it will usually start at 6:30pm. These meetings are also open to the public.

Meeting Procedure

The Mayor is Chairperson of the meeting.

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

Public Participation

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

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

A Point of Interest

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

Planning Decision

Under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a 'planning decision' 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.

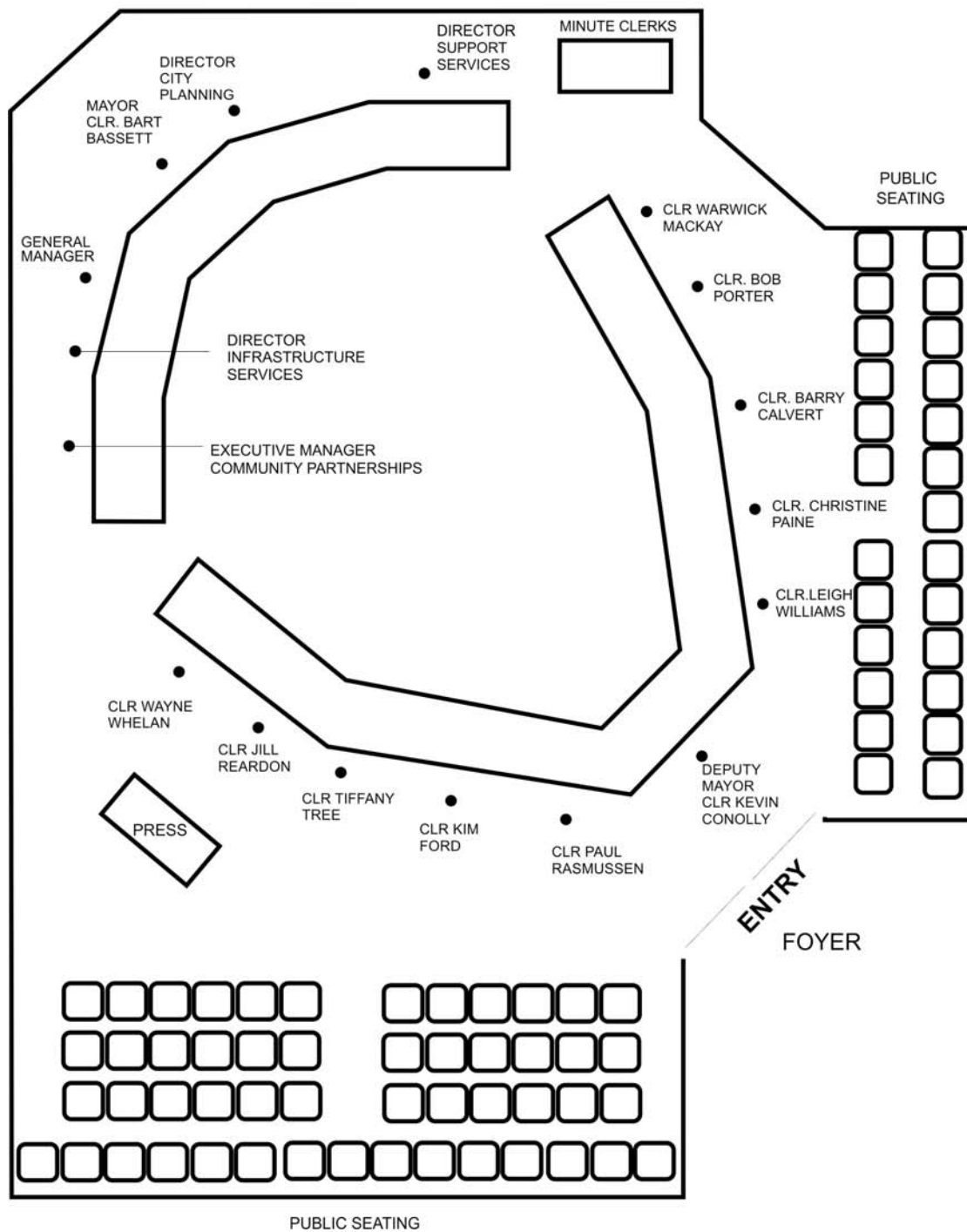
Website

Business Papers can be viewed on Council's website from noon on the Friday before each meeting. The website address is www.hawkesbury.nsw.gov.au.

Further Information

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

council chambers



ORDINARY MEETING

Table of Contents

Meeting Date: 30 August 2011

AGENDA

- **WELCOME / EXPLANATIONS / PRAYER**
- **APOLOGIES**
- **DECLARATION OF INTERESTS**
- **SECTION 1 - Confirmation of Minutes**
- **AGENDA ITEMS SUBJECT TO PUBLIC ADDRESS**
- **SECTION 2 - Mayoral Minutes**
- **QUESTIONS WITH NOTICE**
- **SECTION 3 - Notices of Motion**
- **EXCEPTION REPORT - Adoption of Items Not Identified for Discussion and Decision**
- **SECTION 4 - Reports for Determination**

General Manager

City Planning

Infrastructure Services

Support Services

- **SECTION 5 - Reports of Committees**
- **QUESTIONS FOR NEXT MEETING**

ORDINARY MEETING

Table of Contents

Meeting Date: 30 August 2011

ORDINARY MEETING**Table of Contents****Meeting Date:** 30 August 2011**TABLE OF CONTENTS**

ITEM	SUBJECT	PAGE
SECTION 1 - Confirmation of Minutes		3
SECTION 4 - Reports for Determination		7
CITY PLANNING		7
Item: 180	CP - Development Application - Dwelling House and Rural Shed - 411 Pitt Town Bottoms Road, Pitt Town Bottoms - (DA0652/10, 104031, 104032, 88784)	7
Item: 181	CP - Development Application - Torrens Title subdivision Two Lots into Three Lots - Lots 19 & 20 DP 758881 No.s 49 - 51 Faithful Street, Richmond - (DA0184/11, 73916, 3665, 3664)	26
Item: 182	CP - Development Application - Two Lot Torrens Title Subdivision - Lot 12 DP 748589 No. 802 Comleroy Road, Kurrajong - (DA0103/11, 95498, 111092, 74563)	38
Item: 183	CP - Development Application - Subdivision - Torrens Title - Subdivision - Two Lot Torrens Title - Hillcrest - 219 Bells Line of Road, North Richmond - (DA0097/11, 73916, 14632)	54
Item: 184	CP - Section 96 Application - Multi Unit Housing Development - Lot 1 DP 544593 and Lot 2 DP 223745 Nos 55 and 77 East Market Street, Richmond - (DA0132/09A, 85405, 95498)	76
Item: 185	CP - Renewal of Licence Agreements - Peppercorn Place - (78340)	92
Item: 186	CP - Policy for Provision of Infrastructure for Rezoning Matters - (95498)	95
INFRASTRUCTURE SERVICES		109
Item: 187	IS - Jones Road, Lower Portland - (95495, 79344)	109
Item: 188	IS - Roads to Recovery Program - (95495)	111
Item: 189	IS - Windsor Bridge - (95495)	113
Item: 190	IS - Retailer of Last Resort and Operator of Last Resort Arrangements under the Water Industry Competition Act 2006 - Discussion Paper - (95495, 112179)	115
SUPPORT SERVICES		129
Item: 191	SS - Monthly Investments Report - July 2011 - (96332, 95496)	129
Item: 192	SS - June 2011 Quarterly Review - 2010/2011 Management Plan - (95496, 96332)	133

ORDINARY MEETING**Table of Contents****Meeting Date:** 30 August 2011

ITEM	SUBJECT	PAGE
Item: 193	SS - Consultants Utilised by Council - 1 January 2011 to 30 June 2011 - (95496, 79337)	139
Item: 194	SS - Pecuniary Interest Returns - (96333, 95496)	143
CONFIDENTIAL REPORTS		145
Item: 195	GM - Co-Generation Plant - (79351)	145
Item: 196	IS - Tender No. 02211 - Re-construction of Windsor Wharf, Windsor - (95495, 79354)	146
Item: 197	SS - Property Matter - Lease to Wayne and Leanne Gerahty - Shop 6 Glossodia Shopping Centre - (74061, 112106, 95496)	147
Item: 198	SS - Property Matter - Lease of 20 Bosworth Street, Richmond - (121420, 118853, 95496)	148
Item: 199	SS - Property Matter - Lease to Stephen Hile - 139 March Street, Richmond - (22455, 98759, 112106, 95496)	149
Item: 200	GM - Staff Matter - (79351)	150
SECTION 5 - Reports of Committees		153
ROC - Floodplain Risk Management Advisory Committee Minutes - 15 August 2011 - (86589)		153
QUESTIONS FOR NEXT MEETING		160
Councillor Questions From Previous Meetings and Responses - (105109)		160

ordinary

section 1

confirmation of minutes

ORDINARY MEETING
Confirmation of Minutes

ORDINARY MEETING
Confirmation of Minutes

SECTION 1 - Confirmation of Minutes

ORDINARY MEETING
Confirmation of Minutes

ordinary

section 4

reports
for determination

ORDINARY MEETING

Meeting Date: 30 August 2011

ORDINARY MEETING

Meeting Date: 30 August 2011

SECTION 4 - Reports for Determination

CITY PLANNING

Item: 180 **CP - Development Application - Dwelling House and Rural Shed - 411 Pitt Town Bottoms Road, Pitt Town Bottoms - (DA0652/10, 104031, 104032, 88784)**

Development Information

File Number: DA0652/10
Property Address: 411 Pitt Town Bottoms Road, Pitt Town Bottoms
Applicant: PGH Environmental Planning
Owner: Mr W F Harrison and Mrs K A Harrison
Proposal: Dwelling House and Rural Shed
Zoning: **Current:** Environmental Protection - Agriculture Protection under Hawkesbury Local Environmental Plan 1989
Draft: RU2 Rural Landscape under DRAFT Hawkesbury Local Environmental Plan 2009
Date Received: 24 September 2010
Date Formal: 20 July 2011
Estimated Cost: \$534,300.00
Exhibition Dates: 2 November 2010 to 16 November 2010
Submissions: Nil

Key Issues:

- ◆ Flooding
- ◆ SEPP 1 Objection
- ◆ Shed Size

Recommendation: Approval Subject to Conditions

REPORT:

Executive Summary

The applicant is seeking approval for the construction of a new dwelling and rural shed on Lot 1 in DP 748135 411 Pitt Town Bottoms Road, Pitt Town Bottoms.

The proposal is contrary to the flooding development controls contained within Clause 25 (4) of Hawkesbury Local Environmental Plan 1989 and the maximum rural shed size contained within Hawkesbury Development Control Plan 2002.

However, it is considered that the applicant has been able to satisfactorily justify the non compliances in relation to the above requirements and it is recommended that the application be supported.

The application is being reported to Council as the variation to the flooding control contained within Hawkesbury Local Environmental Plan 1989 exceeds 10% and it is a requirement for all State Environmental Planning Policy No. 1 variations greater than 10% be considered by Council. Should the variation requested be supported by Council the application will be required to be forwarded to the New South Wales Department of Planning for their concurrence.

ORDINARY MEETING

Meeting Date: 30 August 2011

Description of Proposal

The applicant is seeking approval for the construction of a new replacement dwelling and rural shed on the subject site. The proposal will involve the demolition of three existing sheds and the existing dwelling.

The proposed dwelling will be a two storey building constructed using concrete blocks for the walls of the ground floor, weatherboard clad walls for the first floor and metal colorbond sheeting for the roof. The dwelling will contain five bedrooms, a study, lounge room, dining room, kitchen, bathroom and ensuite on the first floor and a garage, store room and laundry on the ground floor.

The proposed rural shed will be rectangular and constructed using concrete blocks for the walls and colorbond sheeting for the roof of the building. The rural shed will measure 10m x 20m (200sqm) with a ridge height of 5m.

The property owner is also seeking approval to live within the existing dwelling until the new dwelling has been constructed.

A revegetation and landscape plan has been submitted with the application. It is proposed that the dwelling house and shed will be coloured to match. A colour schedule has not been provided with the application and the applicant has requested that Council consider colours as per a condition of consent as colours have not yet been finalised by the owner.

History of the application

28 October 2010	Letter sent to the applicant advising non compliances regarding shed size, flooding and effluent disposal and additional information required to be submitted regarding proposed filling works and landscaping.
November 2010	Discussion with the applicant advising that the amount of fill required for the development may require the application to be forwarded to the NSW Office of Water for concurrence. Applicant later advised that a revised plan and layout would be provided so that the extent of fill will be limited to the building footprint.
January 2011	Discussion with the applicant requesting additional time to obtain information requested. Applicant advised that an objection under SEPP 1 is required for the variation requested in relation to Clause 25 (4).
27 April 2011	Applicant provided amended plans showing a reduction in fill, a reduced shed size and a revegetation plan for the site along the river frontage.
30 May 2011	Applicant reminded that a SEPP 1 objection was required in relation to Clause 25 (4).
2 June 2011	An objection pursuant to SEPP 1 was received seeking a variation to Clause 25 (4) of Hawkesbury Local Environmental Plan 1989.
1 July 2011	Discussions held with applicant regarding SEPP 1 objection received and the need to address the percentage of variation sought, shed size variation request and proposed colours and finishes.
20 July 2011	Amended SEPP 1 objection received.

Council Policies, Procedures and Codes to Which the Matter Relates

- State Environmental Planning Policy 1 – Development Standards (SEPP 1)
- State Environmental Planning Policy 44 (SEPP 44) - Koala Habitat Protection
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan No 20 (SREP 20) - Hawkesbury Nepean River

ORDINARY MEETING

Meeting Date: 30 August 2011

- Hawkesbury Local Environmental Plan (HLEP) 1989
- Hawkesbury Development Control Plan (HDCP) 2002

Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979 (EPA Act)

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

a. The provisions of any:

i. Environmental Planning Instrument:

State Environmental Planning Policy No. 1 – Development Standards

An objection under State Environmental Planning Policy No. 1 was lodged in respect to the variation to Clause 25 (4) of Hawkesbury Local Environmental Plan 1989. Clause 25 (4) of this plan allows the replacement of a building on a flood affected site if the floor height of the new work being carried out is not greater than 3m below the previous floor height standard for the area.

In this respect the previous floor height standard for the area is 15.9m AHD and 3 metres below is 12.9m. The application proposes the first floor level at 14.3m AHD which complies however the ground floor is proposed at a level of 10.3m AHD.

Given that the ground floor level is 2.6m further below the 3m development standard the application proposes a 86% degree of variation to Clause 25 (4) of HLEP 1989.

The applicant has indicated that the grounds for objection relate to the fact that the ground floor level will not be used for habitable purposes and that all habitable areas would be located above the previous floor height standard.

Clause 25 (4) of HLEP 1989 reads as follows:

(4) Notwithstanding subclauses (2), (3), (10) and (11), a building that was lawfully situated on any land at 30 June 1997 may, with the consent of the Council, be extended, altered, added to or replaced if the floor level of the building, after the building work has been carried out, is not more than 3 metres below the floor height standard for the land immediately before the commencement day.

It is considered that the above control is a development standard which can be varied under SEPP 1 as it sets a numerical standard for the replacement of a building below the 1 in 100 year flood level. Council has also recently received legal advice confirming that this clause is a development standard which can be varied under SEPP 1.

ORDINARY MEETING

Meeting Date: 30 August 2011

The applicant has detailed that a variation to this standard should be supported given:

- *The underlying object or purpose of the standard, is to restrict the minimum floor level of habitable rooms within developments in flood liable areas so that people and property are not unreasonably put at risk.*
- *The proposed dwelling has a higher floor level than the existing dwelling thus providing a greater level of protection to the residents against possible inundation.*
- *The lower (or ground) level of the dwelling will be at RL10.3m. It contains non-habitable rooms, namely a garage and ski-room/laundry/shower room and under-croft/void area.*
- *Compliance could be achieved by raising the ground level however this does not necessarily result in an improved outcome.*
- *Minor structures (also non-habitable) are allowed for in subclause (6).*
- *The refusal of the proposal would effectively result in a prohibition of the existing residential use of the site.*
- *The proposed development satisfies the overall objective of this clause by ensuring that the dwelling is elevated above the prescribed level with only ancillary, non-habitable areas below it.*

The submission received had also reviewed a set of planning principles provided by his honour Chief Judge Preston in Land and Environment Court hearing *Wehbe v Pittwater Council* [2007] NSWLEC 827 - 21 December 2007. The proposal is believed to be consistent with these planning principles as the applicant has been able to justify that the objectives of the standard are achieved notwithstanding non-compliance with the standard, the standard is not relevant to the development, compliance with the standard would be unreasonable and the standard would prohibit a permissible development within the zone. It is considered that the objection submitted is well founded as granting consent to the proposal would allow for the replacement of the existing dwelling which is consistent with the overall intention of Clause 25 (4) of HLEP 1989 which is to allow for the replacement of a building on land that is affected by 1 in 100 year flood events. Furthermore support of this objection in this instance does not raise any matter of state or regional planning significance and would not adversely impact the public in contravening this development standard.

In conclusion of the above it is considered that the submission provided by the applicant is sufficient reasoning for Council to support the objection and it is recommended that the objection made under SEPP 1 be supported.

State Environmental Planning Policy 44 (SEPP 44) - Koala Habitat Protection

The proposal is not inconsistent with SEPP 44, as the proposal does not include the removal of any trees or disturbance of any natural habitats which would be considered as "core koala habitat".

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been issued for the proposed development and supports the application. A condition of consent will ensure that the development meets the necessary performance requirements as set out in the BASIX certificate, therefore complying with SEPP (BASIX 2004).

ORDINARY MEETING**Meeting Date:** 30 August 2011**Sydney Regional Environmental Plan 20. (No.2 - 1997) - Hawkesbury - Nepean River (SREP No. 20).**

The aim of the policy is to protect the environment of the Hawkesbury-Nepean River system by ensuring the impacts of future land use are considered in the regional context. General and specific matters for consideration, specific planning policies and recommended strategies and development controls, which are to be considered in the assessment of development applications, are included in the policy.

Comments: The proposal meets the overall aim of the plan in that it is consistent with the specific planning policies which apply to the proposal. Clauses 6(1), 6(2), 6(3), 6(4), 6(6) and 6(7) of the Plan apply to the proposal and have been considered in the table below:

Specific Planning Policies and Recommended Strategies	Compliance	Comment
Cl 6(1) Total Catchment Management	Yes	The proposal is unlikely to result in any significant adverse environmental impacts on any downstream local government areas.
Cl 6(2) Environmentally Sensitive Areas	Yes	It is unlikely that the proposal will have an impact on the water table or result in the formation of acid sulphate soils.
Cl 6(3) Water Quality	Yes	It is unlikely that the proposal will have an impact on the water quality of the locality.
Cl 6(4) Water Quantity	Yes	The proposal will not increase water run-off from the site or the rate at which it leaves.
Cl 6(6) Flora and Fauna	Yes	The proposed works are in an area previously cleared and disturbed by past farming activities. It is considered that there will be no significant adverse impact on flora and fauna species, populations or habitats and the proposal will most likely improve flora and fauna onsite as a revegetation and landscape plan has been provided proposing the establishment of the riverbank by planting native plant species endemic to the area.
Cl 6(7) Riverine Scenic Quality	Yes	<p>The proposal is considered to be consistent with the landscape character as described in the Scenic Quality Study.</p> <p>It is noted that the Hawkesbury – Nepean Scenic Quality states that this portion of the river has been identified as an area of 'low local visibility' under the Study however the applicant has proposed the revegetation of the riverbank consistent with the suggested response contained within the Scenic Quality Study, which is to require proposals to be supported by landscape management and planting plans that both encourage the screening of development from the river and bank rehabilitation.</p>

ORDINARY MEETING

Meeting Date: 30 August 2011

The proposal is further considered to be consistent with development controls specified under Clause 11(7) Filling and Clause 11(16) Land uses in riverine scenic areas. The filling is directly related to the construction of the building and it is considered that the proposed dwelling and shed have been designed to fit within the overall context of development within the area.

Based on the above it is considered that the proposed development is consistent with Sydney Regional Environmental Planning Policy 20.

Hawkesbury Local Environmental Plan 1989

The proposal being considered as a Dwelling House and Rural Shed are permitted land uses within the Environmental Protection Agriculture Protection (Scenic) Zone.

The following clauses of Hawkesbury Local Environmental Plan 1989 were taken into consideration:

Clause 2 – Aims and Objectives etc
Clause 5 – Definitions
Clause 9 - Carrying out development
Clause 9a – Zone objectives
Clause 18 – Provision of water, sewage services, etc
Clause 28 – Development in vicinity of heritage items
Clause 37A - Development on land identified on Acid Sulfate Soils Planning Map
Clause 24 Development in certain environmental and other zones

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

The proposal is further considered to be consistent with Clause 25(5), (6) and (7) as access to the site and flood liability will remain unchanged and the buildings have been designed to be constructed of flood compatible materials.

It is noted that the proposed dwelling does not comply with Clause 25 (4), however an objection to this clause pursuant to SEPP 1 has been submitted and is discussed in the report above.

The development has been designed so that the dwelling, shed and landscaping will fit within the context of the area which is surrounded by similar rural residential properties which include dwellings with raised floor levels, large rural sheds and landscaping on the river frontage. It is considered that the development would improve the scenic quality of the area with the addition of new buildings and landscaping. The existing fibro dwelling and corrugated iron clad outbuildings onsite do not have any heritage significance and were originally built for the use of the land for farming.

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

Draft Hawkesbury Local Environmental Plan 2011 applies to the proposal. This draft Plan was exhibited 5 February 2010 to 12 April 2010 and adopted by Council on 7 June 2011 and is currently awaiting gazettal.

Under this Plan the subject land is proposed to be zoned RU2 Rural Landscape. The proposed development best falls under the definition of '*dwelling houses*' and is permissible with development consent. It is considered that the rural shed component of the application is ancillary to the use of the site for residential purposes. The proposal is considered to be consistent with Clause 6.6 of this plan and the RU2 Rural Landscape zone objectives.

iii. **Development Control Plan applying to the land:**

Hawkesbury Development Control Plan (HDCP) 2002

The proposal is consistent with the aims, objectives and rules of Hawkesbury DCP 2002, specifically Part C – Chapter 7 Effluent disposal - Part D –Chapter 1 Residential Development and Part D Erection of Rural Sheds.

The applicant has requested a variation to the maximum rural shed size of 150m², requesting that Council consider a 200m² shed as the property owners need the floor area to store a number of boats and farm equipment associated with the rural residential use of the land. The applicant has indicated that the proposal has been designed in accordance of the aims and objectives of this chapter and that the building will fit within the overall context of the site.

The applicant has also highlighted that State Environmental Planning Policy (exempt and complying development codes) 2008 allows for the construction of a 200m² farm building on the site without the need for development consent.

It is considered that the 50m² variation to the shed size is acceptable and should be supported as the building will not have a negative impact on the locality as the building is consistent with other developments within the area. The application has also been amended to remove an existing 100m² shed in order to reduce the total amount of outbuildings on the site.

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

Not applicable.

v. **Matters prescribed by the Regulations:**

The development will be conditioned to comply with the Building Code of Australia.

It is further noted that the development is not integrated development under the Environmental Planning and Assessment Act 1979 as the development falls within the nominated exemptions under the Water Management Act 2000 and associated Regulation given that the works proposed are part of the residential development of the site.

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

It is considered unlikely that the proposed development will have any adverse environmental or social impacts on the locality.

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

There are no constraints from surrounding land uses that would make this development prohibitive and it is considered that the development will not impact upon critical habitats and threatened species, populations, ecological communities and habitats.

Adequate services and utilities are available to the site and access to the site is satisfactory for the intended use.

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

No submissions have been received in respect to the neighbour notification process.

e. **The Public Interest:**

The proposed development is generally consistent with the relevant planning controls affecting the site and is therefore considered to be consistent with the public's interest.

ORDINARY MEETING

Meeting Date: 30 August 2011

It is considered that support of the SEPP 1 objection is not contrary to the public interest as the variation requested is specific to the subject site.

Conclusion:

The proposed development is considered to be satisfactory, subject to the implementation of conditions proposed within this report. The support of a variation to Clause 25 (4) of HLEP 1989 will allow for the replacement of an existing dwelling with a new dwelling that will be built at a higher level in turn reducing the flood risk associated with the residents of the property and allow for the continued use of the site for residential purposes.

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

Developer Contributions

The following developer contributions apply to this development - \$5,343.00. Accordingly, a condition of consent is required to be imposed in this regard.

Planning Decision

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

RECOMMENDATION:

That:

- A. The objection under SEPP No. 1 be supported and that the application be referred to the Department of Planning to request that the Director General grant concurrence to the application.
- B. Upon receipt of the concurrence, or otherwise, of the Department of Planning, determination of Development Application No. DA06521/10 at Lot 1 DP 748135, 411 Pitt Town Bottoms Road, Pitt Town Bottoms, for a Dwelling House and Rural Shed be delegated to the General Manager.

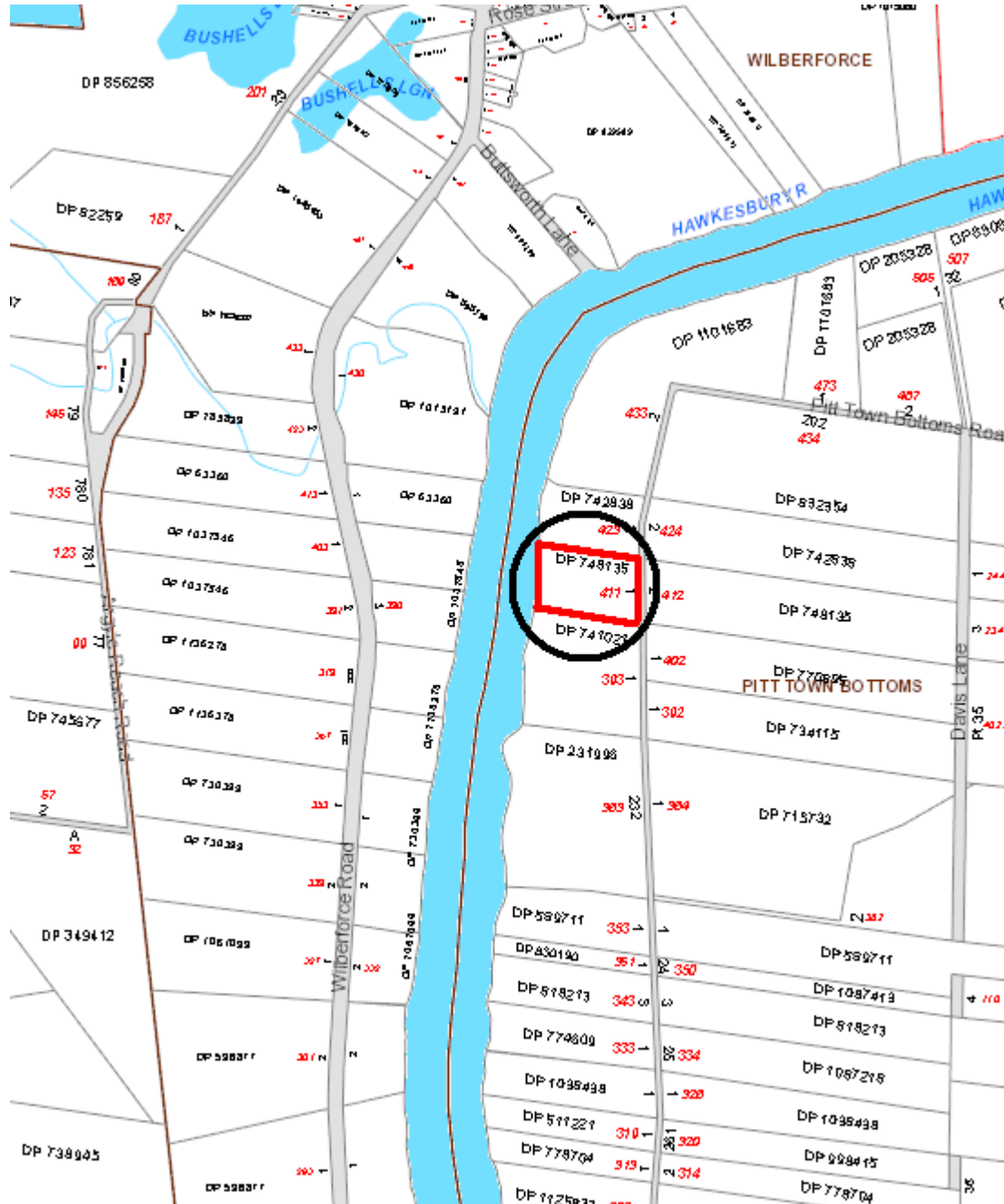
ATTACHMENTS:

- AT - 1 Locality Plan
- AT - 2 Aerial Photograph
- AT - 3 Architectural Plans
- AT - 4 Draft Conditions of Consent

ORDINARY MEETING
Meeting Date: 30 August 2011

AT-1 Locality Plan

Lot 1 in DP 748135 411 Pitt Town Bottoms Road, Pitt Town Bottoms NSW 2756

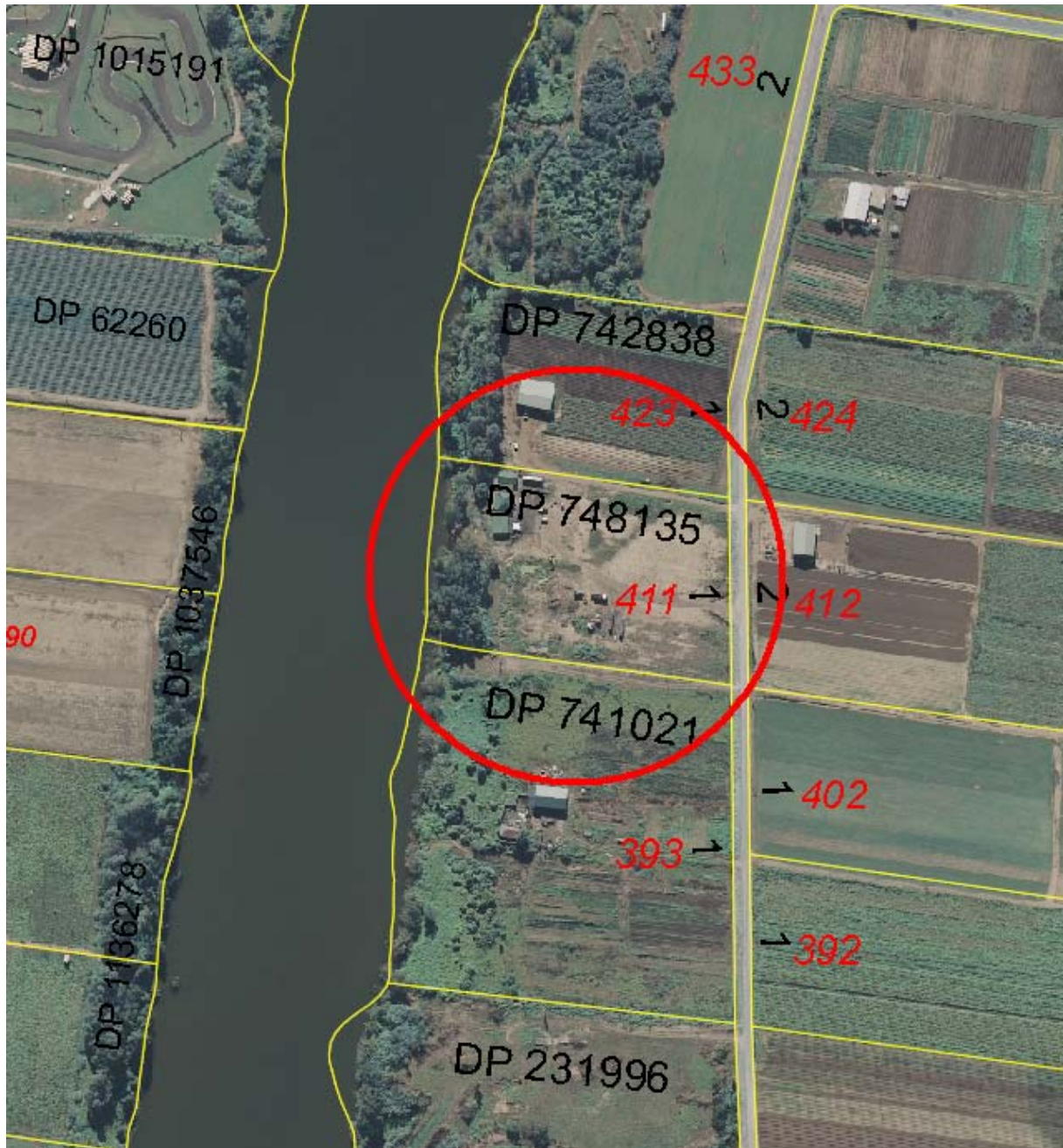


ORDINARY MEETING

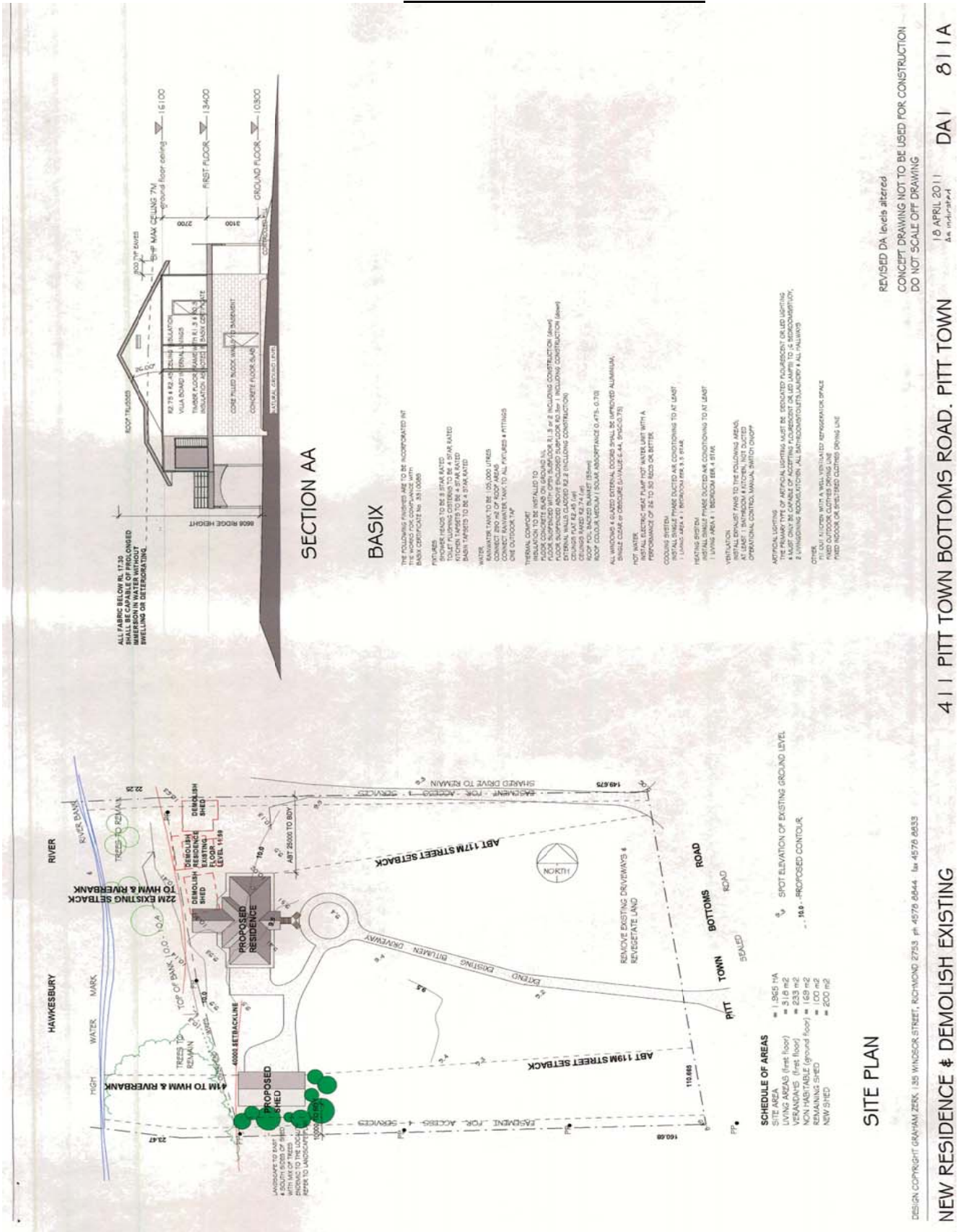
Meeting Date: 30 August 2011

AT - 2 Aerial Photograph

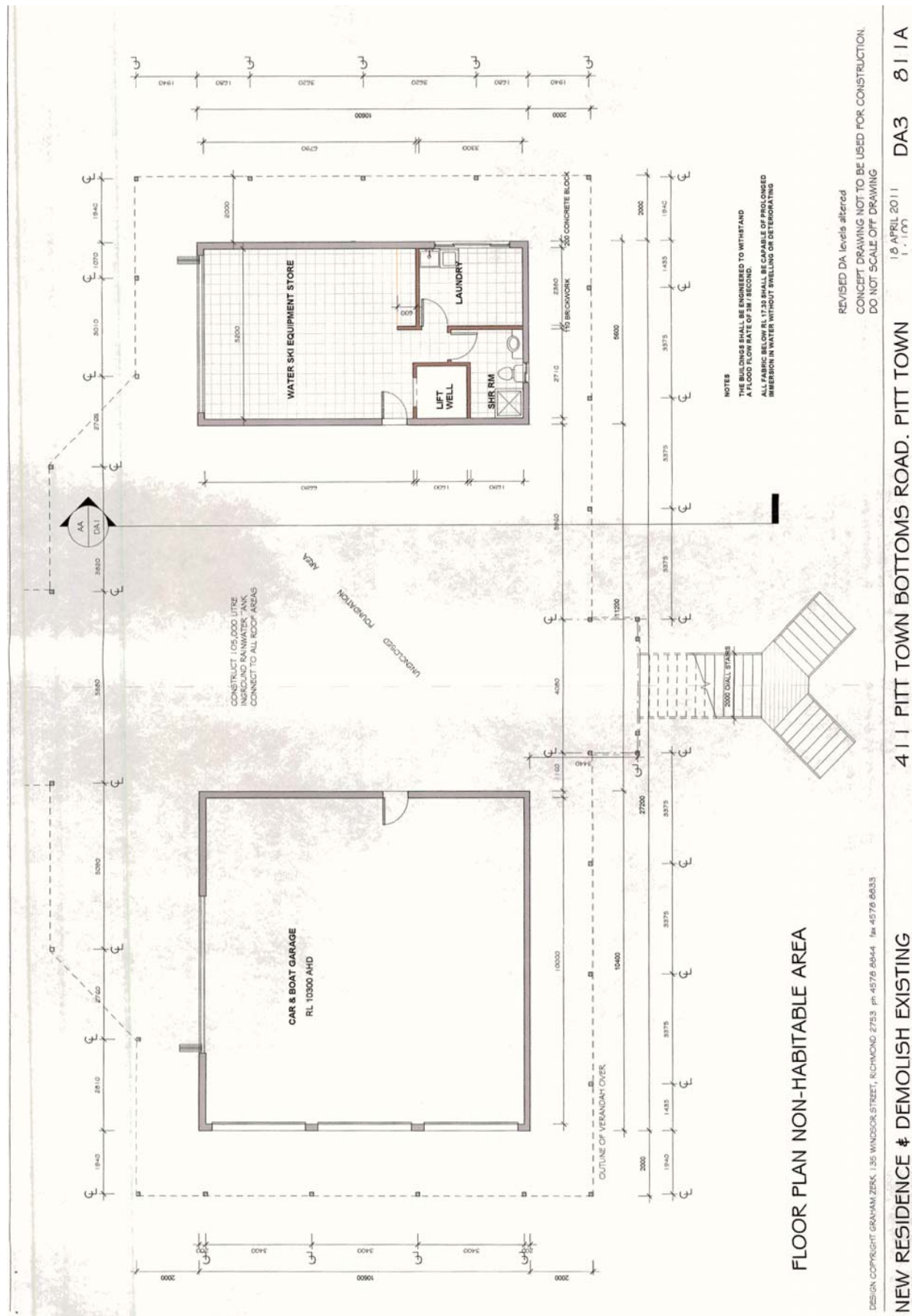
Lot 1 in DP 748135 411 Pitt Town Bottoms Road, Pitt Town Bottoms NSW 2756



