



# Hawkesbury City Council

## ordinary meeting business paper

date of meeting: 09 November 2010

location: council chambers

time: 6:30 p.m.



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**SECTION 4 - Reports for Determination**

**GENERAL MANAGER**

**Item: 241**            **GM - Bells Line of Road Long Term Strategic Corridor Plan - Current Community Consultation Process - (79351)**

**Previous Item:**        Late Matter, Ordinary (11 November 2009)

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**REPORT:**

**Executive Summary**

Issues and proposals regarding the upgrading of the Bells Line of Road or the development of a "Super Highway" have arisen on numerous occasions in the past. This report provides a summary of various Council resolutions on the matter over the last decade.

In November 2009 the Federal Minister for Infrastructure, Transport, Regional Development and Local Government and the NSW Minister for Roads issued a Joint Media Statement concerning the development of a "Long Term Strategic Corridor Plan" (LTSCP) for the Bells Line of Road. Terms of Reference for the LTSCP were released in March 2010.

In late October 2010 the Roads and Traffic Authority (RTA) released its Community Involvement Strategy for the LTSCP which included a "Broad Consultation Methodology" that indicated that community consultation will occur during November and December 2010.

On 1 November 2010 the RTA released on its website a "Community Update" document that indicated that 3 community information sessions would be held in Council's area (North Richmond x 2 and Bilpin) in mid November and that comments could be submitted by 8 December 2010. The RTA has verbally indicated that these details will be advertised in the local media, however, at the time of preparation of this report this has not occurred.

In view of the importance of this matter to the community and the relatively limited and short consultation process it is proposed to recommend that Council request the RTA to extend the consultation process; invite a representative of the RTA to a Councillor Briefing Session to discuss the matter further with Council and make an appropriate submission.

**Consultation**

Consultation in respect of various aspects of this matter is the responsibility of the RTA, however, Council should endeavour to ensure that the RTA undertakes a sufficiently broad ranging process.

**Background**

Issues and proposals for the upgrading or development of a "Super Highway" along the Bells Line of Road have arisen on numerous occasions in the past and have been considered by Council many times. The following provides a summary of various Council resolutions on the matter in the last decade.

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

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"That:

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

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

"That:

- A. *That Council reaffirm its resolution of 8 May 2001. Bell's Line of Road - Proposed Upgrade Council, at the Ordinary Meeting of 8 May 2001, resolved:*

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

- B. *That:*

- 1. Council notes the considerable economic and environmental benefits of using rail for heavy transport. It therefore seeks that in reviewing the need for heavy transport access to Sydney/Newcastle/export terminals from the Central West that as part of the proposed study, consideration is given to an alternative utilising a rail link. It suggests that a rail link be examined, but not limited to the existing Sandy Hollow/Muswellbrook rail line/corridor as well as upgrading of the existing Great Western railway.*
- 2. Part of the study assess the improvement costs and economic benefits for Bell's Line of Road and the areas it serves, to be a safer road, but not a six lane heavy transport high speed highway.*
- 3. The study recognises the need to preserve and hold preserved those land areas now viably used for agricultural, horticultural and fruit production and those of World Heritage and National Park designation in the Hawkesbury and Blue Mountains regions leading to, along and near to Bell's Line of Road.*

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4. *The consultation process includes the Hawkesbury Local Government Area (LGA) via Council and community groups as an element of the study as they were excluded from the previous study."*

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

*"That:*

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

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

*"That:*

1. *Council recognise the potential benefits to the residents of the Hawkesbury of an upgrade of the Bells Line of Road subject to satisfactory resolution of environmental and social issues.*
2. *Any upgrade should continue from Blacktown Road/Driftway between the M7 and the other side of the Hawkesbury River.*
3. *In relation to the immediate vicinity of Kurrajong Heights, Council support the resolution of the Kurrajong Heights Action Group.*
4. *Discussions continue with Mr Ian Armstrong, Leader of the lobby group for upgrading Bells Line of Road to communicate concerns of Hawkesbury residents and to try to achieve amendments to the proposal which incorporates solutions to those concerns whilst achieving improvements to Bells Line of Road."*

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

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

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

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

*"That:*

1. *In the first instance, Council facilitate a presentation to Councillors and the public by the Bells Line Expressway Group in respect of their proposal, and any other proposals regarding the crossing of the Great Dividing Range also be given the same opportunity.*

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2. *WSROC be requested to allow the Bells Line Expressway Group to present the case for the upgrading of Bells Line of Road, including the connection to the M2 and M7, at their next appropriate meeting, with it being noted that Council only supports an upgrade of the Bells Line of Road in terms of Council's previous resolution in this regard."*

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

A Notice of Motion was considered at the Council meeting held on 31 July 2007 when it was resolved:

*"That:*

1. *Council not support the proposed Bells Line of Road Superhighway.*
2. *Council supports safety improvements to the existing Bells Line of Road and the investigation of possible town by-passes.*
3. *Council supports the improvement of the existing rail crossing of the Blue Mountains and a rail link to Port Kembla.*
4. *Council notifies interested parties, including WSROC and relevant Federal and State Government Ministers and local members of parliament of its opposition to the "Superhighway".*

*"That:*

1. *Any future route selection by other tiers of government for a third road crossing across the Great Divide take into account the adopted position of Hawkesbury City Council on 31 July 2007 and avoid any impact on the residents of the Hawkesbury City Council area.*
2. *Council remind the State Government of the urgent need to upgrade Blacktown/Richmond Road from the M7 to North Richmond via The Driftway.*
3. *Council request the State Government to develop options for a flood free crossing and by-pass of Richmond and North Richmond.*
4. *Council inform the Hawkesbury community regarding any information received on the above issues."*

On 9 November 2009 the Federal Minister for Infrastructure, Transport, Regional Development and Local Government and the NSW Minister for Roads issued a Joint Media Statement concerning the development of a "Long Term Strategic Corridor Plan" (LTSCP) for the Bells Line of Road. This Statement was considered by Council on 10 November 2009 when it was resolved:

*"That:*

1. *In view of a Joint Media Statement issued by the Federal Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon. Anthony Albanese MP and the NSW Minister for Transport, the Hon David Campbell MP, regarding the proposed development of a long term plan for the Bells Line of Road, that Council write to both Ministers outlining Council's previous position not to support a proposed Bells Line of Road Superhighway and that the Hawkesbury's state and federal members of parliament also be requested to support Council's adopted position in this regard.*
2. *Clarification be sought on the proposal as outlined in the press release and the impact it will have on the Hawkesbury."*

### Current Position

Appropriate representations were made in accordance with Council's resolution of 10 November 2009. The Federal Department of Infrastructure, Transport, Regional Development and Local Government, on behalf of the Minister, and the NSW Minister for Transport and Roads responded by letters dated 30 November 2009 and 21 January 2010, respectively. Copies of these responses were forwarded to all Councillors at the time and are also included as Attachments 1 and 2 to this report.

The Terms of Reference for the LTSCP were released in March 2010. A copy of these Terms is included as Appendix 3 to this report.

In late October 2010 the RTA released the Community Involvement Strategy for the LTSCP, a copy of which is included as Appendix 4 to this report and distributed under separate cover. The document can also be viewed on the RTA's website at:

[http://www.rta.nsw.gov.au/constructionmaintenance/majorconstructionprojectssydney/bells\\_line\\_of\\_road/bells/pdf/blor\\_cis.pdf](http://www.rta.nsw.gov.au/constructionmaintenance/majorconstructionprojectssydney/bells_line_of_road/bells/pdf/blor_cis.pdf)

The "Broad Consultation Methodology" contained within this document indicates that community consultation will occur during November and December 2010 (pages 24-25).

On 1 November 2010 two further documents became available on the RTA's website, namely:

- Bells Line of Road Long Term Strategic Corridor Plan – Background Summary and Corridor Objectives Report.

[http://www.rta.nsw.gov.au/constructionmaintenance/majorconstructionprojectssydney/bells\\_line\\_of\\_road/bells/pdf/FINAL\\_Background\\_Summary\\_and\\_Corridor\\_Objectives\\_Report.pdf](http://www.rta.nsw.gov.au/constructionmaintenance/majorconstructionprojectssydney/bells_line_of_road/bells/pdf/FINAL_Background_Summary_and_Corridor_Objectives_Report.pdf)

- Community Update - Bells Line of Road Long Term Strategic Corridor Plan.

[http://www.rta.nsw.gov.au/constructionmaintenance/majorconstructionprojectssydney/bells\\_line\\_of\\_road/bells/pdf/RTA3516\\_Community\\_Update\\_Bells\\_Line\\_of\\_Road.pdf](http://www.rta.nsw.gov.au/constructionmaintenance/majorconstructionprojectssydney/bells_line_of_road/bells/pdf/RTA3516_Community_Update_Bells_Line_of_Road.pdf)

Copies of these documents are included as Appendix 5 and 6 to this report and distributed under separate cover.

Whilst Council was informally contacted in September 2010 concerning a display being mounted in the Council's office formal advice to Council concerning the consultation process was not received until 1 November 2010 after contact was made directly with the RTA. The material that was to be displayed, as suggested in the "Community Update", was not received until 1 November 2010 also. A copy of the letter from the RTA dated 1 November 2010 is included as Attachment 7 to this report.

It will be noted that the Community Update document indicates that community information sessions will be held in Council's area as follows:

- **North Richmond Community Centre**  
33 William Street, North Richmond on  
Monday 15 November,  
from 2pm to 4pm and 5pm to 7pm.
- **Bilpin District Hall**  
2596 Bells Line of Road, Bilpin on Tuesday 16 November,  
from 2pm to 4pm and 5pm to 7pm.

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- **North Richmond Community Centre**  
33 William Street, North Richmond on  
Monday 22 November,  
from 2pm to 4pm and 5pm to 7pm.

As part of the community consultation process comments are being invited by 8 December 2010.

The RTA has verbally indicated that these details will be advertised in the local media. However, at the time of preparation of this report whilst an article has covered the matter actual advertisement by the RTA in a local paper does not appear to have occurred as yet.

Given the significance of any proposals regarding the Bells Line of Road it would appear that the consultation process may be limited and over too short a time frame. It may be appropriate for the Council to request the RTA to increase the number of community information sessions that are undertaken and to extend the consultation and comment period into the New Year.

Council may also wish to invite a representative to a Councillor Briefing Session to advise Council further and discuss the community consultation process, as well as subsequent actions and processes in connection with the development of the Plan. The next available Councillor Briefing Session is scheduled to be held on Tuesday, 16 November 2010 and a representative of the RTA has indicated that they could attend this Briefing Session.

Council's latest position in respect of proposals for the Bells Line of Road is outlined in its resolution of 31 July 2007. A part of the current consultation process Council, as a "key stakeholder" is invited to make a submission to the study. As such, Council also needs to consider this aspect of the matter and determine the nature of the submission it may wish to make, ie. possibly to reiterate its position outlined in the resolution of 31 July 2007.

### **Conformance to Community Strategic Plan**

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

- Be a place where we value, protect and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.

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

- Have a comprehensive system of transport connections which link people and products across the Hawkesbury and with surrounding regions.

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

- Work with the community to define the Hawkesbury character to identify what is important to preserve and promote.
- Lobby State government to improve transport networks.

### **Financial Implications**

No direct financial implications are applicable to this report at this stage.

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### RECOMMENDATION:

That in connection with the recently publicised community consultation process by the Roads and Traffic Authority in connection with the development of a Long Term Strategic Corridor Plan for the Bells Line of Road Council:

1. Request the Roads and Traffic Authority to increase the number of community information sessions that are undertaken and to extend the consultation and comment period to February 2011.
2. Invite a representative of the Roads and Traffic Authority to a Councillor Briefing Session to advise Council further and discuss the community consultation process, as well as subsequent actions and processes in connection with the development of the Plan.
3. Make a submission as part of the current community consultation process in line with and supporting Council's resolution of 31 July 2007 in this regard.

### ATTACHMENTS:

- AT - 1** Response from Federal Department of Infrastructure, Transport, Regional Development and Local Government, on behalf of the Minister dated 30 November 2009.
- AT - 2** Response from NSW Minister for Transport and Roads dated 21 January 2010.
- AT - 3** Bells Line of Road – Long Term Strategic Corridor Plan – Terms of Reference
- AT - 4** Community Involvement Strategy – Bells Line of Road Long Term Strategic Corridor Plan. (*Distributed under separate cover*)
- AT - 5** Bells Line of Road Long Term Strategic Corridor Plan – Background Summary and Corridor Objectives Report. (*Distributed under separate cover*)
- AT - 6** Community Update - Bells Line of Road Long Term Strategic Corridor Plan. (*Distributed under separate cover*)
- AT - 7** Letter from the RTA dated 1 November 2010

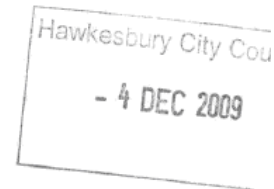
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**AT - 1 Response from Federal Department of Infrastructure, Transport, Regional Development and Local Government, on behalf of the Minister dated 30 November 2009**



Australian Government  
Department of Infrastructure, Transport,  
Regional Development and Local Government



Reference: 08184-2009

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

Dear Mr Jackson

Thank you for your letter dated 11 November 2009 to the Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, about the Bells Line of Road. The Minister has asked me to reply on his behalf.

As you are aware, on 9 November 2009, the Australian and NSW Governments announced that a jointly funded investigation will be undertaken to develop a long term strategic corridor plan for the Bells Line of Road. The investigation is expected to commence in early 2010 and will take about 18 months to complete.

The works will include consideration of various engineering, environmental, ecological and heritage issues as well as carrying out an economic analysis of various options in order to determine any future investment.

Extensive consultations with local communities and stakeholders will be undertaken during the development of the strategic corridor plan to understand the perspectives of the different community groups in the region.

I encourage you to participate in the public consultation process that will be undertaken as part of the development of the strategic corridor plan.

Thank you for raising this matter with the Australian Government.

Yours sincerely

Alex Foulds  
General Manager  
South East Roads (NSW, ACT, Vic, Tas)  
Nation Building - Infrastructure Investment



SCANNED

30 November 2009

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AT – 2 Response from NSW Minister for Transport and Roads dated 21 January 2010.



**David Campbell**

**Minister for Transport and Roads**

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

Hawkesbury City Council

22 JAN 2010

M09/8751

21 JAN 2010

Dear Mr Jackson

Thank you for your letter of 11 November 2009 concerning the long term strategic corridor plan for the Bells Line of Road. I have taken careful note of your detailed comments.

The development of a long term strategic corridor plan for the Bells Line of Road recognises the need for planning to continue to develop this important second crossing of the Blue Mountains for the future.

The concerns of Hawkesbury City Council about the potential impacts to the Hawkesbury area are acknowledged, together with council's preference for the Roads and Traffic Authority (RTA) to investigate the upgrade of Blacktown/Richmond Road as part of the plan.

The strategic corridor plan is expected to take 18 months to complete and will involve extensive consultations with local communities and stakeholders, including Hawkesbury City Council, during its development.

The terms of reference for the plan are currently being drafted and will be released shortly. I have asked that the RTA to contact you directly once the terms of reference is announced.

Again, thank you for taking the time to write to me with your perspective on this issue. If you require any further information on this matter, please contact Mr Gavin Hill, Policy Advisor, in my office on (02) 9228 3020.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Campbell".

David Campbell MP  
Minister for Transport and Roads



**SCANNED**

**AT – 3 Bells Line of Road – Long Term Strategic Corridor Plan – Terms of Reference****BELLS LINE OF ROAD CORRIDOR  
LONG TERM STRATEGIC CORRIDOR PLAN  
Terms of Reference****Purpose:**

The NSW Roads and Traffic Authority (RTA), on behalf of the NSW and Australian Governments, is to prepare a *Long Term Strategic Corridor Plan* for the Bells Line of Road corridor. The *Long Term Strategic Corridor Plan* will guide the development and reservation of a road corridor for a future upgraded Bells Line of Road. Although current projections indicate that a major upgrade of Bells Line of Road is not expected to be required until at least 2033, it is appropriate that planning for this corridor progresses now for the future.

**Background:**

Due to urban expansion and land use changes in north-western Sydney there is a long term strategic requirement to reserve a future road corridor between Bells Line of Road and the Sydney Motorway Network.

Two recent studies that consider the need for an upgrade of Bells Line of Road are:

- Central West Transport Needs Study, SKM 2009
- Bells Line of Road Corridor Study, SKM 2004

While the findings from these studies have concluded that a substantial upgrade of Bells Line of Road is not warranted in the short to medium term on economic, social and environmental grounds; the studies have confirmed that long term strategic planning is required for the Bells Line of Road corridor, in particular considering land use pressures from urban expansion in north-western Sydney.

**Approach:**

The Bells Line of Road *Long Term Strategic Corridor Plan* will be developed through extensive consultation with local communities and stakeholders about the future of the Bells Line of Road corridor. A community involvement plan will be formulated for implementation as the study progresses.

The Bells Line of Road *Long Term Strategic Corridor Plan* will cover three sections:

- Eastern Section – from Bells Line of Road near Kurrajong Heights to the Sydney Motorway Network.
- Central Section – from Kurrajong Heights to Bell.
- Western Section – from Bell to the Great Western Highway.

**Roles and Responsibilities:**

Refer to the governance structure in Schedule 1.

**Tasks:**

The following will be carried out as part of developing the *Long Term Strategic Corridor Plan*:

- a) Identify the short, medium and long term functional needs and objectives for the Bells Line of Road corridor taking into account expected future transport requirements and land use.
- b) Through community consultation and strategic investigations, identify constraints, values and opportunities along the Bells Line of Road corridor.
- c) Identify strategic corridor opportunities and provide commentary on potential options for the future upgrade of the Bells Line of Road corridor.
- d) Provide recommendations on the process to identify and select preferred corridors and the undertaking of interim tasks.

**Outputs:**

Outputs of the investigations will consist of a community involvement plan and a *Long Term Strategic Corridor Plan*.

The *Long Term Strategic Corridor Plan* will include:

- Outline of the study methodology.
- Summary of findings from relevant past studies pertaining to the Bells Line of Road corridor.
- Forecast traffic growth along the route (25 year horizon).
- Identified priorities for the development of the Bells Line of Road corridor.
- Identification of broad options that meet long term corridor requirements, project objectives and project design standards.
- Summary of additional work required.
- Schedule of tasks for selection of a preferred corridor.
- Recommended timeframe for further development.
- Recommended sequencing of implementation.

**Timeframe:**

Completion of a final-draft *Long Term Strategic Corridor Plan* for Steering Committee consideration is required within 18 months of commissioning a contractor to assist in the study.

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**Schedule 1. Governance structure**



Role	Members	Responsibility/ input
Governmental Steering Committee	<ul style="list-style-type: none"> <li>Department of Infrastructure, Transport, Regional Development and Local Government (DITRD LG)</li> <li>Roads and Traffic Authority</li> <li>NSW Transport and Infrastructure</li> <li>NSW Department of Premier and Cabinet</li> <li>NSW Department of Planning</li> <li>Central NSW Councils (CENTROC)</li> <li>Western Sydney Regional Organisation of Councils (WSROC)</li> </ul>	Review progress in accordance with Terms of Reference and provide guidance as required. Ensure Ministers and Councils are kept informed.
Reference Group	<ul style="list-style-type: none"> <li>RTA</li> </ul>	Provide direction, resources and Departmental approval.
Project Manager, Project Team	<ul style="list-style-type: none"> <li>Roads and Traffic Authority</li> <li>Department of Infrastructure, Transport, Regional Development and Local Government</li> <li>Professional Services Contractor</li> </ul>	Project management, liaise with stakeholders, and undertake project studies. Provide secretariat to Governmental Steering Committee. Manage contractors. Oversee community consultation.
Local input	<ul style="list-style-type: none"> <li>Community, stakeholders, councils</li> </ul>	The Bells Line of Road <i>Long Term Strategic Corridor Plan</i> will be developed through extensive consultation with local communities and stakeholders about the future of the road.