AT - 3 Architectural Plans

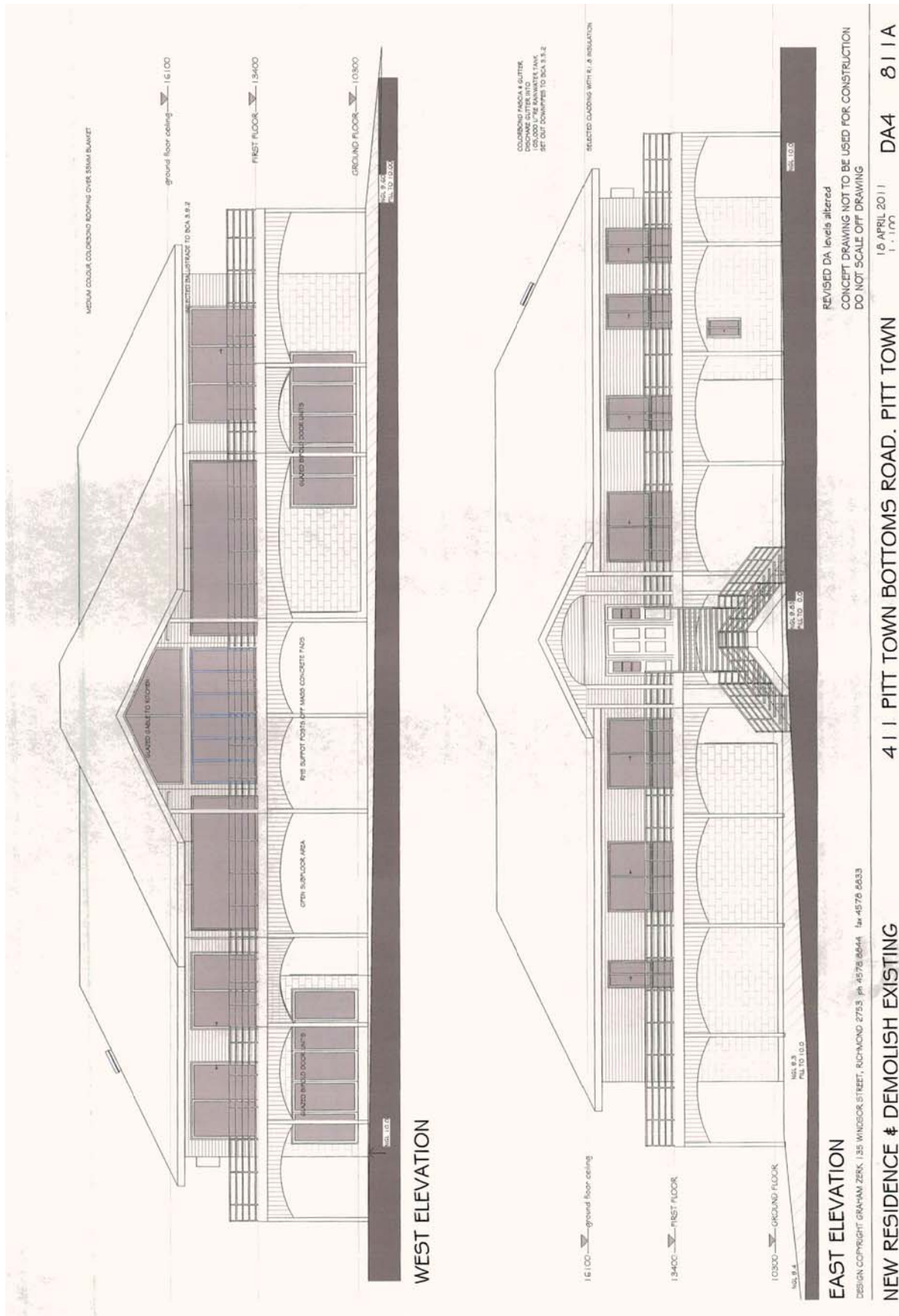


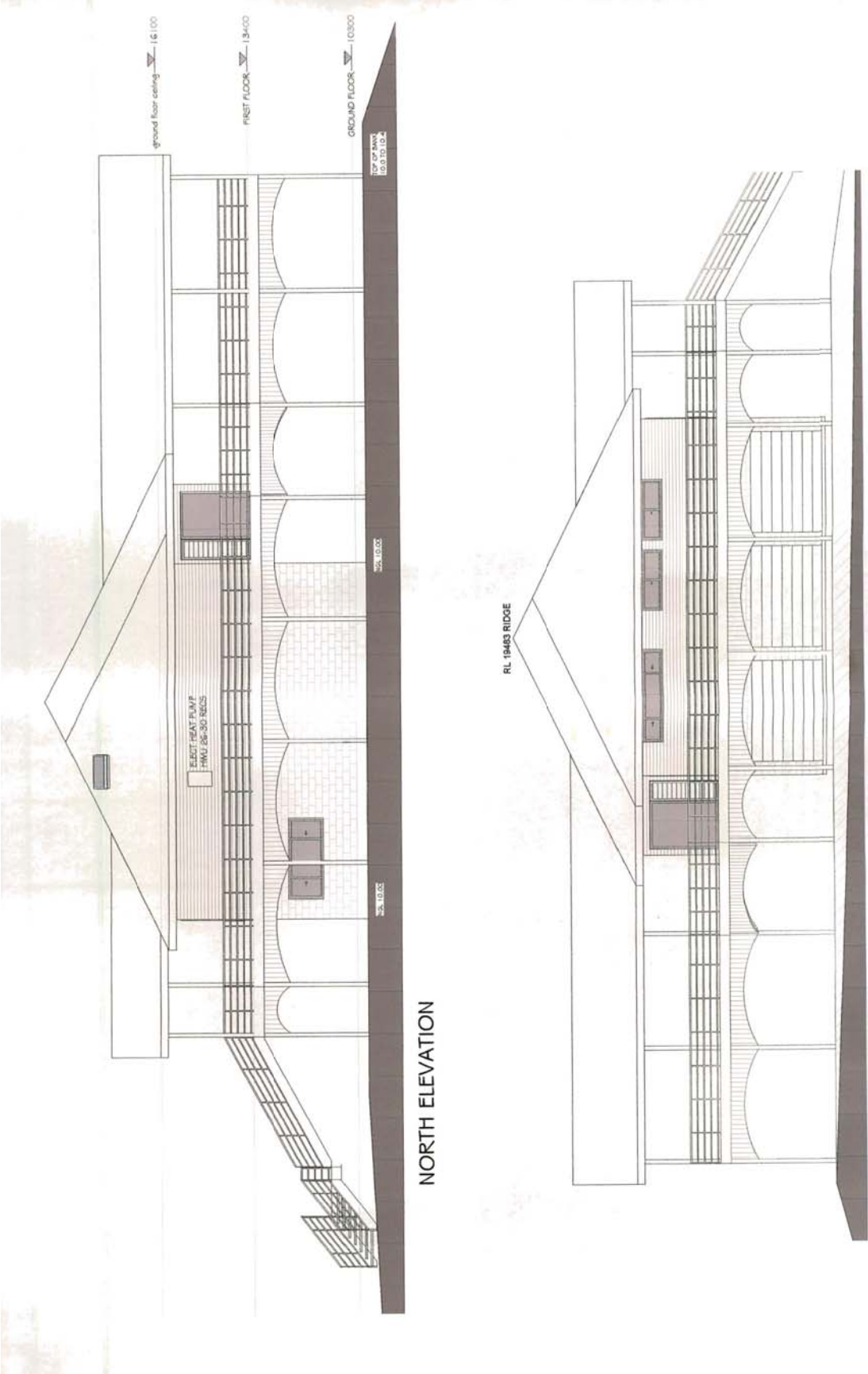
Meeting Date: 30 August 2011



ORDINARY MEETING

Meeting Date: 30 August 2011





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NEW RESIDENCE & DEMOLISH EXISTING

ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 4 DRAFT Conditions of consent

General Conditions

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
2. No excavation, site works or building works shall be commenced prior to the issue of an appropriate construction certificate.
3. The building shall not be used or occupied prior to the issue of an Occupation Certificate.
4. The development shall comply with the provisions of the Building Code of Australia.
5. The accredited certifier shall provide copies of all Part 4 certificates issued under the Environmental Planning and Assessment Act, 1979 relevant to this development to Hawkesbury City Council within 7 (seven) days of issuing the certificate. A registration fee applies.
6. Hawkesbury City Council is the sewer authority for this development, inspection for compliance certification for internal and external sewer drainage shall be requested and approved prior to covering any pipe. An inspection fee applies.

Prior To Issue of Construction Certificate

7. Pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979* and Hawkesbury City Council's Section 94A Development Contributions Plan 2006 (as amended from time to time), a contribution of \$5343.00 shall be paid to Hawkesbury City Council.

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

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

8. Written clearance from Council shall be provided to the principal certifying authority confirming that the existing onsite effluent disposal system located onsite is appropriate for the proposed development.
9. Construction of the access, drainage and filling are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved by the Director of Environment and Development or an Accredited Certifier.
10. An Environmental Management and Rehabilitation Plan for the development site shall be prepared by an appropriately qualified person. The plan shall address (without being limited to) the clearing of vegetation, lopping and removal of trees, earthworks, erosion control, site rehabilitation and landscaping.

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

11. Payment of a Construction Certificate checking fee of and a Compliance Certificate inspection fee in accordance with Councils Fees and Charges shall be made when submitting Civil Engineering Plans for approval. Fees required if an Accredited Certifier is used will be provided on request.

ORDINARY MEETING

Meeting Date: 30 August 2011

12. Prior to the issue of a Construction Certificate a colour schedule for the development shall be submitted to and approved by the Director City Planning, Hawkesbury City Council. Colours of the new work are to match and blend in with the rural landscape of the locality.

Prior to Commencement of Works

13. Erosion and sediment control devices are to be installed and maintained at all times during site works and construction.
14. A Registered Surveyor shall set out the building. The Survey Certificate of the building showing the position of the external walls under construction and in compliance with the approved plans shall be lodged with the principal certifying authority. Any easements must be shown on the Survey Certificate.
15. A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 shall be supplied to the principal certifying authority prior to commencement of works.
16. The applicant shall advise Council of the name, address and contact number of the principal certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1979.
17. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.
18. Toilet facilities (to the satisfaction of Council) shall be provided for workmen throughout the course of building operations. Such facility shall be located wholly within the property boundary.
19. A sign displaying the following information is to be erected adjacent to each access point and to be easily seen from the public road. The sign is to be maintained for the duration of works:
 - (a) Unauthorised access to the site is prohibited.
 - (b) The owner of the site.
 - (c) The person/company carrying out the site works and telephone number (including 24 hour 7 days emergency numbers).
 - (d) The name and contact number of the Principal Certifying Authority.
20. A qualified Structural Engineer's design for all reinforced concrete and structural steel shall be provided to the Principal Certifying Authority prior to any works commencing on site.

During Construction

21. At all times during demolition, a competent person shall directly supervise work. It is the responsibility of the person to ensure that:
 - (a) Adjoining owners are given 24 (twenty four) hours notice, in writing, prior to commencing demolition.
 - (b) Utility services within the structure not required to be maintained during the demolition work shall be properly disconnected and sealed before any demolition commences.
 - (c) The site shall be secured at all times against the unauthorised entry of persons or vehicles.
 - (d) Safe access and egress from adjoining buildings is to be maintained at all times for the duration of the demolition work.

ORDINARY MEETING

Meeting Date: 30 August 2011

- (e) Precautions are taken to ensure that the stability of all parts of the structure and the safety of persons on and outside the site are maintained, particularly in the event of sudden and severe weather changes.
 - (f) The structure and all components shall be maintained in a stable and safe condition at all stages of the demolition work.
 - (g) Demolition activity shall not cause damage to or adversely affect the structural integrity of adjoining buildings
 - (h) Removal of dangerous or hazardous materials shall be carried out in accordance with the provisions of all applicable State legislation and with any relevant recommendations published by the National Occupational Health and Safety Commission (Worksafe Australia).
 - (i) All work shall be carried out in accordance with AS2601 and the Work Plan submitted with the development application.
 - (j) Unless otherwise permitted by Council, the structure is to be demolished in reverse order of construction, being progressive and having regard to the type of construction, to enable the maximum separation and recycling of demolished materials to take place.
 - (k) No material is to be burnt on site.
22. Site and building works (including the delivery of materials to and from the property) shall be carried out only on Monday to Friday between 7am - 6pm and on Saturdays between 8am - 4pm.
23. The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:
- (a) Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
 - (b) Building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site.
 - (c) Builders waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.
24. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
25. Filling shall comprise only uncontaminated virgin excavated natural material. Contamination certificates for all source material shall be provided to the Principal Certifying Authority prior to placing any fill on site.
26. The filled area, including batters, shall be grassed immediately after filling takes place.
27. All fill to be adequately compacted by track rolling or similar in layers not exceeding 300mm.
28. All trucks entering or leaving the site shall have their trays suitably covered to prevent spillage from the truck onto the road.
29. 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.
30. Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved plan and Hawkesbury Development Control Plan chapter

ORDINARY MEETING

Meeting Date: 30 August 2011

on Soil Erosion and Sedimentation.

31. A light duty layback and footway vehicular crossing 3m wide shall be constructed to the development. The crossing shall be constructed in accordance with Hawkesbury Development Control Plan Appendix E, Civil Works Specification.
32. Dust control measures, eg vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
33. During the construction period, the person responsible for the site is to retain records of waste disposal (waste receipts or dockets, recycling processor receipts etc.) in a Waste Data File. The Waste Data File must be provided to Council officers on request to demonstrate that the approved Waste Management Plan is being implemented.
34. A registered surveyor's certificate indicating that the level of the top of the concrete slab formwork/floor joists for the lowest habitable floor is at 13 metres Australian Height Datum shall be obtained.

Alternatively, a defined benchmark AHD level shall be identified by survey report on a fixed location immediately adjacent to the building (eg. top of concrete strip footing, top of poured concrete pier).

The surveyor's certificate shall be provided to both Hawkesbury City Council and the Accredited Certifier (if not HCC) prior to any structure being erected on the concrete.
35. All materials used in the construction below the level of 17.3 metres AHD shall be capable of withstanding prolonged immersion in water without swelling or deteriorating.
36. All roofwater shall be drained to the water storage vessel/s.
37. Any stormwater drainage pit shall be of adequate size and be fitted centrally with vertical overflow pipes and be located so as not to interfere with any other property or sewer drainage system.
38. An automatic fire detection and alarm system shall be installed within the building in accordance with the Building Code of Australia for Class 1A and 1B Dwellings. Alarms and Detectors shall be installed by a licensed electrician and multiple alarms shall be interconnected, an certificate of the installation shall be provided prior to occupation of the building or addition.

Prior to issue of Occupation Certificate

39. A statement or other suitable evidence shall be submitted to the Principal Certifying Authority, certifying that all commitments made on the BASIX certificate have been implemented and installed as approved.
40. The existing dwelling shall be rendered inhabitable within 30 days of the issue of an interim occupation certificate and demolished within 30 days of the issue of a final occupation certificate.
41. A suitably qualified person shall certify that the works identified on the approved revegetation and landscape plan have been satisfactorily completed.

Use of the Development

42. No internal or external alterations shall be carried out without prior approval of Council.
43. 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.
44. The subject development, including landscaping, is to be maintained in a clean and tidy manner.

ORDINARY MEETING

Meeting Date: 30 August 2011

Advisory Notes

*** The applicant is advised to consult with the relevant:

- (a) water and sewer provider
- (b) electricity provider
- (c) natural gas provider
- (d) telecommunications carrier
- (e) road authority

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

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

*** Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.

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

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 181 **CP - Development Application - Torrens Title subdivision Two Lots into Three Lots - Lots 19 & 20 DP 758881 No.s 49 - 51 Faithful Street, Richmond - (DA0184/11, 73916, 3665, 3664)**

Development Information

File Number: DA0184/11
Property Address: 49 Faithfull Street, Richmond
Applicant: McKinlay Morgan & Associates Pty Ltd
Bernadette Nutman
Owner: Mr RJ Nutman and Mrs B Nutman
Proposal: Subdivision - Torrens title subdivision - 2 lots into 3 lots
Zoning: Current – Housing
Proposed – R2 Low Density Residential
Date Received: 8/04/2011
Date Formal: 11/05/2011
Estimated Cost: N/A
Exhibition Dates: 6/05/2011 to 20/05/2011
Submissions: Nil

Key Issues:

- ◆ Australian Noise Exposure Forecast (ANEF) Contour
- ◆ Compliance with Hawkesbury Development Control Plan - Residential Chapter
- ◆ Inconsistency with Established Character

Recommendation: Refusal

REPORT:

Executive Summary

A development application has been received for a three lot subdivision of two existing lots being Lots 19 and 20 Section 33 DP 758881, No.s 49 and 51 Faithful Street, Richmond. The subdivision aims to create a new lot at the rear of two existing lots with the new lot fronting Andrew Street.

Assessment of the proposal highlights the following relevant issues for consideration in the determination of the application:

- Australian Noise Exposure Forecast (ANEF) Contour
- Compliance with Hawkesbury Development Control Plan – Residential Chapter
- Inconsistency with Established Character

The application is being reported to Council at the requests of Councillor Bassett and Councillor Reardon.

The application was notified for the period 6 May 2011 to 20 May 2011. No submissions were received in response to this notification.

The subject land is located within an area affected by aircraft noise and it has been identified under Australian Standard AS 2021-200 and Councils adopted Residential Strategy that residential development within a noise contour higher than 25 is unacceptable. The design of the subdivision would not afford a reasonable level of amenity for future occupants of the new lots having regard to lots size, open space and configuration and would be out of character with the locality in general. It is therefore recommended that the application be refused.

ORDINARY MEETING

Meeting Date: 30 August 2011

Description of Proposal

It is proposed to subdivide Lots 19 (596m²) & 20 (799m²) Section 33 DP 758881 into three lots. The subject properties have a combined area of 1395m². The resultant lots will have the following attributes:

- Proposed Lot 21 – will have an area of 489m², frontage to Faithful Street and Andrew Street and will contain an existing dwelling house. It is proposed to erect a double carport with access from Andrew Street.
- Proposed Lot 22 – will have an area of 456m², frontage to Faithful Street, and will contain an existing dwelling house with attached metal carport, and a separate studio. A metal shed on this proposed lot will be demolished.
- Proposed Lot 23 - will have an area of 450m², frontage to Andrew Street and will contain an existing garage and carport. A shed and toilet on this proposed lot will be demolished.

Council Policies, Procedures and Codes to Which the Matter Relates

- State Environmental Planning Policy No. 55 – Remediation of Land
- Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River
- Hawkesbury Local Environmental Plan 1989
- Draft Hawkesbury Local Environmental Plan 2011
- 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:

a. The provisions (where applicable) of any:

i. Environmental Planning Instrument:

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

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

State Environmental Planning Policy No. 55 - Remediation of Land

The land has been used for residential purposes. Council records do not indicate that the land has been used for any other purpose. It is considered unlikely that the land will be contaminated to such a degree as to cause harm. The land is considered suitable for the proposed development and a Preliminary Site Investigation is not required.

The application is considered to be consistent with the provisions of State Environmental Planning Policy No. 55.

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

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

General Provisions of HLEP 1989

Clause 2 - Aims, objectives etc,

The proposed development is considered to be inconsistent with general aim and objective (b) as outlined in Clause 2 of the Hawkesbury LEP 1989 as it does not:

- provide appropriate land in area, location and quality for future residential development given that the proposal would not afford a reasonable level of amenity for future residents having regard to:
 - the land being located within an area impacted by aircraft noise;
 - the proposed lot sizes and configuration and the location and usability of private open space; and
 - the existing character of the locality.

Clause 8 - Zones indicated on the map

The land is zoned Housing.

Clause 9A - Zones Objectives

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

The objectives of the Housing zone are:

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

Comment:

The locality is not considered to afford a high level of amenity for the future lot given that it is situated in an area that is subject to a high aircraft noise impact.

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

Comment:

The subject application proposes the creation of three allotments having the following areas:

Proposed Lot 21:	489m ²
Proposed Lot 22:	456m ²
Proposed Lot 23:	450m ²

The lots within the general locality have areas between 524m² and 815m², with an average lot size of approximately 650m². The size of lots within an area has a significant bearing upon the character of development within that locality, as it influences the size of dwellings, the size of the curtilage around dwellings, size and location of private open space (backyards) and the separation between dwellings on adjoining land. It is considered that, whilst the LEP permits lot sizes of a minimum of 450m², the proposed lots are not consistent with the existing lot layout that has been predominantly preserved within the locality. This existing subdivision pre-dates 1960.

Given the constraints on the locality from aircraft noise, it is unlikely that the character of the locality will change in the future through increased subdivision.

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

ORDINARY MEETING

Meeting Date: 30 August 2011

Comment:

See comments in (b) above.

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

Comment:

It is considered that the proposed subdivision and future development of the vacant lot will have no significant adverse impact on the natural environment of the area.

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

Comment:

The proposed subdivision will create allotments capable of development for residential purposes.

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

Comment:

Water and reticulated sewerage is available to the land.

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

Comment:

It is considered that the proposed development will not create unreasonable economic demands for public amenities or services.

Specific Provisions of HLEP 1989

Clause 10 - Subdivision - general

This Clause states that a person shall not subdivide land without the consent of Council. The applicant has submitted a development application for this purpose that is the subject of this report.

Clause 12 - Residential subdivision - general provisions

Proposed Lot 21 will have an area of 489m², proposed Lot 22 will have an area of 456m² and proposed Lot 23 will have an area of 450m². The minimum allotment size requirement of 450m² has been achieved in accordance with subclause (2) for all proposed lots.

Clause 18(1) - Provision of water, sewerage etc. services

The subject site is serviced by electricity, water, sewerage and telecommunications services. Whilst services to the property exist, written evidence that satisfactory arrangements for the provision/extension of these services, from the relevant authorities, would need to be provided. This could be addressed through appropriate conditions should Council support the application.

Clause 25 - Development on flood liable land

The subject land is located above the 1-in-100 year flood level of 17.3m AHD.

Clause 27 - Heritage items

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

Clause 28 - Development in the vicinity of a heritage item

The subject land is not located within the vicinity of any listed items of heritage significance.

Clause 37 – Land affected by aircraft noise

Clause 37 requires Council to consider the guidelines of AS 2021 – 1994 (Acoustics – Aircraft noise intrusion – building siting and construction) in order to determine the suitability of certain development on land affected by aircraft noise.

ORDINARY MEETING

Meeting Date: 30 August 2011

The subject land is situated within an Australian Noise Exposure Forecast (ANEF) Contour of 25 to 30. Table 2.1 to AS 2021 identifies dwellings as 'unacceptable' development within this contour.

Table 2.1 to AS 2021 also states:

"This standard does not recommend development in unacceptable areas. However, where the relevant planning authority determines that any development may be necessary within existing built-up areas designated as unacceptable, it is recommended that such development should achieve the required ANR determined according to Clause 3.2. For residences, schools, etc., the effect of aircraft noise on outdoor areas associated with the buildings should be considered."

The proposed development is not considered to be necessary within the locality and not deemed to be infill development. This is because the land has already been subdivided and developed for housing.

Council recently adopted the Hawkesbury Residential Land Strategy which recommends that:

"Urban development should occur in areas with noise exposure contour less than 20.

The Australian Standard criteria should be adopted as a measure of appropriate noise zones for future development.

Development in areas with noise exposure contour between 20-25 will require special noise assessment and mitigation measures.

Residential development in areas above 25 ANEF is considered unsuitable except in the vicinity of Richmond where up to 30 ANEF may be considered, conditional on appropriate noise mitigation measures being consistently applied. However, in areas where ANEF levels are above 25 the land should be more appropriately considered for non-residential uses."

Council's recent adoption of the Hawkesbury Residential Land Strategy reinforces Council's existing position with respect to development within the ANEF Contours, and in particular identifying that the intensification of residential development in ANEF Contours of 25 and above is inappropriate. This view has previously been enforced due to legal advice.

Edwards v Hawkesbury City Council [2004] NSWLEC 647 (30 November 2004)

This Court appeal involved the refusal of an application for three townhouses at 5 Chapel Street, Richmond. Below is an extract from the Commissioners judgement:

Having considered the evidence, the submissions and undertaken a view, I do not consider this application merits consent, principally because it is an unacceptable form of development in this existing noise environment.

Insofar as a number of design and other merit issues for the proposal were raised initially, I note that the design amendments reasonably address these to meet council's requirements, as confirmed in the final joint planner's conference report.

*However in my assessment, the threshold issue concerns the noise exposure amenity due to the effect of RAAF aircraft using the nearby Richmond Base. I accept Mr Montgomery's evidence that the principal control use for assessment of noise affected developments is the ANEF RAAF BASE Plan (**Plan**), (Exhibit 9).*

*Reference to this **Plan** confirms the agreement of the acoustic consultants, that the site is within the 30-35 ANEF contour. This being the case, the associated land use table indicates clearly that houses, home units, flats are unacceptable in zones greater than 25 ANEF. This position is confirmed by reference to the base control, AS 2120 - 2000, from which the **Plan***

was derived.

*Whilst Mr Mazlins approach relies on his experience in the area, that noise mitigation measures can be incorporated in the buildings, nevertheless I consider the Australian Standard only allows residential development in this higher noise contour in "**special cases**". In my assessment of the evidence, no compelling evidence was presented confirming this application represented a special case. Instead, considerable reliance was placed on council's prior approval of other residential developments in a similar noise environment. However I give little weight to these previous approvals and instead consider determining weight should be given the application of appropriate planning principles to achieve acceptable community outcomes.*

More relevantly however, the DCP aims for an acceptable level of amenity for residents and that attenuation measures are not an unreasonable interference to the activities of the household.

In this case, Mr Mazlin initially stated that the new dwellings require air conditioning and effective sealing to restrict noise intrusion to a reasonable level. Whilst he later qualified this, it appears to me that the random operation of military aircraft, over the night time period without curfew, would necessitate extensive use of air-conditioning and significantly restrict opportunities for practical access to natural ventilation.

Under these circumstances, I consider this likely to result in unreasonable interference to be normal activities of the household and accordingly is noncompliant with the DCP noise control and also energy conservation initiatives.

*This general issue of noise impact was considered in **Stockland Developments v Wollongong Council and others** [2004] NSWLEC 470, Roseth SC and Brown C dealt with the Planning principle for noise attenuation when there is a significant noise impact on a proposed development. The relevant paragraph of the decision reads:*

As a general planning principle, where there is conflict between a noise source and a sensitive receptor preference should be given to the attenuation of any noise from the source rather than at the sensitive receptor. This is true whether the noise source generated by a proposal is a new noise and the receptor exists or the noise generator exists and the receptor is a proposed use. In deciding whether the noise should be attenuated at the source, consideration should be given to the degree of conflict between the appropriate noise goals, the difficulty and cost associated with treating the noise at the source, the willingness of the noise generator to be treated and the potential amenity impacts associated with noise attenuation at the receptor. Depending on the circumstances of the case, the cost of attenuation measures may be borne by either party or shared between them, irrespective of the location.

Obviously in the subject case, it is impractical to attenuate at the source, so that other action is required if the consent authority deems residential development appropriate and / or necessary in this situation.

However it appears to me that the council's response action is to address this matter by way of the draft Amendment No.130 to the Hawkesbury Local Environmental Plan. This amendment proposes to prohibit medium density development within the higher-level noise affectation contours. The amendment recognises the existing residential zonings and continues to allow low-density residential development in these noise contours. According to Mr Montgomery, the principle adopted is that increased residential densities should not be permitted in areas of high noise affectation.

Insofar as the various submissions have been made regarding the status of this Amendment No. 130, the only substantive evidence put before the Court is Mr Montgomery's opinion that it is imminent and certain, based on his experience with its passage through the planning system, which includes issue of the section 68 certificate. By reference to the chronology of

ORDINARY MEETING

Meeting Date: 30 August 2011

events presented, I am not satisfied at this stage that the form of draft Amendment is imminent, considering the amount of density rezoning and possible savings clause inclusion.

However, it does seem me that the principle to restrict increased residential densities in areas of high noise concentration is a desirable community objective and accordingly has a reasonable degree of certainty. Therefore I consider this principle should be given substantial weight, which contributes significantly to the failure of this application, notwithstanding its current permissibility.

This judgement gives weight to the Australian Standard in respect to the identification of acceptable ANEF Contours for different types of development. It also highlights that consideration of residential development in higher ANEF Noise Contours be only given in exceptional circumstances. It is considered that the creation of an additional lot for residential purposes does not constitute an exceptional circumstance and the application does not provide any justification in this regard.

In addition, Amendment 130 (gazetted as Amendment 108 on 18 August 2006) identified areas suitable for multi unit housing (Multi Unit Housing zone) and areas suitable for single dwelling houses (Housing zone) based on a number of criteria, including noise intrusion from aircraft. With the gazettal of this Amendment, the zoning of the subject properties changed to Housing, highlighting the unsuitability of the area for increased residential use due to the noise impacts from the RAAF base.

As a consequence of the above Court matter and with the adoption of the current ANEF RAAF BASE Plan 2014 in 2006, the practice in the determination of applications situated in areas subject to aircraft noise has changed so as to consistently apply the guidelines within Table 2.1 to AS 2021. this is further reinforced by the adoption of the Residential Strategy on 10 May 2011.

The applicant provided a number of examples from the locality where it was argued that Council has been inconsistent and therefore has set a precedent:

Deposited Plan & Registered Date	Number of lots created	ANEF Level	Date Development Consent granted
DP 1152663 – 2010	2 lots	30-35	11/11/2002 (subdivision)
DP 1090353 - 2005	2 lots	30-35	12/8/2003 (Dual occupancy + Subdivision)
DP 1072445 - 2004	2 lots	30-35	6/2/2003 (Dual occupancy + subdivision)
DP 1108306 - 20005	2 lots	25-30	7/12/2001 (dual occupancy)
DP 1139469 – 2009 *	2 lots	25-30	5/12/2003 (subdivision)
DP1142913 - 2009	3 lots & 2 dwellings plus 4 townhouses	25-30	6/11/2001

As can be seen, these examples were all granted approval prior to the changes in Council practice and policy as described above. The example marked with an ‘*’ above can be seen on the Locality Plan within Attachment No. 1 to this Report (47 and 47A Dight Street).

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

The land is within Class 5 as shown of the Acid Sulfate Soils Planning Map. The proposal does not require any works, as defined in this Clause. The proposed development is consistent with the requirements of this Clause.

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

Draft Hawkesbury Local Environmental Plan 2009 applies to the proposal. This draft Plan was exhibited during the period 5 February 2010 to 12 April 2010.

Under this Plan the subject land is proposed to be zoned R2 Primary Low Density Residential. The Lot Size Maps provide a minimum lot size requirement of 450m². Clauses 4.1 and 4.1B of the draft Plan relates to the subdivision of the land. The proposed subdivision is consistent with these Clauses.

Clause 6.2 relates to Land affected by aircraft noise and requires consideration of Australian Standard AS 2021 – 2000. This matter has been discussed previously within this Report.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan (HDCP)

The proposed development is generally consistent with the requirements of HDCP. An assessment of the proposal against the relevant provisions of this Plan follows:

Part A: Chapter 2 - General Information

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

Part A: Chapter 3 - Notification

The adjoining neighbours were notified as per the requirements of this Chapter. No submissions were received.

Part D: Chapter 1 - Residential Chapter

An assessment of the proposal against the requirements of this Chapter reveals a number of inconsistencies which will result in a reduction in amenity for the current and future occupants of the existing dwelling houses. These inconsistencies include:

- The main private open space area located on Proposed Lot 21 is located within the front boundary setback;
- The rear 32m² private open space area on Proposed Lot 22 is considered unusable due to its location and separation from the dwelling and main internal and external living areas; and
- Sunlight access to the main private open space areas on Proposed Lot 22 is unlikely to achieve the minimum requirements of 50% of the areas receiving sunlight between 9:00am to 3:00pm.

Part D: Chapter 3 - Subdivision Chapter

The proposed subdivision is consistent with the relevant requirements of the Subdivision Chapter.

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

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

v. Matters prescribed by the Regulations:

Conditions, should the application be approved, are required to be imposed to ensure that:

- All development is in accordance with the Building Code of Australia.
- All demolition is in accordance with applicable Australian Standards.

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

Context & Setting

As previously discussed the proposed lot sizes are inconsistent with the traditional subdivision of the area, which has been predominantly preserved. The proposed lots sizes will result in development which is not consistent with existing character of the area.

Noise & Vibration

The site is located within an area affected by aircraft noise. Australian Standard 2021-2000 identifies that the noise affectation of the property is unsuitable for residential development.

Site Design and Internal Design

As previously identified it is considered that the design of the proposed subdivision will not afford a suitable level of amenity to the existing dwelling houses.

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

It is considered that the subject land is not suitable for the proposed development given the impacts of aircraft noise on the amenity of the locality.

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

The application was referred to the Department of Defence, who advised:

"The 2014 Australian Noise Exposure Forecast (ANEF) map for RAAF Base Richmond is a planning tool which provides an indication of the exposure of a site to aircraft noise. The subject land is located within the 25-30 ANEF zone on the 2014 ANEF map. Under the Australian Standard AS 2021-2000: Acoustics – Aircraft Noise Intrusion – building Siting and Construction, the building site is "Unacceptable" for the proposed use (residential dwelling). As the proposal does not comply with this Australian Standard, the Department of Defence does not support this application."

- e. **The Public Interest:**

It is considered that the proposed subdivision is not in the public interest given:

- the noise impacts from aircraft noise will not afford a reasonable level of amenity for future occupants of the Proposed lot 23; and
- the unsatisfactory level of amenity for future occupants of the Proposed lots 21 & 22 having regard to the lot layout and private open space.

Conclusion:

This Report demonstrates that the proposed subdivision will result in lots which are considered inconsistent with the traditional subdivision of the area, which has been predominantly maintained in the immediate locality. The proposed lot sizes will result in development which is not consistent with the existing character of the area. The lot sizes do not afford an acceptable level of amenity for occupants.

The site is located within an area affected by aircraft noise being situated within an ANEF Contour of 25-30. Australian Standard 2021-2000 identifies that a Contour of 25-30 is 'Unacceptable' for residential development. Recently (10 May 2011), Council has adopted the Residential Land Strategy, which also states that residential development within ANEF Contours above 25 is inappropriate.

Given the impacts of aircraft noise on future development of the vacant lot, and the impact of the subdivision in general on the character of the locality and the amenity of occupants, it is recommended that the application be refused.

ORDINARY MEETING

Meeting Date: 30 August 2011

Planning Decision

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

RECOMMENDATION:

That Development Application No. DA0184/11 at Lot 20 Sec 33 DP 758881 and Lot 19 Sec 33 DP 758881, No.s 49 and 51 Faithful Street Richmond for Subdivision - Torrens title subdivision - 2 lots into 3 lots be refused for the following reasons:

Reasons for Refusal

1. The proposed subdivision is inconsistent with objectives (a) and (b) of Hawkesbury Local Environmental Plan 1989 in that it does not provide for the orderly management of constrained land and the resultant allotments do not provide appropriate land suitable for living, working and recreational activities.
2. The proposed subdivision is inconsistent with objectives (a), (b) and (c) of the Housing zone in that the following matters are not satisfied:
 - (a) to provide for low density housing and associated facilities in locations of high amenity and accessibility.
 - (b) to protect the character of traditional residential development and streetscapes.
 - (c) to ensure that new development retains and enhances the existing character.
3. The proposal is inconsistent with the provisions of Clause 37 of Hawkesbury Local Environmental Plan 1989 in that the subject site is situated on land subject to significant aircraft noise impact and that the type of use proposed is considered unacceptable development on such land.
4. The proposed development does not comply with the requirements of the Hawkesbury Development Control Plan, in particular Part D, Chapter No.1, Residential Development.
5. The proposal is contrary to the building site acceptability classification based on ANEF Zones contained in Australian Standard AS2021 - *Acoustics—Aircraft Noise Intrusion—Building Siting and Construction* in that the proposed use is classified as unacceptable in the noise contour of the site.
6. The proposed lot layout and open space areas available are inconsistent with the established character of the locality.
7. In the circumstances, approval of the development would not be in the public interest.

ATTACHMENTS:

AT - 1 Locality Plan and Aerial Photo

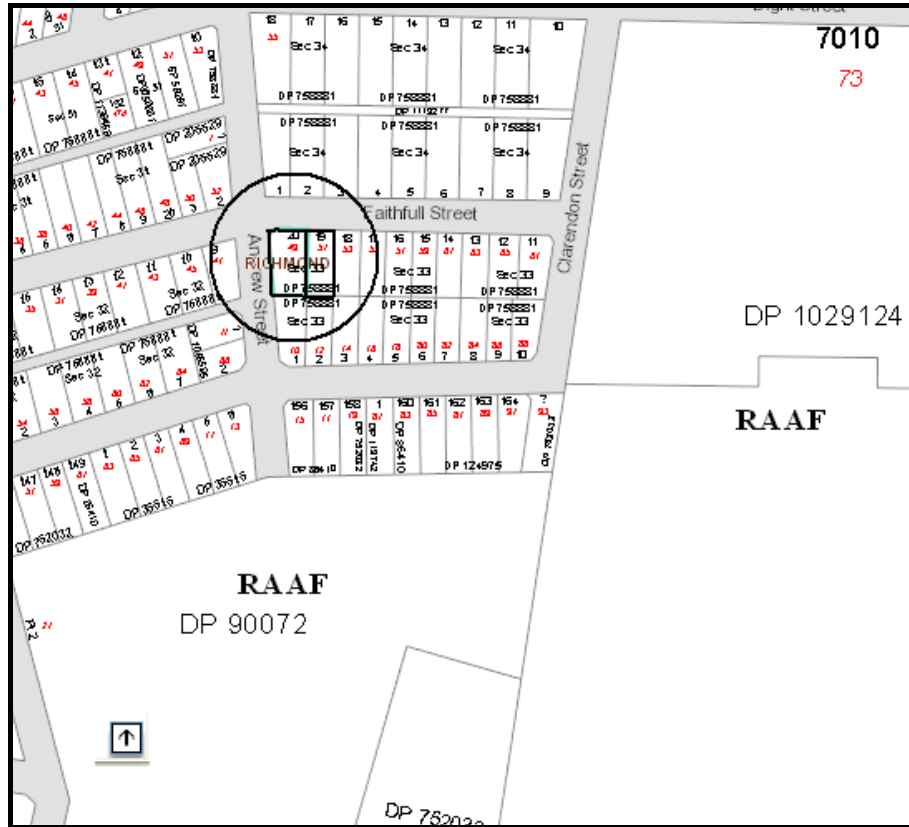
AT - 2 Subdivision Plan

ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 1 Locality Plan and Aerial Photo

Lots 19 & 20 Section 33 DP 758881, No.s 49 and 51 Faithful Street, Richmond.



ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 182 **CP - Development Application - Two Lot Torrens Title Subdivision - Lot 12 DP 748589 No. 802 Comleroy Road, Kurrajong - (DA0103/11, 95498, 111092, 74563)**

Development Information

File Number: DA0103/11
Property Address: 802 Comleroy Road, Kurrajong
Applicant: Falson & Associates Pty Limited
Owner: Ms K L Browne
Proposal: Two Lot Torrens Title Subdivision
Zoning: Rural Living under HLEP 1989
Draft Zoning: RU4 Rural Small holdings under Draft HLEP 2011
Date Received: 2 March 2011
Date Formal: 2 March 2011
Estimated Cost: N/A
Exhibition Dates: 17 March 2011 to 31 March 2011
Submissions: Three

Key Issues:

- ◆ Objection Under State Environmental Planning Policy No. 1.
- ◆ Allotment area.
- ◆ Native Vegetation.

Recommendation: Refusal

REPORT:

Executive summary

The application seeks approval for a two lot Torrens Title subdivision of Lot 12 in DP748589, 802 Comleroy Road, Kurrajong.

The proposal is contrary to the minimum allotment size requirement of four hectares for the subdivision of this parcel of land under Hawkesbury Local Environmental Plan 1989. The application has not satisfactorily demonstrated why Council should consider a variation to the minimum allotment size and it is recommended that the objection made pursuant to State Environmental Planning Policy No. 1 not be supported and that the minimum allotment size provision be upheld.

The application is being reported to Council as the variation to the minimum allotment size exceeds 10% and it is a requirement for all State Environmental Planning Policy No. 1 variations greater than 10% be considered by Council.

Description of Proposal

The proposal involves the subdivision of Lot 12 in DP748589, 802 Comleroy Road Kurrajong into two separate allotments consisting of the following:

Proposed Lot 121 - Proposed frontage to Comleroy Road - 2.8ha in area (a 30% variation to the 4 hectare development standard) and contains an existing dwelling, shed and garage.

Proposed Lot 122 - Proposed frontage to Jacaranda Road - 2.2ha in area (a 45% variation to the 4 hectare development standard) is vacant and contains native vegetation.

ORDINARY MEETING

Meeting Date: 30 August 2011

The purpose of the subdivision is to provide two useable rural allotments as the subject site has access to two road frontages and a watercourse runs through the existing site.

Description of the Land and its Surroundings

At present Lot 12 in DP748589 contains one dwelling, garage and shed. There is no identified watercourse running through the site however Council's mapping shows a drainage line running through the property running from the Southern boundary to the Northern boundary.

Access to the dwelling on the subject site is currently gained from Comleroy Road with Jacaranda Road located at the rear of the property.

Surrounding lots consist of a variety of sizes and are primarily used for a combination of agricultural and rural residential uses.

Council Policies, Procedures and Codes to Which the Matter Relates

- State Environmental Planning Policy 1 – Development Standards (SEPP 1)
- Sydney Regional Environmental Plan 20. (No.2 - 1997) - Hawkesbury Nepean River (SREP No. 20)
- Hawkesbury Local Environmental Plan (HLEP)1989
- DRAFT Hawkesbury Local Environmental Plan (DHLEP)2011
- Hawkesbury Development Control Plan (HDCP) 2002

Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979 (EPA Act)

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

a. The provisions of any:

i. Environmental Planning Instrument:

State Environmental Planning Policy No. 1 – Development Standards

An objection under State Environmental Planning Policy No. 1 was lodged requesting a variation from the minimum allotment size requirement of Hawkesbury Local Environmental Plan 1989. Clause 11(2) of this plan limits lot sizes to 4ha for land zoned Rural Living in this locality. The application proposes the creation of a 2.8ha allotment and a 2.5ha allotment.

The grounds for objection under State Environmental Planning Policy No. 1, submitted with the development application states:

1. *The allotments are not too far removed in area terms from the 4ha requirement of the LEP.*
2. *The allotments are of a size and shape adequate to contain the existing dwelling and associated development and future development on the proposed vacant lot.*
3. *There are other allotments in the vicinity of the site that are of similar in size and in some cases smaller than those proposed.*
4. *There would be no adverse impact on amenity of streetscape as the vacant lot contains a building envelope that is largely consistent with existing dwelling sites on Jacaranda Drive.*
5. *The subdivision has been designed to account for environmental and physical features and allows the best long-term management opportunities for the total landholding.*

Assessment of Grounds for objection under SEPP 1

In determining whether or not an objection to SEPP 1 should be supported it is recommended any assessment use a set of planning principles provided by his honour Chief Judge Preston in Land and Environment Court hearing *Wehbe v Pittwater Council* [2007] NSWLEC 827 - 21 December 2007. The Chief Judge suggests that support of an Objection should be based on the following:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Comment: The main objectives of the standard are to preserve large rural residential allotments without having an impact on the surrounding natural environment or rural residential nature of the locality.

The SEPP 1 objection attempts to demonstrate that the objective of the standard is achieved without meeting the minimum 4ha requirement as the allotments proposed will provide for rural residential purposes and the proposed lots are of a similar size and scale to other lots within the locality.

The applicant's approach is not supported as valid grounds for objection. The proposed subdivision will reduce the potential for the retention of vegetation on the subject site in order to create a building envelope for Proposed Lot 102. It is considered that the removal of the existing vegetation communities located on the site would ultimately be contrary to the overall objectives of this standard.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment: The underlying objective of the standard is considered relevant to the development as the proposed minimum allotment size has been imposed to control the amount of rural residential developments within the area.

It is considered that the creation of an additional rural allotment will ultimately reduce the potential to preserve native vegetation with the creation of a second building envelope. The objective of maintaining the minimum 4ha allotment size is necessary in controlling the number of rural residential allotments within the locality.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment: The underlying objective of the minimum allotment size will not be defeated should the minimum subdivision size provision be upheld. It is considered that the objectives of the minimum allotment size provision will be preserved without the creation of an undersized allotment. It is considered that compliance with this standard is not unreasonable.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment: An assessment for the surrounding area has revealed that the majority of lots within the area comply with Council's minimum allotment size provision and that the minimum allotment size provision for this area has been upheld since the controls introduction. The non-conforming allotments adjoining the site were created prior to the commencement of the current controls prior to the gazettal of HLEP 1989.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

ORDINARY MEETING

Meeting Date: 30 August 2011

Comment: The locality is currently used for a combination of agricultural and rural residential purposes. It is considered that there are no special circumstances in which the subdivision variation should be supported as there are numerous allotments that are zoned Rural Living which have direct access to more than one road and are severed by natural watercourses. It is considered that the minimum allotment size standard applying to the subject zone is not unreasonable or unnecessary and it is considered that the subject site is zoned appropriately.

Chief Judge Preston also highlighted the assessment process shall look at the following points:

1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;

Comment: The SEPP 1 objection does not demonstrate that the objection submitted with the application is well founded. The application has not ascertained whether development that complies with the development standard would be unreasonable or unnecessary. The retention of the existing lot is not considered to be unnecessary or unreasonable given that this land area currently allows for the use of the property for rural residential purposes.

It is considered that subdividing the land into two separate allotments because access is available to the rear of the lot and vegetation can be removed to create a building envelope is contrary to the overall objectives of the zone and that compliance with the minimum allotment size is not unreasonable.

2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and

Comment: The grounds of objection are considered to be general in nature and would be applicable to many sites in the locality. Approval of the objection may create an adverse planning precedent, which would undermine the purpose of the standard.

Further, the applicant has not addressed the significant degree of variation from the development standard that is being sought. The variations proposed are 30% (Proposed Lot 121) and 45% (Proposed Lot 122). It is highlighted that these are not minor variations to the minimum allotment size criteria.

3. It is also important to consider:

- a) whether non-compliance with the development standard raises any matter of significance for State or regional planning; and

Comment: It is considered that non compliance with this standard does not raise any matter of significance for state or regional planning.

- b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Comment: The granting of concurrence to the subject development application would set a precedent for other subdivision applications in the vicinity and in the Rural Living zone. This precedent and its impact will undermine the objectives of the zone and HLEP 1989. In this light it is considered that there is a public benefit in maintaining the minimum allotment size standard for the zone.

It is considered that the SEPP No. 1 objection has not demonstrated that compliance with the development standard is unreasonable or unnecessary or has provided sufficient justification

on planning grounds to warrant contravening the development standard in this instance.

In view of the above, it is recommended that the objection made under SEPP 1 not be supported.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

State Environmental Planning Policy No. 44 applies to land within the Hawkesbury Local Government Area for which development consent is sought having a total land area in excess of 1 hectare. The application does not propose the removal of any vegetation which is considered to be core koala habitat or potential koala habitat as identified in the flora and fauna report submitted with the application.

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

The proposal is consistent with the aims and objectives of SREP No. 20. It is considered that the proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context and that the development is not inconsistent with the general and specific aims, planning considerations, planning policies and recommended strategies.

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

The proposal is inconsistent with the requirements of Hawkesbury Local Environmental Plan 1989. The subject property is zoned Rural Living. Subdivision of land within the Rural Living zone is permissible under Clause 11 (2) of this plan only if the area of each of the allotments to be created is not less than 4ha. The subdivision proposal involves the creation of a 2.8ha lot and a 2.5ha lot. An objection under SEPP No.1 seeking a variation to the allotment size has been submitted with the application and has been assessed previously in this report. It is recommended that Council not support the variation requested.

The proposal is further considered to be contrary to Clause 2 (a) of this plan which is to provide a mechanism for the management, orderly and economic development and conservation of land within the City of Hawkesbury. It is considered that the removal of vegetation to create a building allotment on a lot that does not meet the minimum allotment size criteria is contrary to the 4ha allotment size criteria.

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

Clause 2 - Aims, objectives etc
Clause 5 - Definitions
Clause 9 - Carrying out of development
Clause 10 - Subdivision general
Clause 18 - Provision of water, sewerage services, etc
Clause 37A - Development on land identified on Acid Sulfate Soils Planning Map

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

Draft Hawkesbury Local Environmental Plan 2011 applies to the proposal. This draft Plan was exhibited 5 February 2010 to 12 April 2010 and adopted by Council on 7 June 2011 and is currently awaiting gazettal.

Clause 4.1 permits subdivision with development consent subject to the minimum subdivision lot sizes as shown on the Lot Size Map. DRAFT Hawkesbury Local Environmental Plan 2011 does not seek to change the minimum subdivision lot sizes that currently apply to the subject site under Hawkesbury Local Environmental Plan 1989.

The proposal is contrary to the minimum 4 ha allotment size contained within the draft plan. The draft LEP also contains provisions that will result in SEPP 1 being superseded. Clause 4.6 of the draft LEP (a compulsory Clause) contains provisions for the flexibility of planning controls and

ORDINARY MEETING**Meeting Date:** 30 August 2011

development standards under certain conditions. In the RU4 Rural Small Holdings zone variations to lot sizes are proposed to be up to 10% of the standard. The current proposal is a variation of 30% for Proposed Lot 121 and 45% for Proposed Lot 122 which is not consistent with the Draft LEP Clause.

It is further noted that proposed lot 122 is covered by native vegetation which has been identified in the flora and fauna report submitted as critically endangered vegetation community being shale sandstone transition forest. The removal of vegetation for an undersized allotment is inconsistent with the objectives of Clause 5.9 of this plan which seeks to preserve significant native vegetation.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan (HDCP) 2002

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

Part A Chapter 2 - General Information

The subject application provides adequate information for the assessment of the proposal and therefore complies with this Chapter.

Part A Chapter 3 - Notification

The application was notified to adjacent property owners in accordance with HDCP 2002. Three submissions were received in response to the application and are discussed under the public submission section of this report.

Subdivision Chapter

The following is an assessment against the Rules of the Subdivision Chapter:

Element	Rule	Provides	Complies
General			
Flora and Fauna Protection	(a) Any subdivision proposal which is likely to result in any clearing of native vegetation or impact on any environmentally sensitive area is to be accompanied by a flora and fauna assessment report prepared by a suitably qualified person. This report is to primarily address the Eight Part Test pursuant to the Act (Section 5A), State Environmental Planning Policy 44 – Koala Habitat protection.		Yes
	(b) Vegetation cover should be retained where ever practicable as it acts to stabilise soils, minimise runoff, acts as a pollutant trap along watercourses and is important as a habitat for native fauna.	The application proposes to remove critically endangered vegetation for the creation of a building envelope.	No
	(c) Degraded areas are to be rehabilitated as part of the subdivision.	A bushland management plan is proposed as part of the subdivision.	Yes
	(d) Vegetation should be retained where it forms a link between other bush land areas.	The proposal seeks to remove vegetation within the middle of a vegetation community to provide a building envelope.	No

ORDINARY MEETING

Meeting Date: 30 August 2011

Element	Rule	Provides	Complies
	(e) Vegetation which is scenically and environmentally significant should be retained.	See above	No
	(f) Vegetation which adds to the soil stability of the land should be retained.	See above	No
	(g) All subdivision proposals should be designed so as to minimize fragmentation of bushland.	The proposal will fragment existing bushland areas	No
Visual Amenity	(a) Building envelopes, accessways and road shall avoid ridge tops and steep slopes.		Yes
	(b) Subdivision of escarpments, ridges and other visually interesting places should: <ul style="list-style-type: none"> • Be managed in such a way that the visual impact rising from development on newly created allotments is minimal; and • Retain visually significant vegetation such as that found on ridge tops and other visually prominent locations. 		Yes
	(c) Development Applications for subdivision shall take into consideration the provisions of SREP No. 20 in relation to scenic quality		Yes
Heritage	(a) A subdivision proposal on land which contains or is adjacent to an item of environmental heritage as defined in Schedule 1 of the Hawkesbury LEP should illustrate the means proposed to preserve and protect such items.	Site does not contain or is adjacent to an item of environmental heritage	Yes
Utility Services	(a) Underground power provided to all residential and industrial subdivisions. Where infill subdivision is proposed, the existing system, whether above or underground shall be maintained.	Not a residential infill subdivision	Yes
	(b) All lots created are to have the provision of power.	Available	Yes
	(c) Where reticulated water is not available, a minimum storage of 100,000 litres must be provided. A minimum of 10,000 litres must be available during bush fire danger periods.	Onsite water collection available to the existing dwelling.	Yes
Flooding, Landslip & Contaminated Land	(a) Compliance with clause 25 of Hawkesbury Local Environmental Plan 1989.		Yes
	(b) Access to the subdivision shall be located above the 1% AEP flood level.		Yes
	(c) Where a subdivision proposal is on land identified as being potentially subject to landslip, the applicant shall engage a geotechnical consultant to prepare a report on the viability of subdivision the land and provide	Not identified as land being potentially subject to landslip.	

ORDINARY MEETING

Meeting Date: 30 August 2011

Element	Rule	Provides	Complies
	recommendations as to the siting and the type of buildings which could be permitted on the subject land.		
	(d) In the event the Council deems that there is the potential that land subject to a subdivision application is contaminated then the applicant shall engage a suitably qualified person to undertake a soil and ground water assessment.	Not considered to be contaminated.	Yes
	(e) Contaminated Land shall be remediated prior to the issue of the Subdivision Certificate.	N/A	Yes
Rural and Residential Subdivision			
Rural lot size and shape	(a) The minimum allotment size for land within rural and environmental protection zones are contained within the Hawkesbury Local Environmental Plan 1989.	Proposed Lot 121 would result in a variation of 30% and Proposed Lot 122 will result in a 45% variation from see assessment in report above.	No
	(b) Lots should be able to accommodate a building envelope of 2000m ² with a minimum dimension of 20m. Building envelopes should be located a minimum of 30m from significant trees and other significant vegetation or landscape features. Building envelopes would contain the dwelling house, rural sheds, landscaping, and on-site effluent treatment and disposal areas, and bushfire mitigation.	Proposed	Yes
	(c) In calculating the area of a battle-axe or hatched shaped allotment, the area of the battle-axe handle should be included.	No battle axe allotment proposed	Yes
	(d) The width to depth ratio of allotments should not exceed 1:5		Yes
	(e) Lot layout shall consider the location, the watercourse vegetation and other environmental features.	The application proposes the removal for vegetation	No
Boundary Adjustment	Proposal is not for a boundary adjustment therefore compliance for this chapter is not required.	N/A	N/A
Rural Road and Accessway Design	(a) The design specifications in Figure D3.9 at the end of this clause are to be met.	N/A	Yes
	(b) Where the road width is insufficient or unsatisfactory, an applicant should dedicate or provide land required for local road widening or new roads at no cost to council.	N/A	Yes
	(c) Upgrading of the accessway from the nearest	No details of access	No

ORDINARY MEETING

Meeting Date: 30 August 2011

Element	Rule	Provides	Complies
	sealed road to the proposed subdivision to an all weather standard suitable for the expected traffic generation arising from the subdivision. This work may require the sealing of the pavement dependent upon traffic generation	to building envelope on Proposed Lot 122 shown on the application	
	(d) Where access to the subdivision is via a Crown or Reserve road in addition to the above, the road should be fully constructed to a standard commensurate with roads in the locality and linked to the nearest Council road. Prior to any construction works being undertaken the relevant section of Crown road is to be transferred to Council.	N/A	Yes
	(e) The road fronting the subdivision shall be sealed into half width (minimum 3.5 metres). An all weather standard of road construction may be acceptable where the expected traffic volume generated by the subdivision proposal is low and no sealed roads in the vicinity.	N/A	Yes
	(f) Water courses should be piped where they cross roads and the applicant should create drainage easements generally 10 metres long and 4 metres wide over the point of any discharge of any water from any public road onto private property.	N/A	Yes
	(g) All internal driveways shall be constructed to an all weather standard suitable for the expected traffic generation. An all weather access should also be provided across the footway to any battle-axe lot. Such access should be sealed within the vicinity of existing houses on adjoining lots where dust nuisance may occur and also on steeply sloping land.	Could be provided	Yes
	(h) Where 3 or more individual access handles are proposed, common roads are to be provided.	N/A	Yes
	(i) Battle axe handles shall have a minimum width of 6 metres.	N/A	Yes
	(j) Accessways should have a maximum grade of 25% (1:4) and be sealed if the grade exceeds 1:6, concrete if exceeds 1 in 5.	No access details provided to proposed building envelope on Proposed Lot 122	No
	(k) Where an accessway meets a public road there should be a minimum sight distance of 70 m. This may be increased on roads with a high speed limit.		Yes
	(l) Cul-de sacs for rural roads should have	N/A	Yes

ORDINARY MEETING**Meeting Date:** 30 August 2011

Element	Rule	Provides	Complies
	minimum seal radii of 12.0m and boundary radii of 17.0m.		
Effluent Disposal	<ol style="list-style-type: none">1. An effluent disposal report prepared by a suitably qualified person is required to accompany any development application for rural-residential subdivisions.2. Any system proposed other than a Household Aerated Wastewater Treatment System is required to be installed prior to release of subdivision certificate.	Details have not been provided	No

Conclusion

As detailed above, the development proposal fails to comply with a significant portion of the Hawkesbury Development Control Plan 2002.

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

Not applicable.

v. Matters prescribed by the Regulations:

Not applicable.

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

Context and setting

The surrounding locality is predominantly used for a combination of rural residential and agricultural purposes. The majority of lots within the locality are generally greater than 4ha in area. The proposal will have no unreasonable impacts on adjoining properties in terms of overshadowing, loss of privacy or views and vistas.

Flora and Fauna

The application proposes the removal of critically endangered vegetation for the creation of a building envelope for a lot which is smaller than the minimum allotment size.

Cumulative Impacts

The cumulative impacts of approving subdivisions below the minimum allotment size and clearing vegetation to create a building envelope for rural living purposes is inconsistent with the various planning controls reviewed in the report above. It is considered that compliance with this standard is neither unreasonable nor unnecessary in this circumstance and that support of the variation requested to this development could set an undesirable precedent with respect to breaching the minimum subdivision lot size provision and the fragmentation of native vegetation to create additional building envelopes within the locality.

If the variation requested was to be applied on the basis of the objection submitted, numerous allotments within the locality could potentially be subdivided below the minimum allotment size further changing the appearance of the relatively large allotments within the locality.

c. Suitability of the site for the development:

The proposal is inconsistent with the various planning controls affecting the site and it is therefore considered that the site is not suitable for subdivision. The current use of the subject land does not

ORDINARY MEETING

Meeting Date: 30 August 2011

change as a consequence of the proposal and it is considered that the future development on Proposed Lot 122 will further fragment native vegetation.

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

Referral to the Department of Planning

The application was forwarded to the Department of Planning following the receipt of an objection to HLEP 1989 under SEPP 1. In their letter dated 25 March 2011, the Department of Planning advised that

"I note that the proposal involves a variation to the 4 hectare subdivision standard for the Rural Living zone under Hawkesbury Local Environmental Plan 1989.

Under the provisions of the Environmental Planning and Assessment Act, 1979, concurrence is required if Council proposes to grant development consent to the development application.

It is recommended that Council decline support for the proposed development. However, should the application be approved, then the application is required to be referred to the Department of Planning to obtain their concurrence.

Public Submissions

Three submissions were received in respect to the notification of the development were received and raised the following issues:

- The subject property is not intersected by a watercourse as highlighted in the proposal and therefore the subdivision minimum allotment shall apply.
- Vegetation on the site has not been cleared and the removal of vegetation for a building envelope will disturb native flora and fauna.
- The 88B Restriction as to User on existing Lot 12 in DP 748589 restricts development of the lot to one dwelling.
- The proposed lots are smaller than other lots within the locality.
- The creation of smaller lots will result in privacy issues with increased intensity of lots within the area.

Comment: It is considered that the issues raised by the submissions are warranted as the proposal is inconsistent with the various planning controls affecting the site.

e. The Public Interest:

The current planning controls seek to retain rural allotments of sufficient size for the sustainability of rural living and retainment of native vegetation. To permit the fragmentation of native vegetation would be inconsistent with the existing and future planning controls being HLEP 1989 and Draft HLEP 2011 respectively.

The submitted objection to the subdivision standard fails to adequately address how the standard is unreasonable or unnecessary in this case. The submission also fails to adequately address the degree of variation sought which is significant.

Given that the proposal fails to satisfy the relevant planning controls affecting the site and is inconsistent with the objectives of the zone it is concluded that the proposal is contrary to the general public interest.

ORDINARY MEETING

Meeting Date: 30 August 2011

Conclusion:

The proposal is inconsistent with the minimum allotment size requirement for subdivision as per Clause 11(2) of Hawkesbury Local Environmental Plan 1989. It is considered that the grounds for objection under SEPP No. 1 have not demonstrated that the minimum allotment size requirement is unreasonable and unnecessary.

If subdivisions were to be supported on the basis of the grounds of objection submitted by the applicant it is considered that approval could set an undesirable precedent, as there are number of allotments within the locality which can be subdivided below the minimum allotment size based on the same grounds.

Based on the assessment of the proposal against the relevant planning controls affecting the site it recommended that the minimum allotment size provision be upheld and the application be refused.

Planning Decision

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

Developer Contributions

The development is exempt from contributions under Council's Section 94A Contributions Plan.

RECOMMENDATION:

That:

1. The objection under SEPP No. 1 not be supported.
2. Development Application No. DA0103/11 at Lot 12 DP 748589, 802 Comleroy Road Kurrajong for a Two Lot Torrens Title subdivision be refused based on the following:
 - a) The State Environmental Planning Policy No. 1 objection received in respect to the minimum allotment area is not supported as compliance with the statutory development standard was not considered to be unreasonable or unnecessary in the circumstances.
 - b) The proposal does not comply with the requirements of the Hawkesbury Local Environmental Plan 1989.
 - c) The development does not comply with the Hawkesbury Development Control Plan 2002 Part D Chapter 3 – Subdivision.
 - d) The proposal is inconsistent with the DRAFT Hawkesbury Local Environmental Plan 2011.
 - e) The cumulative impact of this and/or similar subdivisions and the potential adverse impact on the rural residential nature of the locality are considered to not be in the general public interest.

ORDINARY MEETING

Meeting Date: 30 August 2011

ATTACHMENTS:

AT - 1 Aerial Photograph

AT - 2 Locality Plan

AT - 3 Subdivision Plan

ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 1 Aerial Photograph

Lot 12 in DP748589, 802 Comleroy Road Kurrajong

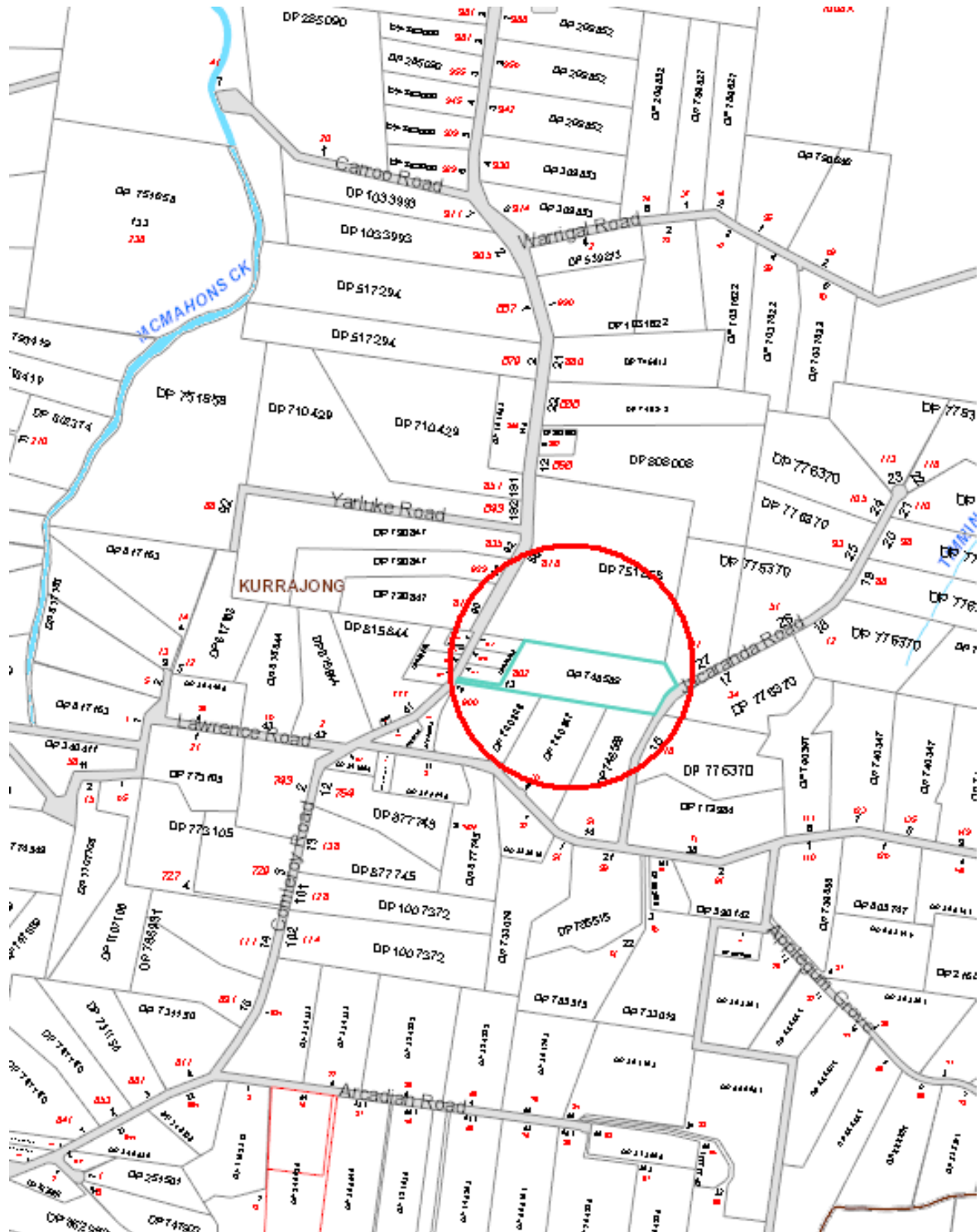


ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 2 Locality Plan

Lot 12 in DP748589, 802 Comleroy Road Kurrajong

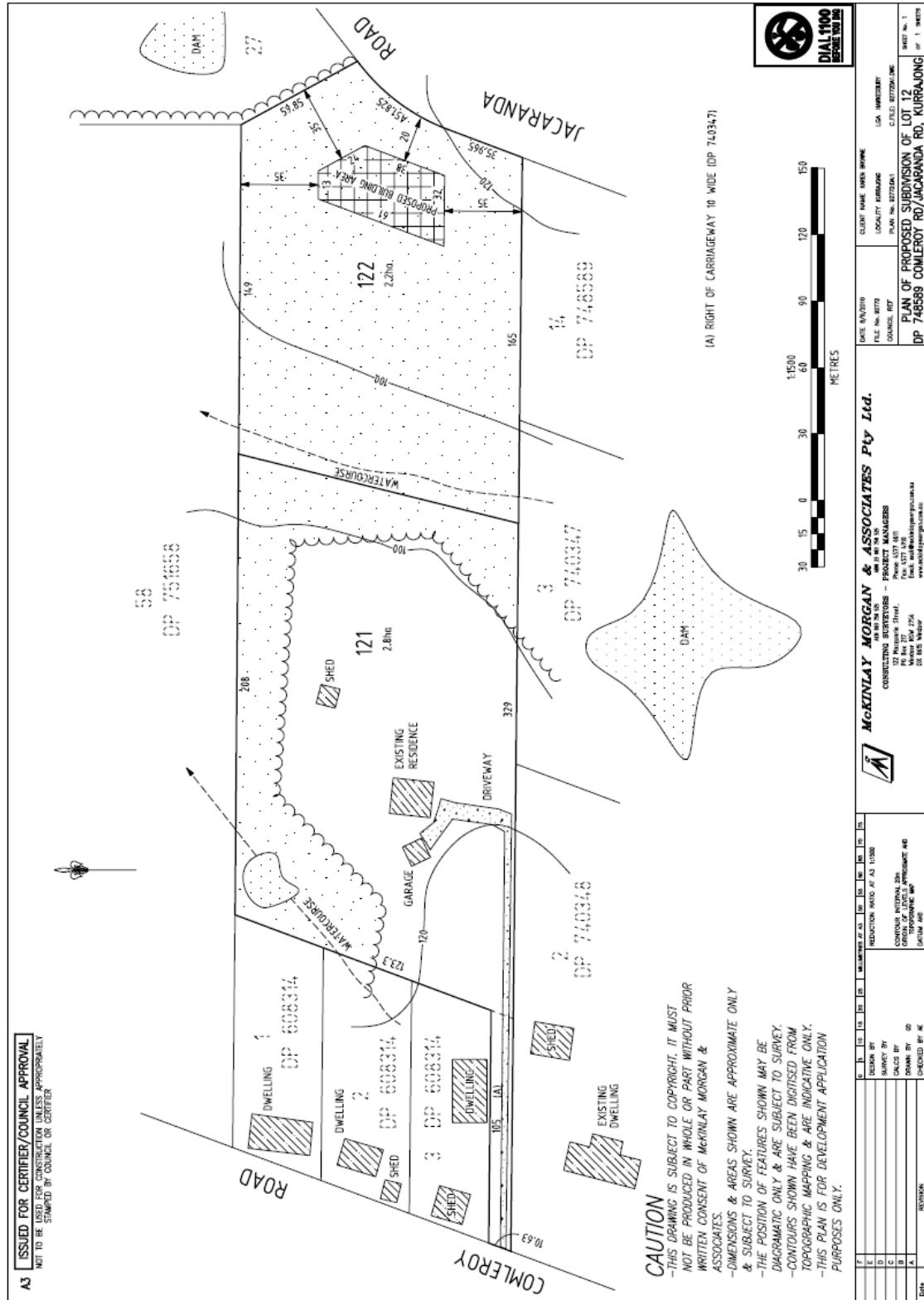


ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 3 Subdivision Plan

Lot 12 in DP748589, 802 Comleroy Road Kurrajong



oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 183 **CP - Development Application - Subdivision - Torrens Title - Subdivision - Two Lot Torrens Title - Hillcrest - 219 Bells Line of Road, North Richmond - (DA0097/11, 73916, 14632)**

Development Information

File Number: DA0097/11
Property Address: Hillcrest - 219 Bells Line Of Road, North Richmond
Applicant: McKinlay Morgan & Associates Pty Ltd
Owner: Rural Press Limited
Proposal Details: Subdivision - Torrens Title - Subdivision - Two Lot Torrens Title
Estimated Costs: N/A
Zoning: Mixed Agriculture
Date Received: 25/02/2011
Advertising: 21/03/2011 - 4/03/2011

Key Issues:

- ◆ Variation to minimum allotment size requirement (Objection under State Environmental Planning Policy No. 1)
- ◆ Heritage
- ◆ Flora and fauna
- ◆ Bushfire
- ◆ Effluent disposal

Recommendation: Approval, subject to Conditions

REPORT:

Executive Summary

The application seeks approval for a two lot Torrens title subdivision of Lot 87 DP 1040092, No. 219 Bells Line of Road, North Richmond.

The proposed subdivision is not consistent with the minimum allotment size requirement for the subdivision of this parcel of land under the lot size provisions of the Hawkesbury Local Environmental Plan 1989. However, the application is supported by an objection under State Environmental Planning Policy No. 1 – Development Standards. This objection satisfactorily justifies the variation of one of the proposed lots from the minimum allotment size requirement.

The application is being reported to Council as the variation to the minimum allotment size exceeds 10%.

The application also requires the concurrence of the Department of Planning.

Introduction

A development application has been received for a two lot subdivision of Lot 87 DP 1040092, No. 219 Bells Line of Road, North Richmond.

Assessment of the proposal highlights the following relevant issues for consideration in the determination of the application:

- Variation to minimum allotment size requirement (Objection under State Environmental Planning Policy No. 1)
- Heritage

ORDINARY MEETING

Meeting Date: 30 August 2011

- Flora and fauna
- Bushfire
- Effluent disposal

The application is being reported to Council in accordance with Council Policy – *State Environmental Planning Policy No. 1 (Development Standards) for Rural Subdivisions Policy* which states:

“The Guidelines for consideration of applications for rural subdivision which rely on State Environmental Planning Policy No. 1 for approval are:

- 1. Applications which propose one (1) undersized lot only which is within 10% (ten percent) of the minimum allotment size, be determined by Council staff under delegated authority.*
- 2. Applications involving more than one (1) undersized lot and/or a variation greater than 10% (ten percent) from the minimum be considered and determined by Council where they can demonstrate that the standard is unreasonable or unnecessary in the attainment of the relevant objects of the Act.*
- 3. Applications which do not demonstrate that the standard is unreasonable or unnecessary be refused by Council staff under delegated authority.*
- 4. Applications to re-subdivide existing undersized allotments, where no additional entitlements will result and where there are no unresolved objections, be determined by Council staff under delegated authority.”*

The application was notified for the period 21 March 2011 to 4 April 2011, and one submission was received. The matter raised within the submission do not warrant refusal of the application.

It is recommended that the application be conditionally approved.

Description of Proposal

It is proposed to subdivide Lot 87 DP 1040092 into two lots. The subject land is 19.2 hectares in area and is severed by Redbank Road. It is proposed to create a separate lot on either side of Redbank Road having the following attributes:

Proposed Lot 1 – will have an area of 6.7 hectares, frontage to Bells Line of Road and Redbank Road and will contain a dam.

Proposed Lot 2 – will have an area of 12.5 hectares, frontage to Bells Line of Road and Redbank Road, and will contain an existing dwelling house, shed and outbuildings, and a dam. The property is identified as an item of local heritage significance. Access to the dwelling house is via an existing driveway from Bells Line of Road.

Council Policies, Procedures and Codes to Which the Matter Relates

- State Environmental Planning Policy No. 44 – Koala Habitat
- State Environmental Planning Policy No. 55 – Remediation of Land
- Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River
- Hawkesbury Local Environmental Plan 1989
- Draft Hawkesbury Local Environmental Plan 2011
- Hawkesbury Development Control Plan
- Council Policy – State Environmental Planning Policy No. 1 (Development Standards) for Rural Subdivisions Policy

a. The Provisions (Where Applicable) of Any:

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:

i. Environmental Planning Instrument:

State Environmental Planning Policy No. 1 – Development Standards

An objection under State Environmental Planning Policy No. 1 was lodged in respect to the variation from the minimum allotment size requirement of Hawkesbury Local Environmental Plan 1989.