**AT – 7 Letter from the RTA dated 1 November 2010**



1 November 2010

General Manager  
Hawkesbury City Council  
Po Box 146  
WINDSOR NSW 2756

Dear Mr Peter Jackson

**Long Term Strategic Corridor Plan for Bells Line of Road**

The NSW and Australian Governments have commenced the preparation of a Long Term Strategic Corridor Plan for the Bells Line of Road (the 'Plan').

I am pleased to invite your organisation to contribute to the planning for this important road corridor.

The Plan will guide the future reservation of a road corridor for an upgraded Bells Line of Road, including a connection to the Sydney Motorway Network. It will also identify the short, medium and long term needs and objectives.

Importantly, the Plan is to be developed in consultation with the local community and stakeholders.

As a key stakeholder group for this project, we would appreciate the opportunity to meet with you, discuss the project, and hear your views and knowledge of the many considerations that relate to the planning of a future upgrade.

The project team is able to meet with you and other nominated representatives of your organisation between **1 November 2010 and 30 November 2010**. To organise a meeting time of your convenience, please contact the project team on **1800 017 787** (toll free), or email **Bells\_Line\_of\_Road@rta.nsw.gov.au**.

There are a number of other ways for the community to participate in the project. A community update is enclosed which provides dates of staffed information days in North Richmond, Bilpin, Lithgow and Orange; as well as postal and email addresses, and contact details. A *Background Summary Corridor Objectives Report*, *Community Involvement Strategy* and other information is available at the project website at **[www.rta.nsw.gov.au/bellslineofroad](http://www.rta.nsw.gov.au/bellslineofroad)**.

An 'Online Forum' has also been set up for the project. The online forum will allow the broader community to share knowledge, add comments and provide suggestions online. The forum is located at **[www.rta.nsw.gov.au/bellslineofroad](http://www.rta.nsw.gov.au/bellslineofroad)**.

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Lastly, I would also highly encourage your group to send in a submission collectively or as individuals. The comments received will be used in the ongoing development of the corridor.

If you require further information, please do not hesitate to contact me on the above number. Thank you in advance for your participation. The team looks forward to working with you on this project.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Diana Loges', with a stylized flourish at the end.

Diana Loges  
Senior Project Manager

**oooO END OF REPORT Oooo**

**ORDINARY MEETING**  
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**CITY PLANNING**

**Item: 242**            **CP - Development Application - Two Lot Torrens Title Subdivision, 12 Stewarts Lane, Wilberforce - (DA0546/10, 107542, 102260, 95498)**

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**Development Information**

**File Number:** DA0546/10  
**Property Address:** 12 Stewarts Lane, Wilberforce NSW 2756  
**Applicant:** Montgomery Planning Solutions  
**Owner:** Miss CD Beer  
**Proposal Details:** Two Lot Torrens Title Subdivision  
**Estimated Cost:** \$70,000  
**Zone:** Mixed Agriculture under Hawkesbury Local Environmental Plan 1989  
**Draft Zoning:** RU1 – Primary Production under DRAFT Hawkesbury Local Environmental Plan 2009.  
**Date Received:** 11/08/2010  
**Advertising:** 19/08/2010 - 7/09/2010

**Key Issues:**

- ◆ Objection under State Environmental Planning Policy No. 1
- ◆ Allotment Area
- ◆ Native vegetation

**Recommendation:** Refusal

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**REPORT:**

**Executive summary**

The application seeks approval for a Two Lot Torrens title subdivision of Lot 406 DP 751665, 12 Stewarts Lane Wilberforce.

The proposal is contrary to the minimum allotment size requirement 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 proposed 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.

**Introduction**

The proposal involves the subdivision of Lot 406 DP 751665, 12 Stewarts Lane Wilberforce into two separate allotments consisting of the following:

- Proposed Lot 1 -            Proposed frontage to Stewarts Lane, 8.82ha in area, is relatively cleared and contains an existing dwelling, various outbuildings and a dam.
- Proposed Lot 2 -            Proposed frontage to Krahe Road, 10ha in area, is vacant and contains native vegetation, an existing dam and a natural watercourse which runs adjacent to the proposed boundary in a south to north direction.

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The proposal will involve the construction of Krahe Road which is currently unsealed and covered in native vegetation.

The purpose of the subdivision proposal is to provide two useable rural allotments, divide the land so that the watercourse will be located entirely on one property and to utilise the existing unformed public road (Krahe Road).

### **Description of the Land and its Surroundings**

At present Lot 3 in DP 87137 contains one dwelling with ancillary outbuildings, two dams and is intersected by a natural watercourse running south to north. The watercourse on the subject site connects to Currency Creek and is identified as a perennial watercourse as defined by the Wilberforce Topographic map 9030-1N.

Access to the subject site is currently gained from Stewarts Lane. A road reserve runs along the rear property boundary which links with Krahe Road. This road reserve is unformed and predominately covered by native vegetation.

There are various vegetation communities on the subject property consisting of a critically endangered ecological community being Shale Plains Woodland and endangered ecological communities being Shale Sandstone Transition Forest, Alluvial Woodland and Shale Gravel Transition Woodland.

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

### **Key Issues Relevant to the Decision:**

- Objection under State Environmental Planning Policy No.1
- Allotment area
- Native vegetation

### **Council Policies, Procedures and Codes to Which the Matter Relates**

- State Environmental Planning Policy 1 – Development Standards (SEPP 1)
- Sydney Regional Environmental Planning Policy 20. (No.2 - 1997) - Hawkesbury Nepean River (SREP No. 20)
- Hawkesbury Local Environmental Plan (HLEP)1989
- DRAFT Hawkesbury Local Environmental Plan (DHLEP)2009
- 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 from the minimum allotment size requirement of Hawkesbury Local Environmental Plan 1989. Clause 11(2) of this plan limits lot sizes to 10ha for land zoned Mixed Agriculture in this locality. The application proposes the creation of a 10ha allotment and an 8.82ha allotment.

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

1. *The land has a total area of 18.82ha and is suitable for two rural allotments.*
2. *The land is dissected by a water course. Which creates difficulty in accessing the eastern half of the land when the watercourse is flowing.*
3. *The land has two road frontages, which in our view is a clear indication of a proposed subdivision pattern.*
4. *The proposal will result in the currently unformed section of Krahe Road being constructed to Councils Standards.*
5. *The undersized allotment is only 11.8% below the minimum size required, which is a very minor departure from the standard.*
6. *The proposed boundary between lots 1 and 2 has been located along an existing fence line.*
7. *The proposed allotments will be in context and character with the surrounding allotments.*
8. *The proposed lots comply with the requirements of the subdivision chapter of Hawkesbury Development Control Plan.*
9. *The proposal will not create any land use conflict within the zone.*
10. *It is submitted that the proposal will not have any environmental impact as demonstrated by the statement of environmental effects.*

### 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 is to conserve larger parcels of rural land to preserve the potential for the land to be used for agricultural purposes, to prevent the fragmentation of agricultural land and to promote the conservation and enhancement of local native vegetation, amongst other objectives. The preservation of larger lot sizes will provide flexibility in regards to the use and development of the land which is consistent with the overall objectives of the zone.

The SEPP 1 objection attempts to demonstrate that the objective of the standard is not relevant to the development by asserting that the land is *suitable for two rural allotments based on the fact that the land is severed by a watercourse and has access to two roads.*

The applicant's approach is not supported as valid grounds for objection. The proposed subdivision will reduce the potential use of the subject land for agricultural activities and will result in the removal of a substantial amount of local native vegetation to construct access to the site. The application has not undertaken any assessment of the significance of the vegetation contained within the road reserve and has not investigated the potential impacts that the removal of that vegetation to construct the access in Krahe Road may have.

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It is therefore believed that the main objectives of the standard can still be achieved on the subject property without the need to support a variation to the minimum allotment size requirement.

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 fragmentation of agricultural lots.

It is considered that the creation of an additional rural allotment will ultimately reduce the potential agricultural use for land in areas previously cleared with the construction of a future residence on the land. Agricultural activities are able to be accommodated on the subject site without the need for the subdivision and erection of a dwelling on the property.

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 Councils 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 were created prior to the commencement of the current controls and the smaller allotments played a significant part in the reason why the current development controls were introduced.

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.

**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 Mixed Agriculture 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

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unreasonable given that this land area currently allows for agricultural activities to be undertaken within areas previously cleared on the subject site with native vegetated areas to be preserved.

It is considered that subdividing the majority of the native vegetation from the cleared portion of the land into two separate allotments 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.

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. 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 on the subject site however no assessment in regards to the removal of vegetation along the road reserve has been undertaken. Should Council choose to support the application it is recommended that a flora and fauna report be prepared addressing whether or not the proposal would have any impact on potential or core koala habitat having regard to the provisions of this policy.

### **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 Mixed Agriculture. Subdivision of land within the Mixed Agriculture Zone (not shown hatched) 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 10ha. The subdivision proposal involves the creation of an 8.82ha lot and a 10ha 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 9a of this plan as the development is inconsistent with the objectives of the Mixed Agriculture Zone, specifically objective (d) and (f) which are *“to prevent fragmentation of agricultural land”* and *“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,”*.

It is considered that the creation of an additional allotment and subsequent development of a residence will further fragment agricultural land within the locality as the development of the existing cleared areas will ultimately reduce the area in which agricultural activities could occur on the existing property.

Furthermore the proposal seeks to subdivide the existing allotment in a manner that will result with the majority of the existing cleared areas being located on proposed lot 1 with proposed lot 2 being primarily occupied by native vegetation consequently fragmenting agricultural land from native bushland.

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 2009 was exhibited 5 February 2010 to 12 April 2010. The subject lot is identified as being Zoned RU1 – Primary Production under DRAFT Hawkesbury Local Environmental Plan 2009.

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 2009 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 10 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 development standards under certain conditions. In the RU1 zone variations to lot sizes are proposed to be up to 10% of the standard. The current proposal is a variation up to 11.2% and is not consistent with the Draft LEP Clause.

It is further noted that proposed lot 2 is covered by native vegetation which has been identified on the Biodiversity Protection Map as significant vegetation. The subdivision and future development of proposed lot 2 may have an adverse impact on the identified vegetation communities located on the

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subject site. The objectives of this zone are to encourage sustainable primary industry production by maintaining and enhancing the natural resource base. It is considered that subdividing the majority of the native vegetation from the cleared portion of the land into two separate allotments is contrary to the objectives of the zone. Retaining the existing lot area would enable the land to be managed more appropriately in accordance of the objectives of this zone by encouraging agricultural development to occur in areas already cleared of vegetation and preserving remnant vegetation areas all on one lot.

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

**Hawkesbury Development Control Plan (HDCP) 2002**

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 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. No submissions were received in response to the application.

**Subdivision Chapter**

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

Element	Rule	Provides	Compl ies
<b>General</b>			
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.	No assessment has been made towards the removal of native vegetation along the road reserve.	No
	(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.	The application has not addressed the impacts the construction of the road reserve will have on watercourses, soils and fauna habitat.	No
	(c) Degraded areas are to be rehabilitated as part of the subdivision.	Rehabilitation of vegetated areas not proposed	No

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Element	Rule	Provides	Compl ies
	(d) Vegetation should be retained where it forms a link between other bush land areas.	No assessment in regards to vegetation removal has been provided.	No
	(e) Vegetation which is scenically and environmentally significant should be retained.		No
	(f) Vegetation which adds to the soil stability of the land should be retained.		N/A
	(g) All subdivision proposals should be designed so as to minimize fragmentation of bushland.	The proposal will fragment existing bushland areas from areas of previously cleared land.	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"> <li>• Be managed in such a way that the visual impact rising from development on newly created allotments is minimal; and</li> <li>• Retain visually significant vegetation such as that found on ridge tops and other visually prominent locations.</li> </ul>		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.	Infill subdivision	Yes
	(b) All lots created are to have the provision of power.	Available	Yes

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Element	Rule	Provides	Compl ies
	(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 dwellings	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.	Not identified as land being potentially subject to landslip.	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 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
<b>Rural and Residential Subdivision</b>			
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 1 would result in a variation of up to 11.2% from the standard. See assessment above.	No
	(b) Lots should be able to accommodate a building envelope of 2000m <sup>2</sup> 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

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Element	Rule	Provides	Compl ies
	(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.		Yes
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.	No details of road construction provided.	No
	(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 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	N/A	N/A
	(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.	Proposed	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.	Proposed, but no assessment of impact on vegetation submitted with the application	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

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Element	Rule	Provides	Complies
	(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.	N/A	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.	Could be provided	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.	Could be provided	Yes
	(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.	N/A	Yes
	(l) Cul-de sacs for rural roads should have minimum seal radii of 12.0m and boundary radii of 17.0m.		Yes
Effluent Disposal	(a) an effluent disposal report prepared by a suitably qualified person is required to accompany any development application for rural-residential subdivisions.	Proposed.	Yes
	(b) Any system proposed other than a Household Aerated Wastewater Treatment System is required to be installed prior to release of subdivision certificate.	N/A	Yes

**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 greater than 10ha 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 does not propose the removal of any vegetation on the subject site however no assessment in regards to the removal of vegetation along the road reserve has been undertaken. This vegetation is likely to contain threatened or endangered species. Should Council choose to support the application it is recommended that a flora and fauna report be prepared, prior to final determination of the application, addressing whether or not the proposal would have any impact on flora and fauna.

**Cumulative Impacts**

The cumulative impacts of approving subdivisions below the minimum allotment size are inconsistent with the overall objectives of the zone which has been discussed 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 agricultural land.

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 fragmenting agricultural land 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 use of the subject land for agriculture does not change as a consequence of the proposal and it is considered that the future development lot 2 will in fact reduce the area available for agriculture on the subject land.

- 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 3 September 2010, the Department of Planning advised that

*"I note that the proposal involves a variation to the 10 hectare subdivision standard for the Mixed Agriculture zone under Clause 11 (2) of the Hawkesbury Local Environmental Plan 1989. Under the Environmental Planning and Assessment Act, 1979, concurrence is required if Council proposes to grant development consent to the development application. The correspondence from Council does not indicate Council's intention to grant consent to the Development Application*

*Furthermore, I would very much appreciate if Council could provide advice on the access issues of proposed lot 2. It is unclear how access is to be provided given that the road is unmade, and there seems to be vegetation issues."*

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.

**e. The Public Interest:**

The current planning controls seek to retain rural allotments of sufficient size for the sustainability of agricultural pursuits and retention of native vegetation. To permit the fragmentation of rural land would be inconsistent with the existing and future planning controls being HLEP 1989 and Draft HLEP 2009 respectively.

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 public interest.

**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.

**Developer Contributions**

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

**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 not be supported.
- B. Development application DA0546/10 at Lot 406 DP 751665, 12 Stewarts Lane WILBERFORCE NSW 2756 for a two lot Torrens Title Subdivision be refused for the following reasons:
  - 1. The State Environmental Planning Policy No. 1 objection 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.
  - 2. The proposal does not satisfy the objectives of the Mixed Agriculture zone of Hawkesbury Local Environmental Plan 1989, as the development is considered to encourage fragmentation of agricultural land and does not promote the conservation and enhancement of local native vegetation.

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3. The development does not comply with Hawkesbury Development Control Plan 2002 Part D Chapter 3 – Subdivision. The proposal fails to comply with the minimum allotment size provision and has not addressed whether or not the removal of native vegetation along the road reserve would have an adverse impact on Flora and Fauna.
4. The proposal is inconsistent with the DRAFT Hawkesbury Local Environmental Plan 2009.
5. The cumulative impact of this and/or similar subdivisions and the potential adverse impact on the agricultural productivity of the land in the area are considered to not be in the general public interest.

### ATTACHMENTS:

- AT - 1** Aerial Photograph
- AT - 2** Locality Plan
- AT - 3** Subdivision Plan

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**AT - 1 Aerial Photograph**

Lot 406 DP 751665, 12 Stewarts Lane Wilberforce.

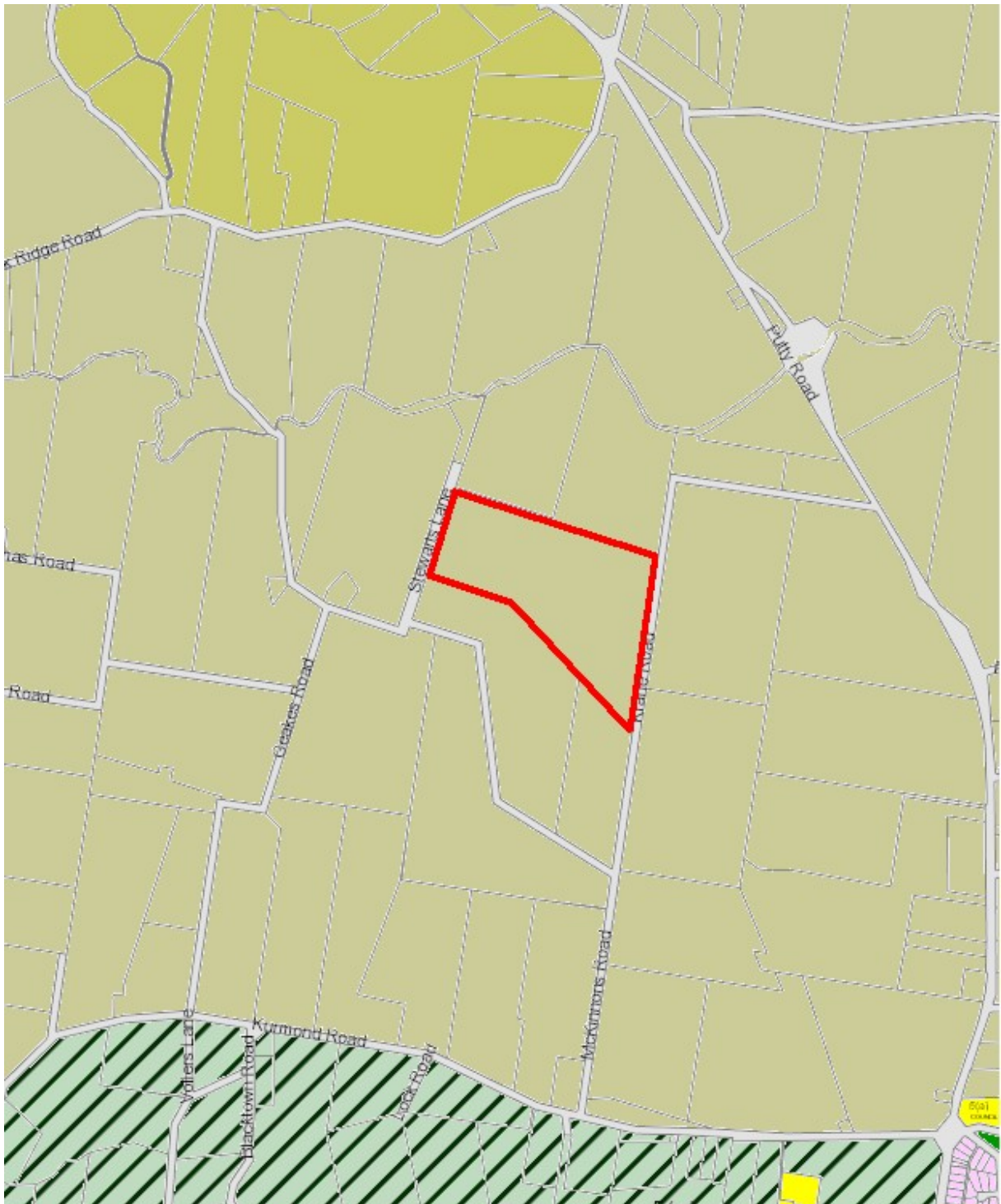


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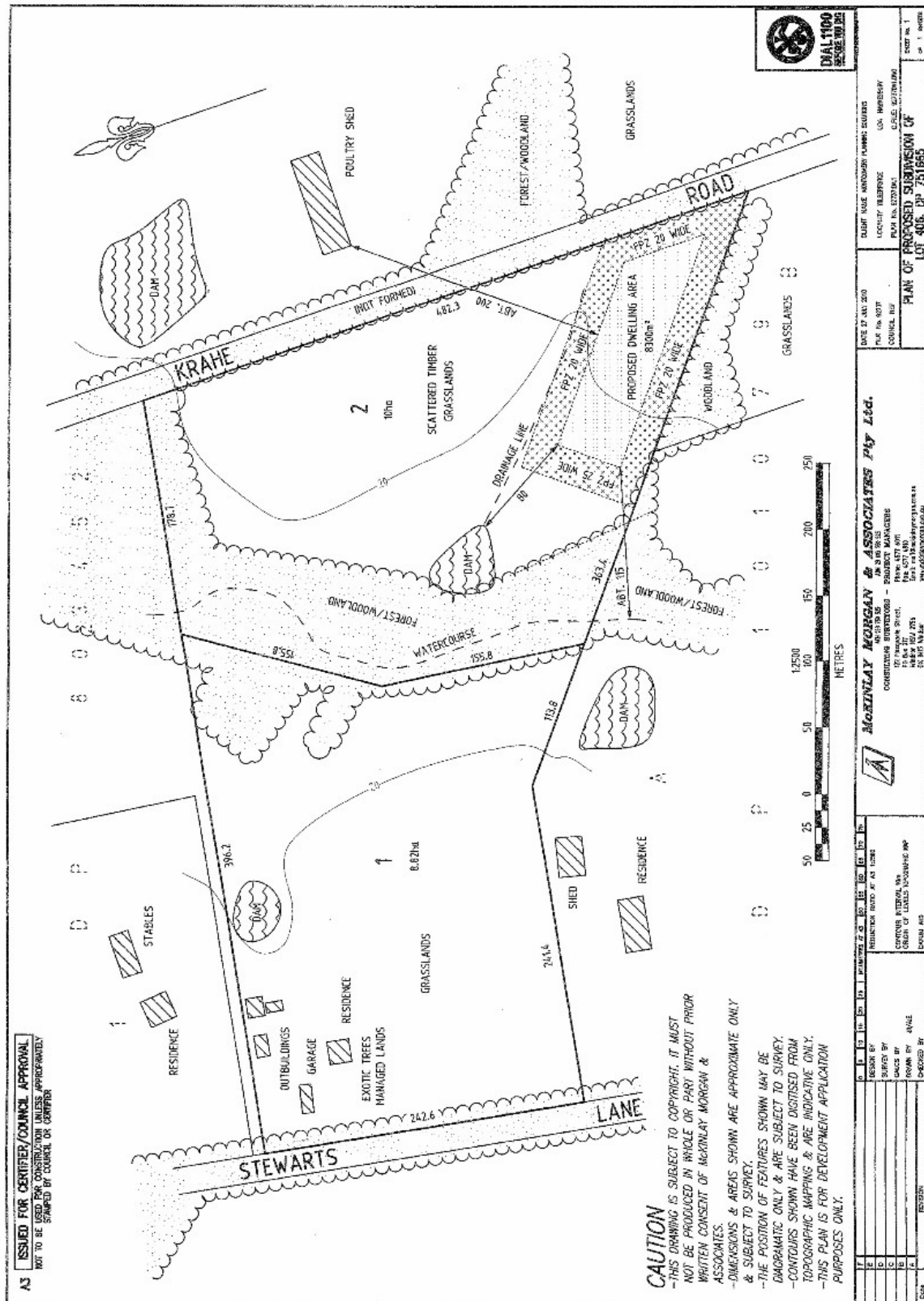
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**AT - 2 Locality Plan**

Lot 406 DP 751665, 12 Stewarts Lane Wilberforce



**AT - 3 Subdivision Plan**



oooO END OF REPORT Oooo

## ORDINARY MEETING

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**Item: 243**      **CP - Development Application - Retrospective Shed Additions and Use of Existing Shed for the Manufacture of Dog Biscuits - Lot 1 DP 564277, 412 Stannix Park Road, Ebenezer - (DA0922/08, 23330, 88784, 95498)**

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### Development Information

**File Number:** DA0922/08  
**Property Address:** 412 Stannix Park Road EBENEZER NSW 2756  
**Applicant:** PGH Environmental Planning  
**Owner:** Tuscany Farm Holdings Pty Ltd and Alextor International Pty Ltd  
**Proposal Details:** Retrospective shed additions and use of existing shed for the manufacture of dog biscuits  
**Estimated Cost:** \$70,000  
**Current Zone:** Mixed Agriculture under Hawkesbury Local Environmental Plan 198  
**Draft Zoning:** RU1 – Primary Production under Draft Hawkesbury Local Environmental Plan 2009  
**Date Received:** 17/12/2008  
**Advertising:** 07/01/2009 - 21/01/2009

**Key Issues:**

- ◆ Prohibited
- ◆ Zone objectives
- ◆ Noise
- ◆ Odour

**Recommendation:** Refusal

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### REPORT:

#### Executive Summary

Approval is sought to use the existing buildings that contain the feed processing shed, cool rooms, and store rooms for the manufacture, packaging, storage and wholesale delivery of dog food biscuits. In addition, the application seeks to formalise unauthorised buildings, specifically used for the manufacture and packaging of dog food biscuits.

The applicants Statement of Environmental Effects, includes a legal opinion that defines the use and development as a 'Rural Industry', a permitted use under Hawkesbury Local Environmental Plan 1989. However, legal advice obtained for Council disagrees with the applicant's view and suggests that the proposed development should be defined as an 'industry', which is a prohibited use. The definition of each land use is explored further within this report.

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

#### Description of Proposal

An application has been received seeking retrospective approval for shed additions and the use of an existing shed for the manufacture of dog biscuits. The use involves the occupation of existing buildings on site that contain the feed processing shed, cool rooms, and store rooms for the manufacture, packaging, storage and wholesale delivery of dog food biscuits.

As the proposed use relies on the classification of eggs as a primary product to satisfy the definition of a 'rural industry' as per Hawkesbury Local Environmental Plan 1989. The application seeks permission for the continuation of the feed shed for poultry (mixing, processing and storage) for the production of eggs.

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The following works are associated with the proposal:

- Convert the storage shed to a packaging shed
- Delivery/dispatch – Loading dock/delivery area ( unauthorised building )
- Drying room (unauthorised building)
- New workshop (unauthorised building)
- New office (unauthorised building)
- Construction of new fire exits and exit paths
- Continued use of store rooms for raw materials
- Expansion of cool room areas for the storage of dog biscuits and eggs
- Continued use of feed shed for poultry (mixing, processing and storage)
- Retrospective approval is sought for the installation of machinery, including hammer mill, mixers, sheet roller/stamping, baking oven, conveyor belts, dryer and packaging.

The creation of dog biscuits on site involves the milling of wheat to create flour, which is then placed in a high speed dough mixer. The mixed dough is placed on a conveyor which runs through a 3 roll sheeter that forms a sheet of dough of a certain thickness (as nominated for the biscuits) to be processed by the rest of the line. The machine has three rolls, two of which are smooth, while the last one is grooved in order to facilitate the incorporation of scrap dough ensuring that waste is minimised. The dough then proceeds over a roller cutter that forms the final biscuit shapes which then continue through the oven where they are baked.

Once the baked biscuits exit the oven they proceed to the biscuit dryer (to establish the correct moisture content) and then placed in mobile holding bins. The mobile bins are taken to the biscuit packing machine for final packaging and then stored ready for dispatch. Any water used in the production of the biscuits is metered into the biscuit mix via a computer and therefore no waste water is generated. Any biscuit waste (baked biscuits and/or dough) is recycled into poultry feed for re-use on the site. An approved poultry farm also exists on the site where eggs are obtained. The collected eggs form part of the mixture for the creation of dog biscuits.

Deliveries and dispatch of the products would occur Monday to Friday between the hours of 7.00am and 6.00pm. Four trucks would enter the site, generating eight vehicle movements per day. The trucks proposed to be utilised are expected to be large rigid or articulated vehicles.

20 employees are proposed to operate the development with a maximum of ten employees per shift. The applicant seeks to produce and package dog biscuits 24 hours per day, seven days a week to allow flexibility to run up to three production cycles to satisfy client contracts.

### History

27 May 1997 (DA68/1997) - Development consent issued for the "*erection of three poultry sheds, feed store, six silos, rearing shed and associated facilities.*"

28 February 2002 (DA28/2000) - Development consent issued for "*two cool rooms*".

13 August 2002 (DA906/1999) - Development consent issued for the "*erection of three additional sheds for the rearing of poultry and realignment of the previously approved rearing shed.*"

2 December 2004 (DA1013/2004) - Development consent issued for "*Construction of buildings to be used for staff amenities, storage of egg cartons and medical supplies, garaging of vehicles and tools and awning over meat meal silos.*"

14 December 2004 (CC1232/2004) - a Construction Certificate was issued by Urban City Consulting Pty Ltd, the Principal Certifying Authority (PCA) in respect of DA1013/2004.

19 December 2007 - Approval granted to a Section 96 application subject to DA906/1999 seeking amendments to the size of the sheds and construction materials.

**ORDINARY MEETING**  
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20 June 2008 - A notice of an intention to issue an order was issued by Urban City Consulting Pty Ltd. The reasons given for the order were as follows:

- Non compliance with conditions of consent.
- To ensure that the conditions of the development consent and/or the Building Code of Australia are complied with.
- Occupation of the building without obtaining an Occupation Certificate.

17 December 2008 - PGH Environmental Planning submits Development Application to Council seeking consent for the operation of a rural industry and formalisation of unauthorised buildings on site.

30 January 2009 - Request from Clr Williams that DA be brought to Council.

27 May 2009 - Request for further information sent to applicant.

1 September 2009 - Notification to applicant that outstanding information yet to be submitted.

15 September 2009 – Notification to applicant that outstanding information yet to be submitted.

2 October 2009 – Partial supply of amended information provided by applicant

4 October 2009 – Amended information, specifically odour and acoustic report provided by the applicant.

26 March 2010 – Request for details of acoustic report to be clarified issued to the applicant.

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

Sydney Regional Environmental Plan No. 20  
Draft Hawkesbury Local Environmental Plan 2009  
Hawkesbury Local Environmental Plan 1989  
Hawkesbury Development Control Plan 2002

**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 No. 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.

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

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

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

Clause 2 - Aims, objectives etc  
Clause 5 - Definitions  
Clause 9 - Carrying out of development

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Clause 9a - Zone objectives

Clause 18 - Provision of water, sewerage etc services

Clause 37A - Development on land identified on acid sulfate soils planning map

As previously discussed, the applicant proposes that the use of land is defined as a 'Rural Industry', which is defined in the Hawkesbury Local Environmental Plan 1989 as:

**Rural industry** means handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in that locality.

The Statement of Environmental Effects states that "the proposal is best described as a rural industry as it involves primary products", and provides the following description of use:

*"The production of dog food products (dog biscuits) involves the conversion of wheat, raw pulped egg, and other minor ingredients (meat-meal, colouring, flavour additives and salt) into dog biscuits. The wheat comprises approximately 80% of the mixture and the pulped raw egg (comprising mixed yolk and egg white) makes up a further 10% of the mixture. Whole wheat is milled on site and is combined with the other ingredients to form dough, which is then sheet rolled, stamped and baked in an oven. After cooling and drying, the dog food product is packaged and dispatched from the site for sales elsewhere."*

The term "primary products" as contained within the definition of "rural industry" is not defined in the HLEP 1989 or in the 1980 Model Provisions. However, several applications seeking approval for a "rural industry" have been determined at the Land and Environment Court, where it has been established what constitutes "primary products" and a "Rural Industry".

The term "rural industry" was considered by Justice Bignold of the Land and Environment Court in **Australian Native Landscapes Pty Ltd v Warringah Shire Council [1989] NSW LEC 3 (8 February 1989)** in respect to of a development consent that was granted by Council in 1979 following a judgment given by Justice Kearney in March 1989 in Supreme Court proceedings, which related to development being carried out on the site.

Justice Bignold referred to the proceedings before Justice Kearney, which involved a determination as to what was to be regarded as a "primary product" for the purposes of the term "rural industry" in circumstances where the term was not defined in the Ordinance applying to the site and thus quoted:

*"I have been referred to dictionary meanings of the word "primary" and the words "products", but I think that ultimately its meaning and connotation must be discovered from reading the words used in the grammatical and ordinary sense, paying regard to the context in which they appear in the Ordinance. It has been helpful suggested by Mr McClellan of counsel for the defendant, that a useful definition would be in the following terms:*

*"Products composed of natural matter or matter developed by natural means."*

*I accept the suggested meaning of the expression as providing an apt and useful guide to the determination of these proceedings."*

In **Domachuk v Baulkham Hills Shire Council [1992] 727 LGRA 395**, Justice Stein considered whether development for the purposes of the growing of mushrooms on a small scale, the bagging of spent mushroom compost for sale, the mixing of numerous imported products with the spent compost to produce various bagged potting mixes for sale, and the sale of imported products such as peat moss, charcoal, leaf mould, pine bark and cow and poultry manure in their imported states was a "rural industry" under the Baulkham Hills Local Environmental Plan 1991. Which has the same definition for "Rural Industry" as the Hawkesbury LEP 1989.

The Court noted that a number of the products brought onto the site were used in the growing of mushrooms, however, noted that significant quantities of the various products brought onto the land were imported for the purposes of being sold without any change in their form (or packaging) or for use in the manufacture of various potting mixes. In that regard, Justice Stein said:

*“Are the various items imported onto the site “ primary products “? What is a primary product for the purposes of the definition in the Local Environmental Plan? In my opinion “ primary “ connotes being of the first order so, for example, a grain is a primary product. The handling, processing or packaging of grain would therefore be a rural industry. Here a large number of products, which are brought onto the site, are claimed to be primary products, for example, rice hulls, peat moss, sawdust, sand, perlite, vermiculite, pine and other bark, wood chips and leaf mould. These come to the site in different containers, some in bags. They are mixed by various processes to manufacture the different types of potting mixes, which are then bagged and labelled for sale.*

*In the sense that they are derived ex-site (either grown, extracted or felled) and imported to the premises, do they comprise primary products which are handled, processed and packed?*

*It may first be observed that the products have all been produced off-site. They have undergone their primary production or harvesting and, in most cases, have already been handled, processed and packed.*

*Have they therefore ceased to be primary products and become merely the ingredients in the manufacture of the various potting mixes produced on the premises? In my view this is the correct position and the activities which are occurring on the premises are not a rural industry as defined in the Local Environmental Plan but more in the nature of an industry involving a manufacturing process as defined. The various products imported to the site are undergoing a secondary processing. The bagging of spent mushroom compost, without its mixing with other ingredients, may be argued to be a rural industry since it involves the handling and packing of a primary by product of the growing of mushrooms on the land.*

*However, once large numbers and quantities of other ingredients are imported to the site in order to mix with the spent compost to produce a variety of products, this cannot be properly classified as a “ rural industry“.*

The Domachuk case is similar to that currently proposed, where secondary products, which are not considered to be “primary products” are added as ingredients to form the final dog food product. As detailed within the applicant’s Statement of Environmental Effects, 80% of the dog food mixture comprises of whole wheat, which is milled on site and raw pulped egg, which is also produced on the site. It is considered that both the milled wheat and raw pulped egg would constitute the handling or treating of that product. However, the remaining 10% of the mixture comprises of ingredients, which are of a secondary nature and therefore the use cannot be defined as a ‘rural industry’.

Based on the determination of the Domachuk case and the interpretation of “primary products” within the land use of a “rural industry” by Justice Stein, the proposed development cannot be defined as a “rural industry”, but rather defined as an “industry” within HLEP 1989. Accordingly, the proposed development is considered to be prohibited within the Mixed Agriculture zone.

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

Within Draft Hawkesbury Local Environmental Plan 2009, the subject site will be zoned RU1 – Primary Production. The subject development and its intended use are considered to be defined as an “ industry “, which means:

*“ the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing or adapting, or the research and development of any goods, chemical substances, food, agricultural or beverage products, or articles for commercial purposes, but does not include extractive industry or a mine. “*

The proposed development is prohibited within the Draft RU1 Primary Production Zone.

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

**Hawkesbury Development Control Plan**

The Hawkesbury Development Control Plan 2002 applies to the proposal. An assessment of the proposal against the relevant provisions of this plan follows:

**Part A Chapter 3 – Notification**

The application was notified to adjacent and adjoining property owners in accordance with HDCP. During the neighbour notification period, two submissions were received and are discussed later in this report.

**Part C Chapter 2 – Carparking and access**

The development provides sufficient carparking and satisfactory turning paths for large vehicle movements in accordance with Part C of Hawkesbury Development Control Plan 2002. However, in respect to development standards for an industrial use within a Mixed Agricultural zone, no specific development control plan exists in relation to the proposed use of land.

**iiia. 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 are no planning agreements applicable to the proposed development.

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

The proposed development is not inconsistent with the provisions of the Environmental Planning and Assessment Regulation, 2000.

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

**Access, Transport & Traffic**

The proposed development will generate an additional eight (8) heavy vehicle movements per day from the site. The low volume of traffic generated by the proposal is considered to have no significant impact on traffic movements within the locality.

**Utilities**

It is considered that the proposed development will not place unreasonable demands on the provisions of services.

**Flora & Fauna**

The site has been extensively cleared from past activities conducted and operated on site, with no further vegetation proposed to be removed as part of the application. It is therefore considered that the proposed development will have no significant impact on threatened species, populations, ecological communities or their habitats.

**Waste**

Waste generated by the development is proposed to be removed by a private contractor.

**Noise & Vibration**

The application has been supported by an acoustic report, which has been reviewed by Council's Environmental Health Officers, who advise that the acoustic report is satisfactory, subject to specific conditions of consent. The acoustic report concludes that the development is able to satisfy the NSW Industrial Noise Policy, subject to mitigation measures to be implemented within the development.

**Natural Hazards**

The site is not impacted by flood waters subject to the 1 in 100 year flood event, however is located on bushfire prone land. As all buildings contained on site are non-residential, the existing structures are not subject to any specified bushfire protection requirements.

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

The proposed use of the development is a prohibited land use in the current zone provisions of the HLEP 1989 and the Draft LEP 2010. Accordingly, the site is considered unsuitable for the proposed development.

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

The application was notified to adjoining property owners for 18 days in accordance with the requirements of Hawkesbury Development Control Plan 2002 from 2 January 2009 to 21 January 2009.

The objections received raised the following concerns:

**1. Odour - offensive smells**

Comment: The application has been supported by a cumulative odour assessment report, which has been reviewed by Council's Environmental Health Officers, who advise that the cumulative odour assessment report is satisfactory, subject to specific conditions of consent. The cumulative odour assessment report concludes that the development is able to satisfy the NSW DECC Odour Performance Criteria subject to mitigation measures to be implemented within the development.

**2. Scale of operation too big for site.**

Comment: An objection has been received concerned that the operation of the site through its various uses has outgrown the capacity of the site to function adequately. The site occupies an area of 17.66Ha and is relatively cleared to accommodate future growth and expansion. Significant area exists on site for carparking and for the manoeuvring of large trucks. Therefore, it is considered that the current operations conducted on site do not exceed the capacity of the site to accommodate all land uses operated. However, the latest proposal for the use of existing sheds for the manufacture of dog biscuits is considered to be defined as 'industry' as per HLEP 1989 and is therefore a prohibited development.

**e. The Public Interest:**

The ultimate development is a prohibited use in both the current and future zone of the site.

**Conclusion:**

Based on the determination of the Domachuk case and the interpretation of "primary products" within the land use of a "rural industry" by Justice Stein, it is considered that the proposed development cannot be defined as a "rural industry", but rather defined as an "industry" within HLEP 1989. Accordingly, the proposed development is considered to be prohibited within the Mixed Agriculture zone.