The Applicant's Objection under State Environmental Planning Policy No. 1 states:

The development standard is both unreasonable and unnecessary to apply in the circumstances of this case.

The subdivision as submitted follows from proper and reasonable management of a rural/residential landholding having regard to existing physical features. Particularly this subdivision recognises that the land is bisected by a public through road. Redbank Road is not a farm lane or dirt road with little traffic, it carries significant traffic including school traffic to and from both Colo High School (and) Kuyper Christian School.

Subdivision to create or maintain a road severed lot is not conducive to a subdivision meeting the minimum lot size... ..

... ..Redbank Road is quite busy, has a speed limit of 80kph and blind corners on either approach – it would be dangerous to move stock or equipment across the road between severed parts of the lot. A subdivision involving severance would result in that part of the lot on the southern side of Redbank Road being unused, and not maintained as it has little relationship to the main part of the lot.

As is currently apparent, the owners/occupiers only use the southern part of the property and have allowed the northern part to become weed infested and overgrown primarily because of access difficulties of moving stock etc across the road. Essentially moving stock across Redbank Road from one part to the other requires a temporary road closure.

Consequently a more logical subdivision either side of the road where the whole of each lot could be utilised by the respective owner. In reality the amount of land available for agricultural pursuits to the owner on the northern side would be the same in either option however in the proposal presented with the application the land available for southern owner for agricultural pursuits is greater by 2.5 ha.

To subdivide the land to create lots in accordance with the zone minimum lot size would not result in rural/residential land not being brought to its proper and full potential which would be contrary to the stated objectives of the Act.

Importantly the objectives of the Act specified in section 5(a) (i) and (ii) would not be obtained if the land does not achieve full development and maintenance potential. The development standard is, therefore, both unreasonable and unnecessary in the circumstances of this particular case.

Strict compliance with the standard would hinder the orderly and economic development of the land this is suited for subdivision as proposed.

Land and Environment Court Planning Principle

In the Land and Environment Court hearing *Wehbe v Pittwater Council* [2007] NSWLEC 827 - 21 December 2007, CJ Preston provided principles by which to assess an objection made under State Environmental Planning Policy No. 1.

The Chief Judge suggests that support of an Objection be based on the following:

- (a) That the objection is well founded
- (b) That the granting of consent is consistent with the aims of SEPP 1
- (c) That the matters identified in Clause 8 to SEPP 1 are satisfied:
 - i. Whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and
 - ii. The public benefit of maintaining the planning control adopted by the environmental planning instrument.

The aim of SEPP No. 1 is to *"provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."*

The Chief Judge further identified ways in which it can be demonstrated that strict compliance with a standard would be unnecessary and unreasonable:

- 1. *"The objectives of the development standard are achieved notwithstanding non-compliance with the standard."*
- 2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary."*
- 3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable."*
- 4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable."*
- 5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary"*

Assessment of applicants SEPP 1 Objection

The main objective of the standard is to conserve larger parcels of rural land to preserve the potential for the land to be used for agricultural purposes, especially those uses which require larger areas. In turn, the larger lot sizes ensure that conflicts between agricultural activities and other types of development are minimised. This was reinforced with the preparation of the Hawkesbury Sustainable Agriculture Development Strategy and the subsequent gazettal of Amendment No. 108 to Hawkesbury Local Environmental Plan 1989, and is particularly reflected within objectives (b), (c) (d) and (g) of the Mixed Agriculture zone.

Having regard to the Planning principle above, it is considered that the applicant has demonstrated that the objectives of the standard are achieved in this instance for the following reasons;

ORDINARY MEETING

Meeting Date: 30 August 2011

1. The utilisation/potential of the land on the northern side of Redbank Road for agricultural purposes has not changed given the fragmentation of the land from the southern side and the constraints imposed by Redbank Road which effectively isolates the use of the northern side from the southern side.
2. It is considered that the development is generally consistent with the objectives of the Mixed Agriculture zone as discussed further in this Report.

In view of the above, it is considered that it has been demonstrated that compliance with Clause 11(2) of Hawkesbury LEP 1989 is, in this case, unreasonable and unnecessary.

It is recommended that the objection under State Environmental Planning Policy No. 1 be supported.

Given that the variation in Lot size is in excess of 10%, the application requires the consideration by Council. It is proposed that should Council support the proposed subdivision, the application be referred to the Department of Planning for concurrence pursuant to the provisions of Section 79B of the Environmental Planning and Assessment Act, 1979.

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

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

State Environmental Planning Policy No. 44 - Koala Habitat Protection

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

State Environmental Planning Policy No. 55 - Remediation of Land

Where a proposed development involves a change in the use of the land, this Policy requires consideration as to whether the land is potentially contaminated.

The applicant advises that the land is being used for "grazing in a hobby capacity". Council records do not indicate the land has been used for any intensive farming purpose in the past. Given the use of the land for low intensity grazing it is considered that the land would not be contaminated to such a degree as to cause harm. The land is considered suitable for the proposed development and a Preliminary Site Investigation is not required.

The application is considered to be consistent with the provisions of State Environmental Planning Policy No. 55.

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

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

General Provisions of HLEP 1989

Clause 2 - Aims, objectives etc,

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

Clause 8 - Zones indicated on the map

The land is zoned Mixed Agriculture.

Clause 9A - Zones Objectives

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

The objectives of the Mixed Agriculture zone are:

- (a) *to encourage existing sustainable agricultural activities;*

Comment:

The proposal will provide lots capable of being used for agriculture with regard to size, however, it is questionable whether the existing or proposed allotments are capable of sustainable agricultural activities.

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

Comment:

It is considered that the use of the resultant lots for residential and/or agricultural use will not result in land use conflicts within the general locality, which, in general, are used for rural residential purposes.

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

Comment:

It is considered that the proposed subdivision will not compromise the continued use of the properties for grazing or other appropriate agricultural uses that do not rely on highly fertile soil.

- (d) *to prevent fragmentation of agricultural land;*

Comment:

The land is currently severed by Redbank Road. The proposed subdivision will not cause additional fragmentation of agricultural land.

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

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

Comment:

It is considered that the proposal will have no significant adverse impact on the River, watercourses, surface and groundwater quality and surface conditions in the locality.

- (f) *to promote the conservation and enhancement of local native vegetation, including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation;;*
- (g) *to ensure that development retains or enhances existing landscape values that include a distinctly agricultural component;*

Comment:

The proposed subdivision will have no adverse impact on the quality of the existing landscape.

Given the location of the future development area, it is considered that the proposed subdivision and subsequent development of the new lot will have no adverse impact on ridges or escarpments, or the scenic quality of the area.

ORDINARY MEETING

Meeting Date: 30 August 2011

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

Comment:

The proposed development is not considered to be a traffic generating development.

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

Comment:

The proposed development does not involve advertising.

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

Comment:

It is considered that the proposed development will not create unreasonable economic demands for the provision or extension of public amenities or services.

Specific Provisions of HLEP 1989

Clause 10 - Subdivision - general

This clause states that a person shall not subdivide land without the consent of Council.

Clause 11 - Rural subdivision - general provisions

Relevant extracts are:

- (1) In this clause:

endangered ecological community means any endangered ecological community referred to in Part 3 of Schedule 1 to the Threatened Species Conservation Act 1995.

- (2) Except as otherwise provided by this clause and clause 13, the Council may consent to the subdivision of land in Zone No 7 (a) or 7 (d) or in the Mixed Agriculture, rural Living, rural Housing, Environmental Protection – Agriculture Protection (Scenic) or Environmental Protection – Mixed Agriculture (Scenic) zone only if the area of each of the allotments to be created is not less than:

- (a) if it is not a lot averaging subdivision, that shown for the zone in Column 2 of the following Table, or
- (b) if it is a lot averaging subdivision, that shown for the zone in Column 3 of that Table.

Column 1	Column 2	Column 3
Zone	Minimum allotment size if not lot averaging subdivision	Minimum allotment size if lot averaging subdivision
Mixed Agriculture (other than land shown hatched on the map)	10 hectares	2.5 hectares

Comment:

The proposed development is not a lot averaging subdivision. Proposed Lot 1 will have an area of 6.7 hectares and Proposed Lot 2 will have an area of 12.5 hectares. The application is supported by an objection under State Environmental Planning Policy No. 1 (SEPP No. 1) to the minimum allotment size requirement of this subclause in respect to the area of Proposed Lot 1. As previously discussed, it is recommended that the objection under SEPP No. 1 be supported.

ORDINARY MEETING

Meeting Date: 30 August 2011

(3) *The Council may consent to the subdivision of land to which this clause applies only if:*

- (a) *there is a ratio between the depth of the allotment and the frontage of the allotment that, in the opinion of the Council, is satisfactory having regard to the purpose for which the allotment is to be used, and*

Comment:

The depth to frontage ratio of the proposed allotments is satisfactory given the intended use of the lots for rural residential and/or agricultural use.

- (b) *the pattern of allotments created by the proposed subdivision and the location of any proposed buildings on those allotments will, in the opinion of the Council, minimize the impact on any threatened species, populations or endangered ecological community or regionally significant wetland, watercourses, agriculture and bush fire threat, and*

Comment:

It is considered that the proposed subdivision and subsequent development of the lots will have no adverse impacts on threatened species, populations or endangered ecological community, on wetlands, watercourses, or increased bush fire threat. The subdivision does not require significant removal of native vegetation and future development on the land will be located in cleared areas. A bush fire authority has been issued for the development.

- (c) *the Council has considered a geotechnical assessment that demonstrates the land is adequate for the on-site disposal of effluent, and*

Comment:

A suitable geotechnical assessment has been provided with the application demonstrating that the resulting allotments are capable of supporting on-site disposal of effluent for a rural residential use.

- (d) *in the opinion of the Council, each of the allotments created contains suitable areas for a dwelling-house, an asset protection zone relating to bush fire hazard and effluent disposal.*

Comment:

The proposed subdivision provides suitable areas on each proposed allotment for a dwelling house, effluent disposal areas and asset protection areas in accordance with the requirements of Hawkesbury Development Control Plan. See assessment below.

(4) N/A

(4A) N/A

(5) N/A

- (6) *Consent must not be granted to a subdivision of land in Zone No 7(d) or in the Mixed Agriculture, Rural Living, Rural Housing, Environmental Protection – Agriculture Protection (Scenic) or Environmental Protection – Mixed Agriculture (Scenic) zone that creates an allotment (otherwise than for use for a public purpose) unless the Council is satisfied that there is an area of land above the 1-in-100 year flood level on the allotment that is:*

- (a) *sufficient for the erection of a dwelling-house, and*
(b) *at natural surface level or at a level achieved by filling carried out with the consent of Council.*

Comment:

The proposed lots have sufficient land at levels above the 1 in 100 year flood level for the locality.

(7) N/A

(8) N/A

- (9) *References to a number of allotments in this clause do not include allotments created for a public purpose or allotments created as neighbourhood property.*

Clause 18(1) - Provision of water, sewerage etc services

This clause 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:

The land will be subject to onsite collection of water and disposal of effluent. The application demonstrates that the site is suitable for the onsite disposal of wastewater. The provision for the onsite collection of water will be ensured through conditions of consent.

Conditions of consent will be imposed requiring written evidence to be provided demonstrating that satisfactory arrangements for the provision/extension of telephone and electrical services have been made to this development.

Clause 25 – Development of flood liable land

Future development of the proposed lots can achieve compliance with the requirements of this Clause.

Clause 27 – Heritage items

A 'Statement of Heritage Impacts 219 Bells Line of Road, North Richmond ("Hillcrest")' prepared by Archnex Designs and dated November 2010 was submitted in support of the application. This report concluded:

"The portion of land proposed to be subdivided off the parcel is effectively separated by the intervening Redbank Road, and there is little evidence of a functional relationship between the house and the subject part of the land.

In my opinion, the proposed subdivision will have a nil effect on the significance of "Hillcrest". The proposed subdivision is, in essence a matter of re-designation of the proposed allotments, and is potentially a lesser physical impact than the conventional "lines on paper" of a subdivision."

The application was referred to Councils Heritage Advisor who advised "Given that this property has been subdivided by Redbank Road that two lot Torrens title subdivision would not cause any further adverse impact on heritage values.

It is therefore considered that the proposed subdivision will have no adverse impact on the significance of the heritage item or its setting.

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

The land is within Class 5 as shown of the Acid Sulfate Soils Planning Map. The proposal does not require any works, as defined in this Clause. The proposed development is consistent with the requirements of this Clause.

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

Draft Hawkesbury Local Environmental Plan 2011 applies to the proposal. This draft Plan was exhibited 5 February 2010 to 12 April 2010 and adopted by Council on 7 June 2011 and is currently awaiting gazettal.

Under this Plan the subject land is proposed to be zoned RU1 Primary Production. The Lot Size Maps provide a minimum lot size requirement of 10 ha. Clause 4.1A of the draft Plan relates to the subdivision of the land within rural zones. The proposed subdivision is considered to be consistent with this Clause and the RU1 zone objectives.

Clause 4.6 'Exceptions to development standards' prohibits subdivision of land in the RU1 zone if the subdivision will result in at least one of the lots being less than 90% of the minimum lot size. Proposed Lot

ORDINARY MEETING

Meeting Date: 30 August 2011

1 will have an area of 6.7 hectares, being a 33% variation from the minimum allotment size requirement of 10 hectares.

The Draft plan is currently with the NSW Department of Planning and may ultimately change by the time the plan is put forward to the New South Wales Government for gazettal. Whilst Clause 4.6 prohibits the development, it is noted that the plan is currently in Draft form and its final version is not considered to be imminent or certain at this point of time. Until HLEP 1989 is replaced with Draft Hawkesbury Local Environmental Plan 2009 the consideration of the proposal under HLEP 1989 would prevail over the draft plan.

ii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan

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

Subdivision Chapter

The following is an assessment against the relevant Rules of the Subdivision Chapter:

Element	Rule	Complies
General		
Flora and Fauna Protection	(a) Any subdivision proposal which is likely to result in any clearing of native vegetation or impact on any environmentally sensitive area is to be accompanied by a flora and fauna assessment report prepared by a suitably qualified person. This report is to primarily address the Eight Part Test pursuant to the Act (Section 5A), State Environmental Planning Policy 44 – Koala Habitat protection.	Yes – No clearing proposed
	(b) Vegetation cover should be retained where ever practicable as it acts to stabilize soils, minimize runoff, acts as a pollutant trap along watercourses and is important as a habitat for native fauna.	Yes
	(c) Degraded areas are to be rehabilitated as part of the subdivision.	Yes
	(d) Vegetation should be retained where it forms a link between other bush land areas.	Yes
	(e) Vegetation which is scenically and environmentally significant should be retained.	Yes
	(f) Vegetation which adds to the soil stability of the land should be retained.	Yes
	(g) All subdivision proposals should be designed so as to minimize fragmentation of bushland.	Yes
Visual Amenity	(a) Building envelopes, accessways and road shall avoid ridge tops and steep slopes.	Yes
	(b) Subdivision of escarpments, ridges and other visually interesting places should:	
	❖ Be managed in such a way that the	Yes

ORDINARY MEETING

Meeting Date: 30 August 2011

Element	Rule	Complies
	<p>visual impact rising from development on newly created allotments is minimal; and</p> <p>❖ Retain visually significant vegetation such as that found on ridge tops and other visually prominent locations.</p> <p>(c) Development Applications for subdivision shall take into consideration the provisions of SREP No. 20 in relation to scenic quality.</p>	<p>Yes</p> <p>Yes See assessment above.</p>
Heritage	(a) A subdivision proposal on land which contains or is adjacent to an item of environmental heritage as defined in Schedule 1 of the Hawkesbury LEP should illustrate the means proposed to preserve and protect such items.	Yes It is considered that the proposed subdivision will have no adverse impact on the heritage significance of the property.
Utility Services	<p>(a) Underground power provided to all residential and industrial subdivisions. Where infill subdivision is proposed, the existing system, whether above or underground shall be maintained.</p> <p>(b) All lots created are to have the provision of power.</p> <p>(c) Where reticulated water is not available, a minimum storage of 100,000 litres must be provided. A minimum of 10,000 litres must be available during bush fire danger periods.</p>	<p>Yes</p> <p>Yes</p> <p>Condition with future development of the lots</p>
Flooding, Landslip & Contaminated Land	<p>(a) Compliance with clause 25 of Hawkesbury Local Environmental Plan 1989.</p> <p>(b) Access to the subdivision shall be located above the 1% AEP flood level.</p> <p>(c) Where a subdivision proposal is on land identified as being potentially subject to landslip, the applicant shall engage a geotechnical consultant to prepare a report on the viability of subdivision the land and provide recommendations as to the siting and the type of buildings which could be permitted on the subject land.</p> <p>(d) In the event the Council deems that there is the potential that land subject to a subdivision application is contaminated then the applicant shall engage a suitably qualified person to undertake a soil and ground water</p>	<p>Yes Building envelope contains land located above 1 in 100 year flood level.</p> <p>Yes</p> <p>Yes Site not within an identified landslip area.</p> <p>Yes Site not considered to be contaminated.</p>

ORDINARY MEETING

Meeting Date: 30 August 2011

Element	Rule	Complies
	assessment. (e) Contaminated Land shall be remediated prior to the issue of the Subdivision Certificate.	N/A
Rural Lot Size and Shape	<p>(a) The minimum allotment size for land within rural and environmental protection zones are contained within Hawkesbury Local Environmental Plan 1989.</p> <p>(b) Lots should be able to accommodate a building envelope of 2000m² with a minimum dimension of 20 metres. Building envelopes should be located a minimum of 30 metres from significant trees and other significant vegetation or landscape features. Building envelopes will contain the dwelling house, rural sheds, landscaping, and on-site effluent treatment and disposal areas, and bushfire mitigation.</p> <p>(c) In calculating the area of a battle-axe or hatchet shaped allotment, the area of the battle axe handle should be included.</p> <p>(d) The width to depth ratio of allotments should not exceed 1:5.</p> <p>(e) Lot layout shall consider the location of watercourse vegetation and other environmental features.</p>	<p>No, See SEPP 1 Objection assessment previously discussed</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>
Effluent Disposal	<p>(a) An effluent disposal report prepared by a suitably qualified person is required to accompany any development application for rural and rural-residential subdivisions.</p> <p>(b) Any system proposed other than a Household Aerated Wastewater Treatment System is required to be installed prior to release of Subdivision Certificate.</p>	<p>Yes</p> <p>N/A</p>
Rural Road and Access Way Design	<p>(a) The design specifications in Figure 4 at the end of this clause are to be met.</p> <p>(b) Where the road width is insufficient or unsatisfactory, an applicant should dedicate or provide land required for local road widening or new roads at no cost to Council.</p> <p>(c) Upgrading of the access way from the nearest sealed road to the proposed subdivision to an all weather standard suitable for the expected traffic generation arising from the subdivision. This work may require the sealing of the pavement dependent upon traffic generation.</p> <p>(d) Where access to the subdivision is via a Crown or Reserve road in addition to the above, the road should be fully constructed to a standard commensurate with roads in</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

ORDINARY MEETING

Meeting Date: 30 August 2011

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

Notification Chapter

The adjoining neighbours were notified as per the requirements of this Chapter of the DCP. One submission was received. The matters raised in this submission are discussed further in this Report.

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

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

iv. Matters prescribed by the Regulations:

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

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

Context & Setting

The locality is predominantly used for rural residential and agricultural purposes. The subject land also adjoins Rural Press. The proposed development will create an additional vacant lot that can be used for rural residential or agricultural purposes and therefore is considered to be context with the locality.

The proposed lots are consistent with the subdivision pattern of the area.

Access, Transport & Traffic

Development of the resultant lots will not create unreasonable impacts on the local road network. Appropriate access to all resultant lots can be achieved.

Heritage

As previously discussed, the subject land is identified as a heritage item, and it is considered that the proposed subdivision will have no adverse impact on the heritage significance of this item.

Flora & Fauna

The proposed subdivision and subsequent development of the vacant lot will not require any significant disturbance to, or removal of, native vegetation for building or the establishment of bushfire asset protection zones. A 'flora and fauna survey and assessment of part of Lot 87, DP 1040092, 219 Bells Line of Road, North Richmond, New South Wales' Report prepared by T.J. Hawkeswood dated 30 May 2011 was submitted in support of the application. This Report concluded that there are no impediments, based on flora or fauna concerns, for the development of the surveyed area as proposed.

It is therefore considered that the requirements of Part 5A of the EP & A Act are satisfied in that the proposed development will have no significant impact on threatened species, populations, ecological communities or their habitats.

Waste

A report prepared by H.J Fiander & Associates, titled "*Subdivision and Associated On-Site Wastewater Treatment & Disposal Systems 219 Bells Line of Road, North Richmond*" dated 29 October 2010 was submitted with the Application. This report concluded that:

"It is considered that with respect to on-site waste water management issues this site is capable of being sub-divided under the current proposal. It will be feasible to dispose of wastewater produced on each block efficiently and without damage to the adjoining land, nearby watercourses and existing dams."

Natural Hazards

The subject land is identified as 'bushfire prone land'. A report titled "*Bushfire Threat Evaluation*" was prepared by McKinlay Morgan & Associates. The application was referred to NSW Rural Fire Service for approval. In their letter of 4 April 2011, the NSW Rural Fire Service granted a bush fire safety authority subject to conditions. Those conditions will be included in any approval that would be issued.

Cumulative Impacts

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

ORDINARY MEETING

Meeting Date: 30 August 2011

c. Suitability of the site for the development:

It is considered that the site is suitable to support the proposed subdivision and the subsequent use of the lots for rural residential and agricultural purposes. The constraints of the site, including bush fire affectation and flora and fauna attributes, are not prohibitive to the development.

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

Integrated Development

NSW Rural Fire Services

The proposed development is 'integrated development' and requires the approval of NSW Rural Fire Services.

In their letter of 4 April 2011, NSW Rural Fire Services granted a Bush Fire Safety Authority subject to conditions. These conditions can be achieved without any adverse environmental or heritage impacts and therefore can be incorporated within any consent.

Concurrence Authorities

Department of Planning

Clause 7 to State Environmental Planning Policy No. 1 requires the concurrence of the Director, Department of Planning.

In their letter of 26 March 2011, the Department of Planning advised:

"Under the provisions of the Environmental Planning and Assessment Act 1979, concurrence is required if Council proposes to grant development consent to the development application. The correspondence received from Council does not indicate Council's intention to grant consent to the development proposal.

When Council has formed a view to grant approval, upon notification, I will seek to arrange the Director General's concurrence, or otherwise, as quickly as possible."

Roads and Traffic Authority

In their letter of 8 April 2011, the Roads and Traffic Authority advised that it "would grant its concurrence to the proposed access under Section 138 of the Roads Act 1993, subject to Council's approval of the development application and the following requirements being complied with:

1. *Prior to the issue of the subdivision certificate an 88B restriction is to be placed on both proposed lots preventing vehicular access to the Bells Line of Road.*
2. *All future access to the site is to be from Redbank Road.*
3. *The proposed development should be designed such that road traffic noise from the Bells Line of Road is mitigated by durable materials in accordance with EPA criteria for new land use developments.*

It has been clarified with the Roads and Traffic Authority that vehicular access for any proposed new development to the lots be restricted to Redbank Road. Therefore the existing driveway access to the residence on Proposed Lot 2 is to remain.

The above requirements have been incorporated into the Recommendation to this Report.

Public Submissions

The application was publicly exhibited between 21 March 2011 and 4 April 2011. One submission was received. This submission raised the following matter for consideration:

- The proposed subdivision does not meet the minimum size requirement of 25 acres.

ORDINARY MEETING

Meeting Date: 30 August 2011

Comment:

The subject property has a minimum allotment size requirement of 10 hectares for subdivision. Proposed Lot 1 will have an area of 6.7 hectares. State Environmental Planning Policy No.1 allows consideration of a variation to a development standard (in this case the minimum allotment size) where it is shown that compliance with the standard is unnecessary or unreasonable. As previously discussed the applicant has satisfactorily demonstrated that compliance with the allotment size requirement, in this instance, is unnecessary and unreasonable. Support of the objection under State Environmental Planning Policy No. 1 facilitates approval of the undersized lot.

e. The Public Interest:

The proposed subdivision and future rural residential and/or agricultural use of the lots is consistent with the character of the locality. The proposal is consistent with relevant legislation and will have no adverse environmental impact. For these reasons it is considered that the proposed development is in the public interest.

Conclusion:

This proposed subdivision is considered to be satisfactory, subject to the implementation of conditions outlined within the recommendation to this report.

However, whilst the current proposal is not consistent with the minimum allotment size requirement for subdivision as per Clause 11(2) of Hawkesbury Local Environmental Plan 1989, it is considered that the proposed undersized lot (Proposed Lot 1) is capable of supporting a viable agricultural activity and the application satisfactorily demonstrates that compliance with the minimum allotment size requirement is unnecessary and unreasonable in this instance.

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

Planning Decision

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

Developer Contributions

The development is exempt from contributions under Section 94E of the Environmental Planning and Assessment Act 1979 or Council's Section 94A Contributions Plan as the estimated cost of development does not exceed \$100,000.

RECOMMENDATION:

That:

1. That Council advise the Department of Planning that it supports the objection lodged pursuant to the provisions of State Environmental Planning Policy No. 1 - Development Standards and requests that the department issue its concurrence; and,

ORDINARY MEETING

Meeting Date: 30 August 2011

2. Upon receipt of the concurrence, or otherwise, of the Department of Planning, determination of Development Application No. DA0097/11 at Lot 87 DP 1040092, Hillcrest 219 Bells Line Of Road, North Richmond for a two lot Torrens Title subdivision be delegated to the General Manager.

ATTACHMENTS:

AT - 1 Locality Plan and Aerial Photo

AT - 2 Subdivision Plan

AT - 3 Draft Consent Conditions

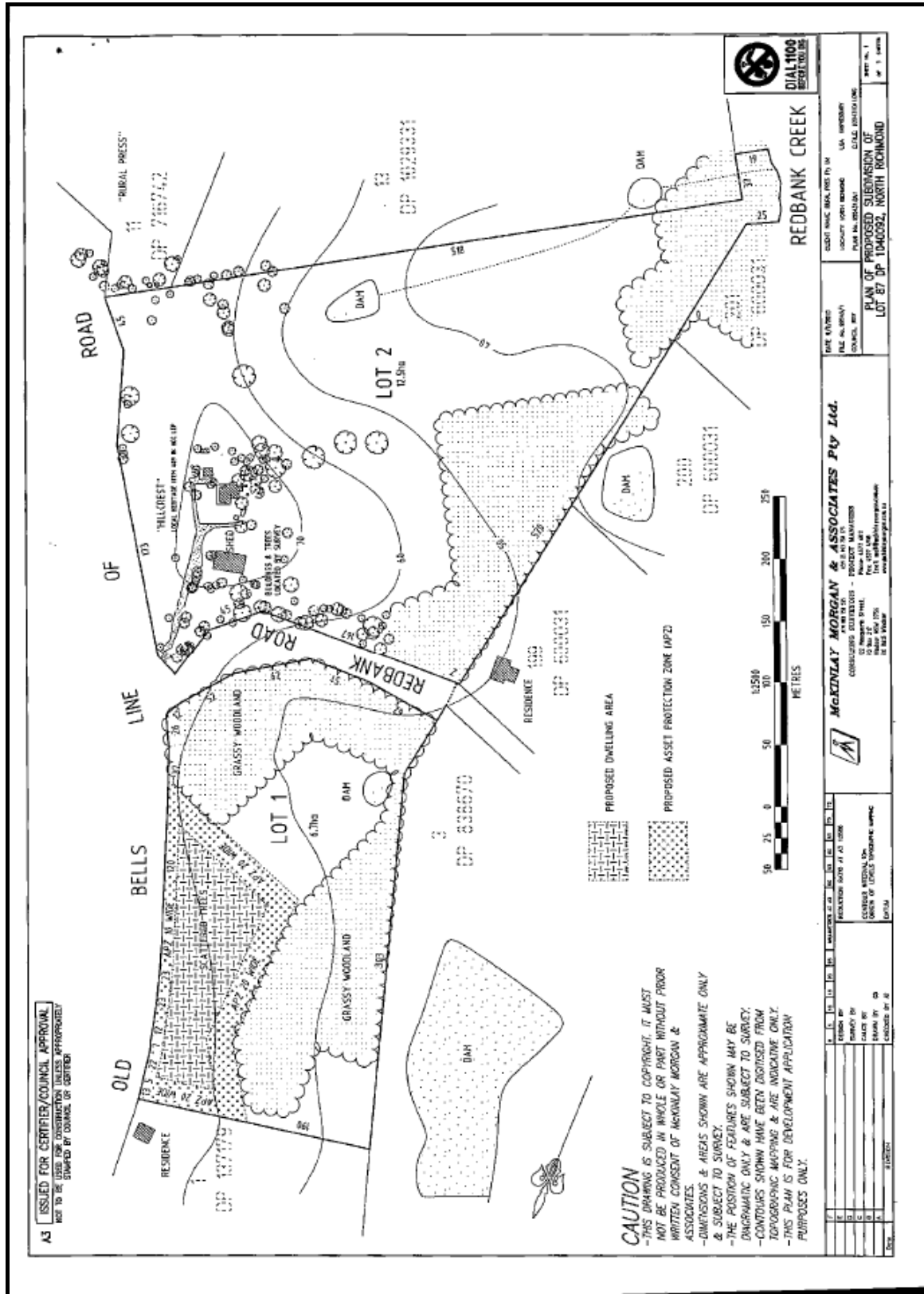
Meeting Date: 30 August 2011

Lot 87 DP 1040092, No. 219 Bells Line of Road, North Richmond.



Meeting Date: 30 August 2011

Lot 87 DP 1040092, No. 219 Bells Line of Road, North Richmond.



ORDINARY MEETING

Meeting Date: 30 August 2011

AT – 3 Draft Consent Conditions

Should concurrence be granted, development application DA0097/11 at Lot 87 DP 1040092, Hillcrest 219 Bells Line Of Road NORTH RICHMOND NSW 2754 for Subdivision – Two Lot Torrens Title subdivision be approved subject to the following conditions:

Rural Fire Services Conditions

Asset Protection Zone

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 2, to a distance of 70 metres or the boundary, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas for proposed lot 1 are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
3. Water, and bottled gas for proposed lot 2 are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

4. Property access roads for proposed lot 1 shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

5. The existing building on proposed Lot 2 is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas less, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

Hawkesbury City Council Conditions

General

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.

ORDINARY MEETING

Meeting Date: 30 August 2011

Prior to Commencement of Works

2. A Traffic Management Plan prepared in accordance with AS 1742-3 (1996) by an appropriately qualified person shall be submitted to Council for approval prior to the commencement of any works. 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.

All traffic management devices shall be installed and maintained in accordance with the approved traffic management plan.

3. Erosion and sediment control devices are to be installed and maintained at all times during site works and construction. The enclosed warning sign shall be affixed to the sediment fence/erosion control device.
4. The applicant shall advise Council of the name, address and contact number of the principal certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1979.
5. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.

During Construction

6. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
7. Inspections shall be carried out and compliance certificates issued by Council or an accredited certifier for the components of construction detailed in Hawkesbury Development Control Plan Appendix B Civil Works Specification, Part II, Table 1.1.
8. A bitumen sealed rural footway crossing, minimum 4m wide shall be constructed to proposed lot 2, in accordance with Hawkesbury Development Control Plan Appendix E, Civil Works Specification and any requirements of the RTA. Prior to works commencing the applicant shall consult with Infrastructure Services regarding fees to be paid, the works required and to organise inspections for a Compliance Certificate.

Prior to Issue of Subdivision Certificate

9. The development shall be completed in accordance with all conditions of the Development Consent.
10. A Certificate from a telecommunications carrier confirming that provision has been made for services to the development shall be submitted to the Principal Certifying Authority.
11. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.
12. Written clearance from Integral Energy shall be submitted to the Principal Certifying Authority.
13. A plan of subdivision prepared to the requirements of the Land Titles Office, shall be submitted to Council, with four copies.
14. The dwelling area and asset protection zones as shown on the approved plans shall be defined on the final plan of subdivision.
15. Creation of a restriction on use of land pursuant to Section 88B of the Conveyancing Act as follows:
 - a. Requiring that all development, including but not limited to, dwelling house, asset protection zones, effluent disposal and buffer areas are restricted to those areas defined on final plan of subdivision.

ORDINARY MEETING

Meeting Date: 30 August 2011

- b. Requiring that a Wastewater Feasibility Assessment be submitted with any future development application involving on site disposal of effluent on the lots.
 - c. Vehicular access from Bells Line of Road for any new development is prohibited.
 - d. All future access to the lots are to be from Redbank Road. In respect to proposed Lot 1, the access is to be sited:
 - i. Clear of native woodland;
 - ii. At a location with a minimum egress sight distance of 120 metres for both left and right turns.
 - e. Any future development is to be designed such that road traffic noise from the Bells Line of Road is mitigated by durable materials in accordance with Environmental Protection Authority criteria for new land use developments.
16. Payment of a Linen Release Fee in accordance with Council's Fees and Charges at the time of lodgement of the linen plan.

Advisory

*** Should any Aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an Aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.

*** The applicant is advised to consult with the relevant:

- (a) water and sewer provider
- (b) electricity provider
- (c) natural gas provider
- (d) telecommunications carrier
- (e) road authority

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

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

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

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 184 **CP - Section 96 Application - Multi Unit Housing Development - Lot 1 DP 544593 and Lot 2 DP 223745 Nos 55 and 77 East Market Street, Richmond - (DA0132/09A, 85405, 95498)**

Development Information

File Number: DA0132/09A
Property Address: 55-57 East Market Street, Richmond
Applicant: Morabito Holdings Pty Limited
Owner: Morabito Holdings Pty Limited
Proposal Details: Modification to the consent for the construction of a multi unit housing development
Zone: Current: Multi Unit Housing Under Hawkesbury Local Environmental Plan 1989.
Draft: R3 Medium Density Residential Under Draft Hawkesbury Local Environmental Plan 2011.
Date Received: 23 June 2011
Advertising: 5 July 2011 to 19 July 2011
Key Issues:

- ◆ Relationship with the original consent (Section 96 provisions)
- ◆ Retention of the dwelling having heritage significance, and the
- ◆ Removal of trees

Recommendation: Approval of Modification

REPORT:

Executive Summary

Pursuant to Section 96(2) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's approval to undertake modifications to Development Consent No. DA0132/09 for the construction of a multi unit housing development.

The original consent approved the demolition of a dwelling house, the relocation and adaptive re-use of a dwelling house as a gym, and the construction of a multi-unit housing development ('townhouses') consisting of 10 dwellings over a basement car park.

This Section 96 Application proposes a number of amendments to the original approval. The most significant amendments involve changes to the layout and external finishes of the townhouses, alterations to the approved fence, the enclosure of the bin storage area, the removal of the relocated dwelling house's front verandah, alterations to the basement car park, the removal of a number of existing trees, and a reduction in the size of the corner footpath splay.

On balance the proposed modifications are considered to comprise substantially the same development as that which was previously approved. The amendments do not alter the development's level of compliance with the applicable Council controls and are not expected to detract from the amenity of residents or neighbours. The approval of this Section 96 Application is therefore recommended.

This application is being reported to Council as the original development application was determined by Council.

Background

Development Consent No. DA0132/09 was approved by Council at its Ordinary Meeting of 29 September 2009. This consent approved:

ORDINARY MEETING

Meeting Date: 30 August 2011

- The demolition of the dwelling house at 55 East Market Street;
- The relocation and adaptive re-use of the dwelling house having heritage significance at 57 East Market Street as a gym;
- The construction of a multi unit housing (townhouse) development over a basement car park on the combined sites. The residential development is to consist of two (2) two-storey blocks, Blocks A and B, each containing five (5) dwellings each. Twenty-two (22) car spaces, including two (2) visitor spaces, are to be provided within the basement car park.

The Proposal

The submitted Section 96 Application proposes a number of design changes in comparison to the original approval. The proposed amendments include:

- The layout, form and appearance of the multi unit housing development is to be modified, such as
 - The dwelling house to be retained onsite (and used as a gym) is to be relocated,
 - The retained former dwelling house's front verandah is to be removed,
 - The townhouses external finishes are to be altered.
 - The 'Juliet' balconies to be located on the northern side of the townhouses are to be deleted and replaced with windows,
 - The layout and entry of Unit 6 is to be altered,
 - The rear courtyard of Unit 1 is to be altered to accommodate the retained former dwelling house,
 - A series of skylights ('solar tubes') are to be provided to the roofs of the townhouses,
 - The bin storage area is to be enclosed given its proximity to a water hydrant,
 - A second egress stair is to be provided at the western end of the car park,
 - A plant room is to be provided to the eastern end of the car park,
 - Mechanical ventilation details, including air intake and exhaust shafts, are nominated for the car park,
 - Modifications to the townhouse windows including the use of horizontal sliding windows,
 - The front fence is to be altered from a brick fence to a timber slat design, and
 - The layout of the onsite detention tank is to be altered to cater for the splayed footpath.

These amendments would necessitate a modification of Condition 1 of the consent to refer to the new plans.

- The removal of seven (7) trees is proposed given their proximity to the new townhouse buildings and onsite detention tank. These trees were to be retained with the original consent.
- A modification of Condition 76 is proposed to reduce the area to be dedicated to Council at the intersection of East Market and Grose Streets. An area of 3m by 3m is nominated as opposed to the conditioned 4m by 4m.

Council Policies, Procedures and Codes to Which the Matter Relates

- Sydney Regional Environmental Planning Policy No. 20 – Hawkesbury-Nepean River;
- Hawkesbury Local Environmental Plan 1989;
- Draft Hawkesbury Local Environmental Plan 2011; and
- Hawkesbury Development Control Plan 2002.

Section 79C Assessment

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 79C of the EP&A Act.

a. The provisions of any:

i. *Environmental Planning Instrument:*

Sydney Regional Environmental Planning Policy No. 20 – Hawkesbury-Nepean River

The aim of the Policy is to protect the environment of the Hawkesbury-Nepean River system and ensure any impacts are considered in the regional context. The provisions of this Policy were considered in the assessment of the original development application and the proposed amendments do not alter compliance. On this basis the modified proposal satisfies the objectives of the Policy.

State Environmental Planning Policies

The proposed amendments will not alter the development's compliance with any applicable State Environmental Planning Policies (SEPP's).

The provisions of SEPP No. 65 – Design Quality of Residential Flat Development are not applicable as the development is not defined as a three-storey residential flat building.

Hawkesbury Local Environmental Plan 1989

The site is zoned Multi Unit Housing and multi unit housing is a permissible land use by virtue of Clause 9 of HLEP 1989. As such the proposed modifications are permissible with consent.

Clause 25 of the HLEP 1989 establishes a 1-in-100 year flood level for the area (17.5m AHD) and the ground floor level of the originally approved development was located above this level (19.7m AHD). The building's ground floor level is not to be altered with this proposal in that the ground floor level is to be maintained at 19.7m AHD.

The modified proposal satisfies the requirements of the HLEP 1989.

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

Draft Hawkesbury Local Environmental Plan 2011

Draft Hawkesbury Local Environmental Plan 2011 (Draft HLEP 2011) was exhibited 5 February to 12 April 2010 and adopted by Council on 7 June 2011. It is currently awaiting gazettal.

Under Draft HLEP 2011 the subject land is proposed to be zoned R3 Medium Density Residential. The subject development would fall under the definition of 'multi dwelling housing', which is a permissible use within the zone.

The modifications proposed with this application would not be inconsistent with Draft HLEP 2011.

iii. *Development Control Plan applying to the land:*

Hawkesbury Development Control Plan 2002

The proposed modifications do little to alter the development's previously approved building footprint or envelope. In this regard it should be noted that the approved setbacks, ceiling and ridge heights are to be maintained. Compliance with the building height plane requirements of Part D Chapter 1 Section 1.3 of the HDCP 2002 is therefore achieved.

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

Not applicable.

v. *Matters prescribed by the Regulations:*

These matters have been considered in the assessment of this Section 96 Application. It should be noted that original consent outlined conditions requiring the development to comply with the Building Code of Australia (BCA).

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

Relocation of Former Dwelling House

Although not heritage-listed, the existing dwelling house 'Melrose Cottage' at 57 East Market Street was identified as being of some heritage significance during the assessment of the original development application. For this reason the relocation and adaptive re-use of the building as a gym was nominated by the Applicant and subsequently approved by Council. The extent of the dwelling house to be retained was not clarified in the conditions imposed by Council, whilst the approved plans show a building that is much smaller than the subject dwelling house.

Comments received from Council's Heritage Advisor at the time detailed that the significance of the dwelling house was related to the galvanised iron roof tiles and the portion of the house under this roof. The Heritage Study previously prepared for the building further detailed that the front verandah of the dwelling house was a later addition.

Based on the advice previously received from the Heritage Advisor, and acknowledging that the dwelling house is not a heritage item under the HELP 1989, no objection is raised to the removal of the verandah to allow for its use as a gym for residents.

Materials and Finishes

The approved townhouse development generally consisted of rendered brickwork and was broken up with sections of unpainted facebrick. The style of the development is to be maintained with this Section 96 Application, although the specific colours and bricks are to be altered. The limited use of painted fibrous cement sheeting is now also proposed.

Neutral colours and materials are proposed, which is comparable to those originally approved for the development. The proposed colours and materials are considered acceptable.

Amenity Impacts

The proposed modifications do not have a significant impact upon the previously approved site coverage, building envelope or setbacks.

The Section 96 Application proposes the deletion of the first floor 'Juliet' balconies approved along the northern sides of the townhouse blocks. These balconies, which were to service bedrooms, are to be replaced with windows. This amendment is expected to have little impact on adjoining neighbours, in particular the northern neighbour at 53 East Market Street, as the use of windows will assist in restricting the potential for overlooking in comparison to the previously approved balconies.

Each of the units are provided with courtyards that satisfy the size and accessibility requirements of Part D Chapter 1 Section 1.7 of the HDCP 2002. The proposed modifications do not alter compliance with these requirements, although Unit 1's courtyard has been adjusted to accommodate the relocated former dwelling house.

It is therefore considered that the modifications will not compromise the amenity of neighbours or residents in comparison to the original approval.

Landscaping

A number of mature trees, including two (2) Jacarandas (*Jacaranda mimosifolia*), two (2) Arizona Cypress (*Cupressus glabra*) and a Liquidambar (*Liquidambar styraciflura*) are currently located along the site's southern boundary. An Arborist's Report has been submitted with this application for the removal of seven trees that were previously nominated for retention. This report refers to a total of nine (9) trees however the two (2) western trees were approved for removal with the original application.

The report argues for the removal of these trees based on their proximity to the approved building works. In this regard it should be noted that a number of these trees are actually located within the footprint of the approved onsite detention tank or are in close proximity to the southern block of townhouses (Block B).

It is acknowledged that the development's footprint is likely to severely compromise the retention of these exotic trees. It is further noted these are large trees within a suburban context and their form has been compromised by their close proximity to one another. Having considered the findings of the Arborist's Report the removal of the additional seven trees is therefore supported.

A concept landscape plan has been submitted nominating replacement trees and shrubs for the site. This plan is considered satisfactory given the site's approved deep planting zones. It is further considered that the existing street trees in Grose Street will help to soften and screen the development.

A condition relating to the submission of a detailed landscaping plan and the retention of trees was imposed on the original consent however. Condition 10 of the consent outlines:

10. *A landscape plan for the entire site, prepared by a suitably qualified person, shall be submitted to the Principal Certifying Authority for approval.*

The landscape plan shall detail the soil depths required for the necessary landscaping to be planted on top of the proposed basement.

The landscape plan is to make provision for the retention of as many existing trees as possible.

With the removal of southern trees as discussed it is recommended that Condition 10 be altered to delete any reference to the retention of trees.

c. Suitability of the site for the development:

There are no constraints from surrounding land uses that would make this development prohibitive and it is considered that the development will not impact upon critical habitats, threatened species, populations, ecological communities or habitats.

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

Public Notification

The application was notified to adjacent property owners from 5 July to 19 July 2011 in accordance with the provisions contained in HDCP 2002. No submissions were received during this notification period.

e. The Public Interest:

The proposed development is generally consistent with the relevant planning controls affecting the site and is therefore considered to be consistent with the public interest.

Section 96 Assessment

The submitted application has been considered against Section 96(2) of the EP&A Act. This section of the Act states:

ORDINARY MEETING

Meeting Date: 30 August 2011

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 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.*

Although clearly a change in design, the proposed modifications are considered to be of a relatively minor environmental impact. The modifications involve minor changes to the appearance and envelope of the building. It is expected that these changes will have a minimal impact on neighbouring property owners/occupiers.

As detailed previously in this report, the proposal was notified in accordance with the HDCP 2002 and no submissions were received.

The modified development is considered to comprise substantially the same development as that which was originally approved and as such it may be considered for approval under the Section 96(2) provisions of the EP&A Act.

The engineering assessment has raised no objections to the amendments to the onsite detention tank design as these amendments are considered to be relatively minor. These minor amendments to the location confirm that the approved location of the OSD tank will necessitate the removal of trees within this area.

The layout, gradients, aisle widths and space dimensions of the basement car park are consistent with the original consent, HDCP 2002 and AS 2890.1.

The original consent required the dedication of land to Council to allow for a splayed footpath. Condition 76 of the consent was imposed and states:

Dedication of a 4m x 4m splay corner at the intersection of Grose and East Market Streets (At no cost to Council) shall be provided.

The Applicant has discussed this matter with Council's Subdivision and Development Engineer and it is agreed that a 3m by 3m splay corner at the intersection of Grose and East Market Streets is sufficient. On this basis the modification of this condition is supported.

Conclusion

The proposed modifications are relatively minor in comparison to the overall development. The alterations to the retained dwelling house preserve the most significant building fabric whilst the proposed tree

ORDINARY MEETING

Meeting Date: 30 August 2011

removal is supported on the basis that these trees are exotic species located within or in close proximity to the development's approved footprint.

The modified development is considered to comprise substantially the same development as that which was originally approved and as such it may be considered for approval under the Section 96(2) provisions of the EP&A Act.

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 Council as the consent authority pursuant to Clause 80(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) modify Development Consent No. DA0132/09, determined on 29 September 2009, for the construction of a multi unit housing development on Lot 1 DP: 544593 and Lot 2 DP: 223745, known as 55-57 East Market Street, Richmond, in the following manner:

1. Condition No.1 be amended as follows:

"The development shall be carried out in accordance with the approved stamped plans 06354-01 – 14 Rev 'D' as submitted with Development Application No DA0132/09A and any supportive documentation, except as modified by these further conditions".

2. Condition 10 be amended as follows:

"A landscape plan for the entire site, prepared by a suitably qualified person, shall be submitted to the Principal Certifying Authority (PCA) for approval.

The landscape plan shall detail the soil depths required for the necessary landscaping to be planted on top of the proposed basement".

3. Condition 76 be amended as follows:

"The dedication of a 3m x 3m splay corner at the intersection of Grose and East Market Streets shall be provided (at no cost to Council)".

ORDINARY MEETING

Meeting Date: 30 August 2011

ATTACHMENTS:

AT - 1 Location Plan and Aerial Photo

AT - 2 Site Plan

AT - 3 Basement Plan

AT - 4 Ground Floor Plan

AT - 5 First Floor Plan

AT - 6 Landscaping Plan

AT - 7 Elevations 1

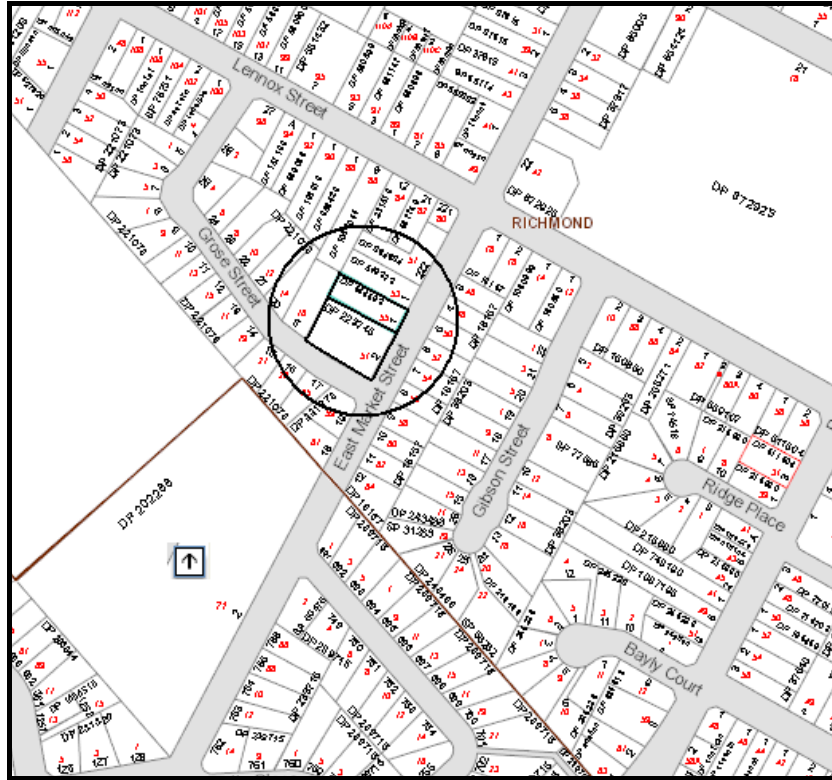
AT - 8 Elevations 2

ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 1 – Locality Plan and Aerial Photo

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond

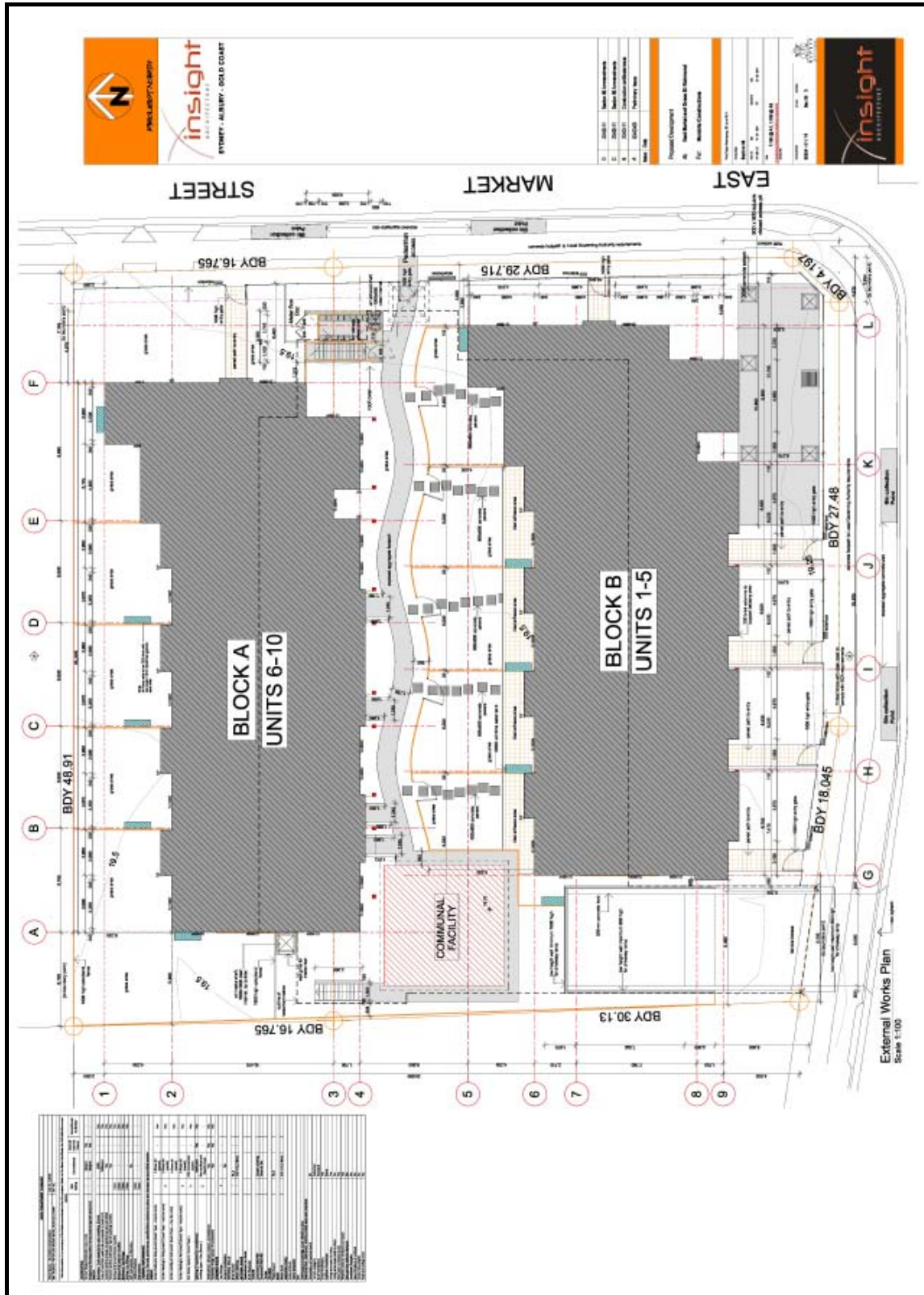


ORDINARY MEETING

Meeting Date: 30 August 2011

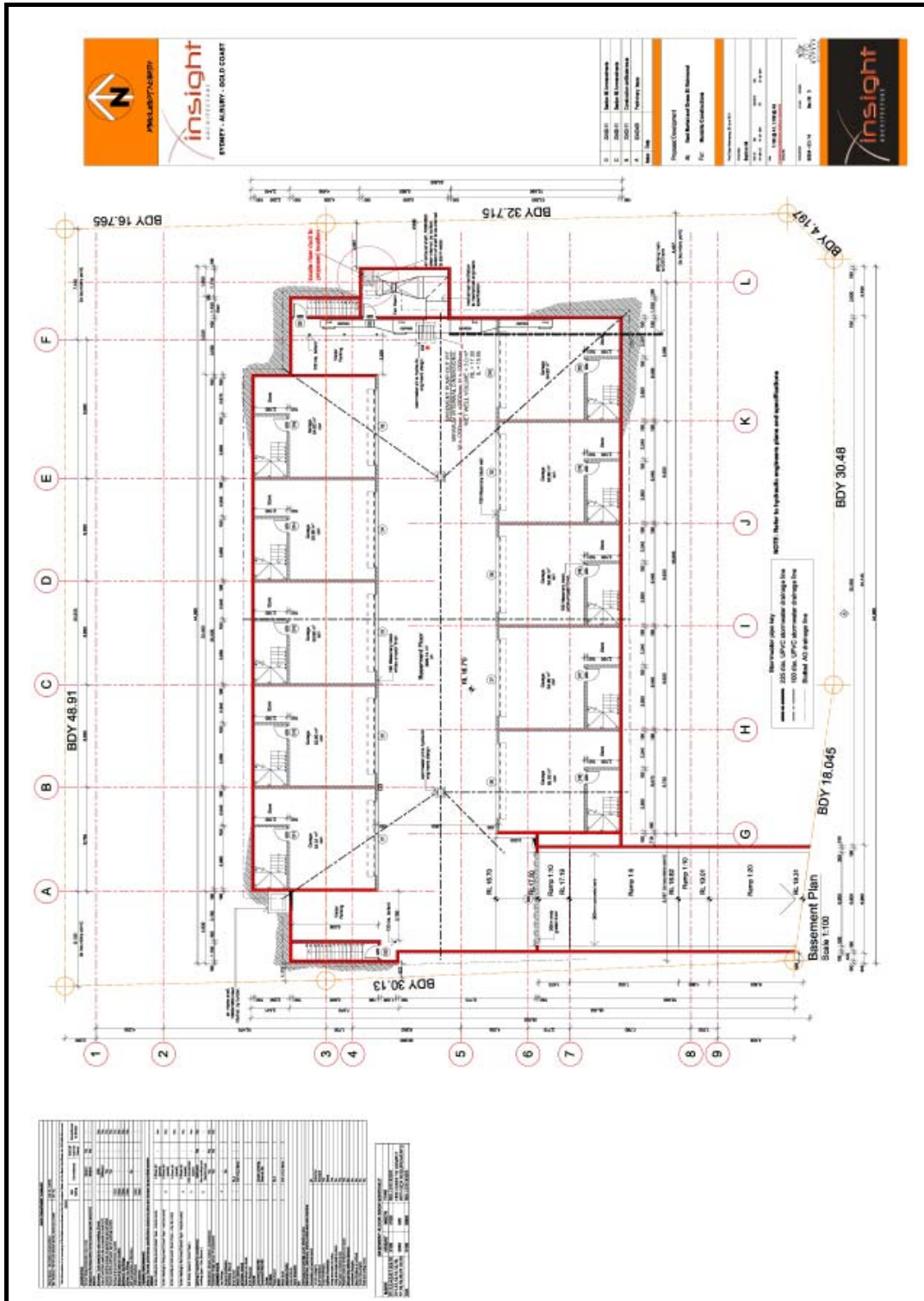
AT - 2 – Site Plan

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond



Meeting Date: 30 August 2011

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond

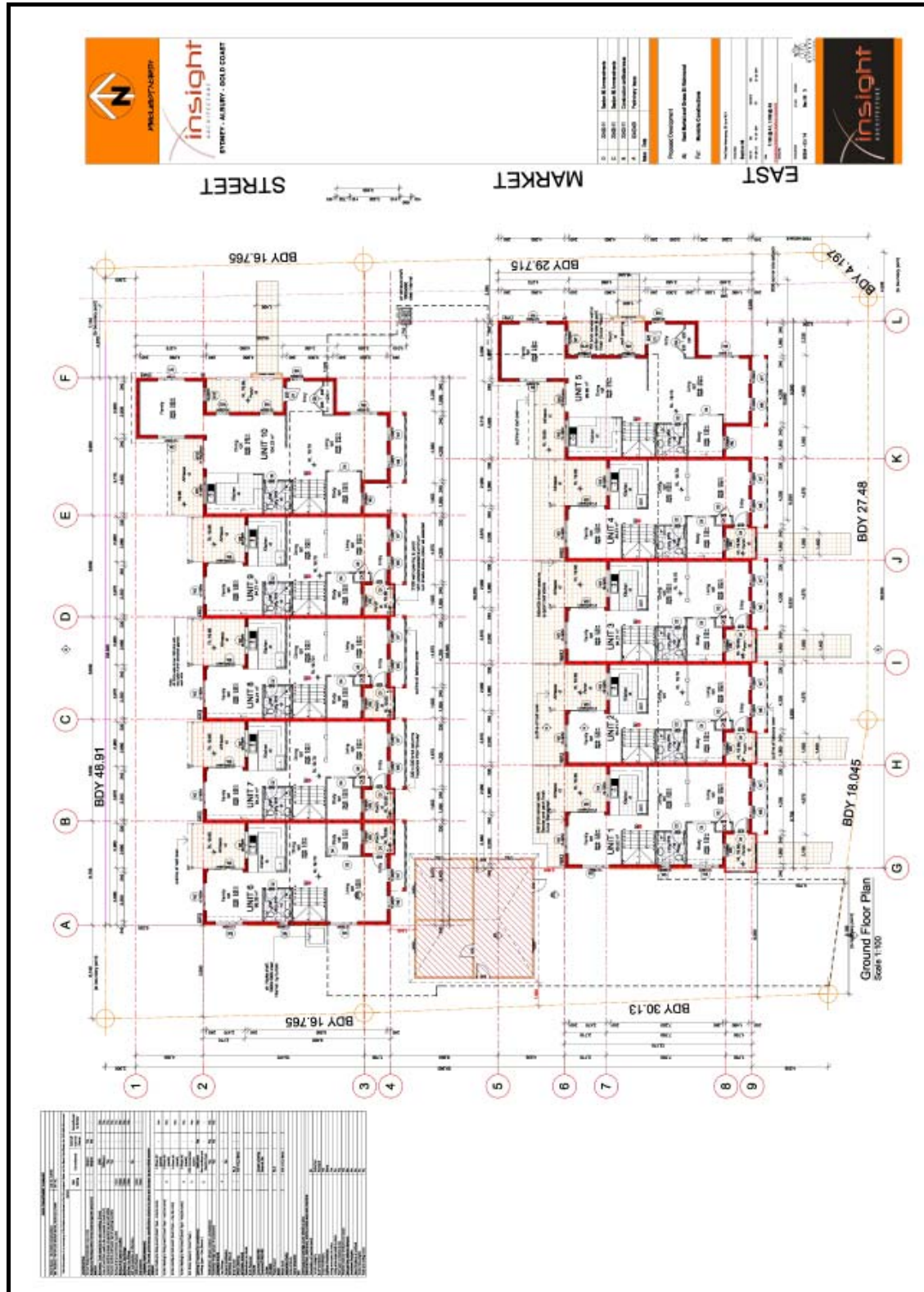


ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 4 – Ground Floor Plan

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond

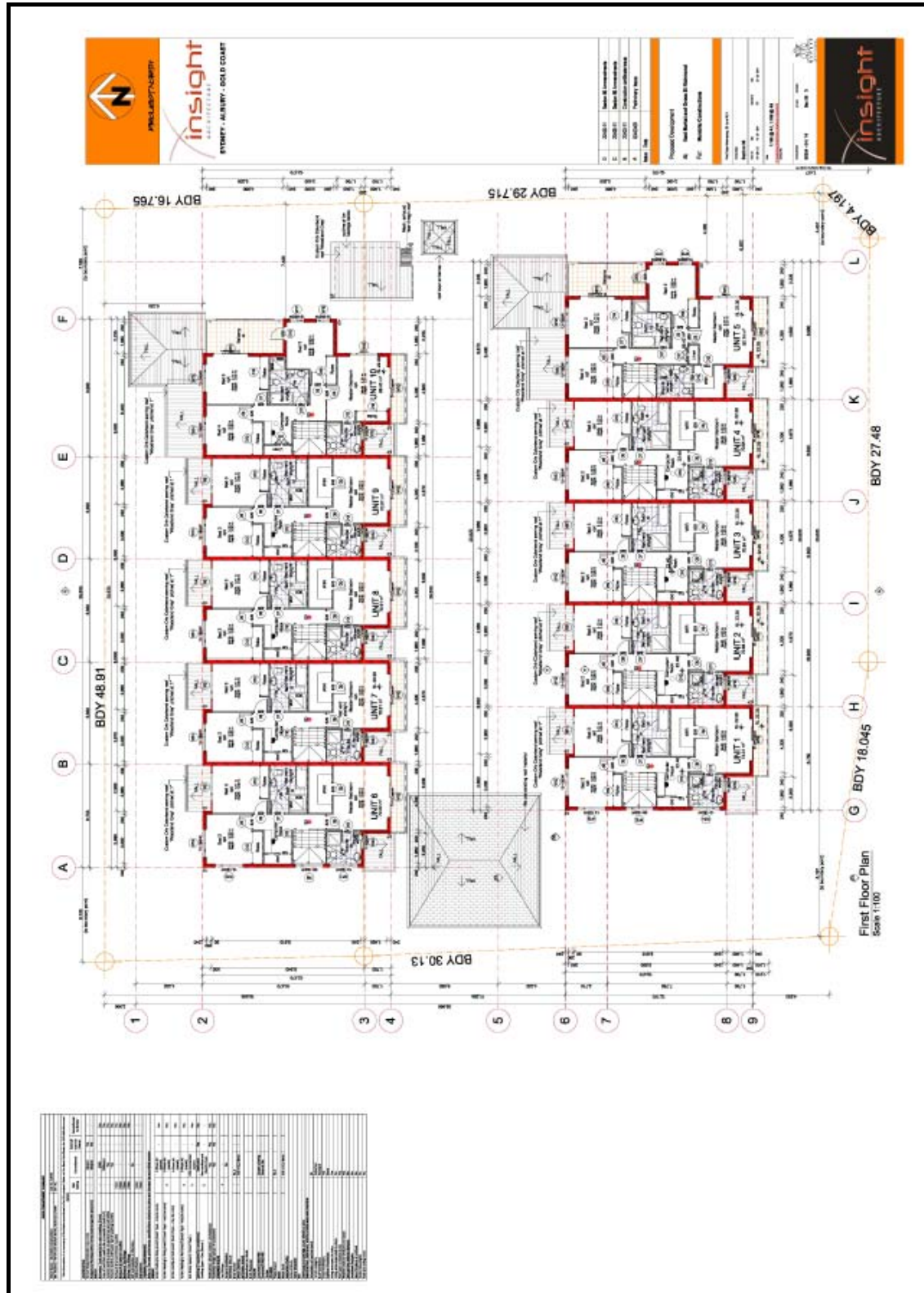


ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 5 – First Floor Plan

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond

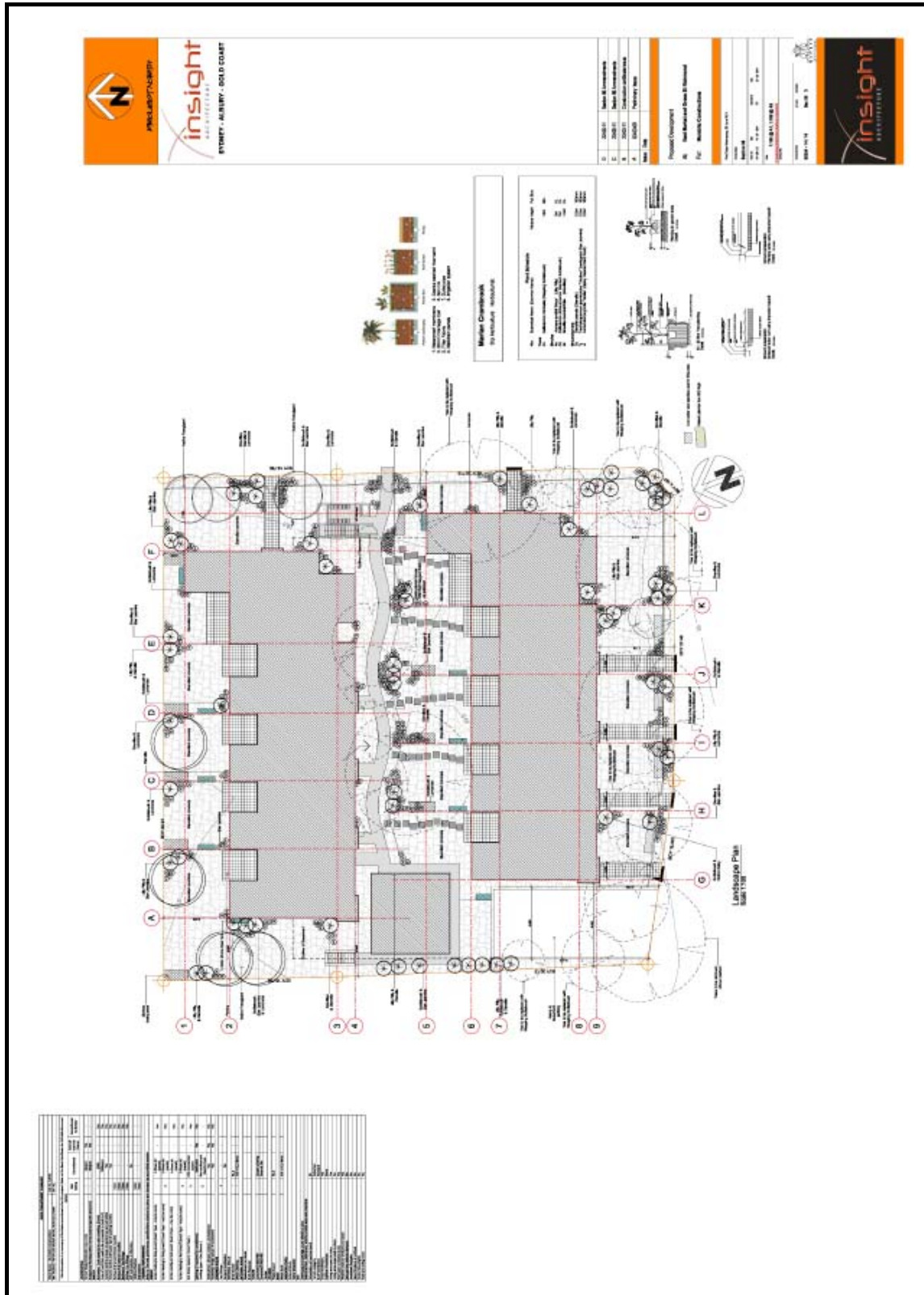


ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 6 - Landscaping Plan

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond

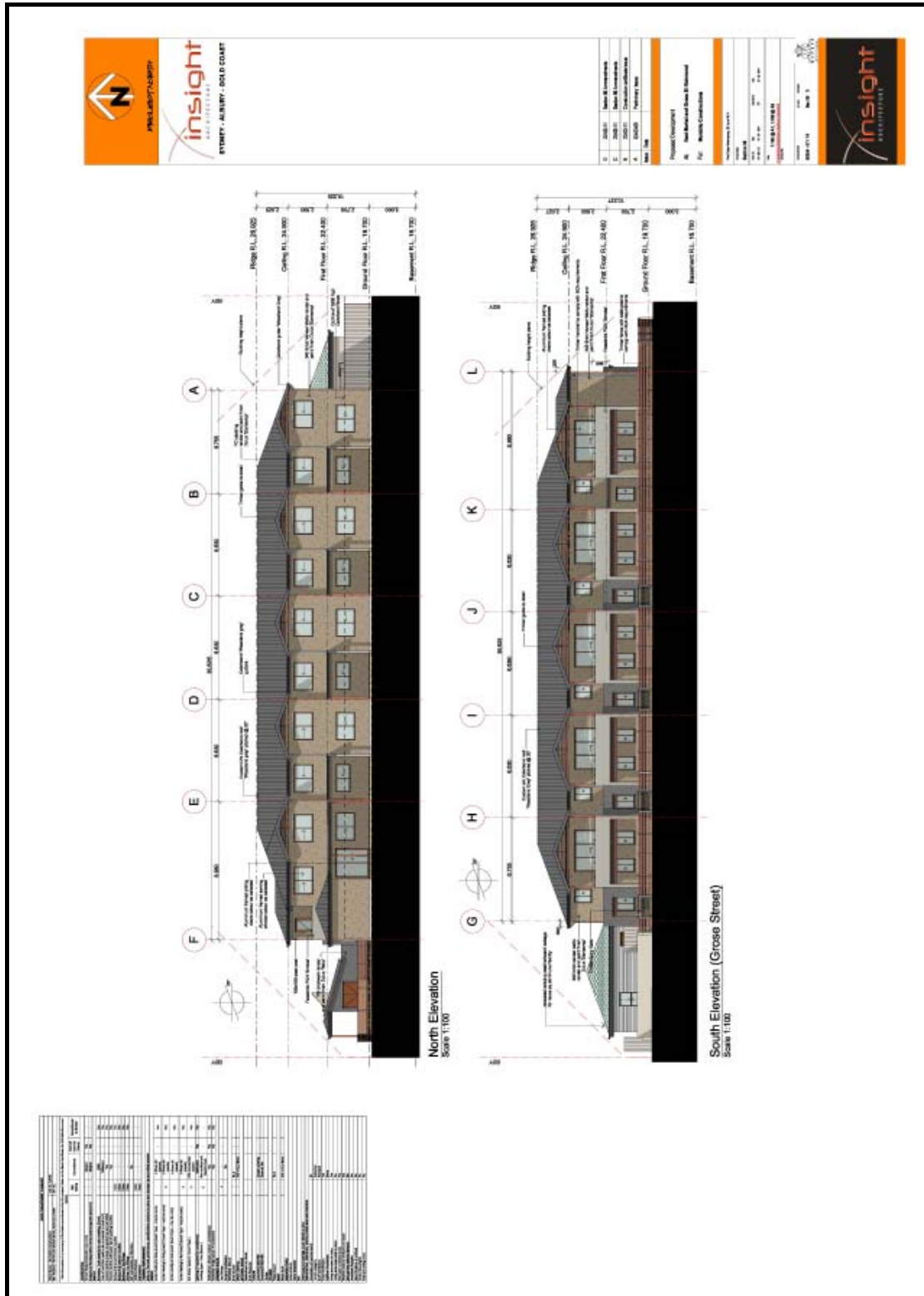


ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 7 - Elevations 1

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond

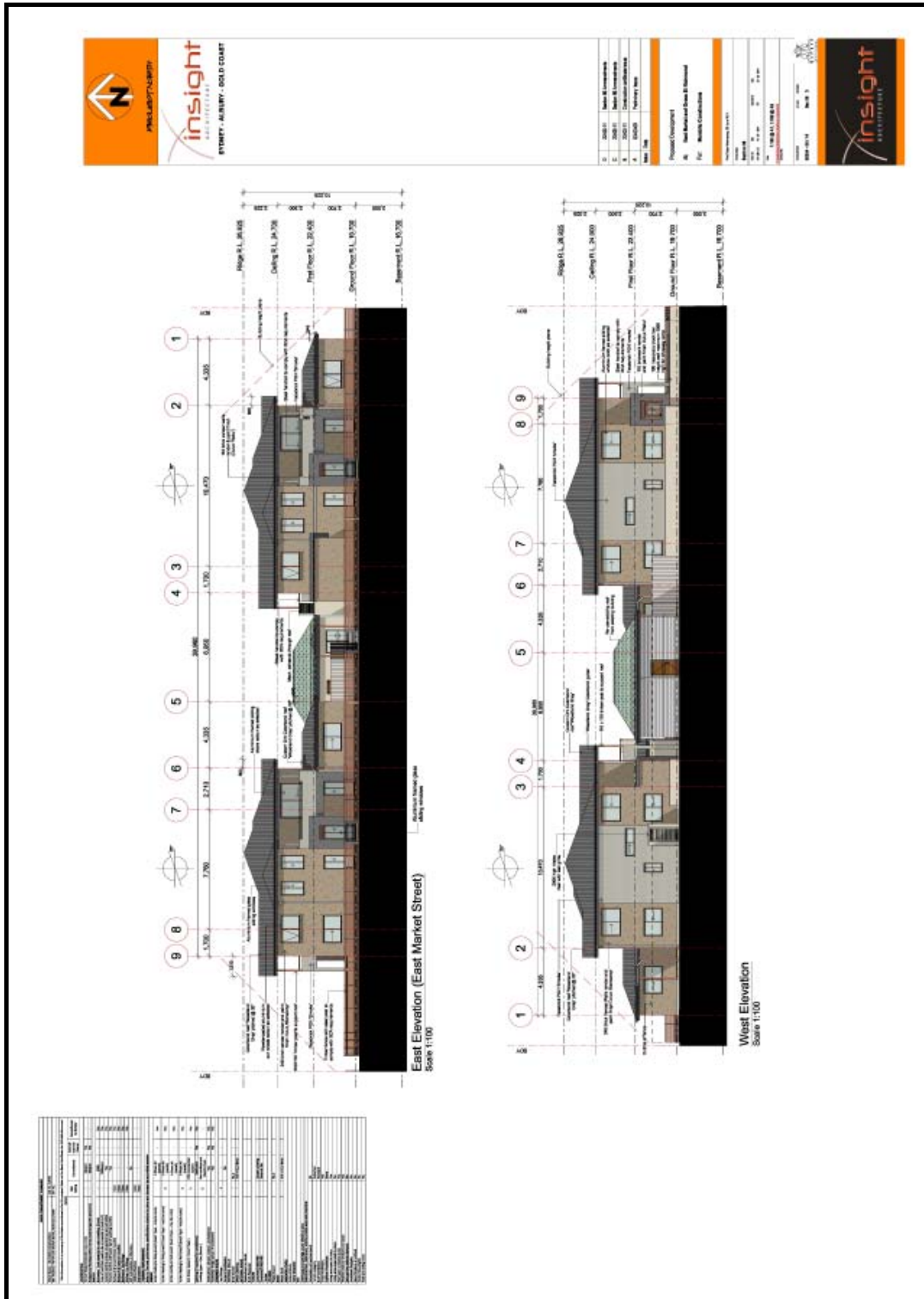


ORDINARY MEETING

Meeting Date: 30 August 2011

AT - 8 – Elevations 2

55 East Market St (Lot 1 DP 544593) and 57 East Market St (Lot 2 DP 223745), Richmond



oooO END OF REPORT Oooo

Item: 185**CP - Renewal of Licence Agreements - Peppercorn Place - (78340)**

REPORT:**Executive Summary**

This report has been prepared to seek Council's approval to renew Licence Agreements between Council and services housed at Peppercorn Place, 320 George Street, Windsor. The report proposes that the Licence Agreement be executed and that the Seal of Council be affixed to each Licence Agreement. The report also outlines the property management arrangements pertaining to Peppercorn Place.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background*Management of Community Facilities*

For many years, Council has implemented decentralised property arrangements for its community facilities to maximise resident participation in the management of these facilities. Under this framework Council delegates the care, control and management of a community facility, usually a community centre, community hall, or child care centre, to an incorporated community committee under Section 377 of the *Local Government Act 1993*. The majority of these community committees are also funded by government agencies to deliver child care or community services with Council's community facilities used as the venue for the delivery of these services. The remaining committees generally manage the smaller halls in outlying areas to provide residents with a local meeting space.