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**Meeting Date:** 9 November 2010

### Planning Decision

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

### RECOMMENDATION:

That:

1. Development application DA0922/08 at Lot 1 DP 564277 412 Stannix Park Road, EBENEZER NSW 2756 for retrospective shed additions and use of existing shed for the manufacture of dog biscuits be refused for the following reasons:
  - (a) The development is best defined as “industry” under the provisions of the Hawkesbury Local Environmental Plan 1989, which is a prohibited land use within the “Mixed Agriculture” zone.
  - (b) The development is defined as “industry” under the provisions of the Draft Hawkesbury Local Environmental Plan 2009, which is a prohibited land use within the RU1 Primary Production zone.
2. As the existing operation for the manufacture of dog biscuits is prohibited in the zone, appropriate compliance action be taken in accordance with Council’s Enforcement Policy to ensure that the operation ceases within a reasonable timeframe.

### ATTACHMENTS:

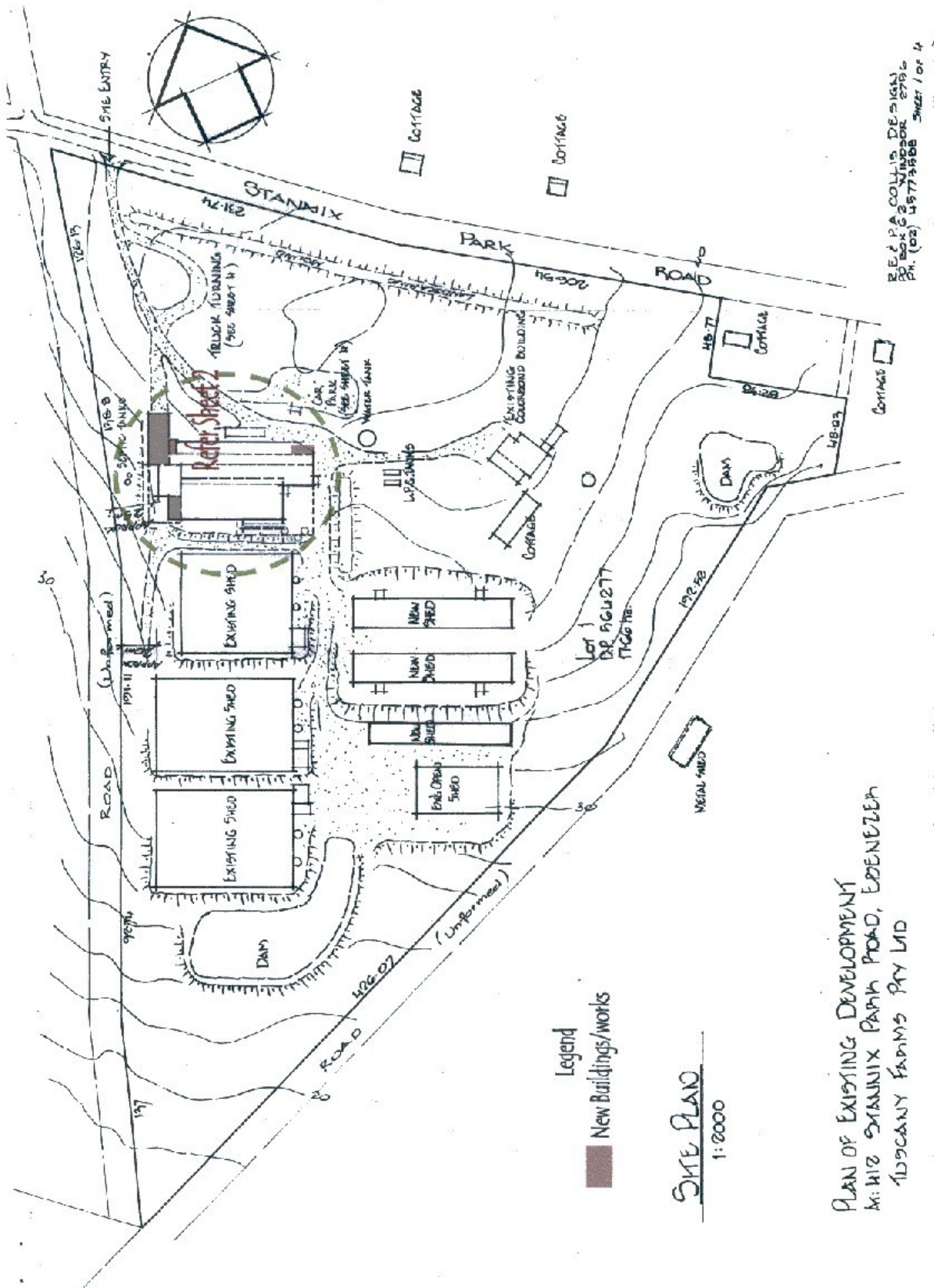
- AT - 1** Locality Plan
- AT - 2** Site Plan
- AT - 3** Elevation Plan

**Meeting Date:** 9 November 2010

# ORDINARY MEETING

Meeting Date: 9 November 2010

## AT - 2 Site Plan



**Meeting Date:** 9 November 2010

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## ORDINARY MEETING

Meeting Date: 9 November 2010

**Item: 244**      **CP - Development Application - Five Rural Sheds with Attached Carports - 433 Pitt Town Bottoms Road, Pitt Town Bottoms NSW 2756 - (DA0160/10, 85782, 90731, 95498)**

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### Development Information

**File Number:** DA0160/10  
**Property Address:** 433 Pitt Town Bottoms Road, Pitt Town Bottoms NSW 2756  
**Applicant:** Urban City Consulting Pty Limited  
**Owner:** Ski Across Pty Limited  
**Proposal Details:** Rural Sheds with attached Carports  
**Estimated Cost:** \$225,000  
**Zone:** Environmental Protection - Agriculture Protection (Scenic ) under Hawkesbury Local Environmental Plan 1989  
**Draft Zone:** RU2 – Rural Landscape under Draft Hawkesbury Local Environmental Plan 2009  
**Date Received:** 5/03/2010  
**Advertising:** 13/9/2010 to 27/9/2010

**Key Issues:**

- ◆ Definition of proposed use and buildings
- ◆ Cumulative shed size
- ◆ Landscaping
- ◆ Integrated development
- ◆ Flooding

**Recommendation:** Refusal

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### REPORT:

#### Executive summary

Council has received a development application that describes the proposed development as “Five Rural Sheds with attached carports”. The Statement of Environmental Effects accompanying the application states that the applicant actually seeks to formalise the use of the site for a permanent recreation facility or establishment providing holiday storage for the 10 landowners.

Rural sheds are only permitted, by definition, if they are associated with an agricultural use or other permissible land use. “Recreation establishments” and “Recreation Facilities” are not permitted land uses within the Environmental Protection – Agriculture Protection (Scenic) zone. Therefore, it is considered that the proposed development is prohibited. However, for clarity of the assessment of the application, a full assessment of the proposed development against all relevant planning controls has been undertaken in this report.

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

#### Introduction

The Development Application proposes to construct five rural sheds with attached carports. An internal bathroom is proposed within each storage area, which will create ten individual storage spaces, with attached carports. The intention of the sheds is to house ten powerboats for ten families for easy access to the river for skiing, however no formal approval exists for access to the river via a pontoon or boat ramp. The applicants propose that the use is defined as a rural shed as per Hawkesbury Local Environmental Plan 1989.

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The storage sheds are proposed to be located on the northern portion of the site, with a setback of 40 metres from the edge of the Hawkesbury River, with a flat pitch roof plane. Each shed occupies an area of 224.4m<sup>2</sup> (20.4m x 11m), with an internal bathroom and external paved area, with an attached carport upon either side of the proposed shed. The cumulative total of the proposed five sheds totals 1122m<sup>2</sup>. From natural ground to the peak of the roof plane, the structures would stand 6.1 metres in height; however this is based on one cross section diagram only. Each of the sheds has extensive glazing via sliding doors, which lead to a paved area. The paved area of each of the sheds addresses the river frontage.

No recreational use has been approved on the site and due to works proposed within 40 metres of a natural watercourse; the application triggers the integrated development provisions within the Environmental Planning and Assessment Act, 1979 and requires the concurrence from the NSW Office of Water. Following correspondence received from the NSW Office of Water, the applicants have amended the location of all sheds to sit 40 metres from the edge of the Hawkesbury River.

### Site and locality description

The subject site is known as 433 Pitt Town Bottoms Road, Pitt Town Bottoms. The site is irregularly shaped and is currently zoned Environmental Protection - Agriculture Protection and currently contains several sheds and ancillary structures used for the operation of a turf farm. The site has direct river frontage and during times of flood, the development site is inundated by several metres of water across the entire site. On the opposing side of Hawkesbury River, to the north of the subject site a state heritage item (Australiana Pioneer Village - Rose St, Wilberforce ) is located. On the opposing side of Hawkesbury River to the east, the Butterfly Farm exists and to the west and south of the subject site, other turf farms are located.

### History

A previous application, DA0524/09, sought approval for the construction of five recreational storage sheds with recreational facilities. That application was withdrawn on the 17 November 2009.

- 8 March 2010 - DA0160/10, the current Development Application, was lodged.
- 14 April 2010 - Comments from NSW Office of Water, requesting additional information, received
- 3 May 2010 - Correspondence requesting additional information is issued to the applicant
- 19 May 2010 - 7 day reminder letter issued to the applicant
- 19 May 2010 - Amended plans and details received
- 1 June 2010 - Application referred back to the NSW Office of Water
- 10 June 2010 - Concurrence issued from the NSW Office of Water
- 22 June 2010 - Correspondence advising of DCP non-compliances and included request to applicant to advise Council whether they intend to withdraw or amend the application.
- 26 July 2010 - Final 7 day reminder letter issued to the applicant
- 31 August 2010 - Meeting held with Council Officers
- 9 September 2010 - Response to Council letter of 22/6/10 received from applicant

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

Sydney Regional Environmental Plan No 20  
Hawkesbury Local Environmental Plan 1989  
Draft Hawkesbury Local Environmental Plan 2009  
Hawkesbury Development Control Plan 2002

### 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:

**ORDINARY MEETING****Meeting Date:** 9 November 2010**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).**

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 subject land falls within the boundary of SREP 20 and is situated within a corridor of local significance. The site is also located 1 kilometre upstream of an area of regional significance. Specific planning policies and recommended strategies of the plan apply to the proposal and have been considered in the table below:

<b>Specific Planning Policies and Recommended Strategies</b>	<b>Compliance</b>	<b>Comment</b>
Total Catchment Management	Yes	The proposal is unlikely to result in any significant adverse environmental impacts on any downstream local government areas.
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.
Water Quality	Yes	The proposed effluent disposal areas are located more than 100 metres away from the banks of the Hawkesbury River, and are considered unlikely to adversely affect the water quality of the river.
Water Quantity	Yes	The proposal will not significantly increase water run-off from the site or the rate at which it leaves.
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.
Riverine Scenic Quality	No	The proposal is considered to be inconsistent with the strategies recommended within the Riverine Scenic Quality. Inadequate details have been submitted with the application as to how the development is to be screened when viewed from the river. The cumulative total of the additional shed floor area of 1122m <sup>2</sup> is considered excessive and out of scale.

Clause 11 of SREP No. 20 sets development controls, setting out particulars for the development controls imposed by this part. The development is considered to be categorised as 'Land uses in or near the river', which is defined as:

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*"All uses in the river or a tributary of the river, or within 40 metres of the high water mark of the river or a tributary of the river where it is tidal or within 40 metres of the bank where it is non-tidal. This includes clearing and the construction and use of piers, wharves, boat sheds or other structures which have direct structural connection to the bank or bed of the river or a tributary of the river."*

In consideration of such proposals, the following matters are required to be considered by the consent authority:

- The need to locate access points where riverbanks are stable, away from river shallows and major beds of attached aquatic plants, away from fishing grounds and fish breeding areas, where the proposed activities do not conflict with surrounding recreational activities, and where significant fauna and wetland habitats will not be adversely affected.

### Comment:

The area sought for development has previously been cleared and disturbed by past farming activities. The structures are located 40 metres from the banks of the river and are considered to have no significant adverse impact on flora and fauna species, populations or habitats. In addition, the proposal does not interfere with any surrounding recreational activity. However, it is clear that the intent is to carry out recreational activities on the site in the form of activities related to boating, camping and fishing, using the river and riverbank.

- The need to require remedial works, such as the re-establishment of flora and fauna habitats.

### Comment:

The development does not contain any remnant flora and fauna habitats and is currently used as a turf farm. The development does not propose any vegetation to be removed.

- The potential for use of the land as a buffer to filter water entering the river.

### Comment:

The existing land use as a turf farm has limited opportunity to create buffers and filter water entering Hawkesbury River without a loss of farming area.

- The need for an Erosion and Sediment Control Plan.

### Comment:

Any approval for construction works would require the preparation and installation of erosion and sediment controls prior to the issue of any Construction Certificate to control and mitigate erosion loss and sedimentation entering the river system.

- The need for a Vegetation Management Plan.

### Comment:

The applicant has previously been requested to provide details of landscaping and how the proposed structures are to be screened when viewed from the Hawkesbury River. Inadequate details have been submitted considering the scale of activity, river frontage distance and the significance of the visual impact. Accordingly, it is considered that the applicants have failed to address this matter of consideration adequately.

Hawkesbury Local Environmental Plan 1989

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

Clause 2 - Aims, objectives etc  
 Clause 5 - Definitions  
 Clause 9 - Carrying out of development  
 Clause 9a - Zone objectives  
 Clause 18 - Provision of water, sewerage etc services  
 Clause 20 - Development below high - water mark etc  
 Clause 25 - Development of flood liable land  
 Clause 28 - Development in the vicinity of heritage items  
 Clause 37A - Development on land identified on Acid sulfate soils planning map

A "Rural Shed" is defined in the Hawkesbury Local Environmental Plan 1989 (HELP 1989) as the following:

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

Rural sheds are only permitted by definition if they are associated with an agricultural use or other permissible land use. Whilst the application describes the proposed development as "Five Rural Sheds with attached carports", the Statement of Environmental Effects accompanying the application states that the applicant actually seeks to formalise the use of the site for a permanent recreation facility or establishment providing holiday/recreational storage for the 10 landowners. There is also a strong possibility that the development could be used for short term accommodation by the owners. "Recreation establishments" and "Recreation Facilities" are not permitted land uses within the Environmental Protection – Agriculture Protection (Scenic) zone. Therefore the proposal is prohibited.

An assessment of the Development Application reveals that the proposal is contrary to the aims and objectives of HLEP 1989 and fails to satisfy the objectives of the Environmental Protection - Agriculture Protection (Scenic) zone.

The application is not considered to satisfy the objectives of the Environmental Protection – Agriculture Protection (Scenic) zone, specifically;

- (a) *to protect the agricultural potential of rural land in order to promote, preserve and encourage agricultural production,*
- (c) *to ensure that development does not create or contribute to rural land use conflicts,*
- (e) *to preserve river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other local features of scenic quality,*
- (j) *to preserve the rural landscape character of the area by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping.*

**Comment:**

The proposed development is considered to be inconsistent with the above zone objectives, as the proposed recreational use of the land will diminish the ability of the land to be utilised for agricultural pursuits in the future. In addition, it is likely to generate rural land use conflict amongst neighbouring properties in the locality between turf farmers, vegetable growers and water skiers/holidaying public.

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The development fails to address the visual impact of the sheds, which is considered likely to dominate the rural landscape character of the area, through its excessive floor area. Minimal detail has been provided in respect to landscaping to screen or beautify the surrounding area to mitigate the visual impact of the structures.

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

Within Draft Hawkesbury Local Environmental Plan 2009, the subject site will be zoned RU2 Rural Landscape. The subject development and its intended use are considered to be defined as a "Recreational Facility (outdoor)" with ancillary 'boat sheds', which means a:

*"a building or place (other than a recreation area) used predominately for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary building), but does not include an entertainment facility or a recreation facility (major)" and a:*

*"building or other structure used for the storage and routine maintenance of a boat or boats and that is associated with a private dwelling or non-profit organisation, and includes any skid used in conjunction with the building or other structure. "*

The proposed development is prohibited within the Draft RU2 Rural Landscape zone.

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

**Part A Chapter 3 - Notification**

The application was notified to adjacent property owners in accordance with HDCCP. During the neighbour notification period two submissions were received. Those submissions are discussed later in this report.

The following table provides an assessment of the proposed development against the requirements for the erection of rural sheds:

Element	Rules	Provides	Complies
Sitting	(a) Sheds shall be located no closer to the road than the existing dwelling house on the property. (Refer to Figure D8.1).	All structures are located a considerable distance from Pitt Town Bottoms Road.	Yes
	(b) Cut and fill shall be limited to 2m of cut and 900mm of fill. (See Figure D8.2).	Cut and fill do not exceed the requirements of Rule 8.2.1 (b)	Yes
	(c) Sheds shall not be erected on land having a slope in excess of 10%. (Refer Figure D8.2).	The position of the shed will not be erected on a portion of the site where the slope exceeds more than 10%.	Yes

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Element	Rules	Provides	Complies
	(d) The erection of rural sheds shall involve minimal disturbance to native vegetation.	No vegetation will be removed.	Yes
Size	<p>(a) The maximum size of sheds in the 1(c). 1(c1) areas shall not exceed 170m<sup>2</sup>. The cumulative total of all outbuildings shall not exceed 170m<sup>2</sup> on any one property in these zones.</p> <p>(b) In zones 1(a), 1(b), 7 (d), 7(d1), 7(e), the applicant will need to justify the size of any shed exceeding 170m<sup>2</sup> in terms of the use of the shed and the land, as well as measures taken to minimize the impact on neighbors and the general area.</p>	<p>NA</p> <p>The cumulative total of the floor areas of the five sheds is 1122m<sup>2</sup>. Each shed is 224.4m<sup>2</sup> in area. The applicant has failed to justify the excessive size of the sheds to the use of the land.</p>	<p>NA</p> <p>No</p>
Height	<p>(a) The total height of a rural shed erected in a rural 1(c) and 1(c1) zones shall be no more than 5m or no higher than the height of the ridgeline of the dwelling house on the same property, whichever is less.</p> <p>(b) In other zones the total height of a rural shed exceeding 5m shall be justified in terms of the use of the shed and the visual impact of the development.</p> <p>(c) The total height of 'barn style' sheds may exceed 5m based on individual merit.</p>	<p>NA</p> <p>6.1 metres.</p> <p>Not barn style</p>	<p>NA</p> <p>No</p> <p>NA</p>
Form	<p>(a) Rural sheds with standard roof form will be limited to rectangular shapes.</p> <p>(b) Sheds of other roof forms, for example barn style, will be encouraged.</p>	Flat pitch at 9 degrees sought	<p>No.</p> <p>N/A</p>
Colour	<p>(a) The colour of a rural shed will match or blend in with those of existing buildings.</p> <p>(b) On vacant land the colour of rural sheds shall be taken from the natural environment.</p>	<p>NA</p> <p>The colours selected : roof – slate grey and walls – beige cream are not considered to resemble natural environmental colours in the vicinity of the works</p>	<p>NA</p> <p>No</p>

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Element	Rules	Provides	Complies
Type of building materials	(a) Building materials used in the construction of rural sheds are to be new, preprinted and non-reflective.	Colorbond	Yes
	(b) The use of corrugated iron will be considered subject to the size, height, design and location of the rural shed.	Colorbond	Yes
	(c) Any part of a building below the 1-100 year flood level is to be constructed of flood compatible materials.	The location is below the 1 in100 flood level. Flood compatible materials would be required to be chosen	Subject to conditions of consent if approved
Landscaping	(a) Plantings are to be a mix of trees, shrubs and ground cover.	No precise details have been submitted	No
	(b) Trees shall include species that at maturity have a height above the ridgeline of the shed.		No
	(c) Shrub mass shall provide adequate screening		No
	(d) Plants endemic to the area must be chosen.		No

**Comment:**

As detailed above, the proposal fails to comply with the DCP requirements in respect to size, height, form, colour and landscaping.

**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 are no planning agreements applicable to the proposed development.

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

The proposed development is considered to be inconsistent with the provisions of clause 54 of the Environmental Planning and Assessment Regulation, 2000 as insufficient information, particularly definition of the development, landscape details and visual impact analysis, has been provided to address issues raised with the applicant.

**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:**

The development fails to address the visual impact of the sheds, which is considered to dominate the rural landscape through the excessive cumulative floor area. Minimal detail has been provided in respect to landscaping to screen or beautify the surrounding area to mitigate the visual impact of the structures. Accordingly, it is considered that the proposed development will have a negative impact upon the natural environment.

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

The site is flood affected by the 1 in 100 year event and during times of flood, the development site is inundated by several metres of water across the entire site. The proposal involves erecting a number of sheds to store equipment and provide temporary accommodation. The flood environment of the site is not conducive to the intended purpose. It should also be noted that the proposed use of the development is a prohibited land use in the current zone provisions of the HLEP 1989 and the draft LEP 2010. Accordingly, the site is considered unsuitable for the proposed development.

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

The application was publicly exhibited between 13 September 2010 and 27 September 2010. During this notification period, two (2) submissions of objection were received. The matters raised in these submissions are addressed below:

**1. Long term occupation/ski/caravan park**

Comment:

Two submissions have been received objecting to the perceived use of the site as a 'ski/caravan park'. As earlier detailed within the report, whilst the application form describes the proposed development as "Five Rural Sheds with attached carports", the Statement of Environmental Effects accompanying the application states that the applicant actually seeks to formalise the use of the site for a permanent recreation facility or establishment providing holiday storage for the 10 landowners. There is also a strong possibility that the development could be used for short term accommodation by the owners. "Recreation establishments" and "Recreation Facilities" are not permitted land uses within the Environmental Protection – Agriculture Protection (Scenic) zone. Therefore the proposal is prohibited.

**2. Noise pollution/Riverbank erosion/Destruction of natural habitats/Boats taking off and landing from this development/Road traffic congestion**

Comment:

This objection is concerned at the use and subsequent impacts associated with a ski park operating from the premises. The applicant has applied for development consent for the construction of five (5) rural sheds with attached carports, with internal facilities. It is claimed within the submitted Statement of Environmental Effects that the sheds purpose is to house the boats of ten (10) separate families. The application has not been submitted as a recreational establishment; however the listed concerns are likely impacts of a ski park on the adjoining natural and built environment. The likely impacts of a ski park operating from the premises have not been explored or addressed by the applicant within their Statement of Environmental Effects.

**3. Development not allowed within 40 metres of the riverbank**

Comment:

The applicant has amended plans following correspondence from the NSW Office of water who advised that no structures shall exist within 40 metres of the riverbank. The revised plans detail that no structures are present within 40 metres of the riverbank of Hawkesbury River.

**4. Sewerage Disposal**

Comment:

An onsite wastewater management report prepared by Toby Fiander has been submitted with the application and is considered satisfactory. The disposal areas are located a sufficient distance from the waterway. In addition, no objections to the location of the effluent disposal areas has been raised from the NSW Office of Water.

**5. Visual Impact**

Comment:

An objection has been received concerned at the appearance of the 'rural sheds' as viewed from the opposing side of the Hawkesbury River. The 'rural sheds' are very contemporary and modern in design, unlike a traditional rural shed design. The development fails to address the visual impact of the sheds, which is considered to dominate the rural landscape through its excessive cumulative floor area. Minimal detail has been provided in respect to landscaping to screen or beautify the surrounding area to mitigate the visual impact of the structures.

**6. To my understanding buildings have to be portable in flood prone areas**

Comment:

Due to the level of land, the perceived holiday accommodation of the cabins, the structures do not satisfy the flood planning requirements in respect to the area of land above the 1 in 100 year flood event as per Clause 25 of Hawkesbury local Environmental Plan 1989. Should the structures be verified as bona fide 'rural sheds', all structures would be required to be constructed of flood compatible materials and strengthened to increase resistance to floodwater flow, buoyancy and debris impact.

**e. The Public Interest:**

The ultimate development is a prohibited use in both the current and future zone of the site. The development also fails to address the visual impact of the sheds, which is considered to dominate the rural landscape through its excessive floor area. Minimal detail has been provided in respect to landscaping to screen or beautify the surrounding area to mitigate the visual impact of the structures.

In addition, the development significantly exceeds Council's DCP requirements for the cumulative total permitted for rural sheds, as well as development standards for height, form, colour and landscaping. Accordingly, the proposal to construct five (5) rural sheds, with attached carports is considered to be contrary to the public's interest.

**Conclusion:**

The development fails to address the visual impact of the sheds, which is considered to dominate the rural landscape through its excessive floor area. Minimal detail has been provided in respect to landscaping to screen or beautify the surrounding area to mitigate the visual impact of the structures. In addition, the development exceeds Council's DCP requirements for the cumulative total permitted for rural sheds, as well as development standards for height, form, colour and landscaping.

**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:** 9 November 2010

### RECOMMENDATION:

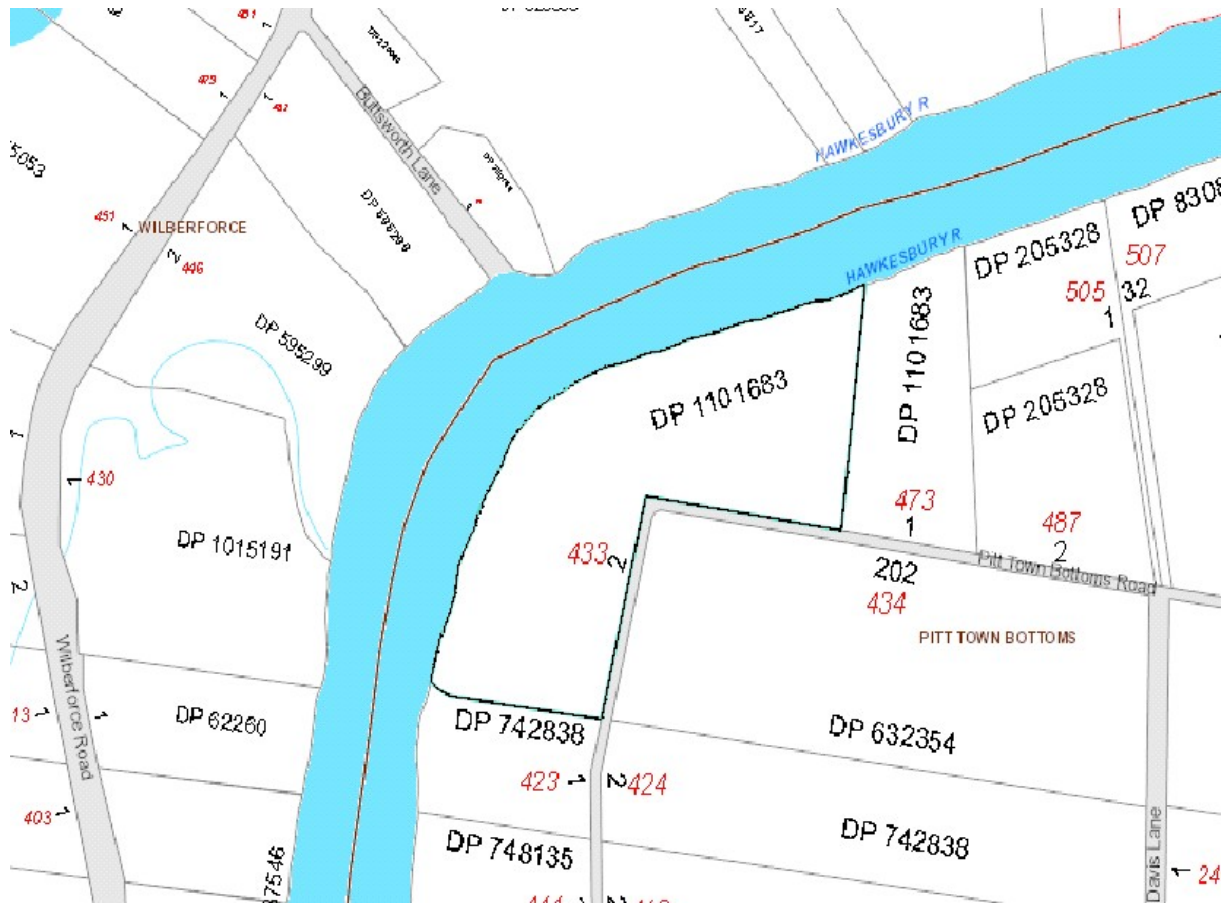
That development application DA0160/10 at Lot 2 DP 1101683, 433 Pitt Town Bottoms Road, Pitt Town Bottoms NSW 2756 for Five Rural Sheds with attached carports be refused for the following reasons:

1. The development is best defined as a "Recreation Establishment" or "Recreation Facility" under the provisions of the Hawkesbury Local Environmental Plan 1989, which are prohibited land uses within the "Environment Protection – Agriculture Protection (Scenic)" zone.
2. The development is defined as a 'Recreation Facility (outdoor)' under the provisions of the Draft Hawkesbury Local Environmental Plan 2009, which is a prohibited land use within the RU2 Rural Landscape zone.
3. The development fails to address recommended strategies and matters of consideration of Sydney Regional Environmental Planning Policy 20. (No. 2 – 1997) – Hawkesbury – Nepean River.
4. The development fails to comply with the aims and objectives of HLEP 1989.
5. The development fails to satisfy the objectives of the Environment Protection – Agriculture Protection (Scenic) zone.
6. The development does not comply with Hawkesbury Development Control Plan 2002 Part D Chapter 8 – Erection of rural sheds in respect to development standards pertaining to size, height, form, colour and landscaping.
7. The development is considered to have an unacceptable visual impact upon the rural landscape.
8. The site is considered unsuitable for the development given the flood affectation of the site.
9. Due to the above reasons and the objections received the proposal is not considered to be in the general public interest.

### ATTACHMENTS:

- AT - 1** Locality Plan
- AT - 2** River Perspective/Site Plan
- AT - 3** Part Site Plan
- AT - 4** Elevation Plan

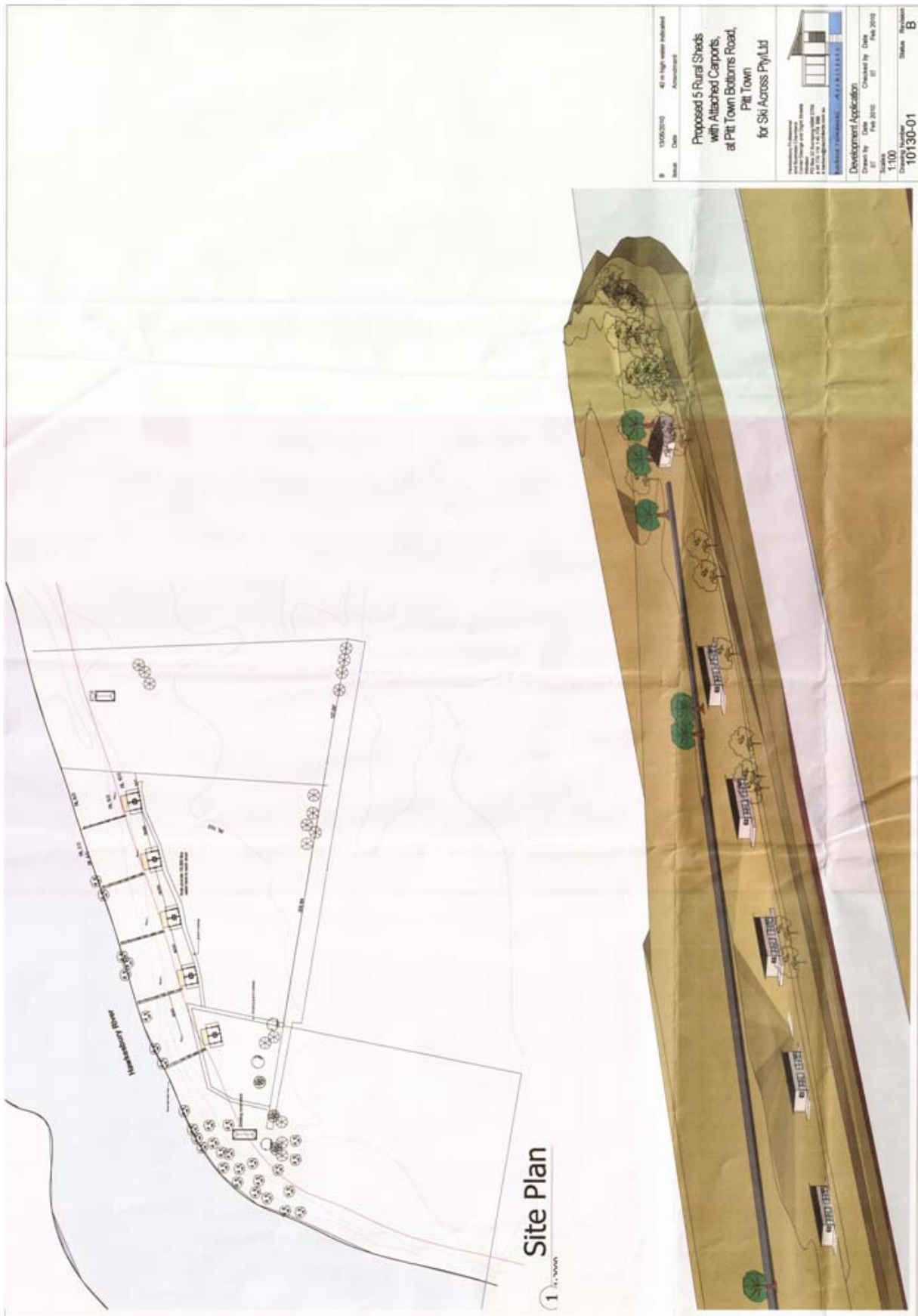
AT - 1 Locality Plan



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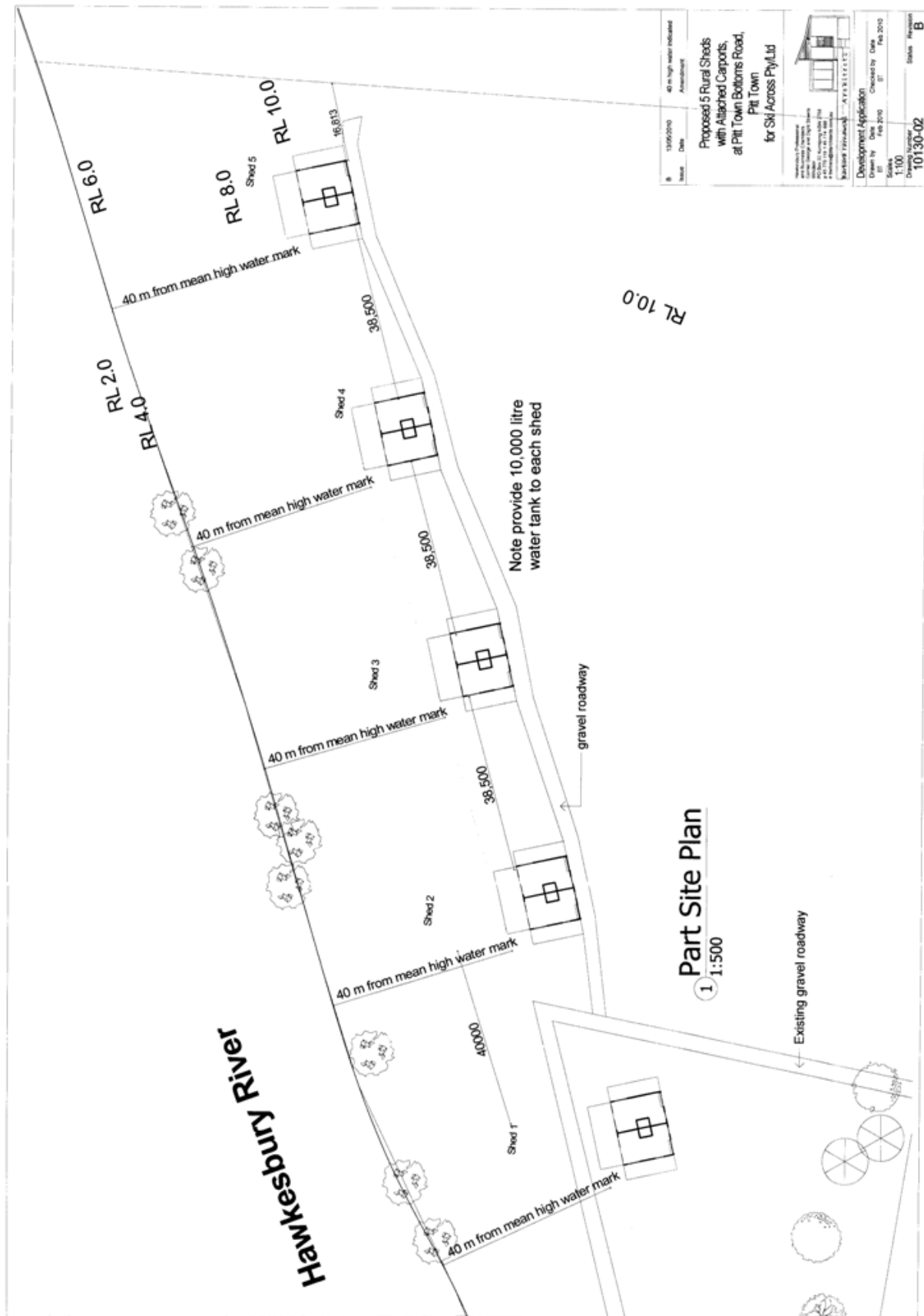
AT - 2 River Perspective/Site Plan



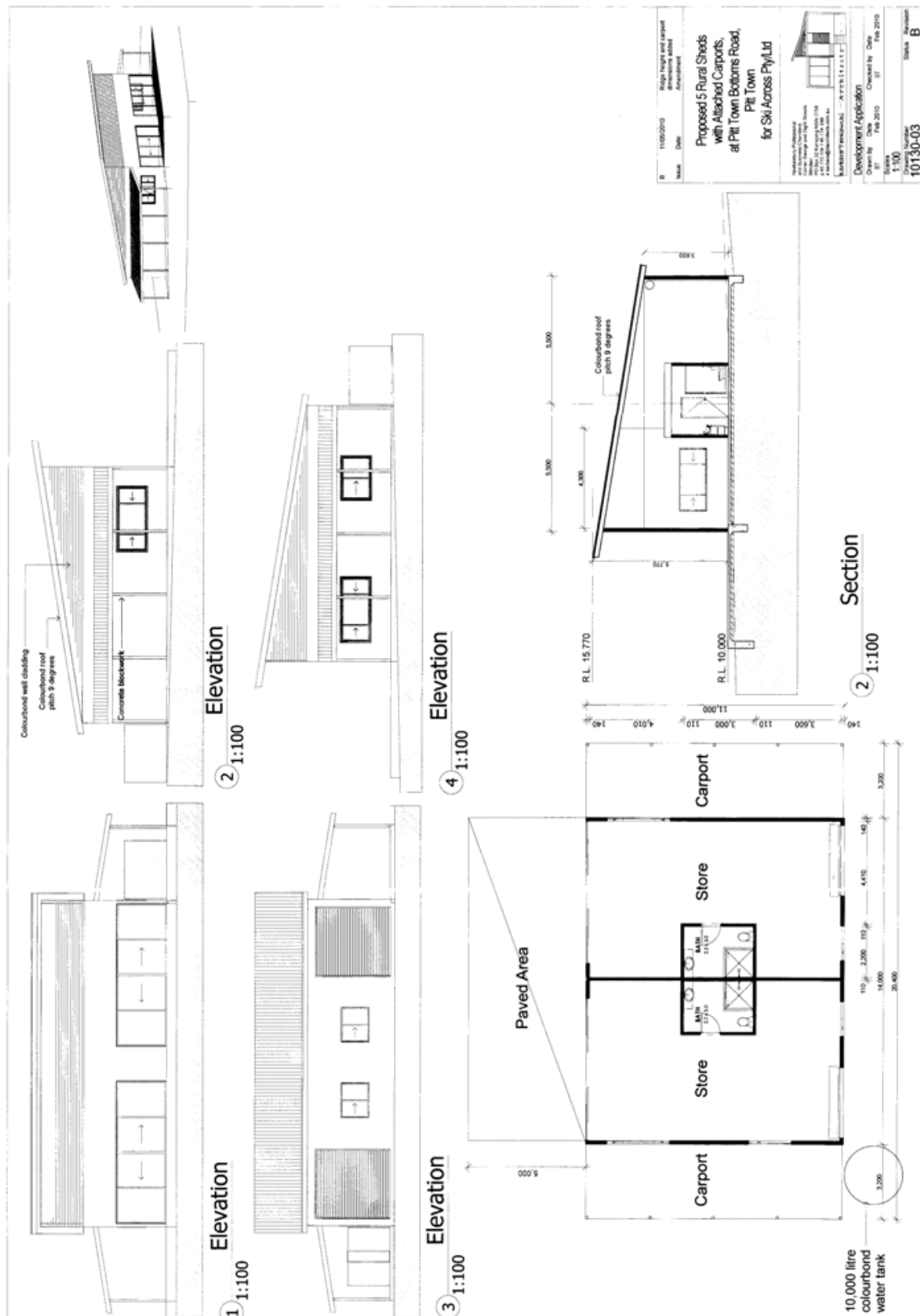
# ORDINARY MEETING

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## AT - 3 Part Site Plan



## AT - 4 Elevation Plan



oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 9 November 2010

**Item: 245**      **CP - Development Application - Rural Tourist Facility - Lot 433, DP 751665, 172 Blacktown Road, Freemans Reach - (DA0302/10, 14738, 95498)**

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### Development Information

**File Number:** DA0302/10  
**Property Address:** 172 Blacktown Road, Freemans Reach  
**Applicant:** Michael Sam Dimech  
**Owner:** Mr MS Dimech  
**Proposal Details:** Rural Tourist Facility  
**Estimated Cost:** \$200,000  
**Current Zone:** Environmental Protection - Agriculture Protection (Scenic)  
**Draft Zoning:** RU2 Rural Landscape  
**Date Received:** 30/04/2010  
**Advertising:** 14/05/2010 - 1/06/2010 extended until 15/06/10

**Key Issues:**

- ◆ Siting of cabins
- ◆ Integrated Development - Bushfire
- ◆ Endangered ecological community
- ◆ Rural amenity

**Recommendation:** Refusal

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### REPORT:

#### Executive Summary

The proposal is to expand the existing rural tourist facility from one to three cabins. The use of the land for this purpose is permitted under the planning provisions but the siting of the proposal is contrary to the key objectives for rural development i.e. rural amenity, visual impact, protection of vegetation and protection of agricultural land. The applicant has not demonstrated a willingness to amend the siting of the cabins to a more suitable position on the land

This matter is being reported to Council at the request of Councillor Williams.