The respective responsibilities of Council and the community committee are as outlined in the *Community Facilities Manual* adopted by Council in August 2010. In simple terms, a community committee is responsible for meeting day-to-day operating and 'wear and tear' maintenance costs of the community facility they manage or occupy. The community committee levies fees on users of the building, and/or utilises government funding or child care fee income to cover these costs. Council is responsible for structural maintenance and for maintaining the integrity of the building fabric. Council derives no income from this arrangement with the income collected by the community committee retained by the committee. Council effectively provides community facilities to its delegated community management committees on a rent-free basis to allow committees to minimise the occupancy costs of the building and keep user charges or child care fees at an affordable level. Council also benefits from this arrangement by minimising the staffing costs required to manage its community facilities portfolio.

Peppercorn Place - Licence Agreements

Peppercorn Place was officially opened in May 2001 as a purpose built facility which currently houses six community organisations offering programs to frail older people, young people with disability and their carers. In July 2002 Council delegated care, control and management of Peppercorn Place to the Board of Peppercorn Services Inc but at the request of the Board resumed direct management of Peppercorn Place in July 2010.

The property management arrangements for Peppercorn Place are unique to Peppercorn Place (although recently Council has entered into a similar agreement with the Macquarie Towns Art Society with respect to their occupancy of the Yarramundi Community Centre).

As a co-location facility housing services managed by incorporated community associations and/or government agencies, Peppercorn Place requires a specific property management framework based on a

ORDINARY MEETING

Meeting Date: 30 August 2011

renewable Licence Agreement executed between Council (the "Licensor") and each agency within the building (the "Licensee"). As there is no single community committee with delegated responsibility for the building, Council manages the building and levies a usage charge on Licensees to meet the day-to-day operating costs generated by Licensees in their occupation of Peppercorn Place. These costs include electricity, cleaning, contribution to 'front-desk' reception services, security, building repairs, equipment leasing and maintenance, risk management, tenant amenities and other sundry expenses.

The Licence Agreement operates in the same way as the standard 'hire agreement' that Council's delegated management committees apply to all groups using a Council facility to collect the revenue required to cover the costs of the use of the facility by that group. Peppercorn Place operates in the same way as other facilities within Council's community facilities portfolio, the difference being that Council, rather than a community committee, collects the revenue required to cover day-to-day operating costs, that is, there is not a "rent" component to the charges to recoup Council's investment in the property.

For most government funded community organisations housed in a council facility, their occupancy costs constitute a standard operating cost that has been factored into the level of recurrent funding that the group receive from a funding agency. If a funded organisation were to occupy commercial premises they would be required to pay rent in addition to their day-to-day occupancy costs.

Peppercorn Place - Licence Fee

There has been some recent discussion as to whether the Peppercorn Place Licence Fee constitutes a 'rental charge'. As is the case with all of Council's community buildings, Licensees do not pay rent (as it is commonly understood) but are charged a designated amount to cover the costs generated by their occupancy of the building. Council does not retain any revenue from this arrangement but uses the revenue solely to meet expenses generated by each Licensee. Under the renewed Licence Agreement Council will continue to provide rent-free accommodation to the services located in Peppercorn Place.

If Council were to waive the applicable Licence Fee, Council would still be required to cover these expenses as they have been incurred via commercial transactions with external business entities. Waiving the License Fee would effectively require Council to provide an ongoing operational subsidy to a government agency or a funded community organisation. If met in full, the operational subsidy would be in the order of \$85,600 and would constitute financial assistance which would need to be transacted under Council's Community Sponsorship Program. Given the challenges posed by an ageing population, there are likely to be other priorities should a recurrent investment of this size be contemplated by Council.

Current Situation

The previous Licence Agreements, for the period 1 Jan 2009 and 31 Dec 2010, entered into with each Licensee were due for renewal on 1 January 2011. New licence agreements were drawn up for the five year period from 1 Jan 2011 to 31 Dec 2015 and were forwarded to each Licensee in late November 2010. Negotiations with several Licensees have resulted in delays in the return of signed copies and consequently the matter can only now be reported to Council. Some Licensees have requested a 2 x 2 year agreement in lieu of a five year agreement. Under the new Licence Agreements the following annual user charges (GST Exclusive) have been levied for each of the Licensees;

Anglican Retirement Village	\$7,903.68
Bridges Disability Services Inc	\$29,139.96
Nepean Blue Mountains Local Health District (Fern Haven DayCare)	\$8,226.96
Nepean Blue Mountains Local health District (Senior DayCare)	\$12,327.00
Peppercorn Services Inc	\$14,609.40
State Property Authority (on behalf of Home Care Service of NSW)	\$13,364.64

The proposed Licences have now been agreed to by all the above Licensees.

ORDINARY MEETING

Meeting Date: 30 August 2011

Conformance to Community Strategic Plan

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

- Be financially sustainable to meet the current and future needs of the community based on a diversified income base, affordable and viable services.

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

- Work with public and private sectors to ensure funding and delivery of improved services and infrastructure.

Financial Implications

There are no financial implications arising from this report. The revenue and expenses highlighted in the report have been included in Council's Adopted 2011/2012 budget.

RECOMMENDATION:

That the Seal of Council be affixed to the Licence Agreements entered into between Hawkesbury City Council and each Licensee of Peppercorn Place.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 186 **CP - Policy for Provision of Infrastructure for Rezoning Matters - (95498)**

Previous Item: 160, Ordinary (26 July 2011)
 MM, Ordinary (13 October 2009)

REPORT:

Executive Summary

On 26 July 2011 Council considered a report that recommended changes to the Policy for Rezoning of Land for Residential Purposes - Infrastructure Issues. The changes recommended were to allow the consideration of applications (not necessarily approval) and to reinforce that the assessment of those applications was to be undertaken in accordance with the adopted Hawkesbury Residential Land Strategy. The resolution of that meeting was as follows:

"That the matter be deferred to the second Council Meeting in August to allow further consultation with residents groups, Councillors and Senior Staff prior to being reported back to Council."

A meeting with a group referring to themselves as the Hawkesbury Community Consultative Group (HCCG) was held on Monday 8 August 2011. Five Councillors also attended this meeting. The matters raised at the meeting are discussed in this report and an amended Policy wording is proposed for Council's consideration.

Consultation

The issues raised in this report were raised at a consultation meeting with community representatives and Councillors held on 8 August 2011 and also via a letter received at Council on 17 August 2011 from the North Richmond District Community Action Association (NRDCAA). Further community consultation on the matter is not required under Council's Community Engagement Policy. This matter was also the subject of a Councillor Briefing Session held on Tuesday, 5 July 2011.

Background

On 13 October 2009 Council considered a Mayoral Minute regarding infrastructure issues in Richmond and North Richmond. The resolution from that matter adopted the Policy "Rezoning of Land for Residential Purposes - Infrastructure Issues". This Policy and a number of other Council resolutions were made prior to Council's adoption of the Hawkesbury Residential Land Strategy on 10 May 2011.

A report outlining the resolutions and the reasons for the proposed changes to the Policy was considered by Council at the meeting of 26 July 2011. (Copy attached to this report) The resolution of that meeting was:

"That the matter be deferred to the second Council Meeting in August to allow further consultation with residents groups, Councillors and Senior Staff prior to being reported back to Council."

As a result of this resolution a meeting was held with the group calling themselves the Hawkesbury Community Consultative Group (HCCG) on Monday 8 August 2011. The meeting was attended by Councillors Calvert, Ford, Rasmussen, Reardon and Whelan and 17 community members representing a variety of community groups including North Richmond District Community Action Association (NRDCAA), Bowen Mountain Association, Hawkesbury Harvest, Kurrajong Hills, Glossodia, Wilberforce, Windsor, Pitt Town, Vineyard and Landcare Groups.

The issues raised at this meeting are summarised as follows:

ORDINARY MEETING

Meeting Date: 30 August 2011

- desire to retain the existing Policy as it is,
- concern that the existing Policy, 'a political tool prior to the State election', is being "watered down" to allow development without infrastructure,
- no rezoning should be permitted until the existing transport infrastructure is up to the expectations of the community west of the River in accordance with the Mayoral Minute,
- no agreement that there is "conflict" between the existing Policy and the adoption of the Hawkesbury Residential Land Strategy (HRLS) and other resolutions,
- Council should not approve any more DAs until the transport infrastructure, particularly North Richmond, is improved,
- there is a need to define "Council's Satisfaction" in the existing Policy,
- concern with the use of the terms "adequate", "intent" and other words in the 26 July proposed amended Policy,
- Vineyard and other areas could proceed in accordance with the HRLS,
- do not want another "Pitt Town", i.e., development with no infrastructure,
- more public transport is required and Council is not doing anything,
- agricultural land should be protected,
- more community consultation is required on this Policy.

Comments on the above issues and proposed changes to the Policy are as follows:

- *Desire to retain the existing Policy as it is,*

This sentiment is essentially why the matter was deferred by Council on 26 July 2011 for further consultation. The main reason for this desire is that the community interpretation of the Policy is that the current wording is definite in that no development proposals will be considered by Council until existing problems are rectified. The comments from the community meeting imply that Council are more likely to conform to the current Policy rather than complying with an amended Policy as proposed.

For the reasons set out in the previous report and discussed further in this report, this is not the preferred option.

- *Concern that the existing Policy, a political tool prior to the State election, is being "watered down" to allow development without infrastructure,*

This concern seems to stem, principally, from the proposed removal of the words "*not consider nor support*" from the Policy. It was thought by the community attendees that the removal of these words will allow development to proceed without infrastructure being addressed.

The intent of the proposed amendments to the Policy is to allow the assessment of Planning Proposals (rezoning applications) on their merits against Council's existing Strategies, primarily the HRLS. In this regard the decision whether the proposal is supported or rejected still remains with the elected Council to decide. The proposed benefit of this approach is that a development proposal has the ability to contribute towards the rectification of infrastructure problems. Whilst a new development cannot be made to fix an existing problem it must provide for the required infrastructure to service the proposal and not make the existing situation any worse. In this regard, the provision of infrastructure for a new development, due to the fact that it cannot make the situation worse, could/will contribute to the improvement of the existing situation.

- *No rezoning should be permitted until the existing transport infrastructure is up "to the expectations of the community west of the River in accordance with the Mayoral Minute",*

The last part of the above is quoted from the attendee notes from the community meeting. It should be noted that the Mayoral Minute, and hence the Policy, states that the existing infrastructure had to be addressed to "*Council's satisfaction*" and not "*to the expectations of the community west of the river*".

Whilst this may seem to be a trivial wording issue, it is the words and the construction of a Policy that is important so that a clear, unambiguous direction is expressed in the Policy. Given the confusion that has

ORDINARY MEETING

Meeting Date: 30 August 2011

arisen it is another reason for the Policy to be amended to clarify what is required from an applicant and to guide Council's assessment and decision on these matters.

- *No agreement that there is "conflict" between the existing Policy and the adoption of the Hawkesbury Residential Land Strategy (HRLS) and other resolutions,*

There was some confusion with this issue when it was discussed at the community meeting. On the one hand the comment was made that the existing Policy containing the words "*not consider nor support*" essentially stopped any application being assessed on its merits or considered by Council. However, on the other hand there were some attendees stating that under the existing Policy those applications could still be assessed.

Given this confusion as to the implementation of this Policy, it is clear that the Policy needs some amendment to clarify how it will apply, how it relates to other Policies and resolutions of Council and when to apply the Policy. The proposed amended Policy seeks to clarify how to apply Council's existing Policies, i.e. assessed against the HRLS, and what the applicant must consider prior to lodging any application. Like any application, the elected Council still retains the final decision on the merits of the proposal. The final decision on these matters is made by the Council following public exhibition of any proposal.

The refusal to consider any rezoning applications is contrary to Council resolutions adopting the Community Strategic Plan and the HRLS. It is this contradiction that the amended Policy wording is attempting to address.

- *Council should not approve any more DAs until the transport infrastructure, particularly North Richmond, is improved,*

This suggestion is essentially a moratorium on all development until the transport problems are resolved. The question of a moratorium on development was mentioned at the community meeting on 8 August and, although some attendees may have expressed support, it was not clear that this was the agreed option for the meeting.

Whilst the suggestion of a moratorium may appeal to some in the community it is not a preferred planning option as this will substantially restrict options for improving infrastructure and could also reduce the likely support for infrastructure improvements from infrastructure providers as they would not see the cost benefit in upgrading infrastructure for no growth. In this case the infrastructure providers may only slightly upgrade the infrastructure to a level satisfactory for the provider but not satisfactory to the community.

- *There is a need to define "Council's Satisfaction" in the existing Policy,*

The proposed amendments to the Policy better define "Council's satisfaction" by requiring preparation and assessment of a proposal to be in accordance with the provisions of the sustainability criteria contained in the HRLS.

- *Concern with the use of the terms "adequate", "intent" and other words in the 26 July proposed amended Policy,*

The amended Policy attached and recommended in this report clarifies what the term "adequate" means and how that is assessed.

The word "intent" is not currently in the existing or amended Policy. It is assumed that the discussion relating to "intent" refers to what the Policy is attempting to achieve and how that is implemented. As mentioned above, if there is confusion as to the "intent" of a Policy then this would imply that the Policy wording should be amended to ensure that there is no confusion as to the intent and to clarify the implementation requirements of that Policy.

ORDINARY MEETING

Meeting Date: 30 August 2011

- *Vineyard and other areas could proceed in accordance with the HRLS,*

The process for Vineyard was not explained at the meeting of 8 August because that was not the purpose of the meeting. However, it seems that there is a need for some explanation of the process as it is being implied that Vineyard has the infrastructure and that Council is ignoring the area.

Council has made numerous resolutions in support of the land at Vineyard and representations to various Planning Ministers have been made regarding these resolutions. The matter of release of the Vineyard Precinct in the Growth Centre has also been raised with various senior staff in the Department of Planning.

The Vineyard area is part of the North West Growth Centre and the timing and release of that land is up to the Minister for Planning and not Council. As such, this land does not need to be included in Council's strategic documents as it is already included in the State strategic documents. Council and the community will be included in the detailed planning of the precinct, i.e. development control plans, when that process commences after the release of the Precinct by the Minister. Until the land is released Council does not have control over the process. Council will, consistent with the existing Council resolutions, continue to push for the Vineyard precinct release.

In relation to the current Policy, any Planning Proposal for Vineyard would need to be assessed and meet the same requirements as a Planning Proposal for any other area in the Hawkesbury. It should also be noted that, contrary to statements made at the meeting of 8 August, currently there is insufficient infrastructure to service the release of land in the Vineyard area for residential purposes.

- *Do not want another "Pitt Town", i.e., development with no infrastructure,*

This statement is often made in various forums, however, this is not correct. The Concept Approval for Pitt Town, approved by the Minister for Planning, has made provision for infrastructure to be provided for the Pitt Town development progressively as that development proceeds. The details of the infrastructure provision and the milestones for that provision are itemised in the existing Section 94 Contributions Plan 2008 that was supported by Council and was made by the Minister for Planning. In this regard the Section 94 Contributions Plan can only be changed by the Minister. To date the development has not proceeded beyond any of these milestones for the infrastructure provision.

- *More public transport is required and Council is not doing anything,*

Whilst the need for more public transport is agreed, the relevance to the issue of the Policy amendment is unclear.

Unless Council decides to provide the public transport itself it has little control over its provision. However, Council Policy can influence public transport provision and there are targets in the HRLS for public transport and the "centres based model" used for future development in the HRLS is a land use Policy that assists in the viability of public transport.

- *Agricultural land should be protected,*

This issue is not relevant to the consideration of amendments to the current infrastructure Policy. However, the Community Strategic Plan (CSP) and the HRLS have direction statements, strategies and actions that assist in the protection of agricultural land. However, additional planning work to address these issues is scheduled for future years.

- *More community consultation is required on this Policy.*

The attendees of the meeting of 8 August have expressed the view that this matter should be deferred to allow further community consultation. The recommendation of this report does not support further consultation on this matter for the reasons outlined in this report. It is also questionable whether any different community position would be achieved in further consultation given the strong opinion that the existing Policy should remain.

Submission from NRDCAA

In addition to the meeting of 8 August 2011, an undated letter received by Council on 17 August 2011 has been forwarded to local State Members of Parliament and Council from the North Richmond District Community Action Association (NRDCAA) as a result of a meeting of that group relating to this matter and requesting that this submission be considered by Council. A copy of this submission is attached to this report.

The issues raised in that submission and comments on those issues are as follows:

- *Retain the Policy and introduce a moratorium on all development until traffic problems are fixed*

There was a cursory mention of this at the meeting 8 August. However, since then there seems to have been stronger suggestions of this approach culminating in the undated submission from NRDCAA received at Council on 17 August 2011.

The suggestion in this regard is that this approach be in place until an outcome is achieved that *“protects the interest of the community by stopping development west of the river until Council and the NSW Government have committed finance, development (sic) a plan and allocated funds to ease the traffic congestion in an around Richmond and North Richmond.”* The submission also stated that the suggested Policy wording of 26 July was *“unclear on benchmarks that applicants for development were required to meet west of the river when lodging their application.”* (See attachment 2)

There are a number of matters, as listed below that need to be taken into account when considering this approach:

- This proposal is contrary to the directions of the adopted Community Strategic Plan and the adoption of the Hawkesbury Residential Land Strategy in that these documents require Council to consider infrastructure and development issues on “both sides of the river”. The focus of the submission being in only one area of the LGA would not be consistent with these adopted Policies and Strategies.
- This proposal restricts Council’s ability to consider and pursue all options for addressing and funding infrastructure problems, i.e. Council, State or development funding of works.
- The submission has stated reasons for the pursuit of this approach and the reason for rejecting the proposal on 26 July 2011. However, these reasons/arguments seem to be conflicting. In this regard the submission suggested that the 26 July 2011 proposed amended Policy wording was *“unclear on benchmarks”*. Whilst this is noted, it can also be said for the submission proposal that uses terms such as *“ease the traffic congestion”* and other terms such as *“until transport infrastructure is adequate in Richmond and North Richmond”*. The suggestion proposed in the submission does not detail realistic, achievable levels of service to identify what *“ease the traffic congestion”* means and costing of these measures cannot be undertaken.

However, the proposed Policy wording recommended in this report, by referring to the HRLS sustainability and settlement criteria, does allow those measures to be detailed and ultimately costed. Also the current RTA study and traffic modelling is working towards addressing these “benchmarks”. The consideration of development proposals, as recommended in this report, can feed into this process. Excluding consideration of development or other options for formulating a resolution to these problems may not achieve the best outcome.

- A moratorium on development can have unintended consequences, such as population decline affecting commercial activity and service provision, which would not be in the best interests of the community.
- The reason for this suggestion seems to be primarily driven by the existing traffic problems. Whilst this may slow some of the problem, the moratorium does not address the growing car and vehicle

ORDINARY MEETING

Meeting Date: 30 August 2011

usage and ownership of existing residents as younger people get vehicles or the lack of services and public transport that would require additional increased vehicle usage.

- Given that Council has a Policy framework (Community Strategic Plan, HRLS, Employment Lands Strategy, etc) to guide consideration of growth and development, a moratorium on development would send a message to investors and the State Government that Council and the community cannot undertake the planning necessary for the Hawkesbury and there is a real possibility of Council losing control over development through loss of planning powers.
- *Retain the existing Policy but restrict its coverage to either North Richmond or “west of the river”*

For similar reasons as outlined above this proposal is not recommended. This suggestion has the additional problem of the definition of where to place the boundary for the moratorium? The existing traffic problems are not the result of development in one specific area, in this case North Richmond. (This can be seen from the increase in traffic using the bridge at Windsor and using back streets through Freemans Reach to get to areas west of North Richmond).

This option would essentially be a moratorium on all development in the Hawkesbury as west of the River would be stopped until there is an “*ease of traffic congestion*” and east of the River, due to flooding issues, is restricted until the Floodplain Risk Management Study and Plan is publically exhibited, adopted and the adopted actions are funded and undertaken. As mentioned previously in this report, development at Vineyard is not under Council's control and the timing for that development is currently unknown.

Conclusion

As mentioned previously, further community consultation is unlikely to result in a resolution of this matter. It is appropriate that in this case all the issues raised in the previous community consultation and the submission received at Council on 17 August 2011 be considered and that the Council give direction to this matter by either adopting the recommendation of this report or making an alternate resolution as the Council sees fit.

Conformance to Community Strategic Plan

The proposal is consistent with the Looking After People and Place Directions statements;

- Be a place where we value, protect and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.
- Offer residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury.
- Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury.
- Have development on both sides of the river supported by appropriate physical and community infrastructure.
- Have friendly neighbourhoods, connected communities, and supported households and families.
- Have future residential and commercial development designed and planned to minimise impacts on local transport systems allowing easy access to main metropolitan gateways.

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

- Develop plans to enhance the character and identity of our towns and villages.
- Develop and implement a plan to conserve and promote heritage.

ORDINARY MEETING

Meeting Date: 30 August 2011

- Identify community needs, establish benchmarks, plan to deliver and advocate for required services and facilities.
- Develop disaster response and community safety plans.

The proposed Policy amendment, detailed in the recommendation to this report, makes the Policy more consistent with the Community Strategic Plan in that it refers to development “on both sides of the river” as well as assists in the implementation of a specific strategy in the CSP being the preparation of the residential land strategy.

Financial Implications

There are no financial implications applicable to this report.

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 Council:

1. Amend the current Policy “Rezoning of Land for Residential Purposes - Infrastructure Issues”, adopted on 13 October 2009, to the following:

That as a matter of policy, Council indicates that it will consider applications to rezone land for residential purposes in the Hawkesbury LGA only if the application is consistent with the directions and strategies contained in Council’s adopted Community Strategic Plan, has adequately considered the existing infrastructure issues in the locality of the development (and the impacts of the proposed development on that infrastructure) and has made appropriate provision for the required infrastructure for the proposed development in accordance with the sustainability criteria contained in Council’s adopted Hawkesbury Residential Land Strategy.

Note 1:

In relation to the term “adequately considered the existing infrastructure” above, this will be determined ultimately by Council resolution following full merit assessments, Council resolution to go to public exhibition and Council resolution to finally adopt the proposal, with or without amendment.

Note 2:

The requirements of the term “appropriate provision for the required infrastructure” are set out in the sustainability matrix and criteria for development/settlement types in chapter six and other relevant sections of the Hawkesbury Residential Land Strategy 2011.

2. Write to the Minister for Roads, the Hon Duncan Gay, to request that funds be allocated in the next State budget to physically address the lack of transport infrastructure in and around Richmond and North Richmond.
3. Write to the local State Members for Londonderry, Hawkesbury and Riverstone requesting their support and assistance in this matter.

ORDINARY MEETING

Meeting Date: 30 August 2011

ATTACHMENTS:

AT - 1 Report to Council Meeting of 26 July 2011.

AT - 2 Copy of submission from NRDCAA to Local Members, Councillors and Council (undated)

AT - 1 Report to Council Meeting of 26 July 2011.

REPORT:

Executive Summary

On 13 October 2009 Council considered a Mayoral Minute regarding Infrastructure Issues in Richmond and North Richmond. The resolution from that matter adopted the Policy "Rezoning of Land for Residential Purposes - Infrastructure Issues". This Policy and a number of other Council resolutions were made prior to Council's adoption of the Hawkesbury Residential Land Strategy on 10 May 2011.

The purpose of this report is to outline the background to the Policy and recommend changes to the Policy so that the current conflict with the adopted Hawkesbury Residential Lands Strategy and the Policy can be rectified.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy. However, this matter was discussed at the Councillor Briefing Session held on Tuesday, 5 July 2011.

Background

Council has made a number of resolutions regarding development proposals that deferred further consideration of the development proposals until after the Hawkesbury Residential Land Strategy (HRLS) had been completed. Council also adopted a Policy on this matter on 13 October 2009. The matters and resolutions are as follows:

Report to Council Meeting on 8 July 2008 regarding the Progress and Criteria for Preparation of Residential Strategy.

That:

1. *Council note that the sustainability criteria contained in the Metropolitan Strategy and the actions contained in the draft North-West Sub-Regional Strategy must be included for implementation in Council's Strategy work.*
2. *It be noted that the criteria for inclusion into the Residential Strategy, as specified in the "Proposed Broad Local Criteria" of this report is an extension of the Statutory criteria and this be adopted for use in the preparation of the Residential Strategy.*
3. *The draft Residential Strategy be reported to Council prior to the public exhibition of the draft Strategy.*
4. ***That no additional applications (beyond those already lodged in Council or those in respect of areas previously nominated by Council for urban expansion where existing flood evacuation issues have been resolved eg North Bligh Park) for new residential rezoning matters be processed by Council until the draft Residential Strategy has been completed and endorsed by Council.***
5. *The issue of urban renewal be integrated into this report.*

Notice of Motion to Council Meeting on 3 February 2009 regarding Development at North Richmond.

That Council reaffirms its existing resolutions concerning the preparation of the Residential Strategy and the development of the Community Strategic Plan.

ORDINARY MEETING

Meeting Date: 30 August 2011

Mayoral Minute to the Council Meeting on 13 October 2009 regarding Infrastructure Issues - Richmond and North Richmond.

That as a matter of policy Council indicate that it will not consider nor support any further applications to rezone land for residential purposes in the area west of the Hawkesbury River until such time as the existing infrastructure issues, particularly as related to traffic, have been addressed to Council's satisfaction.

Report to Council to consider comments, on the land release application for North Richmond, to the Department of Planning. The resolution in part was:

3. Council reaffirm its resolution of 13 October 2009 as detailed in the report.

Report to Council following public exhibition of the HRLS recommending amendments and adoption of the amended HRLS. The resolution in part was:

2 Adopt the amended Hawkesbury Residential Land Strategy.

As can be seen from the above resolutions, Council has resolved to support the preparation of the HRLS since adoption of the criteria on 8 July 2008 and has not recommended consideration of further rezoning matters until the HRLS was in place. The most significant resolution restricting consideration of these matters is the Policy that was adopted on 13 October 2009 as shown above.

It is clear that Council required such a Policy as there was, and still is, a real need for the consideration of relevant infrastructure issues prior to support of any further development. It is also clear that there is a need for that consideration to follow a consistent approach so that the assessment considers the appropriate infrastructure for the locality and is fair to the applicant and the community.

The Policy, in the absence of any adopted criteria for assessment of "Council's satisfaction", has been useful in the consideration of proposed future development since October 2009. However, with the adoption of the Hawkesbury Residential Land Strategy the adopted Policy and the adopted Strategy conflict.

In this regard, the Policy states "*Council indicate that it will not consider nor support any further applications*" which has the effect of Council not being able to assess or consider any rezoning applications and does not adequately detail how infrastructure assessment will be undertaken to obtain "Council's satisfaction". However, the HRLS identifies land that Council is prepared to consider for further investigation for rezoning, subject to certain criteria. The HRLS contains a measured approach to consideration of development, in that it defines settlement types, identifies (via the sustainability matrix in Chapter 6 of the Strategy) the infrastructure and service requirements for those settlement types and also contains implementation actions to assist in the implementation of the strategy. In this regard, the HRLS essentially sets out the assessment criteria and approach to assessment so that plans for "Council's satisfaction", as per the Policy, can be achieved.

It is considered that the HRLS, the past resolutions and the Policy can all operate together subject to some minor changes to the Policy. It is recommended that the Policy be changed to deal with all development areas in the Hawkesbury (rather than just one side of the River) and to reference the Hawkesbury Residential Land Strategy rather than "Council's satisfaction". The recommended changes to the Policy are shown below:

That as a matter of policy, Council indicates that it will **only** ~~not consider nor support any further applications to rezone land for residential purposes in the Hawkesbury LGA area west of the Hawkesbury River until such time as if the~~ **application has adequately considered the existing infrastructure issues in the locality of the development and made adequate provision for the required infrastructure for the proposed development in accordance**

ORDINARY MEETING

Meeting Date: 30 August 2011

with the sustainability criteria contained in Council's adopted Hawkesbury Residential Land Strategy particularly as related to traffic, have been addressed to Council's satisfaction.

The changes proposed above still require any development to address the existing infrastructure as required by the Policy. However, the proposed changes have the added advantage of requiring any application to also address the future infrastructure needs of the community in accordance with the adopted Hawkesbury Residential Land Strategy.

Conformance to Community Strategic Plan

The proposal is consistent with the Looking After People and Place Directions statements;

- Be a place where we value, protect and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.
- Offer residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury.
- Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury.
- Have development on both sides of the river supported by appropriate physical and community infrastructure.
- Have friendly neighbourhoods, connected communities, and supported households and families.
- Have future residential and commercial development designed and planned to minimise impacts on local transport systems allowing easy access to main metropolitan gateways.

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

- Develop plans to enhance the character and identity of our towns and villages.
- Develop and implement a plan to conserve and promote heritage.
- Identify community needs, establish benchmarks, plan to deliver and advocate for required services and facilities.
- Develop disaster response and community safety plans.

The proposed Policy amendment makes the Policy more consistent with the Community Strategic Plan in that it refers to development *"on both sides of the river"* as well as assists in the implementation of a specific strategy in the CSP being the preparation of the residential land strategy.

Financial Implications

No financial implications applicable to this report.

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.

ORDINARY MEETING

Meeting Date: 30 August 2011

RECOMMENDATION:

That Council amend the current Policy "Rezoning of Land for Residential Purposes - Infrastructure Issues", adopted on 13 October 2009, to the following:

"That as a matter of policy, Council indicates that it will only consider applications to rezone land for residential purposes in the Hawkesbury LGA if the application has adequately considered the existing infrastructure issues in the locality of the development and made adequate provision for the required infrastructure for the proposed development in accordance with the sustainability criteria contained in Council's adopted Hawkesbury Residential Land Strategy."

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

**AT - 2 Copy of submission from NRDCAA to Local Members,
Councillors and Council (undated)**

NRDCAA Meeting Outcome with regard to Mayoral Minute and Residential Land Strategy.

To, HCC Councillors,

MR Williams MLA Hawkesbury,

MR Bassett MLA Londonderry,

MR Conolly MLA Riverstone,

MR Jackson General Manager HCC.

Dear All,

The NRDCAA held its August meeting on Monday 15 and carried the following resolutions unanimously.

This meeting of the NRDCAA notes the report on extreme traffic congestion in and around Richmond and North Richmond as a result of over development by Council without adequate infrastructure over a number of years.

Despite our endeavours to have a majority of Councillors, led by the Mayor and Deputy Mayor to stop development until transport infrastructure is adequate in Richmond and North Richmond areas to the satisfaction of the Community, the majority of Councillors have not respected the NRDCAA nor the community's call.

Development continues, creating more and more delays to commuters which create serious problems for those commuters and the wider community at large.

The Community welcomed the Mayoral Minute in 2009 following pressure and anger from the Community over the worsening traffic congestion despite its apparent weakness.

Council considered a recommendation at the July 26 2011 Council meeting which was unclear on benchmarks that applicants for development were required to meet west of the river when lodging their application.

This meeting welcomes Council's majority decision in July to delay Council Officer's recommendation whilst consultation with the Hawkesbury Community Consultative Group (HCCG) occurs.

Having discussed reports and considered press coverage and input from the Community the NRDCAA urges Council to support an outcome which will:

*Protect the interest of the community by stopping development west of the river until
Council and the NSW Government have committed finance, development a plan and
allocated funds to ease the traffic congestion in and around Richmond and North
Richmond.*

Accordingly, this meeting directs representatives from HCCG to attempt to negotiate an outcome with Council in accordance with this decision.

ORDINARY MEETING

Meeting Date: 30 August 2011

The second resolution.

This meeting of the NRDCAA request Council to urgently correspond with the Minister for Roads Mr Gay MLC to inform Council, HCCG, and the Community in writing, if funds will be allocated to address the lack of transport infrastructure as a result of over development by Council without the necessary transport infrastructure in and around Richmond and North Richmond in the September budget?

We call on Mr Bassett, MLA Londonderry, Mr Williams, MLA Hawkesbury and Mr Conolly, MLA Riverstone to confirm their support for our endeavours and canvas Minister Gay for an immediate response.

Should no funds be available after the release of the budget, Council and the Community should implement a strategy to pressure the Premier Mr O'Farrell to intervene in his capacity as Minister for Western Sydney.

Whilst the issues in resolution one and two remain outstanding the status quo with regards to development should remain until they are resolved. In addition the NRDCAA should canvas others for support.

We would appreciate this matter be debated at the next Council meeting or the procedure we need to follow to have this occur.

Would you each individually reply please in order for the NRDCAA to gauge support or otherwise?.

Your reply should be addressed to the secretary @ turnbullcandb@bigpond.com.

Yours Sincerely

Michael Want for and on behalf of Colleen Turnbull

Secretary NRDCAA

oooO END OF REPORT Oooo

INFRASTRUCTURE SERVICES

Item: 187 **IS - Jones Road, Lower Portland - (95495, 79344)**

Previous Item: 250, Ordinary (9 November 2010)

REPORT:

Executive Summary

The purpose of the report is to authorise the Seal of Council to be affixed to any necessary documentation relating to the dedication of the right of way known as Jones Road, Lower Portland as public road.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

Council at its meeting of 9 November 2010 considered a report in relation to the dedication of the right of way known as Jones Road, Lower Portland as public road. It was resolved to accept the dedication subject to the agreement of all property owners and no monetary compensation for such dedication.

The purpose of this report is to authorise the Seal of Council to be affixed to any necessary documentation relating to the dedication of the right of way known as Jones Road, Lower Portland.

Conformance to Community Strategic Plan

The proposal is consistent with the Linking the Hawkesbury Directions statement;

- Have a comprehensive system of well maintained local and regional roads to serve the needs of the community.

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

- Facilitate the integration of a transport network.

Financial Implications

There are no financial implications as a result of this report.

RECOMMENDATION:

That the Seal of Council be affixed to any necessary documentation relating to the dedication of the right of way known as Jones Road, Lower Portland as a public road.

ORDINARY MEETING

Meeting Date: 30 August 2011

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

Item: 188 IS - Roads to Recovery Program - (95495)

REPORT:**Executive Summary**

The Australian Local Government Association (ALGA) is launching local government's Road to Recovery Program campaign to ensure the Program is extended beyond the current program which ends in 2014. The ALGA is seeking every council's support for the campaign by way of a resolution calling on the Federal Government to firstly recognise the successful delivery of the Roads to Recovery Program by local government since 2000; continue the Roads to Recovery Program on a permanent basis and with the current administrative arrangements; and provide an increased level of funding under a future Program that recognises the shortfall of funding on local roads of \$1.2 billion annually.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

Correspondence has been received from the President of the ALGA requesting Council's support in mounting a campaign for increased and ongoing Roads to Recovery Program Funding.

It is believed that the Roads to Recovery Program was achieved in 2000 by similar campaigning, and further campaigns have been very successful with two extensions to the Program and a funding increase to \$350 million per annum in 2009. By the time the current Program ends in 2014 more than \$4.5 billion in additional funding will have been provided for local roads.

The ALGA commissioned research, released at the 2010 National Local Roads and Transport Congress in Bunbury, which shows that the national shortfall in the level of funding for local roads amounts to about \$1.2 billion annually.

The ALGA will be launching local government's Road to Recovery campaign at the 2011 National Local Roads and Transport Congress being held in Mount Gambier from 16-18 November 2011.

The support of every council has been sought and in advance of the launch the ALGA is asking all councils to pass a resolution of support. The motion calls for the Roads to Recovery Program to be made permanent at a rate that recognises the backlog of needs on local roads and a continuation of the current popular and successful arrangements. These arrangements provide all councils with certainty of funding and give them control over the works to be funded.

As part of the campaign, the ALGA has requested that all councils write to the Prime Minister, the Leader of the Opposition, Minister for Infrastructure and Transport, Opposition spokesperson for Transport and local Federal Members to advise them of Council's supports for a new Roads to Recovery Program, and to ensure that national political leaders are fully aware of local government views.

Conformance to Community Strategic Plan

The proposal is consistent with the Linking the Hawkesbury Directions statement;

- Have a comprehensive system of well maintained local and regional roads to serve the needs of the community.

ORDINARY MEETING

Meeting Date: 30 August 2011

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

- Lobby State Government to improve transport networks.

Financial Implications

There are no financial implications resulting from this report.

RECOMMENDATION:

That:

1. Council call on the Federal Government to:
 - a) Recognise the successful delivery of the Roads to Recovery Program by local government since 2000;
 - b) Continue the Roads to Recovery Program on a permanent basis to assist local government meet its responsibilities of providing access for its communities;
 - c) Continue the Roads to Recovery Program with the current administrative arrangements; and
 - d) Provide an increased level of funding under a future Roads to Recovery Program that recognises the shortfall of funding on local roads of \$1.2 billion annually.
2. Appropriate correspondence be forwarded to those parties as suggested by the Australian Local Government Association in this regard.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 189 IS - Windsor Bridge - (95495)

Previous Item: MM, Ordinary (8 June 2010)
NM1, Ordinary (11 August 2009)
MM, Ordinary (28 April 2009)

REPORT:

Executive Summary

Following community consultation in relation to the nine potential options for the upgrade or replacement of the Windsor Bridge, the Roads and Traffic Authority (RTA) has identified Option 1 as the preferred option, a new high level structure immediately downstream of the existing bridge, connected by a new approach road located on the eastern side of the Thompson Square.

The RTA is seeking comment in relation to the preferred option, and it is recommended that Council reaffirm its position in relation to the replacement of the Windsor Bridge, and support the RTA preferred option as Option 1.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

In June 2008, the NSW Government announced it had committed \$25million for a replacement of Windsor Bridge. The RTA undertook investigations into potential options of a new or refurbished bridge. Following public exhibition of the nine potential options, the RTA has identified Option 1, a new high level structure immediately downstream of the existing bridge connected by a new approach road located on the eastern side of Thompson Square, raising the bridge height to accommodate a 1-in-5 year flood event. The existing bridge and road alignment through Thompson Square would be removed providing for a larger area of consolidated open space within Thompson Square.