#### Description of Proposal

The application seeks approval for construction of two single storey tourist cabins for a rural tourist facility with access to the proposed cabins through Kurmond Road via a new driveway. Two off street parking spaces are to be provided on site adjacent to the proposed cabins. The proposal also involves installation of an on site sewerage management system for the cabins and removal of eight trees and vegetation.

#### History

**DA0646/04**      Approval was granted for the construction of a two storey dwelling on the subject land. Conditions 25 and 26 of this consent required that the existing dwelling, on the site be rendered inhabitable by removing the kitchen, laundry and bath and changing the use into a saddlery and potting studio.

**DA0524/07**      Approved the change of use of the existing building used for saddlery and potting studio into a Rural Tourist facility.

It is also noted that the existing development approval for a rural tourist facility on the subject land required the submission of a guest register in accordance with the

## ORDINARY MEETING

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conditions of consent for DA0524/07 of 10 April 2008 (*A copy of the guest register is to be provided to Council every 6 months from the date of commencement of the use of the existing building as a rural tourist facility*). The provision has not been complied with.

**DA0533/08** Approval was granted for the removal of (25) Trees

**30 April 2010** Current DA lodged.

**14 May 2010- 01 June 2010**

Notification – extended until 15 June 2010

**17 June 2010** Request for further information about EEC, HLEP1989.

**3 August 2010** further request for information compliance and bona-fides of proposal specific requirement having regard to Clause 43 of HLEP 1989 and adequacy of submitted information

### **Council Policies, Procedures and Codes to Which the Matter Relates**

- Hawkesbury Local Environmental Plan (HLEP) 1989
- Draft Hawkesbury Local Environmental Plan (HLEP) 2009
- 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
- Hawkesbury Development Control Plan (HDGP) 2002
- Hawkesbury's Development Control Plan – Contaminated land

### **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:**

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

#### **Clause 2 - Aims, objectives etc,**

The proposed development is considered to be inconsistent with the aims and objectives as outlined in Clause 2 (a) and (c) of the LEP.

- (a) *to provide the mechanism for the management, orderly and economic development and conservation of land within the City of Hawkesbury.*

#### **Comment**

The proposal is not considered to be orderly development of the subject site as it does not respond to the constraints of the site or the grouping of the facilities

- (c) *to protect attractive landscapes and preserve places of natural beauty, including wetlands and waterways,*

**Comment**

The removal of trees and vegetation by the proposed development will not protect attractive landscapes and preserve places of natural beauty.

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

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

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

**Clause 9 – Carrying out development**

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

**Clause 9A – Zone objectives**

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

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

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

**Comment:**

The land currently accommodates a residential use consisting of a dwelling and a rural tourist facility. The proposed expansion of the tourist use and siting of the cabins on the subject site will reduce the lands suitability for agricultural use in the future.

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

**Comment:**

The application does not seek consent for agricultural use of the land.

- (c) *to ensure that development does not create or contribute to rural land use conflicts,*
- (d) *to ensure that development retains or enhances existing landscape values that include a distinctly agricultural component,*

**Comment:**

The removal of native vegetation along the boundary to Kurmond Road is likely to have an adverse impact on the existing landscape values in this locality

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

**Comment:**

It is considered that the proposal is not compatible with the scenic quality of the area and may have a detrimental impact upon the locality. The siting of the proposed development within an area of native vegetation identified as the critically Endangered Ecological Community (Cumberland Plain Woodland) will have significant impact on the scenic quality of the area and will contribute to degradation of this protected ecological community

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

**Comment:**

See clause (e) comments above

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

**Comment:**

The proposed use will not generate a significant increase in traffic movements within the locality.

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

**Comment:**

No advertising structures are proposed in conjunction with the application.

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

**Comment:**

The proposed development is not considered to create unreasonable economic demands for the provision or extension of public amenities or services.

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

**Comment:**

The proposal is not considered to preserve the rural landscape character of the area as it involves removal of trees, clearing of native vegetation and the position of buildings is amongst existing vegetation.

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

**Comment:**

The land is not used for agriculture at present

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

A new aerated wastewater treatment system is proposed for the two cabins with 928sqm of surface irrigation. This is considered inadequate as the proposed site for the on-site wastewater sewage management system (tanks and land application area) slopes significantly into a gully with the potential for runoff, negatively impacting on the critically Endangered Ecological Community (Cumberland Plain Vegetation).

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

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

**Comment**

The buildings have been sited in a location where they may have significant impact on the scenic quality of the locality as they would convert the existing vegetated setting into a more urbanised site.

**Clause 43 – Rural Tourist Facility**

This clause requires Council to consider the following matters:

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

**Comment:**

The land is not used for agricultural purposes at present

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

**Comment:**

The application does not demonstrate that the proposal will not have an adverse impact on the Critically Endangered Ecological Community (Cumberland Plain Vegetation) existing on the subject site hence the development is not considered to have a minimal environmental impact.

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

**Comment:**

There is adequate separation distance between the proposed development and adjoining properties.

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

**Comment:**

The development proposal incorporates landscaping and screen planting for visual amenity as viewed from a public road or dwelling house on other land in the vicinity.

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

**Comment:**

The buildings are not clustered close to the existing Rural Tourist facility and existing dwelling house on the subject site hence the proposal does not reduce the potential impact on rural amenity.

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

**Comment:**

It is considered that the removal of trees and vegetation and the erection of the cabins on the subject site would have an adverse visual impact on the scenic quality of the area.

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

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

**Comment**

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 or specific aims, planning considerations, planning policies, recommended strategies and development controls.

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

S.E.P.P. No. 44 "aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) *by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat; and*
- (b) *by encouraging the identification of areas of core koala habitat; and*
- (c) *by encouraging the inclusion of areas of core koala habitat in environment protection zones."*

**Comment**

State Planning Policy No. 44 - Koala Habitat applies to land within the Hawkesbury Local Government Area to which a development application has been made and has an area of more than 1 hectare.

The submitted Flora and fauna report demonstrated that the subject site is not considered to be core Koala habitat.

- 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 has been exhibited 5 February 2010 to 12 April 2010. The proposed use best falls under the definition of

*'tourist and visitor accommodation'* which is permissible with development consent under this draft Plan.

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

**Hawkesbury Development Control Plan 2002**

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

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

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

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

**Part A, Chapter 3 - Notification**

The application was notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002. In response to this notification nine written submissions were received.

The issues raised in the submissions are discussed later in this report.

**Car Parking Chapter**

The chapter deals with the provision of car parking and manoeuvring of vehicles for different land uses. The required car parking is available for the proposed rural tourist facility. Adequate area is also available for vehicles to enter and leave the site in a forward direction.

**Effluent Disposal**

*The objectives of this chapter are:*

- *to set out the minimum requirements for applications requiring or relying on the installation of an on-site sewage management facilities;*
- *to set out the limited circumstances where Council may agree to removal of sewage by pump out or tanker removal;*
- *to identify special provisions relating to connection to reticulated sewerage systems and development within the rural and environmental protection scenic zones.*

**Comment**

This Chapter requires certain *"development requiring or relying on an existing or proposed on-site sewage management facility must be accompanied by a waste water feasibility study (or similar) prepared by a suitably qualified and experienced expert."*

The applicant submitted "On-site wastewater management report" Report No. REP-23310-A dated 7 April 2010 prepared by Enviro Tech. The report is considered satisfactory.

**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 are no planning agreements that have been entered into under section 95F.

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

The proposed cabins will be required to comply with the Building code of Australia.

**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 subject property has a frontage of 82.28 metres to Blacktown Road, A frontage of 96.56 metres to Kurmond Road and an overall depth of approximately 260 metres. The site falls approximately 29 metres from Kurmond Road, in a south easterly direction, to Blacktown Road. The site is occupied by a dwelling fronting Blacktown Road and another dwelling approved for the use of a tourist facility, also fronting Blacktown Road. The north western half of the property, fronting Kurmond Road, is covered by trees and other vegetation that is identified as Shale Plains Woodland and the south eastern portion of the site fronting Blacktown Road is generally regularly mown grass and garden landscaping.

The adjoining properties to the east, west and some to the north are predominately used for rural residential land uses and to the south and partly to the north the land is occupied by farming land uses.

**Access, Transport and Traffic**

Access to the proposed rural tourist facility is proposed via a separate driveway off Kurmond Road. The proposed traffic generated by the facility will not unreasonably impact on the local road network.

**Utilities**

On site effluent disposal system is available and needs to be upgraded to cater for the proposed use. Other utilities and services are available to the subject land.

**Other Land Resources**

The intensification of the site for a rural tourist facility may result in loss of potential for land to be used for agriculture.

**Flora and Fauna**

The northern half of the subject land, that is proposed to accommodate the proposed development, has been classified as an endangered ecological community (comprising Shale Plains Woodland). The Scientific Committee, established by the Threatened Species Conservation Act, has made a Final Determination to list the Cumberland Plain Woodland in the Sydney Basin Bioregion as a Critically Endangered, Endangered Ecological Community. The proposal will have unreasonable impacts on these ecological endangered communities.

**Natural Hazards**

The subject land is located within an area of moderate bush fire risk. The application was referred to RFS who raise no objections subject to conditions.

The application was referred to the NSW Rural Fire Service seeking a Bush Fire Safety Authority under Section 100B of the Rural Fires Act 1997. The NSW Rural Fire Service has granted a Bush Fire Safety Authority as detailed in correspondence dated 28 May 2010. The conditions provided by the NSW Rural Fire Service will be included in conditions of consent if the application is supported.

### **Site Design And Internal Design**

The location of the proposed development is considered inappropriate as the cabins are spread across the site rather than clustered in a group. The cluster approach would assist in protecting the vegetation and rural amenity.

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

The area is characterised by rural residential and farming land uses, the location of the proposed development is such that it is going to have unacceptable impacts on the visual amenities of the locality.

The development may impact upon critical habitats and threatened species, populations, ecological communities and habitats as the subject site is within Critically Endangered Ecological Community (Cumberland Plain Vegetation) area. These constraints on the subject site make this development unacceptable in its current layout.

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

The application was notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002. In response to this notification nine written submissions were received.

The issues raised in the submissions are discussed as follow:

##### **Non Compliance with previous consent**

A number of submissions received in response to the exhibition of the development application have raised concern that the conditions of previous development consents applying to the existing rural tourist facility have not been complied with nor enforced. These submissions suggest that non-compliance and /or non-enforcement should be taken into account when assessing the current proposal and should be a basis for refusal of development consent.

Compliance or otherwise with previous development consents is not a relevant consideration in determining the subject development application. This is also supported by Case Law. The matter has been referred to Council's Compliance section for taking necessary action for any breaches of the conditions of consent for existing applications.

In regards to the current development application it is noted that the proposed use is permissible with Council's consent and Council is obliged to consider this application on its merits regardless of any breaches and non compliances with any other development consents

##### **Intensification of subject site / rural ambience of the area**

The proposal is for the expansion of an existing rural tourist facility. Rural tourist facilities by definition are low scale to minimise any impacts on the amenity of the area. The proposal is a permissible land use and due to the low scale nature of rural tourist facilities in general, minimal impacts are envisaged on the rural lifestyle. However, the proposed location of the development within an area of critically Endangered Ecological Community and removed from the existing rural tourist facility building and existing dwelling house on the site make the development unacceptable.

##### **Effect of excavation and landfill on natural contour**

The application proposal involves cut and fill ranging from 200mm cut and 300mm fill that is consistent with the provision of the DCP

**Effluent Disposal**

The applicant submitted "On-site wastewater management report" Report No. REP-23310-A dated 7 April 2010 prepared by Enviro. Tech. This report satisfactorily demonstrated that the site is suitable for the on-site disposal of waste water associated with the proposed development. However the siting is in conflict with the existing vegetation as the report has not adequately considered the impacts that the additional treated effluent will have on that vegetation.

**Presence of Critically Endangered Ecological Community (Cumberland Plain Vegetation)**

The applicant submitted Flora and fauna Assessment and Seven parts test of significant prepared by Anderson Environmental Consultants Pty Ltd in support of the development. This report does not satisfactorily demonstrate that the proposal will not have a significant impact on the threatened species populations, ecological communities or their habitats in accordance with section 5A of the EP&A Act 1979.

The flora and fauna report accompanying the application is considered inadequate as it failed to adequately identify the area of investigation, scope of survey, likely direct or indirect impacts of the proposed development as it relates to land clearing for asset protection, building and structures areas. Impacts of effluent disposal, erosion, weeds (in relation intensification of the subject land for residential development), recreation and storm water impacts to critically endangered ecological community (Cumberland Plain Shale Woodland) have not been adequately addressed. The seven part assessment report does not consider the impact of the proposed development on the following endangered species [*Pterostylis Saxicola* (flora), *Freckled duck* (fauna), *Black tailed Godwit*, *Comb crested Jacana* and *Painted snige* (Australian subspecies)]. The report is considered inconsistent with the requirement of Section 5A - *Significant effect on threatened species, populations or ecological communities, or their habitats* of the Environmental Planning and Assessment Act 1979 (EPA Act)

**Impact of additional traffic and safety concern**

The scale of the activity is such that it is likely to have minimal impact on traffic in the locality. Kurmond Road has adequate capacity to absorb any increase in the volume of traffic generated by the proposal. The proposed use will also have acceptable noise impact due to a large separation distance to the dwelling house on the adjoining land. It was considered that no traffic Impact study is required for this minor scale application

**Is this another loophole to build two (2) more rentable buildings on the property?**

The proposal is for the construction of two cabins for use with the existing tourist facility on the subject land. The cabins cannot be used as additional dwellings as it will constitute multi-unit housing development which is prohibited in the zone. If an application for a rural tourist facility was supported appropriate restrictive conditions would be imposed. As mentioned previously in this report, compliance enforcement of consent conditions is a separate matter to the assessment of the development application and potential future non-compliance cannot be used as a reason for refusal of an application.

**Setback from adjoining properties, privacy and landscaping**

The setback of the development from boundaries is considered satisfactory with regard to privacy and providing suitable areas for landscaping.

**Precedent for Similar development**

The proposed development is permissible land use in the zone with consent. Each development is assessed on merits.

**e) the public interest**

The submitted information does not demonstrate how the proposal protects vegetation, rural amenity or justify that the siting is appropriate.

**Hawkesbury Section 94A Development Contributions Plan 2006**

This Plan allows Council to impose a requirement for a monetary payment where it approves a development that will, or is likely to, require the provision of or increase the demand for public amenities and public services within the area.

The Contribution Plan applies a levy on most development at the rate of 0.5% for development with a value of works not exceeding \$200 000. The estimated cost of works associated with this application has been valued at \$200 000 therefore a contribution of \$1 000 would apply should the application be recommended for approval.

**Conclusion**

The application does not provide sufficient information in respect of the likely adverse impact of the development on the critically Endangered Ecological Community. The proposal is considered to be inconsistent with the requirement of Section 5A - *Significant effect on threatened species, populations or ecological communities, or their habitats* of the Environmental Planning and Assessment Act 1979 (EPA Act). The proposed development is considered to be inconsistent with the rural tourist facilities siting requirement under clause 43 of the HLEP 1989. The proposed development will have an adverse impact on the scenic quality rural and bushland character of the subject site and locality.

**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 DA0302/10 at Lot 433 DP 751665, 172 Blacktown Road, Freemans Reach NSW 2756 for a Tourist Facility - Rural tourist facility be refused for the following reasons:

1. The proposed development is inconsistent with the objectives contained within Section 5 of the Environmental Planning and Assessment Act, 1979.
2. The proposed development is inconsistent with objective (a) (d) (e) (f) and (j) of the Environmental Protection - Agriculture Protection (scenic) Zone contained within Hawkesbury Local Environmental Plan 1989.
3. The proposed development is inconsistent with the rural tourist facilities siting provisions under clause 43 of Hawkesbury Local Environmental Plan 1989.
4. The information submitted with the application is inadequate in order to enable a proper assessment of the proposal.
5. The proposal is likely to have an adverse impact on threatened flora and fauna species, populations and ecological communities.
6. The proposed development is inconsistent with the established rural character of the locality.

**ORDINARY MEETING**

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7. The proposed development will have an unacceptable impact on the visual quality of the area.
8. In the circumstances, approval of the development would not be in the public interest.

**ATTACHMENTS:**

- AT - 1** Map: Lot 2 DP 1044458, 172 Blacktown Road, Freemans Reach NSW 2756  
**AT - 2** Aerial Photo: Lot 2 DP 1044458, 172 Blacktown Road Freemans Reach NSW 2756  
**AT - 3** Site plan of proposed development.

**Meeting Date:** 9 November 2010

[illegible]

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**AT - 2    Aerial Photo: Lot 2 DP 1044458, 172 Blacktown Road Freemans Reach NSW 2756**



**Meeting Date:** 9 November 2010

Proposed area for efficient irrigation to comply with NSW Health

KURMOND ROAD 72.47

NEW FISHING SCREEN PLANTING

BRICK STABLES

LOT 432 D.P. 751665

ORCHARD AND PARKING BAYS

PROPOSED TOURIST FACILITY LODGES

STORMWATER GULLY INTO DASHLAND GULLY

SEDIMENT CONTROL FENCE

WALL 2043

300 LITRE TANK FOR EACH LODGE

LOT 4 D.P. 601736

METAL SHED

PERSON AMBULATED SEPTIC TANK TO SERVICE BOTH LODGES

248.44

REMAINING WALL

3 STOREY DWELLING

DRIVEWAY

NO. 172 LOT 433 D.P. 751665 2.02 ha.