The RTA advises that this option performs best on value for money and performs well in relation to most of the project objectives. The project could be delivered in two stages based on traffic demands and available funding:

- The section between Wilberforce Road and George Street including construction of a new bridge is estimated at \$31million.
- Future works including traffic signals at the George Street,/Bridge Street intersection and modification of lanes on Fitzroy Bridge (South Creek) are estimated at \$14million, being constructed based on traffic demands and available funding.

The RTA is currently seeking comments on the preferred option, with written comments required by Friday, 9 September 2011.

In consideration of this matter previously, Council at its meeting of 28 April 2009 resolved:

"That Council's strong support of the location of the proposed new bridge over the Hawkesbury River at Windsor on the eastern side of Thompsons Square (extension of Bridge Street), at the higher level be confirmed and the RTA be advised accordingly."

ORDINARY MEETING

Meeting Date: 30 August 2011

Further, at its meeting of 11 August 2009 Council resolved to reaffirm its support for Option 1 among the RTA's advertised options for replacement of Windsor Bridge.

It is recommended that Council once again reaffirm its position and support for the RTA's preferred option as the high level Option 1.

Conformance to Community Strategic Plan

The proposal is consistent with the Linking the Hawkesbury Directions statement;

- Plan for, maintain and renew our physical infrastructure and community services, facilities and communication connections for the benefit of residents, visitors and businesses.

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

- Lobby State government to improve transport networks.

Financial Implications

There are no financial implications resulting from this report.

RECOMMENDATION:

That Council once again reaffirm its position in relation to the replacement of the Windsor Bridge, and support the Roads and Traffic Authority's preferred option as Option 1 (high level).

ATTACHMENTS:

- AT - 1** Windsor Bridge over the Hawkesbury River Options Report – dated August 2011 - *(to be distributed under separate cover).*

oooO END OF REPORT Oooo

Item: 190 IS - Retailer of Last Resort and Operator of Last Resort Arrangements under the Water Industry Competition Act 2006 - Discussion Paper - (95495, 112179)

REPORT:

Executive Summary

The Water Industry Competition Act was introduced to allow the private sector to hold licences as a water authority to promote competition on the water industry. Arrangements are being proposed under the Water Industry Competition Act to protect customers against failure of private water authorities if they were to fail for financial or operational reasons. These arrangements have been provided within a discussion paper for comments.

It is recommended that the comments provided in response to the discussion paper be submitted to the NSW Government, Department of Finance and Services for consideration.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

The Government introduced the Water Industry Competition Act (WIC Act) to harness the innovation and investment potential of the private sector in the water and wastewater industries as part of its strategy for a sustainable water future. One of the reforms introduced under the WIC Act was a licensing regime for private sector entrants to ensure the continued protection of public health, consumers and the environment.

To protect consumers, the WIC Act includes provisions to ensure the continued supply of water and sewerage services in the event that a licensed retail supplier fails or becomes unviable – these provisions are referred to as retailer of last resort (RoLR) arrangements. This is the subject of a discussion paper recently released under the WIC Act. While the RoLR provisions address the possibility of a retail supply failure, where the Minister can declare a public utility or a licensed retailer a retailer of last resort, the WIC Act does not include provisions that would respond to a licensed network operator failure (OoLR event) or the failure of a combined network operator and retail supplier.

The Department of Finance and Services is undertaking a review of the adequacy of the RoLR provisions and identification of a preferred set of options for OoLR arrangements.

As part of this review, the Department is seeking feedback on the discussion paper which aims to generate stakeholder views in relation to two key areas:

1. the principles and objectives that should underpin a RoLR and OoLR scheme
2. the issues that must be addressed in developing the detailed provisions that will make up the RoLR and OoLR scheme.

The development of the review paper has utilised the work undertaken to date in the energy sector who have well established RoLR schemes for each State and Territory and are proposing a National Energy Customer Framework (NECF) that includes a single national RoLR scheme for electricity and gas.

There are a series of questions posed throughout the discussion paper which relate to each of the relevant sections. A copy of the discussion has been circulated separately as Attachment 1.

Section 1 is an introduction to the discussion paper, whilst section 2 gives background to the Water Industry Competition Act 2006, the licensing regime, retailer of last resort (RoLR) and operator of last resort (OoLR).

Section 3 outlines the policy intent of RoLR and OoLR arrangements. The principles and objectives propose that a RoLR and OoLR scheme should be flexible to ensure the most practical and efficient response to licence failure, encourage good industry practice, ensure continuity of service provision, ensure quality of service provision, not impede competition, protect customers, ensure the continuity of payments and information to affected parties, include cost recovery mechanisms and be compatible with broader legislative and commercial arrangements.

The various questions posed and suggested responses are as follows:

Q1: Are the above principles and objectives appropriate for RoLR and OoLR arrangements?

It is felt that the principles and objectives, as outlined under Section 3 of the Discussion Paper satisfactorily cover the key areas of the RoLR and OoLR arrangements under the WIC Act 2006.

Section 4 explains the specific role of RoLR and OoLR arrangements and what other mechanisms are in place to protect service continuity. The first part of section 4 outlines the factors that can lead to service failure and what provisions are in place to deal with physical failure including WIC Act licensing measures, emergency direction provisions and other relevant regulatory provisions.

Q2: Are these provisions adequate to manage the risk of physical failure?

It is considered that the provisions are adequately addressed within the Discussion Paper.

Section 4 also questions the role of RoLR and OoLR arrangements in the event of a physical failure and managing the risk of licensee failure.

Q3: Are the existing licensing requirements adequate to manage the risk of licensee failure?

It is considered that the provisions are adequately addressed within the Discussion Paper.

Section 5 describes the current Retailer of Last Resort arrangements under the WIC Act, including some scenarios where RoLR arrangements would be triggered. The section also outlines possible RoLR scenarios, key elements of RoLR arrangements and questions that must be considered in relation to those arrangements, overview of RoLR provisions under the WIC Act, gap analysis of those arrangements and appointment of a RoLR.

Q4: What provisions should the scheme include with regard to the RoLR appointment process:

- a. Should the RoLR scheme require the appointment of a RoLR? If so, on what basis should the appointment be made? For example should it be a requirement that all retail supplier licences granted under the WIC Act have an appointed RoLR from the date the licence is granted? What should be the timing requirements of this appointment?
- b. Alternatively, at the point a licence is issued, should the scheme require that the Minister first determine if it is necessary to nominate a RoLR in relation to that scheme? Should there be a minimum timeframe in which the Minister must make the determination?

It is suggested that the RoLR scheme should require that all retail supplier licences granted under the WIC Act have an appointed RoLR at the date the licence is granted. The appointment should be made following consultation with suitable retailers and include adequate financial arrangements to ensure that the appointed RoLR will not suffer financial imposts due to such an appointment.

ORDINARY MEETING

Meeting Date: 30 August 2011

Section 5 also raises the question of responsibility if appointment of a RoLR is canvassed, with the alternative being that license applicants have an agreement in place before a license is issued.

Q5: Should the Minister or the license applicant have the responsibility for appointing a RoLR?

It is suggested that to ensure appropriate arrangements are in place should a retailer fail, there should be a regulatory framework for the appointment of a RoLR, including necessary financial arrangements. Whilst the license applicant could be made responsible in the first instant, should that fail the Minister should have the final responsibility.

Section 5 identifies that the WIC Act is silent on steps the Minister must take or factors considered prior to appointing a RoLR, including organisational and technical capacity, financial resources, number of customers and area or areas the retailer currently services.

Q6: Should the RoLR arrangements include provisions that:

- a. prescribe criteria that must be considered before making a RoLR appointment? If so what should these criteria be?
- b. require the retailer to be consulted before being appointed as a RoLR?
- c. require the retailers concurrence before being appointed a RoLR

To ensure that the appointed RoLR would be entering into the appointment with a clear understanding of what is required to be a RoLR, arrangements must include provisions that:

- a. *Prescribe criteria that must be considered before making a RoLR appointment for example, the financial and resource capacity of an organisation.*
- b. *Require the retailer to be consulted before being appointed as a RoLR*
- c. *Require the retailer to agree before being appointed a RoLR*

Section 5 notes that the WIC Act sets out the circumstances under which the Minister can declare a "supply failure" and includes:

- the licensee is no longer authorised to supply water or provide sewerage services
- the licensee has refused to supply water or provide sewerage services to its small retail customers without having made adequate arrangements for the transfer of these services to another licensed retail supplier or public water utility
- a licensee has given written notice to the Minister of its intention to terminate the supply of water or sewerage services to some or all of its customers
- where the licensee is unable, or the Minister is satisfied that it is imminently likely to become unable to supply water or provide sewerage services to its customers

Q7: Are the existing triggers for declaring a supply failure in relation to a licensed retail supplier appropriate?

The existing triggers as outlined within the discussion paper are considered to be adequate.

Section 5 advises that licensed retailers are not required under the WIC Act to notify the Minister or IPART if it is likely that a RoLR event will be triggered.

Q8: Should licensed retail suppliers be required to notify the Minister or IPART if it is likely that a RoLR event will be triggered?

The licensed retail suppliers should be required to notify the Minister or IPART if it is likely that a RoLR event will be triggered. There should also be appropriate penalties put in place should the retailer fail to provide the required notification.

ORDINARY MEETING

Meeting Date: 30 August 2011

Section 5 advises that the WIC Act is currently unclear as to whether or not a RoLR appointment is permanent and if it is possible for a failed retailer to be reinstated.

Q9: Once appointed, should the RoLR arrangements be permanent or should the failed licensee have an opportunity to be reinstated?

It is considered that the RoLR arrangements should be permanent if the RoLR is capable financially and has adequate resources to fulfil the role of a RoLR in the long term. A failed licensee should not be reinstated.

Section 5 advises that a RoLR is required to prepare a contingency plan for the Minister's approval which must address the following points:

- the water and sewerage infrastructure from which it proposes supply of water or sewerage services
- the arrangements it has, or proposes to make, with the service provider for that infrastructure
- any limitations (such as limitations as to capacity and reliability) in its ability to supply water or provide sewerage services
- the additional costs that it is likely to incur if it has to supply water or provide sewerage services to supply failure customers
- consequential effects on its ability to supply water or provide sewerage services to supply failure customers.

The Minister may approve the plan or require the RoLR to amend the plan and resubmit for approval.

Q10: Are the existing contingency planning requirements adequate?

It is considered that the existing contingency planning requirements are adequate; however, the contingency plans should include necessary operational and asset management planning.

Q11: Should the contingency planning requirements include procedures and information communication requirements?

It is considered that contingency planning requirements should include procedures and information communication requirements.

Q12: Who should have the responsibility for preparing the contingency plan?

It is considered that the preparation of the contingency plan should be the responsibility of the RoLR, however it should be prepared in consultation with IPART and the Licensee if possible and approved by the Minister.

Section 5 also addresses the obligation to supply. The WIC Act does not specify a minimum period a customer must remain with a RoLR. This means that customers of a failed retailer can opt out of being a customer of the RoLR and move to another retailer at any time. This may have implications for a RoLR's ability to recover its costs. If a RoLR was to incur substantial costs in accepting new customers, there would be little certainty under the current arrangements that the RoLR could fully recover these costs, particularly if they are recovering the costs through instalments over more than one billing period.

Q13: Should the RoLR arrangements set a maximum period within which a customer of a RoLR must decide whether or not they want to remain a customer of the RoLR or switch to another retailer? If so, what should this maximum period be?

ORDINARY MEETING

Meeting Date: 30 August 2011

It is considered that a RoLR should not be financially disadvantaged by such an appointment. This should be guaranteed through customer surety for whatever time period is required or alternatively through Government backing.

Q14: Should the RoLR arrangements include provisions that govern the termination of a RoLR's supply obligation/appointment? If so:

- a. should a RoLR have the ability to seek a termination of its appointment; and/or
- b. should the Minister have the ability to terminate a RoLR appointment?

It is considered that:

- a. *If the appointed RoLR experiences difficulties or is not able to fulfil the RoLR role then the RoLR arrangements should include provisions that facilitate the termination of a RoLR's supply obligation/appointment.*
- b. *In the interest of protecting the health and welfare of the public, the Minister would retain the ability to terminate a RoLR's appointment as deemed necessary in similar terms to that of a Licensee.*

Section 5 advises that when a RoLR occurs, the customers and relevant RoLR are taken to have entered into a special circumstances contract. The WIC Act does not prescribe any minimum conditions to be included in special circumstances contracts, for example, in relation to tariffs, charges and termination of RoLR's supply obligation. It outlines items which might be included in a special circumstances contract, or alternatively "special circumstances conditions" which would be additional to any existing contract conditions with the failed retailer.

Q15: With regard to the special circumstances contract:

- a. Should the RoLR arrangements specify a minimum set of conditions to be included in the contract? If so, what should these include?
- b. Should the terms and conditions be the same for small retail and large customers?

It is considered that:

- a. *There should be a minimum set of conditions relating to the RoLR and the items listed in Section 5.4.5 of the discussion paper are adequate as a minimum.*
- b. *The terms and conditions for small retail and large customers would require special consideration given that large customers may have special requirements/needs for supply.*

Section 5 identifies that there are a range of costs that could be incurred by a RoLR both in planning for a RoLR event and assuming the role of a RoLR, such as developing and implementing a contingency plan, and ensuring appropriate systems are in place to facilitate the transfer of customers. The current provisions do include a cost recovery mechanism – a RoLR tariff. A RoLR can impose a RoLR tariff on a transferred customer, this tariff being determined by the Minister on the recommendation by IPART, however the basis on which the tariff is determined and what sort of costs it is intended to cover is not specified, and there is no distinction made between costs incurred as a result of planning, as opposed to those incurred once RoLR assumes its role.

A possible option is to have two separate cost recovery mechanisms, one for contingency planning and one for the costs of assuming the role of a RoLR. The contingency planning costs through an upfront fee on the new retailer at the time the licence is granted, or an annual fee on the licensee.

Q16: Is the existing RoLR tariff provision an adequate cost recovery mechanism for RoLRs? Are there other cost recovery mechanisms that should be considered?

It is considered that the existing tariff provision is not adequate and the two cost recovery mechanisms detailed within the Discussion Paper would be required as a minimum to adequately address the cost recovery as a result of a RoLR event occurring. A further alternative may be to have a new licensee

ORDINARY MEETING

Meeting Date: 30 August 2011

provide a surety, such as a bank guarantee which could be adjusted for changes which may occur over time.

Q17: Should the RoLR arrangements include provisions allowing RoLR's to recover additional costs incurred as a result of its appointment as a RoLR prior to the occurrence of the RoLR event?

It is considered that RoLR's should not be financially disadvantaged through such an appointment. Costs incurred should not be spread over the existing customer base of the RoLR.

Q18: Should RoLR costs be recovered as an upfront or annual fee?

It is considered that the RoLR costs should be recovered on an ongoing annual basis as outlined within the discussion paper.

Section 5 advises that in a RoLR event the regulation requires that the RoLR must give the customer notice that the customer has become a customer of the RoLR, together with a copy of the special circumstances contract.

Q19: Are there additional customer notification or information requirements that should be imposed in a RoLR event?

It is considered that the customer notification or information requirements are adequate should a RoLR event be imposed.

Q20: Should there be communication with customers explaining what will happen if a RoLR event occurs in the future?

It is considered that the customer should be fully informed at each stage/phase of the RoLR event process.

Section 5 identifies that the current RoLR framework does not include provisions that ensure a RoLR has access to the network assets and suggests options for continuity of supply to customers.

Q21: Should the RoLR be required to have a network assets access agreement in place with the network operator as part of its contingency planning obligations?

It is considered that the RoLR should be required to have a network operator special circumstances contract as part of its contingency planning obligations as special access arrangements may be required to fulfil its obligations as a RoLR.

Q22: Or, should the existing agreement between the licensed network operator and the failed retail supplier automatically apply to the RoLR?

Refer to answer to Q.21.

Section 5 advises that the market consequences of a RoLR event principally relate to the transfer of financial responsibility for the affected customers from a failed retailer to a RoLR and outlines provisions which could satisfy that transfer. It also addresses the transfer of customer information from a failed retailer to a RoLR.

Q23: Are there additional matters regarding information transfer in a RoLR event that should be addressed under the RoLR regime?

It is considered that there are no additional matters evident that should be addressed regarding information transfer in a RoLR event under a RoLR regime.

Section 6 relates to Operator of Last Resort (OoLR) arrangements designed to respond to a network operator failure. The WIC Act does not currently include such arrangements. The implications of a network operator failure are more complex than a retail supplier failure as the technical skills required to operate and maintain infrastructure are quite different to those required to sell water to customers.

OoLR events can be complicated by a range of factors including the nature of the infrastructure, the standard of infrastructure, the capacity of the OoLR or utility that acquires the infrastructure, the capacity of the OoLR's infrastructure, and the ownership of the infrastructure.

The key questions/issues relating to OoLR arrangements are:

- Who can be appointed an OoLR and how? Who is able to make this appointment? Can an OoLR perform the role of a RoLR in a combined retail supplier and network operator failure? How long will an OoLR need to be appointed for?
- Under what circumstances can an OoLR be appointed?
- What are the contingency planning requirements of the nominated OoLR?
- Mechanisms for OoLR to recover costs incurred to plan and or assume the duties of an OoLR

Section 6 identifies that there are a range of issues that the OoLR regulatory framework will need to address to ensure continued supply of essential services to customers. These issues include the appointment of OoLR's starting with the requirement to appoint an OoLR and the nature and timing of the appointment.

Q24: What provisions should the scheme include with regard to the OoLR appointment process:

- a. Should the OoLR scheme require the appointment of a OoLR? If so, on what basis should the appointment be made? E.g. should it be a requirement that all network operator licences granted under the WIC Act have an appointed OoLR from the date the licence is granted? What should be the timing requirements of this appointment?
- b. Alternatively, at the point a licence is issued, should the scheme require that the Minister first determine if it is necessary to nominate an OoLR in relation to that scheme? Should there be a minimum timeframe in which the Minister must make the determination?

It is considered that the OoLR scheme should require that all network operator licences granted under the WIC Act have an appointed OoLR at the date the licence is granted.

Section 6 also identifies the responsibility for appointment of an OoLR.

Q25: Should the Minister or the licence applicant have the responsibility for appointing an OoLR?

It is suggested that the RoLR scheme should require that all network operator licences granted under the WIC Act have an appointed OoLR at the date the licence is granted. The appointment should be made following consultation with suitable operators and include adequate financial arrangements to ensure that the appointed OoLR will not suffer financial imposts due to such an appointment.

Section 6 also identifies the process for appointment including the organisational and technical capacity of the operator, the location of the failed operator and the willingness of other operators to take on the role of OoLR.

Q26: Should the OoLR arrangements include provisions that:

- a. prescribe criteria that must be considered before making an OoLR appointment? If so, what should these criteria include?
- b. require the operator to be consulted before being appointed as an OoLR?
- c. require the operator's concurrence before being appointed an OoLR?

ORDINARY MEETING

Meeting Date: 30 August 2011

To ensure that the appointed OoLR would be entering into the appointment with a clear understanding of what is required to be a OoLR, arrangements must include provisions that:

- a. prescribe criteria that must be considered before making a OoLR appointment for example, the financial and resource capacity of an organisation.*
- b. require the operator to be consulted before appointed as a OoLR.*
- c. require the operator to agree before being appointed a OoLR.*

Section 6 addresses the length of OoLR appointment as in most cases this would require a longer term solution in addition to arrangements to ensure continued supply in the short term. This may involve:

- Negotiating the sale or transfer of network assets
- Licensing a new operator or varying an existing operator's licence.

Q27: Should the OoLR arrangements have the flexibility of being either a temporary or permanent arrangement?

Once appointed, the OoLR arrangements should be permanent if the OoLR has both the financial capability and resources available to fulfil the role of OoLR.

Q28: Should the OoLR scheme include a provision that allows the Minister to review OoLR arrangements and progress made towards a permanent solution and decide whether to extend or terminate the OoLR arrangement?

The Minister should always have the power to review OoLR arrangements whether temporary or permanent and adjust the arrangements to suit the situation.

Section 6 also looks at the circumstances where a specialist private water utility operator could be granted a licence to construct, operate and maintain water infrastructure they do not own. As a consequence any OoLR arrangements that are developed must be flexible enough to deal with situations where a failed licensee is not the owner of the assets.

Q29: Where a public utility is unable to take over an essential service, should there be provisions that would allow for a private operator (licensed under the WIC Act for a separate scheme) to continue to provide that service on a temporary basis?

It is considered that such a provision would be acceptable and continue to allow for greater competition.

Q30: If a temporary licensing provisions were to exist:

- a. Should the circumstances under which a temporary licence could be granted be prescribed? If so, what should these prescriptions be?
 - b. What should be the maximum period of time a network operator could operate under a temporary licence before it would be required to obtain a full licence under the WIC Act for that scheme?
- a. It is considered that flexibility in the issue of a temporary licence is required to ensure all possibilities in an OoLR event can be accommodated.*
 - b. It is considered that the network operator should be required to obtain a full licence after a twelve month period.*

Q31: Where a private operator (who is already licensed under the WIC Act) continues to provide services they are not licensed for, when would it be appropriate for the operator to:

- a. seek a variation to its existing licence to operate the new service?
- b. be required to apply for another licence under the WIC Act for the new service?

ORDINARY MEETING

Meeting Date: 30 August 2011

- a. *It is considered appropriate that a temporary licence should be issued for the particular operation when the operator is appointed as an OoLR.*
- b. *It is considered appropriate that a network operator should be required to obtain another licence under the WIC Act for the new service after a twelve month period.*

Section 6 also addresses the situation where a combined retailer and operator (bundled supplier) fails, retaining the bundled service through an OoLR period may be desirable to protect the value of the business for the purposes of sale, rather than transferring its customers to a RoLR and effectively stripping the business of its retail function.

Q32: In the event of a bundled supplier (the retail supplier and network operator are the same entity) failure, should the OoLR regime have the ability to also appoint an OoLR to continue the retail supply functions?

It is considered that the OoLR should be given the opportunity, in the first instance, to carry out the bundled supplier function. Should the OoLR not have the capacity or be willing to undertake the role, then the OoLR regulatory regime should have the ability to appoint an OoLR for that purpose during the consultation period.

Section 6 identifies the need to specify the circumstances under which the Minister can declare a network operator failure and suggests that the events prescribed in the WIC Regulations would appear appropriate.

Q33: Are there other events that should trigger an OoLR event?

It is considered that the triggers prescribed in the WIC Regulations are adequate.

Section 6 advises that under the WIC Act, a RoLR is required to prepare a contingency plan for the Ministers approval and this could be used as the basis for developing OoLR contingency requirements which would address:

- The arrangements it has, or proposes to make , with the retail supplier to provide services
- Any limitations (such as limitations as to capacity and reliability) in its ability to operate network infrastructure
- The additional costs the OoLR is likely to incur if it has to operate water infrastructure
- Consequential effects on its ability to operate network infrastructure in the event of a network operator failure

Q34: Should nominated OoLRs be required to have a contingency plan?

It is considered that the nominated OoLR's should be required to have a contingency plan.

Q35: If so, should these planning requirements mirror those required for RoLRs?

It is considered that the planning requirements should mirror those required for RoLR.

Q36: Are there additional matters that should be addressed in an OoLR contingency plan?

It is considered that the prescribed matters are adequate.

Section 6 identifies that costs an OoLR could face include planning and maintaining the capacity for a OoLR event, operating the failed network operators infrastructure and capital costs necessary to ensure safe operation of the network.

Q37: Are there additional costs an OoLR is likely to incur?

It is considered that the discussion paper broadly covers areas of likely cost to an OoLR, however there could also be additional costs to a public utility for additional load based licence fees due to additional flows and replacement costs of assets depending upon the age of the infrastructure. The planning phase should identify major cost implications prior to appointment.

Section 6 identifies there are several broad issues to consider when deciding how additional costs incurred by an OoLR should be recovered, including:

- Who should bear the risk of failure of a new network operation- the operator, its customers, the broader community or others?
- How the costs of an OoLR event should be distributed – who are the beneficiaries and who should bear the costs in the event of a failure?
- What are the costs to be recovered and how do they relate to the income from the failed network operation?
- What pricing mechanisms should be used to recover the costs?
- When should charges be paid and costs recovered – before an OoLR event or after?
- How should cost recovery mechanisms be determined and regulated?

Section 6 states that cost recovery principles should:

- Account for full efficient costs: The full efficient costs of providing the services should be taken into account when determining the costs to be recovered.
- Be fair and equitable: Cost recovery should be equitable and protect customers from sudden price increases and ensure there are no perverse incentives for potential OoLR
- Be transparent: Cross subsidies should be limited, but if they exist, should be transparent
- Easy to administer: Cost recovery by an OoLR should be simple to administer and understand
- Distribute risks evenly: Any mechanism should appropriately distribute risks across network operators, customers and the broader community

Q38: Are these appropriate principles of OoLR cost recovery?

It is considered that the principles are generally appropriate, however there should generally be no cross subsidies and the distribution of risk should be limited to those who are benefiting from the network and the operator in particular, not the broader community.

Q39: Are there other principles that need to be applied?

It is considered that no additional principles need be applied.

Section 6 identifies possible cost recovery mechanisms that could be used in an OoLR event including:

- An upfront charge to network operators to cover the preliminary costs of establishing an OoLR for their networks
- Upfront bonds from network operators
- An industry wide fund
- A charge to customers affected by the OoLR event
- Costs spread over OoLR's entire customer base
- A combination of the above

Q40: Should the costs incurred by an OoLR be recoverable from newly licensed network operators?

It is considered that the costs incurred by an OoLR should be recoverable from the specific licensee for the particular scheme, it should not be passed on to the broader community.

ORDINARY MEETING

Meeting Date: 30 August 2011

Q41: Should these costs be recovered upfront or annually?

It is considered that the OoLR costs should be recovered through a combination of an upfront bond and an ongoing annual charge basis as outlined within the discussion paper.

Q42: Should such a charge be established by IPART or negotiated between the OoLR and the network provider?

It is considered that the charge should be negotiated between the OoLR and the network provider; however IPART should review the charges and provide advice.

Section 6 addresses upfront bonds from network operators to contribute to the OoLR costs in the event of a business failure.

Advantages of a bond:

- Ensure that network operators incorporate risk into their planning and pricing
- Protect customers from sudden price increases in the case of an OoLR event
- Provide a source of funds to cover the costs to the OoLR of stepping in to operate the failed provider's network.

Possible disadvantages of this option are:

- It could place an overly high financial burden on a new network operator, particularly small operators, and therefore act as a barrier to entry.
- The higher the bond (or more strict the requirements) the more risk is borne by the network operator.
- It would be difficult to estimate the appropriate bond amount to recover costs in the event of an OoLR event.
- If the bond amount was passed onto the network operator's customers, they would bear the business risk and may end up paying a premium for the service.

Q43: Under this option, is there a need to limit the amount passed through into prices paid by customers of a private network operator?

It is considered that limiting the amount and risk passed onto customers would be essential. The private network operator should bear the majority of the risk as they should be the beneficiaries of a successful business.

Q44: What risk management considerations are involved in determining a bond amount?

It is considered that in addition to those listed within the Discussion Paper, the following risk management considerations should be involved in determining a bond amount:

- *The scale of the network/operation and the number of customers committed to the system.*
- *Location in relation to other operators.*
- *Any identified costs which an OoLR would be required to fund should an OoLR event occur.*

Q45: Are there any other issues associated with this approach?

It is considered that the Discussion Paper covers the issues of concern.

Section 6 also suggests an industry wide fund which could be an upfront charge to operators at the time the licence is granted.

ORDINARY MEETING

Meeting Date: 30 August 2011

Possible advantages of this approach are:

- this type of risk-based approach is likely to more equitably manage the risks associated with new operators, as incumbent operators (including OoLR) would have a lower risk of failure and therefore pay a lower amount into the fund
- there would be an opportunity for allowing this cost to be passed through into prices, meaning that the OoLR could recover some or all of its contribution.

Possible disadvantages of this approach:

- it may be financially prohibitive to small projects that would otherwise be efficient, and therefore act as a barrier to competition
- what would monies from the fund be used for if there are no OoLR events
- it would be difficult to determine the appropriate contribution of each operator.

Q46: Are there any other issues associated with this approach?

It is considered that the upfront bond is the more suitable approach as it relates to the risk profile of the operator and the size of the operation. There would also be additional management issues in relation to the operation of an industry wide fund.

Section 6 also canvasses the provision of a fee payable by customers transferred to the OoLR to cover some or all of the costs associated with an OoLR event.

Possible advantages of this approach:

- provide a more accurate reflection of the magnitude of costs of providing services to this customer group if the failure was due to the new network operator charging prices that did not cover its costs
- reflect a user pays approach because the customers of the failed provider would not be subsidized by the OoLR's other customers
- provide a mechanism for the OoLR to recover costs associated with an OoLR event in excess of those able to be recovered through the regulated tariff it charges its existing customers.

Possible disadvantages of this approach:

- if the customer base of the failed operator is small (e.g. a small development area using recycled water in an isolated network), additional costs to each customer may be significant
- it would transfer the business risk from the operator to its customers and penalise the customers if there was a failure event
- customers could not easily switch to a different network operator to avoid this price increase, as there would usually be only one network (i.e. they cannot exercise market choice)
- it is likely to be difficult to estimate the costs associated with an OoLR event, as these are unique to each OoLR event and could vary significantly.

Q47: Should the costs incurred by an OoLR be recoverable from affected customers?

It is considered that the costs/risks should be borne by the newly licensed private operators. It would not be equitable if customers were to pay for the newly licensed operators failure.

Q48: Are there any other issues associated with charging affected customers to recover the costs of an OoLR event?

It is considered that equity would be the main issue as stated in the response to Q47.

Q49: Given that customers would be bearing the cost of licensee failure:

ORDINARY MEETING

Meeting Date: 30 August 2011

- a. what measures, if any, should be in place to ensure potential purchasers/tenants are aware of the costs associated with licensee failure?
- b. should the risk management/contingency planning requirements for licence applicants under the WIC Act be strengthened? If so, how?
- c. What are some key considerations in developing a methodology to recover costs from affected customers?

It is considered that notwithstanding that customers should not bear the cost of licensee failure, should that ultimately occur, then:

- a. *The information relating to potential costs associated with licensee failure should be outlined completely within the potential purchasers/tenants contract.*
- b. *Yes, by providing mechanisms whereby customers are not responsible for bearing the cost of licensee failure.*
- c. *Should the costs be recovered from customers those costs should be spread over a long period to reduce the financial impact. As previously stated, the costs should be funded by the failed licensee through a bond mechanism.*

Section 6 canvasses the additional costs to the OoLR of operating the new network being recovered across the whole of the OoLR's customer base through the price path.

Possible advantages of this approach are:

- the additional cost per customer would be lower, as it would be shared across a greater number of customers.
- the true costs of network provision would be incorporated into prices, which may not have been the case if the network operator failed because prices did not cover its costs.
- it would protect affected customers from a price spike, which may have affordability impacts.

Possible disadvantages of this approach are:

- the OoLR's customers would be subsidising the failed network operator's customers (who would potentially be paying an artificially low price for the service).
- if another private provider is the OoLR, there may be no additional customer base (i.e. it would be paid by affected customers) or the existing customer base may be small and therefore cost could be significant to customers.
- the risk of business failure would be borne by a third party, limiting the accountability of the failed network operator.
- it could lead to intergenerational equity issues if costs are recovered over a long period of time – future generations could bear the cost of failed network providers.

Q50: Should the costs incurred by OoLR be recoverable from an OoLR's customer base?

It is considered that this mechanism would be inequitable for those customers not affected by the failed operations. In fact it is possible that some of the OoLR customers will not be in a locality that is even close to the operation being undertaken by an OoLR.

Q51: How should the price/charge be calculated if incorporated in the price path? Should this calculation be different if the OoLR was a regulated water authority versus a local council or a private operator?

It is considered that the calculation of the price/charge if incorporated in the price path (which is not supported) should be as detailed within the Discussion Paper. There should be no difference if the OoLR was a regulated water authority, a local council or a private operator.

Q52: Are there any other issues associated with charging affected customers to recover the costs of an OoLR event?

It is considered that the Discussion Paper adequately covers the issues.

ORDINARY MEETING

Meeting Date: 30 August 2011

Q53: How could options be combined to achieve appropriate cost recovery, risk management and equity outcomes?

It is considered that bond payments by a licensee to cover an OoLR event is the preferred approach followed by an industry fund approach. The bonds/industry fund payments could be provided by a combination of an upfront payment by the licensee and profits generated through the operation of the scheme.

In summary, this Discussion Paper has raised a number of points, in which a submission to the Department outlining the above comments is considered appropriate.

Conformance to Community Strategic Plan

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

- A balanced set of decisions that integrate jobs, housing, infrastructure, heritage, and environment that incorporates sustainability principles.

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

- Work with public and private sectors to ensure funding and delivery of improved services and infrastructure.

Financial Implications

There are no financial obligations generated from this report, however if a private water authority was to fail within the Hawkesbury area, Council could be nominated as an RoLR or OoLR and this may have financial implications on the operation of the Windsor Sewerage Scheme.

RECOMMENDATION:

That the questions raised throughout the Retailer of Last Resort and Operator of Last Resort arrangements under the Water Industry Competition Act 2006 discussion paper, answered within the report be provided as a submission to the NSW Government, Department of Finance and Services.

ATTACHMENTS:

- AT - 1** Retailer of Last Resort and Operator of Last Resort Arrangements under the Water Industry Competition Act 2006 Discussion Paper – July 2011 – *(to be distributed under separate cover)*.

oooO END OF REPORT Oooo

ORDINARY MEETING**Meeting Date:** 30 August 2011**SUPPORT SERVICES****Item: 191 SS - Monthly Investments Report - July 2011 - (96332, 95496)****REPORT:****Executive Summary**

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

This report indicates that Council held \$39.15 million in investments at 31 July 2011.

It is recommended that this report be received and noted.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

The following table indicates that Council held \$39.15 million in investments as at 31 July 2011. Details of the financial institutions with which the investments were made, date investments were taken out, the maturity date (where applicable), the rate of return achieved, the credit rating of the institutions both in the short term and the long term, and the percentage of the total portfolio, are provided below:

Investment Type	Institution Short Term Rating	Institution Long Term Rating	Lodgement Date	Maturity Date	Interest Rate %	Principal \$	Percentage of Portfolio	Total \$
On Call								
CBA	A1+	AA	31-Jul-11		5.25%	3,950,000	10.11%	3,950,000
Term Investments								
ANZ	A1+	AA	17-Nov-10	17-Aug-11	6.30%	1,000,000	2.55%	
ANZ	A1+	AA	18-May-11	16-May-12	6.35%	500,000	1.28%	
ANZ	A1+	AA	29-Nov-10	26-Oct-11	6.36%	1,500,000	3.83%	
ANZ	A1+	AA	25-Nov-10	23-Nov-11	6.60%	1,000,000	2.55%	
ANZ	A1+	AA	25-Nov-10	23-Nov-11	6.60%	2,000,000	5.11%	
ANZ	A1+	AA	23-Feb-11	22-Feb-12	6.24%	1,200,000	3.07%	
ANZ	A1+	AA	10-Mar-11	20-Dec-11	6.35%	2,000,000	5.11%	
ANZ	A1+	AA	14-Mar-11	11-Jan-12	6.35%	2,000,000	5.11%	
ANZ	A1+	AA	23-Mar-11	21-Mar-12	6.24%	500,000	1.28%	

ORDINARY MEETING

Meeting Date: 30 August 2011

Bankwest	A1+	AA	04-May-11	05-Oct-11	6.00%	1,000,000	2.55%	
Credit Union Australia	A-2	BBB+	23-Feb-11	24-Aug-11	6.21%	1,000,000	2.55%	
Defence Force Credit Union Ltd	unrated	unrated	18-May-11	21-Sep-11	6.11%	500,000	1.28%	
ING Direct	A-1	A+	23-Feb-11	21-Sep-11	6.22%	1,000,000	2.55%	
NAB	A1+	AA	17-Nov-10	16-Nov-11	6.46%	1,000,000	2.55%	
NAB	A1+	AA	08-Dec-10	10-Aug-11	6.39%	2,000,000	5.11%	
NAB	A1+	AA	02-Dec-10	07-Dec-11	6.44%	1,000,000	2.55%	
NAB	A1+	AA	03-Dec-10	07-Dec-11	6.45%	2,000,000	5.11%	
NAB	A1+	AA	08-Dec-10	07-Dec-11	6.44%	500,000	1.28%	
NAB	A1+	AA	20-Jan-11	14-Sep-11	6.22%	2,000,000	5.11%	
NAB	A1+	AA	09-Feb-11	09-Feb-12	6.27%	1,000,000	2.55%	
NAB	A1+	AA	15-Jun-11	25-Jan-12	6.16%	2,000,000	5.11%	
NAB	A1+	AA	27-Jul-11	25-Jul-12	6.29%	1,000,000	2.55%	
NAB	A1+	AA	06-Jul-11	05-Jul-12	6.25%	2,000,000	5.11%	
Westpac	A1+	AA	20-Jan-11	19-Oct-11	6.20%	1,000,000	2.55%	
Westpac	A1+	AA	11-May-11	16-Nov-11	6.15%	1,000,000	2.55%	
Westpac	A1+	AA	22-Jun-11	25-Jan-12	6.18%	2,000,000	5.11%	
Westpac	A1+	AA	01-Jun-11	01-Oct-11	6.15%	1,500,000	3.83%	35,200,000
TOTAL INVESTMENT AS AT 31 JULY 2011								39,150,000

Bench Marking

Bench Mark	Bench Mark %	Actual %
UBS 90 Day Bank Bill Rate	5.07%	6.30%
Reserve Bank Cash Reference Rate	4.75%	5.25%

Performance by Type

Category	Balance \$	Average Interest	Difference to Benchmark
Cash at Call	3,950,000	5.25%	0.50%
Term Deposit	35,200,000	6.30%	1.23%
Total	39,150,000	6.20%	1.13%

ORDINARY MEETING

Meeting Date: 30 August 2011

Restricted Funds

Restriction Type	Amount \$
External Restrictions -S94	6,818,475
External Restrictions - Other	8,563,443
Internal Restrictions	18,425,076
Unrestricted	5,343,006
Total	39,150,000

Funds subject to external restrictions cannot be utilised for any purpose other than that specified in line with legislative requirements. Externally restricted funds include funds relating to S94 Contributions, Domestic Waste Management, Stormwater Management and Grants.