DRIVEWAY

72.78

BLACKTOWN ROAD

**PROPOSED NEW TOURIST FACILITY LODGES AT 172 BLACKTOWN ROAD, FREEMANS REACH FOR M & M DIMECH**

Scales as shown

Date 25.03.10

Drawn by A Bennet 9626-8125

**Construction Method**

1. Excavate and install concrete foundation
2. Construct concrete wall and floor slab
3. Construct concrete wall and floor slab
4. Construct concrete wall and floor slab
5. Construct concrete wall and floor slab
6. Construct concrete wall and floor slab
7. Construct concrete wall and floor slab
8. Construct concrete wall and floor slab
9. Construct concrete wall and floor slab
10. Construct concrete wall and floor slab

**SEDIMENT FENCE**

SD 6-2

oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 9 November 2010

**Item: 248**                    **CP - Draft Notice of Approval - Protection of the Environment Operations (Clean Air) Regulation 2002 - (96330, 95498)**

**Previous Item:**            296, Ordinary (12 December 2006)  
                                 196, Ordinary (31 August 2010)

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### REPORT:

#### Executive Summary

At the Council Meeting of 14 September 2010 Council resolved the following;

- "1.    *In accordance with Clause 6G(3)(d) of the Protection of Environment Operations (Clean Air) Regulation 2002, Council place on public exhibition its draft Notice of Approval (Attachment 3 to the Council report dated 31 August 2010) for a period of 14 days.*
2.    *Following the public exhibition of the draft Notice of Approval, if any public submissions are received, a further report be prepared for Council's consideration. Should there be no submissions received following the expiration of the public exhibition period, the draft Notice of Approval as outlined in the report be adopted."*

Following the Draft Notice of Approval being placed on public exhibition, two public submissions were received (copies of submissions attached). The submissions requested that the restricted hours in the Draft Notice of Approval be extended.

At the Council Meeting on 14 September 2010, the time restrictions were considered. When the "blanket approval" is complied with, the resident is exempted from completing a pile burning application, which needs assessment and approval by Council staff. The "blanket approval" is in place to streamline the process, and to allow residents complying with its requirements to proceed without having to complete a pile burning application.

If the resident wants to burn outside any of the conditions of the blanket approval (i.e. to modify hours, pile sizes etc.), a pile burn application needs to be submitted in these instances. Generally, applications for pile burning are normally assessed within seven days of the assessing officer receiving them.

The purpose of this report is to advise Council on the submissions received following the draft Notice being placed on public exhibition.

#### Consultation

The "Clean Air Regulation Notice of Approval to Pile Burn" document was placed on public exhibition for a period of 14 days. The issues raised in this report concern matters which were raised in the submissions received during the public exhibition.

#### Background

At its meeting on 31 August 2010, Council deferred the report on the draft Notice of Approval issued under the provisions of the Protection of the Environment Operations (Clean Air) Regulation 2002. It should be noted that the subject Notice of Approval contains the conditions of approval for pile burning that do not require the consent of Council. The subject Notice of Approval relates to the activity that is exempt from formal approval.

Concern was raised about condition 9 of the Notice that states "*Burning shall only be conducted between the hours of 8am and 5pm on any day.*" The condition is imposed for a number of reasons, but mainly due to the increased air pollution impacts at night and the fact that the Notice relates to the exempt activity.

The “Clean Air Regulation Notice of Approval to Pile Burn” is commonly known as “a blanket approval to pile burn”. The purpose of this approval is to reduce the amount of administrative paperwork and procedures for the community when they have cleaned up debris from trees and vegetation on their land, and want to dispose of it by burning, but only if the land area exceeds 4,000 square metres.

The person wishing to dispose of this material by burning only needs to follow the requirements of the document, and they can then burn the materials without further reference to Council. The document is easily accessed by visiting Council's web site, or obtaining a hard copy at Council's office, or requesting for it to be mailed out to them.

When the “blanket approval” is complied with, the resident is exempted from completing a pile burning application, which needs assessment and approval by Council staff. The “blanket approval” is in place to streamline the process, and to allow residents complying with its requirements to proceed without having to complete a pile burning application.

It is preferred that the exempt burns be undertaken during the day as at night the temperature inversion and absence of sunlight to degrade the chemicals emitted during the burn, lead to increased air pollution. However, as mentioned above, should a person wish to vary these conditions a simple application to Council will enable the safety aspects of the particular application to be assessed and approvals for those applications is generally less than seven days.

At the Council Meeting of 14 September 2010 Council resolved to place the draft Notice of Approval on public exhibition. Following the Draft Notice of Approval being placed on public exhibition, two public submissions were received (copies of submissions attached). The submissions requested that the restricted hours in the Draft Notice of Approval be extended.

#### **Comment**

Should a resident wish to burn outside any of the conditions of the blanket approval (i.e. to modify hours, pile sizes etc.), a pile burn application needs to be submitted in these instances. Generally, applications for pile burning are normally assessed within seven days of the assessing officer receiving them. In relation to the concerns raised in the submissions, variations can be addressed via a simple application and it is not considered necessary to vary the exempt approval process.

The current Notice of Approval that is used by Council for these exempt or “blanket” approvals for pile burning expired on 30 September 2010.

#### **Conformance to Community Strategic Plan**

The proposal is consistent with the Caring for Our Environment Directions statement;

- Take active steps to encourage lifestyle choices that minimise the ecological footprint;

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

- Encourage and educate the community to care for their environment

The Notice of Approval is a “blanket” approval for the burning of cleared vegetation in certain circumstances. In these cases the activity must comply with the requirements and, if so, does not require formal approval. This approach to exempt approvals assists the community in their activities and also provides guidance and education to persons undertaking these activities.

#### **Financial Implications**

Funding for this initiative can be met from within the Regulatory Services approved budget.

## ORDINARY MEETING

**Meeting Date:** 9 November 2010

### **Conclusion**

Council's existing Notice of Approval provides residents, on properties greater than 4,000 square metres or greater and/or is designated as an Extreme Risk, with the ability to pile burn dead and dry vegetation outside of the Bush Fire Season under a 'blanket' approval, i.e. if the activity complies with all of the conditions in that Notice of Approval, with no requirement for formal approval.

It is proposed that the Draft Notice of Approval will remain in force for a period of five years. These residents will only need to seek consent from Council when they wish to burn dead and dry vegetation outside of the restrictions of the draft Notice of Approval. It should be noted that it is still necessary for residents to seek the necessary approvals from the Rural Fire Service during the declared Bush Fire Season. If a resident wishes to burn outside the hours specified or wishes to vary any of the conditions, the resident will need to submit an application. That application is usually processed within seven days or less.

### **RECOMMENDATION:**

That the draft Clean Air Regulation Notice of Approval to Pile Burn as attached to this report be adopted and remain in force until 9 November 2015.

### **ATTACHMENTS:**

- AT - 1** Draft Notice of Approval
- AT - 2** Public Submissions received
- AT - 3** Report (and attachments) to Council Meeting of 14 September 2010

**AT - 1 - Draft Notice of Approval**

**Clean Air Regulation 2002  
Notice of Approval  
Rural Areas and Villages**

Hawkesbury City Council hereby grants general approval for the pile burning of dead and dry vegetation grown on that property, in the open, on land which is 4,000 square metres (one acre) or greater and/or is designated as an Extreme Risk under the Hawkesbury Bush Fire Risk Management Plan.

Properties from Yarramundi, Bowen Mountain, Tabaraga Ridge - Kurrajong Heights, "The Islands Estate", Blaxlands Ridge, Grose Vale and Kurrajong village are designated as Extreme Risk (or as amended from time to time by the Bush Fire Management Plan). ***In all circumstances Council should be contacted to confirm the individual property is designated Extreme Risk and to check whether any other approvals are required.***

This approval remains in force from 1 October 2010 to the 30 September 2015. **It is limited by the following prohibitions and conditions:**

**It is prohibited to burn**

1. For the purposes of bush fire hazard reduction. Bush fire hazard reduction burns are not covered under this Notice. Such burns need to be assessed and approved under the Rural Fires Act 1997 and residents should apply to the relevant local authority.
2. Without the approval of the NSW Fire Brigade throughout the year in the following areas: McGraths Hill, Windsor Downs, Bligh Park, South Windsor, Windsor, Vineyard, Clarendon, Richmond, and North Richmond.
3. Without the approval of the Rural Fire Service between 1 October to 31 March or until the commencement of the Bush Fire Season if declared earlier.
4. Ecological/bush regeneration burns to be carried out in vegetation which is listed as an Endangered Ecological Community (EEC) or which is habitat for threatened species will require a licence from the Department of Environment, Climate Change and Water (DECCW). See the DECCW website for further information about threatened species and EECS (<http://www.environment.nsw.gov.au/threatenedspecies/>) and for a licence application form (<http://www.environment.nsw.gov.au/wildlifelicences/ScientificResearchLicences.htm>).

**This approval does not include:-**

1. The burning of other matter other than dead and dry vegetation grown on the property.
2. The burning of vegetation resulting from land clearance. Development consent is required for the clearing of native vegetation which can be obtained from Council.
3. The burning of vegetation which has been cleared for commercial development or building construction as development consent must be obtained from Council.
4. The removal of dead or dying trees as written notification needs to be provided to Council under its Tree Preservation Order.

## ORDINARY MEETING

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5. The removal or burning of any native vegetation that comprises an EEC or habitat for threatened species which requires assessment and approval under the Rural Fires Act.

The approval is granted subject to the provisions of the Protection of the Environment Operation (Clean Air) Regulation 2002 and to the following conditions:

1. Pile burning of dry and dead vegetation should NOT be seen as the best method for disposing of dry and dead vegetation. Alternative means of disposal such as re-use; recycling; composting; disposal through Council's waste service, kerbside collection service or waste management facility; should be thoroughly investigated and are the preferred disposal methods.
2. Only dry and dead vegetation originating on a property that is included in this approval shall be burnt on that property. Burning is to be conducted in accordance with the NSW Rural Fire Service "Standards for Pile Burning" February 2006;  
[http://www.hawkesbury.nsw.gov.au/\\_data/assets/pdf\\_file/0003/1785/StandardsForPileBurning.pdf](http://www.hawkesbury.nsw.gov.au/_data/assets/pdf_file/0003/1785/StandardsForPileBurning.pdf)
3. Burning must at all times be carried out by such practical means as are necessary to prevent or minimise air pollution. The potential for smoke impacting on any person due to wind direction and weather conditions must be taken into account.
4. In the event of a Total Fire Ban being declared, this approval is suspended. Any existing fire is to be extinguished and cannot be re-commenced until the Total Fire Ban is lifted.
5. In the event of a No Burn Day being declared by the EPA, this approval is suspended for the duration of the declaration. When a "No Burn" notice is issued, it applies to the lighting of new fires in the declared areas. Existing fires should be allowed to continue as extinguishing the fire will result in more smoke. "No Burn Notices" are notified in the Public Notices section of the Sydney Morning Herald not later than on the day on which the order is to take effect. Recorded information about "No Burn Notices" is usually available from 4pm the day before the notice comes into effect and can be accessed by calling ph: 131 555 or is available on the Department of Environment, Climate Change and Water (DECCW) website at  
<http://www.environment.nsw.gov.au/air/aboutnb.htm>
6. Adjoining neighbours and people likely to be affected by smoke are to be notified at least 48 hours before the fire is lit. This will allow for smoke-sensitive people such as asthmatics, to plan to be away from the area when the burn is conducted.
7. Written or oral notice is to be given to the Hawkesbury Rural Fire Service at least 24 hours prior to the burn. (The Rural Fire Service will require additional time during the Bush Fire Season). Such notice must specify the location, purpose, period and time of the fire proposed to be lit. Contact details include: **RFS Pile burning notification line Ph: (02) 4575 1143, FAX 4575 1475, email [hawkesbury@rfs.nsw.gov.au](mailto:hawkesbury@rfs.nsw.gov.au)**
8. A responsible supervising adult over the age of eighteen shall be on site at all times with enough water to extinguish the fire, if required, for that time the fire is active.
9. Burning shall only be conducted between the hours of 8am and 5pm on any day.
10. Any residue waste from the burning must be disposed of in an environmentally satisfactory manner and in accordance with the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 1996". On completion of the burn, the burnt area must be maintained in a condition that minimises or prevents the emission of dust from the area and prevents sediment or ash from fires being washed from the area into waters.

**ORDINARY MEETING**

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Failure to comply with this approval may result in an On The Spot fine of \$500.00 for an individual or \$1,000.00 for a corporation. In the event of prosecution, the maximum penalty is \$5,500.00 for an individual and \$11,000.00 for a corporation.

***If you do not comply with the conditions specified above you are not permitted to burn without separate approval being issued by Council and/or the local Rural Fire Service authority.***

For further information please contact:

Hawkesbury City Council  
Regulatory Services  
PO Box 146  
Windsor NSW 2756

Ph: (02) 4560 4444  
Fax: (02) 4560 4400  
Email: [council@hawkesbury.nsw.gov.au](mailto:council@hawkesbury.nsw.gov.au)

**ORDINARY MEETING**  
**Meeting Date: 9 November 2010**

**AT - 2 Public Submissions Received**

October 18, 2010

Mr. Garry Baldry,  
Manager of Regulatory Services,  
P.O. Box 146,  
WINDSOR NSW. 2756

e.mail: [council@hawkesbury.nsw.gov.au](mailto:council@hawkesbury.nsw.gov.au)

Dear Sir,

**RE: Draft Notice of Approval – Clean Air Regulation 2002 – PILE BURNING**

We note that the proposed Notice of Approval – Clean Air Regulation – Pile Burning again provides (Clause 9) that such burning shall only be conducted between the hours of 8am and 5pm on any day.

As long-term active firefighters, we are well aware of the fact that it is often preferable from both a safety and Clean-Air perspective to defer lighting up until later in the day when:

- fuels (being dryer) ignite more readily -- assisted by the warmer temperature -- and burn more cleanly creating less smoke
- winds (if any) have been properly considered -- thus minimizing any chance of spotting

Consequently, the requirement to extinguish by 5pm is most inhibiting as it takes some considerable hours for a complying pile to effectively reduce to ash.

In the circumstances, we respectfully request that Council consider extending the hours until Midnight (or, possibly even overnight). This would allow residents to choose an optimum time to conduct their pile burn -- taking into account:

- prevailing weather conditions
- the requirement to remain in attendance
- work commitments which would otherwise generally confine burn activities to weekends -- thereby concentrating potential smoke haze at such times
- afternoon/night burns utilize the normal temperature drop and/or rise in humidity to safely conclude a burn

Whilst cognisant that the aim of this legislation is to reduce any possible pollution impact, we firmly believe that given the usual overnight airflow/drainage towards the east, any smoke generated in the Macdonald Valley is more likely to flow down-river away from populated areas and thus would not contribute to any pollution/inversion around Richmond/Windsor.

Accordingly, we would ask that Council give special consideration to adopting "location specific" guidelines by extending the hours as above -- at least in the Macdonald Valley.

Yours faithfully,

DataWorks Document Number: 3574609

**ORDINARY MEETING**  
**Meeting Date: 9 November 2010**



**St Albans Volunteer Bush Fire Brigade**

4 Wharf St  
St Albans, NSW, 2775

Ph: (02) 4568 2011  
Fax: (02) 4568 2235  
Business Hours; (02) 9488 7293

14<sup>TH</sup> October 2010

Mr Garry Baldry  
Manager of Regulatory Services  
Hawkesbury Council  
P.O. Box 146  
WINDSOR NSW 2756  
RE Draft: **Notice of Approval – Clean Air Regulation 2002 – Pile Burning.**  
Dear Sir,

I write to you on behalf of the members of the **St Albans Volunteer Bush Fire Brigade** in relation to the above Draft Approval.  
The Brigade Permit Officers operate under strict RFS standards in terms of Pile Burn approvals. These standards include Design and construction of the PILE (no longer or wider than 2 metres and no greater than 1.5 metres high). In addition the placement of the pile must be at a safe distance from nearby hazards such as vegetation and in built up areas away from power lines. Additionally Pile Burns must:

- ❖ Not be undertaken on No Burn days declared by either the Rural Fire Service (Total Fire Ban) and the Department of Environment & Conservation. (No Burn days).
- ❖ Not to be undertaken without prior approval and unless neighbours have been notified.

**The Brigade members are seeking a change in the approved draft as it refers to the time allowed to conduct a Pile Burn.**

In the Draft, the burning process must only be conducted between the hours of 8am to 5pm on the day of the approved burn during the Fire Season or for a burn outside the season. We understand that the times allowed are designed to minimise the effects of smoke hazards in the Hawkesbury and the wider area.

We would argue that the 8am to 5pm severely limits the effectiveness of a Pile Burn, in terms of reducing the residue, and that any smoke hazards from the Macdonald Valley would have a negligible effect in terms of the Hawkesbury District. The Macdonald Valley is more than 40km (As the 'crow' flies) from the Hawkesbury environs and anecdotally (no local BOM Wind Rose data available) the local prevailing winds appear to flow more to the east & south east rather than due south. From a residue effect and perhaps a residual fire safety point of view we request that the eligible time be extended to include at least to midnight if not until daylight. (I.e. a 24hour window). When the initial ignition has settled down the smoke effect is diminished and any potential fire risk outside the Pile Burn area is also diminished. The best times for initial ignition and for overall reduced smoke hazard are later in the morning or earlier afternoon as slightly later Burns would have the effect of increasing the initial burn rate (warmer ambient temperature) thus reducing the smoke hazard and by allowing overnight management the residue waste is more likely to be more effectively handled. A mandatory 5pm finish is likely to severely reduce the effectiveness and completeness of the burn where the resultant ashes are more easily managed from an environmentally satisfactory point of view.

We note, in an article in the local paper, that council will give permission for a specific burn to be extended overnight.

We ask that this allowance be permanently included in the Draft, at least for the relatively unique Macdonald Valley, to provide certainty and arrive at a result that is not counterintuitive.

Yours Faithfully    Neil Falconer Secretary.    Graeme Sheather President.

**AT - 3 – Report from Council Meeting 14 September 2010**

**ITEM:** CP - Draft Notice of Approval - Protection of the Environment Operations (Clean Air) Regulation 2002 - (96330, 95498)

**Previous Item:** 296, Ordinary (12 December 2006)  
196, Ordinary (31 August 2010)

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**REPORT:**

**Executive Summary**

At the Council meeting of 31 August 2010 Council considered a report on the Draft Notice of Approval for “Blanket” or “exempt” approvals for the pile burning of dead and dry vegetation grown on a property. A copy of that report is attached. The resolution of that meeting was as follows:

*“That consideration of this item be deferred to the Ordinary Council Meeting on 14 September 2010.”*

The issues that were discussed and required clarification related to condition 9 of the Notice which states *“Burning shall only be conducted between the hours of 8am and 5pm on any day.”* and clarification as to the provisions in Council's Tree Preservation Order in relation to approvals required for the removal of a dead tree.

The purpose of this report is to clarify the above issues and gain approval to place the draft Notice on public exhibition.

**Consultation**

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy. The intention of the report is to gain approval to place the draft Notice of Approval on public exhibition.

**Background**

At its meeting on 31 August 2010, Council deferred the report on the draft Notice of Approval issued under the provisions of the Protection of the Environment Operations (Clean Air) Regulation 2002. It should be noted that the subject Notice of Approval contains the conditions of approval for pile burning that does not require the consent of Council. The subject Notice of Approval relates to the activity that is exempt from formal approval.

Concern was raised about condition 9 of the Notice that states *“Burning shall only be conducted between the hours of 8am and 5pm on any day.”* The condition is imposed for a number of reasons, but mainly due to the increased air pollution impacts at night and the fact that the Notice relates to the exempt activity.

The “Clean Air Regulation Notice of Approval to Pile Burn” is commonly known as “a blanket approval to pile burn”. The purpose of this approval is to reduce the amount of administrative paperwork and procedures for the community when they have cleaned up debris from trees and vegetation on their land, and want to dispose of it by burning, but only if the land area exceeds 4,000 square metres.