Internal restrictions refer to funds allocated through a Council Resolution, for specific purposes or to meet future known expenses. Whilst it would “technically” be possible for these funds to be utilised for other purposes, such a course of action, unless done on a temporary internal loan basis, would not be recommended nor would it be “good business practice”. Internally restricted funds include funds relating to Tip Remediation, Plant Replacement, Risk Management and Election.

Unrestricted funds may be used for general purposes in line with Council's adopted budget.

Investment Commentary

The investment portfolio decreased by \$4.18 million for the month of July, 2011. During July, various income was received totalling \$3.86 million, including rate payments amounting to \$1.61 million, while payments to suppliers and staff costs amounted to \$7.78 million.

The investment portfolio currently involves a number of term deposits and on-call accounts. Council's current investment portfolio is not subject to share market volatility.

As at 31 July 2011, Council has invested \$3.5 million with 2nd tier financial institutions, with the remaining funds being invested with 1st tier institutions. The investment of up to \$1 million with 2nd tier Authorised Deposit Taking Institutions (ADIs) is entirely covered by the free Government Guarantee Scheme, and is in accordance with Council's Investment Policy. Also, Council's adopted Investment Policy allows Council to invest above \$1 million with 2nd tier Authorised Deposit Taking Institutions that are wholly owned subsidiaries of major Australian trading banks, subject to conditions stipulated in the Policy.

The investment portfolio is regularly reviewed in order to maximise investment performance and minimise risk. Independent advice is sought on new investment opportunities and Council's investment portfolio is independently reviewed by Council's investment advisor each calendar quarter.

Council's investment portfolio complies with Council's Investment Policy, adopted on 28 June 2011.

Investment Certification

I, Emma Galea (Responsible Accounting Officer), hereby certify that the investments listed in this report have been made in accordance with Section 625 of the Local Government Act 1993, Clause 212 of the Local Government (General) Regulation 2005 and Council's Investment Policy.

Conformance to Community Strategic Plan

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

- Be financially sustainable to meet the current and future needs of the community based on a diversified income base, affordable and viable services

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

ORDINARY MEETING

Meeting Date: 30 August 2011

- Maintain and review a sustainable long term financial framework.

Financial Implications

Funds have been invested with the aim of achieving budgeted income in 2011/2012.

RECOMMENDATION:

The report regarding the monthly investments for July 2011 be received and noted.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 192 **SS - June 2011 Quarterly Review - 2010/2011 Management Plan - (95496, 96332)**

Previous Item: 126, Extraordinary (22 June 2010)

REPORT:

Executive Summary

The Local Government Amendment (Planning and Reporting) Act 2009 provides transitional provisions for phasing in the legislative requirements of the Integrated Planning and Reporting framework over a three-year period. Transitional provisions provide that councils continue to operate under the legislative requirements in place prior to the Amendment Act, until such time as their Group commences under the new Integrated Planning and Reporting framework. Hawkesbury City Council has opted to be a Group 3 council, implementing the Integrated Planning and Reporting Framework by June 2012.

In light of transitional provisions, the June 2011 Quarterly Review has been prepared in accordance with the legislative requirements in place prior to the Amendment Act.

In accordance with Clause 203 of the Local Government (General) Regulation 2005, within two months of the end of each quarter, Council is required to review progress in achieving the objectives set out in its Management Plan.

Section 407 (Repealed) of the Local Government Act 1993 requires the General Manager to report to Council the extent to which strategies set by the Council's current Management Plan have been achieved during that quarter.

This report and the relevant attachment provide information on Council's financial performance, financial position and progress in achieving the objectives set out in its Management Plan, as at 30 June 2010.

Clause 211 of the Local Government (General) Regulation 2005, allows for votes relating to works, services, facilities and goods and services started, carried out, provided or contracted, to be carried out or provided before the end of the year concerned, not to lapse at the end of the financial year. Included in the attachment is an itemised list of projects falling in this category as at 30 June 2011, requiring funding to be carried over into the 2011/2012 financial year.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

Council adopted its Management Plan for 2010/2011 on 22 June 2010.

The Quarterly Review for the quarter ending 30 September 2010 was adopted by Council on 30 November 2010. The Quarterly Review for the quarter ending 31 December 2010 was adopted by Council on 15 February 2011. The Quarterly Review for the quarter ending 31 March 2011 was adopted by Council on 31 May 2011.

The June 2011 Quarterly Review has been prepared and is attached to this report as Attachment 1.

Financial Position

As part of the Management Plan Review, Clause 203 of the Local Government (General) Regulation 2005 requires a review of the income and expenditure for the year in comparison to budget estimates.

ORDINARY MEETING

Meeting Date: 30 August 2011

The June 2011 Review resulted in an estimated surplus position at year-end of \$111,938, subject to final audit. It is proposed that this surplus be transferred to the Workers Compensation Reserve.

The June 2011 Quarterly Budget Review results in a balanced end of year position, and in the opinion of the Responsible Accounting Officer, maintains a satisfactory short term financial position for Council.

Operating Income

For the year ended 30 June 2011, Council's total operating revenue from rates, fees and charges, grants and contributions and other revenue is \$55.8M, exceeding the Budget by \$1.23M. This variance has mostly resulted from the advance payment of the first 2011/2012 Financial Assistance Grant in the amount of \$1.15M.

A range of revenue streams have contributed to the remaining variance. Profit on sale of assets exceeds the budgeted amount by \$0.3M. It is to be noted that while this profit inflates the operating revenue figure, it does not have an effect on the retained surplus/ deficit available for general funding purposes. The majority of the remaining positive variance has resulted from Animal Control income performing better than budgeted. Also contributing to the variance is a number of unbudgeted grants received in the last quarter of 2010/2011. As grant income is matched with grant expenditure, the additional grant income received has no impact on Council's net result.

Operating Expenditure

Council's operating expenditure is required for the provision of core services including road maintenance, parks, cultural and recreational facilities, regulatory services, building and development control, waste management, environmental and sewerage facilities. For the year ending 30 June 2011, total operating expenditure, excluding depreciation and including grant funded works, is \$47M compared to a budget of \$50M. Operational funds of approximately \$2.8M are requested to be carried over to the 2011/2012 financial year as part of this Review. These include grant funded works. Unspent amounts relating to Reserve funded programs remain in their respective Reserves. Major favourable variances include IT network administration, expenditure on corporate systems and legal expenditure.

A number of operating income and expenditure budget line items ended the 2010/2011 financial year with a budget variance within acceptable variation limits. The items detailed in this report are some of the major variations identified.

The budgetary controls in place at Council ensure that major variances or trends are identified in a timely manner, and accounted for as part of quarterly budget reviews. Managers are required to explain variances outside the acceptable threshold on a monthly basis, and are required to address these variances as part of the quarterly review process.

Capital Expenditure

Council manages and maintains \$633M worth of assets, and during 2010/2011 has spent \$22.8M of a \$38M capital budget on road construction, kerb, guttering and drainage works, bridges, footpaths, open spaces, stormwater assets, sewerage assets, waste management assets, public works plant, community buildings and fleet replacement. Capital works requested to be carried over to the 2011/2012 financial year amount to \$16.1M.

A detailed list of projects requested to be carried over to the 2011/2012 financial year is contained within the attachment to this report. It is to be noted that the amount carried over for capital expenditure includes \$12.7M of works that are grant or reserve funded.

Investments

As at the end of June 2011, Council's investment portfolio amounted to \$43.3M, averaging earnings of 6.14%.

ORDINARY MEETING

Meeting Date: 30 August 2011

Restricted Assets

As at 30 June 2011, Council's Reserves amount to \$35.4M, with \$17.6M being externally restricted, and \$17.8M being internally restricted.

The more significant items of the June 2011 Review include:

- **Animal Control Income – Favourable Variance \$105K**
(Adopted Management Plan –Part 2 – CP Pg 18)

The full year budget for Animal Control income for 2010/2011 is \$430K. As at the end of June 2011, actual income received through the program is \$534K, resulting in a favourable variance of \$105K. The majority of this variance has resulted from an increased level of registration fees being received.

- **Legal Expenditure – Favourable Variance \$360K**
(Adopted Management Plan –Part 2 – SS Pg 50)

The full year budget for legal expenditure for 2010/2011 is \$486K. For the financial year ending 30 June 2011, total legal expenditure was \$192K, resulting in a positive variance of \$294K. In addition, \$66K was received in respect of legal proceedings determined in favour of Council. These payments relate to proceedings, which may have commenced in previous financial years.

- **IT Network Administration – Favourable Variance \$106K**
(Adopted Management Plan –Part 2 – SS Pg 48)

As at the end of June 2011, actual expenditure incurred in relation to information technology network administration was \$106K under budget. The Disaster Recover Site project did not progress to the stage where lease commitments are incurred during 2010/2011, and will now occur in 2011/2012. There were savings made as a result of using internal resourcing in favour of external consultants.

- **IT Corporate Systems – Favourable Variance \$123K**
(Adopted Management Plan –Part 2 – SS Pg 48)

The full year budget for corporate systems for 2010/2011 is \$659K. Actual expenditure incurred during 2010/2011 is \$536K, resulting in a saving of \$123K. The upgrade of some corporate systems has been delayed until 2011/2012, but the majority of the savings have resulted from the reduced reliance on consultancies, with an increased use of internal resources.

- **Employee Leave Provision – Unfavourable Variance \$764K**

Council is required to ensure that it maintains its employee leave entitlements provisions at an appropriate level. Council's liability in respect of employee leave entitlements as at 30 June 2011 has been determined, and results in an increase in the overall provisions required for Annual Leave, Leave in Lieu, Long Service Leave and Pre 1993 Sick Leave of \$764K.

- **Reserve Funded Variances**

The following adjustments are within internally or externally restricted funds, and consequently have no net impact on Council's overall position.

- *Contractors Charges (Waste Management Facility)* – A favourable variance of \$215K was incurred over 2010/2011 in relation to contractors charges at the Waste Management Facility. As at the end of June 2011, \$584K had been spent as opposed to the Full Year Budget of \$800K. This variation has resulted from reduced levels of dumping at the Waste Management Facility.
- *Section 88 Contributions* – A favourable variance of \$197K occurred in respect of the Section 88 contributions paid in the current financial year. As at the end of the fourth quarter, \$1.72M had been paid against a Budget of \$1.92M. Section 88 contributions are based on the tonnage of waste that is

ORDINARY MEETING

Meeting Date: 30 August 2011

not recycled at the Waste Management Facility. The decrease in tonnages processed has led to the reduction in contributions payable.

- *Sullage Collection Residential Annual Charges* – An unfavourable variance of \$218K resulted in respect of the Annual Residential Sullage Collection Charges received in the current financial year. As at the 30 June 2011, \$1.78M had been raised against a Budget of \$2M. This shortfall in income can be attributed to the conversion of properties onto the Sydney Water network in Freemans Reach, Glossodia and Wilberforce.
- *Treatment Works Operating Expense* – An unfavourable variance of \$127K was incurred in respect to the treatment works operating expenses paid in the current financial year. As at the 30 June 2011, \$1.22M had been paid against a Budget of \$1.01M. This over expenditure has resulted from additional treatment works conducted at the South Windsor Sewerage Treatment Plant.
- ***Workers Compensation Reserve – Transfer \$112K***

The surplus resulting after all the necessary adjustments and subject to final audit is \$112K. This surplus has been transferred to the Workers Compensation Reserve in order to maintain the Reserve balance at a sustainable level.

It is to be noted that the preparation of the annual financial statements entails the consolidation of other entities accounts with Council's figures. The income and expenses of the Hawkesbury Sports Council are consolidated with Council's figures. Also, the equity interest in Westpool is taken into account. These adjustments are reflected in Council's Annual Financial Statements.

Community Strategic Plan Milestone Achievements – Operational Plan

The Community Strategic Plan (CSP) contains a number of short term Milestones to assist in the monitoring of the long term CSP. The following is a summary of the progression and achievements of some of the milestones, grouped in the CSP themes, in the Strategy.

Looking After People and Place

CSP Milestone: Prepare Residential Land Strategy

The Draft Hawkesbury Residential Land Strategy was completed and placed on public exhibition from October 2010 to the end of January 2011. As a result of public comments, amendments were made and the Hawkesbury Residential Land Strategy was adopted by Council on 10 May 2011.

CSP Milestone: Prepare flood risk management study and plan

The draft flood risk management study and plan were presented to the Floodplain Risk Management Advisory Committee in June 2011. The Committee is currently reviewing the significant detail contained in the study and plan with a view to recommending, in the late second half of 2011, to Council that the documents be placed on public exhibition.

CSP Milestone: Review and update heritage list in Hawkesbury Local Environmental Plan

An updated heritage list has been included in the Standard Template Local Environmental Plan. The draft plan was adopted by Council on 7 June and submitted to the NSW Department of Planning and Infrastructure in June 2011.

Caring for Our Environment

CSP Milestone: Implement plans to save energy and water

Quarterly reports on energy and water usage have been set up and will be provided to Management Executive (MANEX). Summary of usage reports are contained on Council's Intranet site.

ORDINARY MEETING

Meeting Date: 30 August 2011

CSP Milestone: Environmental Education for the community

The Sustainable Living Guide (online portal system) was launched in March 2011 on Council's website. It was promoted widely to the community and also featured at the Hawkesbury Show.

CSP Milestone: Review, develop and implement waste and recycling strategy

The Environmentally Sustainable Procurement Guide and Operational Standard were adopted by MANEX in June 2011 to help staff apply the five sustainability principles of environmentally preferable procurement to all acquisitions.

Linking the Hawkesbury

CSP Milestone: Develop road hierarchy plan and prepare and implement Asset Management System

An action plan has been developed for meeting the asset planning requirements of the Integrated Planning and Reporting legislation. The Asset Management Policy was adopted by Council on 29 September 2009 and the Strategy has been endorsed by MANEX and implementation is underway. Council considered a report on the tender for an asset management system on 12 July 2011.

CSP Milestone: Implement Mobility Plan including Pedestrian Access and Bike Plan

The Hawkesbury Mobility Plan was adopted by Council on 11 May 2010. The Hawkesbury Mobility Plan Implementation Committee met on 19 May 2011. Implementation included construction of two sections of shared bike path at Clarendon.

Supporting Business and Local Jobs

CSP Milestone: Encourage and Support Hawkesbury business and employment groups

Various activities including: Business and Employment Market knowledge; Economy Research and Knowledge; self-help business options; and Business/Employment Training and Skills opportunities have been implemented.

Shaping Our Future Together

CSP Milestone: Conduct bi-annual community survey program

Planning for the Hawkesbury Community Survey 2011 commenced with Micromex being selected as the preferred provider (from three quotes). The 2011 Survey Reference Group met in June 2011 to develop the draft survey questions which were considered by Council at a Briefing Session in August 2011 and the survey is being undertaken during August and September 2011. The results of this survey will be reported to Council late in 2011.

CSP Milestones: Develop and implement community participation and partnership programs

Council's Youth Participation Officer is working with youth services to develop a Youth Services Plan (in line with recommendations from the Youth Summit).

Council's Community Resident Panel assisted with the surveys and workshops for Council's Kerbside Bulky Waste Collection review.

Conformance to Community Strategic Plan

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

ORDINARY MEETING

Meeting Date: 30 August 2011

- Be financially sustainable to meet the current and future needs of the community based on a diversified income base, affordable and viable services

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

- Maintain and review sustainable long term financial framework

Funding

Funding and budget impacts have been specified within this report and attached review documentation.

RECOMMENDATION:

That:

1. The information contained in the report on the 2010/2011 Management Plan – June 2011 Quarterly Review be received.
2. The Quarterly Review of the 2010/2011 Management Plan for the period ending 30 June 2011 be adopted.

ATTACHMENTS:

- AT - 1** 2010/2011 Management Plan Review – June 2011 Quarter - *(to be distributed under separate cover)*

oooO END OF REPORT Oooo

ORDINARY MEETING**Meeting Date:** 30 August 2011

Item: 193 **SS - Consultants Utilised by Council - 1 January 2011 to 30 June 2011 - (95496, 79337)**

Previous Item: 187, Ordinary (14 June 2005)

REPORT:**Executive Summary**

At the meeting of Council held on 14 June 2005, consideration was given to a report regarding the consultants utilised by Council in 2003/2004 and 2004/2005. Subsequently, in recent years, Council has been provided with reports outlining consultants utilised by Council on a six monthly basis.

The purpose of this report is to provide details of the various firms, or persons, the Council has utilised as consultants, for the period January to June 2011.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

At the meeting of Council held on 14 June 2005, consideration was given to a report regarding the consultants utilised by Council. The report detailed various consultants, the purpose of the engagement, and the expenditure in 2003/2004 and 2004/2005.

Subsequently, in recent years Council has considered reports outlining consultants utilised by Council for six monthly periods, being January to June and July to December each year.

The following table provides details of the various firms or persons the Council has utilised as consultants for the period January to June 2011, detailing the purpose of the consultancies, and the amount paid in this period:

Firm	Purpose	Funding Source	External Requirement	6 Months to 30/06/2011
Accessible Arts	Workshop Fees – Performance Program	Grant Funds	No	\$500.00
Damian Allan	Valuation of artillery pieces at Richmond and Windsor memorials	General Funds	Division of Local Government	\$1,000.00
ALS Laboratory Group	South Windsor Effluent Reuse Scheme	Grant Funds	Department of Health	\$26,599.00
Anthony & Associates Inc	Heritage Planning Slab Barn Study	General Funds	No	\$1,000.00
Aprince Consulting Pty Limited	Bulk Waste Service Tender	Reserve Funds	No	\$9,400.00

ORDINARY MEETING

Meeting Date: 30 August 2011

Firm	Purpose	Funding Source	External Requirement	6 Months to 30/06/2011
Archaeological & Heritage Management Solutions	Aboriginal Heritage Advice – Yarramundi Reserve	Grant Funds	Department of Planning	\$550.00
Austral Archaeology Pty Ltd	Aboriginal Archaeological Salvage Excavation – Museum site	General Funds	NSW Heritage Office	\$39,145.00
Berzins Environmental Planning Pty Ltd	Various Development Applications	General Funds	No	\$3,840.00
Berzins Environmental Planning Pty Ltd	Hawkesbury LEP January 2011	General/Grant Funds	No	\$840.00
Bewsher Consulting Pty Ltd	Hawkesbury Overland Flow Study	Grant Funds	Office of Environment & Heritage	\$8,820.09
Bewsher Consulting Pty Ltd	Hawkesbury Floodplain Risk Management Study and Plan	Grant Funds	No	\$113,472.19
David Braunstein	Training Package for incident reporting	General Funds	No	\$1,050.00
Consulting Earth Scientists Pty Ltd	WMF monthly and quarterly environmental monitoring	Internal Reserve	Office of Environment & Heritage	\$43,704.81
Donald Ellsmore Pty Ltd	Heritage advisory services	General Funds	No	\$9,335.00
GeoEnviron Consultancy Pty Ltd	Pavement Investigation	General Funds / Grant Funds	No	\$12,685.00
Golder Associates Pty Ltd	Environmental monitoring – East Kurrajong landfill	Reserve	Office of Environment & Heritage	\$6,824.00
Golder Associates Pty Ltd	Landfill gas evaluation and feasibility study	Grant Funds	Office of Environment & Heritage	\$4,500.00
Christopher Hallam and Associates Pty Ltd	Windsor Town Centre Traffic Study	General Funds	No	\$25,200.00
Hydro-Plan	Irrigation Design – Richmond Park	General Funds	No	\$3,150.00
IAB Services	Various Audits	General Funds	No	\$20,816.20
Landarc	Generic Plans of Management & categorisation of Community Land	General Funds	Division of Local Government	\$1,400.00
Lunney Watt and Associates Pty Ltd	Proposed Drainage Easement	General Funds	No	\$1,000.00

ORDINARY MEETING

Meeting Date: 30 August 2011

Firm	Purpose	Funding Source	External Requirement	6 Months to 30/06/2011
Minerva Consulting Group	OH&S Professional Services September 2010, March – April 2011	General Funds	No	\$27,572.50
Montgomery Planning Solutions	Report for proposed development	General Funds	No	\$3,900.00
Paradigm Digital Pty Ltd	South Windsor Effluent Reuse Scheme	Grant Funds	Department of Health	\$13,600.00
The Playground Doctor	Council playground site inspections	General Funds	No	\$4,340.00
Public Works NSW Water Solutions	South Windsor Pump Station V and South Windsor Effluent Reuse Scheme	Grant Funds	No	\$13,913.00
PricewaterhouseCoopers	Review of Co-Generation Plant Financial Modelling	General Funds	No	\$5,000.00
SGS Economics and Planning	Land Use Assessment - Macquarie Street Development	General Funds	No	\$29,130.94
SGS Economics and Planning	Regional Tourism Development Feasibility Study	General Funds	No	\$9,407.20
Spectra Financial Services	Investment advisory services January to June 2011	General Funds	DLG Investment Policy Guidelines	\$6,000.00
Sphere Property Consultation	Advisory services - Macquarie Street development	General Funds	No	\$7,800.00
Vekta Pty Ltd	WMF Volumetric Survey and Plan preparation	Internal Reserve	Office of Environment & Heritage	\$10,900.00
Waste Audit and Consultancy Services Pty Ltd	Landfill Audit	Grant Funds	Office of Environment & Heritage	\$43,900.00
John Woodhouse	Staff Consultation	General Funds	No	\$1,597.00
KD Wood Valuations (Aust) Pty Ltd	Rental valuations and other valuation services	General Funds	No	\$3,000.00
J Wyndham Prince	Consultancy & Engineering Services North Richmond Drainage	General Funds	No	\$6,770.00
TOTAL				\$521,661.93

ORDINARY MEETING

Meeting Date: 30 August 2011

Conformance to Community Strategic Plan

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

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

Funding

This is an information report requested by Council and costs detailed have been met within existing budgets.

RECOMMENDATION:

That the information concerning consultancies utilised by Council, during the period January to June 2011, be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

Item: 194 SS - Pecuniary Interest Returns - (96333, 95496)**REPORT:****Executive Summary**

The Local Government Act, 1993 details the statutory requirements in respect of the lodgement of Disclosure of Pecuniary Interests and Other Matters Returns by Councillors and Designated Persons. This Report provides information regarding a Return recently lodged with the General Manager by a Designated Person. It is recommended that Council note that the Disclosure of Pecuniary Interests and Other Matters Return lodged with the General Manager has been tabled in accordance with the Local Government Act 1993.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Background

Section 450A of the Local Government Act, 1993 relates to the register of Pecuniary Interest Returns and the tabling of these Returns, which have been lodged by Councillors and Designated Persons. Section 450A of the Act is as follows:

"450A Register and tabling of returns:

1. *The general manager must keep a register of returns required to be lodged with the general manager under section 449.*
2. *Returns required to be lodged with the general manager under section 449 must be tabled at a meeting of the council, being:*
 - (a) *in the case of a return lodged in accordance with section 449 (1)—the first meeting held after the last day for lodgement under that subsection, or*
 - (b) *in the case of a return lodged in accordance with section 449 (3)—the first meeting held after the last day for lodgement under that subsection, or*
 - (c) *in the case of a return otherwise lodged with the general manager—the first meeting after lodgement."*

With regard to Section 450A(1), a register of all Returns lodged by Councillors and Designated Persons in accordance with Section 449 of the Act is currently kept by Council, as required by this part of the Act.

With regard to Section 450A(2), all Returns lodged by Councillors and Designated Persons under Section 449 of the Act must be tabled at a Council Meeting, as outlined in Sections 450A(2)(a), (b) and (c) above.

With regard to Section 450A(2)(a), the following Section 449(1) Return has been lodged:

Position	Return Date	Date Lodged
Manager Corporate Services & Governance	9/5/2011	23/5/2011

The Return has been lodged prior to the due date for the receipt of the Return, being three months after the return date.

ORDINARY MEETING

Meeting Date: 30 August 2011

The above details are now tabled in accordance with Section 450A(2)(a) of the Act and the Return is available for inspection if requested.

Conformance to Community Strategic Plan

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

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

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

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

Financial Implications

No financial implications applicable to this report.

RECOMMENDATION:

That the information be received and noted.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 30 August 2011

CONFIDENTIAL REPORTS

Item: 195 **GM - Co-Generation Plant - (79351)**

Previous Item: 150, Ordinary (29 June 2010)
 38, Ordinary (23 February 2010)
 10, Ordinary (2 February 2010)
 184, Ordinary (8 September 2009)
 32, Ordinary (26 February 2008)

Reason for Confidentiality

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

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(g) of the Act as it relates to legal advice concerning possible legal action in relation to Council's Co-Generation Plant and the information is regarded as advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and, therefore, if considered in an open meeting would, on balance, be contrary to the public interest.

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

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 196 **IS - Tender No. 02211 - Re-construction of Windsor Wharf, Windsor - (95495, 79354)**

Reason for Confidentiality

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

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

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

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 197 SS - Property Matter - Lease to Wayne and Leanne Gerahty - Shop 6 Glossodia Shopping Centre - (74061, 112106, 95496)

Reason for Confidentiality

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

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

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

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 198 SS - Property Matter - Lease of 20 Bosworth Street, Richmond - (121420, 118853, 95496)

Reason for Confidentiality

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

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

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

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 199 **SS - Property Matter - Lease to Stephen Hile - 139 March Street, Richmond - (22455, 98759, 112106, 95496)**

Reason for Confidentiality

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

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

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

ORDINARY MEETING

Meeting Date: 30 August 2011

Item: 200 GM - Staff Matter - (79351)

Reason for Confidentiality

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

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(a) of the Act as it relates to personnel matters concerning particular individuals (other than councillors).

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

ordinary

section 5

reports
of committees

ORDINARY MEETING
Reports of Committees

SECTION 5 - Reports of Committees

ROC - Floodplain Risk Management Advisory Committee Minutes - 15 August 2011 - (86589)

The meeting commenced at 4:33pm in Council Chambers

Present:	Councillor Kevin Conolly - Chair Councillor Bob Porter - Deputy Chair Councillor Jill Reardon Councillor Paul Rasmussen Mr John Miller Mr Harry Panagopoulos Mr Les Sheather Mr Peter Cinque Mr Ian Johnston Mr Kevin Jones Mr Geoffrey Bessell Mr Chris Ransom
Apologies:	Councillor Warwick Mackay Mr Alexander (Phil) Windebank Mr Ray Williams MP - Member for Hawkesbury
In Attendance:	Mr Drew Bewsher - Bewsher Consulting Pty Ltd Mr Matthew Owens Mr Philip Pleffer Mr Chris Amit Mr Bart Bassett MP - Member for Londonderry Councillor Kim Ford Mr Joseph Del Duca for Mrs Louise Markus MP - Federal Member for Macquarie

REPORT:

RESOLVED on the motion of Councillor Reardon and seconded by Mr Les Sheather that the apologies be accepted.

Mr Panagopoulos addressed the Committee, advising as Mr Avery had retired from the Department (Office of Environment and Heritage), he would attend future meetings in his stead.

MOTION:

RESOLVED on the motion of Mr Les Sheather, seconded by Mr John Miller.

Refer to COMMITTEE RECOMMENDATION

COMMITTEE RECOMMENDATION:

That the Committee recognises and appreciates the long term contribution Mr Avery has made to the Committee in general, and in particular his contribution towards the Draft Hawkesbury Risk Management Flood Plan and Study.

DECLARATIONS OF INTEREST

The Chair raised the issue of declarations of interest, advising notwithstanding his general exemption from the Minister, he felt obliged to make a declaration of interest. Mr John Miller and Mr Ian Johnston also declared an interest.

CONFIRMATION OF MINUTES

RESOLVED on the motion of Councillor Reardon and seconded by Mr Les Sheather that the Minutes of the Floodplain Risk Management Advisory Committee held on 27 June 2011, be confirmed.

ORDINARY MEETING
Reports of Committees

Member	01/11/10	06/12/10	18/01/11	17/02/11	18/04/11	9/05/11	27/06/11	15/08/2011
Councillor Kevin Conolly - (Chair)	✓	✓	✓	✓	✓	A	✓	✓
Councillor Bob Porter - (Deputy Chair)	✓	✓	✓	A	✓	✓	✓	✓
Councillor Warwick Mackay	A	A	A	A	A	A	A	A
Councillor Paul Rasmussen	✓	✓	✓	✓	✓	✓	✓	✓
Councillor Jill Reardon	✓	✓	✓	✓	✓	✓	✓	✓
Mr Peter Cinque OAM - (SES Sydney Western Division)	A	✓	✓	A	✓	✓	✓	✓
Mr David Avery - (Dept. of Environment and Climate Change)	✓	✓	✓	✓	A	✓	✓	✓
Mr Chris Ransom – (Dept of Defence)	✓	✓	X	✓	X	✓	A	✓
Snr Inspector Robert Bowman - (Industry & Investment NSW) -Primary Industries	X	X	✓	✓	A	✓	X	X
Mr Les Sheather - (Community Member)	✓	✓	A	✓	✓	✓	✓	✓
Mr Kevin Jones - (SES Headquarters)	✓	A	✓	✓	A	✓	✓	✓
Mr Geoffrey Bessell - (Community Member)	✓	✓	✓	✓	✓	✓	A	✓
Mr John Miller - (Community Member)	✓	✓	✓	✓	✓	✓	✓	✓
Mr Bill McMahon - (Community Member)	✓	✓	✓	✓	✓	✓	X	✓
Mr Alexander (Phil) Windebank	✓	✓	✓	✓	✓	✓	✓	A
Mr Ian Johnston	✓	✓	✓	✓	✓	A	✓	✓

Comment [R1]: Mr Harry Panagopoulos in lieu

Key: A = Formal Apology ✓ = Present X = Absent - no apology

SECTION 3 - Reports for Determination

Draft Hawkesbury Floodplain Risk Management Study and Plan

RECOMMENDATION TO COMMITTEE

That the:

1. Draft Hawkesbury Floodplain Risk Management Study and Plan be discussed by the Committee and recommendations for amendments be made, if required.
2. Draft Hawkesbury Floodplain Risk Management Study and Plan be recommended to Council for public exhibition.

DISCUSSION:

The Chair reminded the Committee the draft HFRMS&P was provided on a confidential basis until such time it was resolved to go on public exhibition.

Councillor Porter arrived at the meeting at 4.36pm.

The Chair brought the following issues to the table for discussion:

- the time period to be used as a limit of confident flood prediction;
- proposal for flood Planning Controls of land above 1:100 level

and invited members to put forth specific issues they wish to discuss.

- Mr Panagopoulos referred to recommendations 7 and 8 of the Plan, advising it was the Department's view the matters in recommendation 7 should be explored more thoroughly, and the matters in recommendation 8 were outside the scope of brief.
- Mr Cinque raised issues relating to levels of confident flood prediction and the Jim Anderson Bridge. Mr Cinque reported the advice he received twelve months ago specified the bridge provided for only one lane outbound and one lane inbound, further reporting he believed additional road works would be required to upgrade the bridge to two lanes outbound.
- Councillor Porter asked how the PMF was calculated. The Chair responded the PMF was established some time ago by experts from the Bureau of Meteorology (BoM) using meteorological methods and historical records to determine the greatest amount of rainfall which is theoretically possible within a region. Mr Owens reported staff are in the process of putting together information to assist Councillor Porter with his enquiry regarding the PMF calculation which would be provided to him in due course.
- The Chair invited discussion regarding levels of confident flood prediction. Mr Cinque reported he noted the BoM's reference to predictions being made with some confidence over periods longer than 9 hours, however, advised he could not see a case to change from the 9 hour prediction. Clarification was sought as to what the 9 hours represents and Mr Bewsher responded it takes an average of 9 hours for rainfall in the catchment downstream from Wallacia, to travel through the system to Windsor.

ORDINARY MEETING
Reports of Committees

- Concern was raised the BoM does not have baseline data at St Albans and enquiry was made if there was any other area that was not covered by gauges. It was reported the Grose and McDonald Rivers were not covered. Councillor Porter made reference to the 2007 floods wherein it was revealed two out of three gauges were not working and questioned the integrity of gauges. Mr Cinque responded maintenance of the gauge network was an issue and was something the SES aspires to be involved in, however, due to funding issues the responsibility of maintaining gauges remains with Sydney Water. Councillor Rasmussen suggested the BoM would be able to provide a percentage of the confidence of the model they are using and it was suggested they be contacted for advice.

MOTION:

RESOLVED on the motion of Councillor Rasmussen, seconded by Councillor Porter.

Refer to COMMITTEE RECOMMENDATION

COMMITTEE RECOMMENDATION:

That staff write to the Bureau of Meteorology seeking information from them about the level of confidence of making predictions for various flood events relating to areas of Hawkesbury.

- The Chair referred to the Jim Anderson Bridge and the issue of only one lane allocated for evacuation purposes. Mr Cinque advised it was imperative to keep one lane inbound for emergency vehicles. Councillor Bassett reported the bridge was designed to have a three lane deck.

Councillor Ford left the meeting at 5.32pm

MOTION:

RESOLVED on the motion of Councillor Bart Bassett, seconded by Councillor Rasmussen.

Refer to COMMITTEE RECOMMENDATION

COMMITTEE RECOMMENDATION:

That staff write to the Roads and Traffic Authority of NSW to determine if the Jim Anderson Bridge could carry three lanes of traffic and if so, could it be reconfigured to provide two outbound lanes and one inbound lane during flood emergencies.

- The Chair addressed Mr Cinque seeking comments on the establishment of community refuges. Mr Cinque responded he would view the proposal with apprehension due to concerns the establishment of refuges may cause people to become complacent and subsequently may refuse to evacuate.

Mr Geoffrey Bessell left the meeting at 6.00pm.

The Chair determined the issue of community refuges be left on the table.

- Further discussion arose regarding recommendation 8 in the Plan and Mr Panagopoulos reiterated the issues in the recommendation were thought to be outside the scope of brief and the Department would not support that recommendation. The Committee agreed the recommendation be deleted from the Plan and dealt with separately.

MOTION:

RESOLVED on the motion of Councillor Porter, seconded by Mr Les Sheather.

Refer to COMMITTEE RECOMMENDATION

COMMITTEE RECOMMENDATION:

That item 8 of the recommendation be deleted from the Plan and the matters dealt with in item 8 become the subject of a separate recommendation to Council.

Councillor Bassett left the meeting at 6.34pm

Mr Del Duca left the meeting at 6.39pm

- Discussion arose regarding planning controls and requirements to build in flood prone areas. Mr Bewsher strongly recommended the addition of freeboard should be taken into consideration when adopting flood levels.
- Mr Sheather asked if he could be provided with the flood planning clause of the new LEP (ie Draft Hawkesbury Environmental Plan 2011) which replaced Clause 25 of the Hawkesbury Environmental Plan 1989. Mr Owens advised he would arrange for the documents to be forwarded to Mr Sheather.

Councillor Porter left the meeting at 7.00pm

The Chair suggested once issues were resolved with the BoM, RTA, and feedback is received from the Department's technical working group, the matter be reported to Council with a view to placing the draft FRMS&P on public exhibition.

- Mr Johnston brought the consultant's attention to pages 11 and 32 wherein a natural "choke point" *downstream* of Sackville was referred to. It was noted this should read "*upstream*" of Sackville.
- It was noted the next FRMAC meeting was scheduled for Monday 17 October. The Chair determined if the information sought from the various departments became available prior to that date, an earlier meeting would be called.

SECTION 5 - General Business

- Mr Miller raised concern the issue of flood mitigation should be addressed and put forth the following Motion.

MOTION:

RESOLVED on the motion of Mr John Miller, seconded by Mr Les Sheather

Refer to COMMITTEE RECOMMENDATION

COMMITTEE RECOMMENDATION:

That Hawkesbury City Council establish a policy for flood mitigation of the Hawkesbury - Nepean River Valley, by requesting the Premier of New South Wales, the Hon. Barry O'Farrell MP, to seek bipartisan support from the Commonwealth Government, with his NSW Government, for joint funding under the Natural Disaster Resilience Programme (NDRP) to have a review carried out of the previous Environmental Impact Statements (EIS) prepared for Sydney Water by ERM Mitchell McCotter:

- July 1995 "Proposed Warragamba Flood Mitigation Dam Environmental Impact Statement (3 Volumes) and;
- November 1996 Proposed Warragamba Dam and Auxiliary Spillway Environmental Impact Statement (4 Volumes)

ORDINARY MEETING
Reports of Committees

to assess the most economically viable large - scale flood mitigation works and measures, to reduce the height of major floods in the Hawkesbury - Nepean Valley and reduce the need for an enormous evacuation of our residents and damage to their property.

The meeting closed at 7:30pm.

oooO END OF REPORT Oooo

ORDINARY MEETING
Questions for Next Meeting

QUESTIONS FOR NEXT MEETING

Councillor Questions From Previous Meetings and Responses - (105109)

REPORT:

Questions - 9 August 2011

#	Councillor	Question	Response
1	Clr Porter	Enquired if Council could have an operation every six months that allowed the footpath in South Windsor to be gurnied and cleaned up.	Director Infrastructure Services advised that quotations are being sought to determine the costs involved to carry out the request.
2	Clr Porter	Enquired if the garbage bins that are on their way to South Windsor could be hurried along.	Director Infrastructure Services advised that it is anticipated the bins will be installed within approximately 6 weeks.
3	Clr Reardon	Enquired if the historical flood markers could be reinstated on our main roads to create an awareness of where the floods came to.	<p>Director City Planning advised that Community Flood Education will be a significant part of the draft Floodplain Risk Management Plan (FRMP) that is currently being considered by the Floodplain Risk Management Advisory Committee of Council.</p> <p>The draft FRMP community education proposes such matters as public awareness programs, flood safe guides, flood tolerant housing posters, enhanced flood information on Council's website and installation of flood icons/markers at key locations.</p> <p>It is proposed that the draft FRMP be considered and adopted by Council prior to costing, prioritising and implementation of any of these initiatives.</p>
4	Clr Bassett	Enquired as to how many years had Council been asking the RTA to conduct an audit between Richmond and North Richmond up until the recent acceptance of the RTA to conduct that audit.	Director Infrastructure Services advised that Council has considered this matter on numerous occasions since March 2003, resulting in the RTA being requested to undertake various investigations to improve the overall traffic flow between Richmond and North Richmond.

ORDINARY MEETING
Questions for Next Meeting

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

ORDINARY MEETING

Questions for Next Meeting



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