The person wishing to dispose of this material by burning only needs to follow the requirements of the document, and they can then burn the materials without further reference to Council. The document is easily accessed by going to Council's web site, or obtaining a hard copy by visiting Council, or asking for it to be mailed out to them.

When the “blanket approval” is complied with, the resident is exempted from completing a pile burning application, which needs assessment and approval by Council staff. The “blanket approval” is in place to streamline the process, and to allow residents complying with its requirements to proceed without having to complete a pile burning application.

If the resident wants to burn outside any of the conditions of the blanket approval (i.e. to modify hours, pile sizes etc.), a pile burn application needs to be submitted in these instances. Generally, applications for pile burning are normally assessed within seven (7) days of the assessing officer receiving them.

It is preferred that the burns be undertaken during the day as at night the temperature inversion and absence of sunlight to degrade the chemicals emitted during the burn, lead to increased air pollution. However, as mentioned above, should a person wish to vary these conditions a simple application to Council will enable the safety aspects of the particular application to be assessed and approvals for those applications is generally less than seven days.

The other matter that was raised by Council at the meeting of 31 August 2010 related to the requirements of the Tree Preservation Order for the removal of a dead tree. A copy of the Tree Preservation Order (TPO) is attached to this report for information. Section 3 of the TPO deals with exemptions to the requirement for approval and is quite extensive in these exemptions. However, rather than repeat the entire section, the most relevant section of Section 3. Exemptions are as follows:

*“Development consent is not required in relation to:*

- 1) *Any tree that is not a heritage item and if documented evidence can be produced that is satisfactory to Council to prove that:*
  - a) *The owner of the tree has agreed; and*
  - b) *The tree was dying or dead or had become dangerous. In this case such evidence is to be provided to Council prior to its ring-barking, cutting down, topping, removal, injuring or wilful destruction or where a tree poses imminent danger, immediately after; or”*

As can be seen from the above extract from the TPO, development consent is not required for the removal of a dead or dying tree. At the Council meeting of 31 August 2010, reference was made to an incident where a person was fined for the removal of a dead tree without consent. In that instance the property is heritage listed in Council’s LEP and, as seen from the above extract, development consent is still required where the tree is located on a property that is heritage listed in the Hawkesbury LEP 1989.

The current Notice of Approval that is used by Council for these exempt, or “blanket” approvals for pile burning expires on 30 September 2010. In this regard it is proposed to place the amended Notice, as attached to the Council report of 31 August 2010, on public exhibition prior to adoption.

### **Conformance to Community Strategic Plan**

The proposal is consistent with the Caring for Our Environment Directions statement;

- Take active steps to encourage lifestyle choices that minimise the ecological footprint;

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

- Encourage and educate the community to care for their environment

The Notice of Approval is a “blanket” approval for the burning of cleared vegetation in certain circumstances. In these cases the activity must comply with the requirements and, if so, does not require formal approval. This approach to exempt approvals assists the community in their activities and also provides guidance and education to persons undertaking these activities.

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### Financial Implications

Funding for this initiative can be met from within the Regulatory Services approved budget.

### Conclusion

Council's existing Notice of Approval provides residents on properties greater than 4,000 square metres (one acre) or greater and/or is designated as an Extreme Risk, the ability to pile burn dead and dry vegetation outside of the Bush Fire Season under a 'blanket' approval, i.e. if the activity complies with the conditions in that Notice of Approval, no formal application is required.

It is proposed that the Draft Notice of Approval will remain in force for a period of five years. Hence, outside of the Bush Fire Season residents on properties greater than 4,000 square metres, and residents on properties less than 4,000 square metres which are designated as an Extreme Bush Fire Risk will be able to pile burn, dead and dry vegetation in accordance with the draft Notice of Approval, i.e. individual consent from Council will not be required. These residents will only need to seek consent from Council when they wish to burn dead and dry vegetation outside of the restrictions of the draft Notice of Approval. It should be noted that it is still necessary for residents to seek the necessary approvals from the Rural Fire Service during the declared Bush Fire Season.

### RECOMMENDATION:

That:

1. In accordance with Clause 6G(3)(d) of the Protection of Environment Operations (Clean Air) Regulation 2002, Council place on public exhibition its draft Notice of Approval (Attachment 3 to the Council report dated 31 August 2010) for a period of 14 days.
2. Following the public exhibition of the draft Notice of Approval, if any public submissions are received, a further report be prepared for Council's consideration. Should there be no submissions received following the expiration of the public exhibition period, the draft Notice of Approval as outlined in the report be adopted.

### ATTACHMENTS:

**AT - 1** Report (and attachments) to Council Meeting of 31 August 2010

**AT - 2** Copy of Council's Tree Preservation Order

**AT - 1 Report to Council Meeting of 31 August 2010**

**REPORT:**

**Executive Summary**

Hawkesbury City Council has granted in the past general approval under Clause 6G(2)(a) of the Protection of the Environment Operations (Clean Air) Regulation 2002 (Regulation) for the pile burning of dead and dry vegetation grown on a property, in the open, where the land is 4,000 square metres (one acre) or greater and/or is designated as an Extreme Risk under the Hawkesbury Bush Fire Risk Management Plan. The current Notice of Approval was enacted by Council for a period five (5) years, with the approval due to expire on 30 September 2010 (*please refer to Attachment 1, Council's existing Notice of Approval*). Without the adoption of draft Notice of Approval, residents will be unable to conduct pile burning in the Hawkesbury Local Government Area.

**Consultation**

The issues raised in this report concern matters which constitute a trigger for Community Engagement under Council's Community Engagement Policy. The community engagement process proposed in this report meets the criteria for the minimum level of community engagement required under Council's policy.

In accordance with clause 6G(3)(e) of the Protection of Environment Operations (Clean Air) Regulation 2002 the opinions of the DECCW were obtained in regard to the extension of Council's existing Notice of Approval (Attachment 2).

DECCW's key concerns related to the impact on air quality and native vegetation. To address DECCW's concerns regarding air quality it is proposed to include several DECCW suggested conditions in Council's draft Notice of Approval and continue to incorporate the condition which requires possible alternative means e.g. re-use, recycling, composting, to dispose of dead and dry vegetation are utilised in preference to pile burning. In regard to the removal of dead trees and the potential impact this might have on habitat for threatened species, Council's Tree Preservation Order requires that prior to the removal of a dying or dead tree written notification be provided to Council. The written notice should be given at least 14 days prior to the removal of the tree (except in emergency situations). This information has been again included in the draft Notice of Approval.

A copy of an initial draft Notice of Approval was provided to DECCW. All of DECCW's suggestions in the initial draft Notice of Approval have been incorporated into the final draft Notice of Approval.

**Background**

The Regulation allows local councils to assess local conditions and to select the appropriate control of burning for the area. The Regulation lists the level of control for Hawkesbury City Council as follows:

1. All burning of vegetation in the open or in an incinerator is prohibited except with approval. Councils have powers to grant approvals for burning dead and dry vegetation on the premises on which the vegetation grew.
2. The burning of domestic waste on residential premises where domestic waste management services are not available.

The Protection of the Environment Operations (Clean Air) Regulation 2002 outlines, for local councils and fire management authorities, burning requirements. The Regulation:

- Requires anyone who burns anything in the open or in an incinerator to do so in a manner that prevents or minimises air pollution.

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- Imposes a statewide ban on the burning of tyres, coated wire, paint/solvent containers and residues, and treated timber.
- Controls the burning of domestic waste and vegetation.
- Gives powers to councils to control the extent of vegetation burning in their Local Government area where they have elected to have this control.
- Permits agricultural, cooking and recreational fires.
- Allows other burning if approved by the Department of Conservation, Climate Change and Water (DECCW).
- Bans home-unit incinerators.

The Regulation does not affect bushfire hazard reduction work allowed under the Rural Fires Act, the destruction of prohibited plants or drugs, or the burning of diseased animal carcasses.

Currently, Hawkesbury City Council grants general approval for the pile burning of dead and dry vegetation grown on any property, in the open, where the land is 4,000 square metres (one acre) or greater and/or is designated as an Extreme Risk under the Hawkesbury Bush Fire Risk Management Plan. Areas designated Extreme Risk include properties from Yarramundi, Bowen Mountain, Tabaraga Ridge - Kurrajong Heights, "The Islands Estate", Blaxland Ridge, Grose Vale and Kurrajong Village.

The reasons given for requesting an extension of Council's Notice of Approval include the following:

- The current Notice of Approval will lapse on 30 September 2010.
- Allow residents on properties 4,000 square metres (one acre) or greater and/or designated as Extreme Risk, with the ability to burn dead and dry vegetation, therefore protecting themselves against wildfires.
- Collection and disposal of vegetation in Council's waste service is not practical - waste service bins are too small; stockpiling/composting is dangerous.

#### **Conformance to Community Strategic Plan**

The proposal is consistent with the Caring for Our Environment Directions statement;

- Take active steps to encourage lifestyle choices that minimise the ecological footprint;
- and is also consistent with (or is a nominated) strategy in the Community Strategic Plan being:
- Encourage and educate the community to care for their environment.

#### **Financial Implications**

Funding for this initiative can be met from within the Regulatory Services approved budget.

#### **Conclusion**

Council's existing Notice of Approval provides residents on properties greater than 4,000 square metres (one acre) or greater and/or is designated as an Extreme Risk, the ability to pile burn dead and dry vegetation outside of the Bush Fire Season a 'blanket' approval.

It is also proposed that the Draft Notice of Approval will remain in force for a period of five years. Hence, outside of the Bush Fire Season residents on properties greater than one acre, and residents on properties less than one acre which are designated as an Extreme Bush Fire Risk will be able to pile burn, dead and

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dry vegetation in accordance with the draft Notice of Approval, i.e. individual consent from Council will not be required. These residents will only need to seek consent from Council when they wish to burn dead and dry vegetation outside of the restrictions of the draft Notice of Approval. It should be noted that it is still necessary for residents to seek the necessary approvals from the Rural Fire Service during the declared Bush Fire Season.

### **RECOMMENDATION:**

That:

1. In accordance with Clause 6G(3)(d) of the Protection of Environment Operations (Clean Air) Regulation 2002, Council place on public exhibition its draft Notice of Approval (Attachment 3) for a period of 14 days.
2. Following the public exhibition of the draft Notice of Approval, if any public submissions are received, a further report be prepared for Council's consideration. Should there be no submissions received following the expiration of the public exhibition period, the draft Notice of Approval as outlined in the report be adopted.

### **ATTACHMENTS:**

**AT - 1** Current Notice of Approval

**AT - 2** Correspondence from DECCW Re: extension of Council's existing Notice of Approval

**AT - 3** Draft Notice of Approval

**AT - 1 Current Notice of Approval**

**Clean Air Regulation 2002  
Notice of Approval  
Rural Areas and Villages**

Hawkesbury City Council hereby grants general approval for the pile burning of dead and dry vegetation grown on that property, in the open, on land which is 4,000 square metres (one acre) or greater and/or is designated as an Extreme Risk under the Hawkesbury Bush Fire Risk Management Plan.

Properties from Yarramundi, Bowen Mountain, Tabaraga Ridge - Kurrajong Heights, "The Islands Estate", Blaxlands Ridge, Grose Vale and Kurrajong village are designated as Extreme Risk. ***In all circumstances Council should be contacted to confirm the individual property is designated Extreme Risk.***

This approval remains in force from 30 September 2006 to the 30 September 2010.

**It is prohibited to burn**

1. Without the approval of the NSW Fire Brigade throughout the year in the following areas: McGraths Hill, Windsor Downs, Bligh Park, South Windsor, Windsor, Vineyard, Clarendon, Richmond, and North Richmond.
2. Without the approval of the Rural Fire Service between 1 October to 31 March or until the commencement of the Bush Fire Season if declared earlier.

**This approval does not include:-**

1. The burning of other matter other than dead and dry vegetation grown on the property.
2. The burning of vegetation resulting from land clearance. Development consent is required to be obtained from Council.
3. The burning of vegetation which has been cleared for commercial development or building construction as development consent must be obtained from Council.
4. The removal of dead or dying trees as written notification needs to be provided to Council under its Tree Preservation Order.
5. Ecological/bush regeneration burns which are carried out to destroy infestations of noxious weeds or the clearance of land for native species regeneration. Individuals and organisations that wish to carry out these burns should apply to the Department of Environment and Conservation (DEC), PO Box 668 Parramatta NSW 2124.

The approval is granted subject to the provisions of the Protection of the Environment Operation (Clean Air) Regulation 2002 and to the following conditions:

1. Pile burning of dry and dead vegetation should NOT be seen as the best method for disposing of dry and dead vegetation. Alternative means of disposal such as re-use; recycling; composting; disposal through Council's waste service, kerbside collection service or waste management facility; should be thoroughly investigated and are the preferred disposal methods.

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2. Only dry and dead vegetation originating on a property that is included in this approval shall be burnt on that property. Burning is to be conducted in accordance with the NSW Rural Fire Service "Standards for Pile Burning" February 2006;  
<http://www.hawkesbury.nsw.gov.au/environment/19544.html>
3. Burning must at all times be carried out by such practical means as are necessary to prevent or minimise air pollution. The potential for smoke impacting on any person due to wind direction and weather conditions must be taken into account.
4. In the event of a Total Fire Ban being declared, this approval is suspended. Any existing fire is to be extinguished and cannot be re-commenced until the Total Fire Ban is lifted.
5. In the event of a No Burn Day being declared by the EPA, this approval is suspended for the duration of the declaration. When a "No Burn" notice is issued, it applies to the lighting of new fires in the declared areas. Existing fires should be allowed to continue as extinguishing the fire will result in more smoke. "No Burn Notices" are notified in the Public Notices section of the Sydney Morning Herald not later than on the day on which the order is to take effect. Recorded information about "No Burn Notices" is usually available from 4pm the day before the notice comes into effect and can be accessed by calling ph: 1300 130 520 or is available on the Department of Environment and Climate Change NSW (DECC) website at [www.environment.nsw.gov.au/air/airqual.htm](http://www.environment.nsw.gov.au/air/airqual.htm)
6. Adjoining neighbours and people likely to be affected by smoke are to be notified at least 48 hours before the fire is lit. This will allow for smoke-sensitive people such as asthmatics, to plan to be away from the area when the burn is conducted.
7. Written or oral notice is to be given to the Hawkesbury Rural Fire Service at least 24 hours prior to the burn. (The Rural Fire Service will require additional time during the Bush Fire Season). Such notice must specify the location, purpose, period and time of the fire proposed to be lit. Contact details include:  
  
**RFS Pile burning notification line Ph: (02) 4575 1143, FAX 4575 1475, email [hawkesbury@rfs.nsw.gov.au](mailto:hawkesbury@rfs.nsw.gov.au)**
8. A responsible supervising adult over the age of eighteen shall be on site at all times with enough water to extinguish the fire, if required, for that time the fire is active.
9. Burning shall only be conducted between the hours of 8am and 5pm on any day.
10. Any residue waste from the burning must be disposed of in an environmentally satisfactory manner and in accordance with the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 1996". On completion of the burn, the burnt area must be maintained in a condition that minimises or prevents the emission of dust from the area and prevents sediment or ash from fires being washed from the area into waters.

Failure to comply with this approval may result in an On The Spot fine of \$500.00 for an individual or \$1,000.00 for a corporation. In the event of prosecution, the maximum penalty is \$5,500.00 for an individual and \$11,000.00 for a corporation.

***If you do not comply with the conditions specified above you are not permitted to burn without separate approval being issued by Council.***

**ORDINARY MEETING**

**Meeting Date:** 9 November 2010

For further information please contact:

Hawkesbury City Council  
Regulatory Services  
PO Box 146  
Windsor NSW 2756

Ph: (02) 4560 4444  
Fax: (02) 4560 4400  
Email: [council@hawkesbury.nsw.gov.au](mailto:council@hawkesbury.nsw.gov.au)

## ORDINARY MEETING

Meeting Date: 9 November 2010

### AT - 2 - Correspondence from DECCW Re: Extension of Council's existing Notice of Approval

Our reference: DOC10/33903

Contact: Marcus Leslie, 9995 6849

Mr G Baldry  
Manager Regulatory Services  
Hawkesbury City Council  
PO Box 146  
WINDSOR NSW 2756

Dear Mr Baldry

#### **Open burning policy in the Hawkesbury local government area**

Thank you for your letter of 26 June 2010 seeking the opinion of the Department of Environment, Climate Change and Water (DECCW) on Council's proposal to extend its Clean Air Regulation 2002 Notice of Approval Rural Areas and Villages to include premises greater than 4000 square meters and/or premises designated as an Extreme Risk under the Hawkesbury Bush Fire Risk Management Plan, as required under the *Protection of the Environment Operations (Clean Air) Regulation 2002*. DECCW previously commented (18 July 2006) on an earlier version of this Notice of Approval and many of our comments are still relevant.

I wish to reassure Council that DECCW is fully supportive of Council meeting its obligations in relation to fire risk as a first priority. DECCW's further input as follows is to ensure that all other legislative responsibilities of government are fully addressed with the Council changes proposed.

DECCW has reviewed the Notice of Approval and our key concerns relate to the impacts on air quality, native vegetation, in particular threatened species and their habitat, and a possible increase in the incidence of fire in extreme bushfire risk areas. These are discussed in more detail below. DECCW also considers that the Notice of Approval is ambiguous in terms of what is or is not permitted and has made some suggested changes to address this, as well as some of our concerns (see attached Notice).

DECCW's current position on open burning for local government areas listed on Part 1 of Schedule 8 of the POEO (Clean Air) Regulation 2002 is to prohibit all open burning with the exception of burns undertaken for ecological purposes or special effects. This approach aims to better protect air quality and amenity by minimising burning. DECCW believes that there are alternative options available for the reuse or disposal of vegetative waste and encourages Council to promote these.

#### **Impacts on Air Quality**

An extension of the current open burning approval in the Hawkesbury local government area (LGA) is likely to lead to further increases in local and regional air pollution. Clause 6G(3) of the POEO (Clean Air) Regulation 2002 requires Council take into consideration the impact on local and regional air quality and amenity; the feasibility of re-use, recycling or other alternative means of disposal; and the opinions of those members of the public likely to be most affected by the proposed approval, before granting such an approval.

As stated in our earlier correspondence, DECCW encourages Council to give serious consideration to minimising any such impacts by:

- ensuring residents in the LGA have access to, and are aware of, green waste services, such as kerbside collections, or alternatives, such as composting or chipping services;

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- minimising and coordinating any necessary burns so that local residents are not subject to ongoing smoke impacts and poor air quality brought about by an increased frequency of open burns;
- consulting with those stakeholders likely to be affected by the proposal.

### Impacts on native vegetation, threatened species and their habitat

Remnant native vegetation in the Hawkesbury LGA includes endangered ecological communities (EECs), threatened species and/or their habitat. As discussed in our previous correspondence, even dead trees (standing or logs) may be habitat for threatened species. DECCW is concerned that this Notice of Approval may lead to the unauthorised removal or inappropriate burning of such vegetation and recommends that Council make it quite clear in the Notice of Approval that any works likely to impact on threatened species, populations or endangered ecological communities or their habitat must be adequately assessed and approved. Removing live or dead vegetation from an endangered ecological community or from the habitat of threatened species, may constitute an offence under the National Parks & Wildlife Act unless it is subject to a consent from Council, a licence from DECCW or some other valid form of approval. Landholders should be encouraged to check the DECCW website <http://threatenedspecies.environment.nsw.gov.au/index.aspx> or talk to Council to obtain more information about threatened species in their area. Where a consent from Council or other form of approval is not required for such works, then landholders will need to apply for a s. 91 licence from DECCW. A licence application form can be obtained from the DECCWW website at: [http://www.nationalparks.nsw.gov.au/PDFs/Application\\_Form\\_s91\\_jan07.pdf](http://www.nationalparks.nsw.gov.au/PDFs/Application_Form_s91_jan07.pdf).

### Bushfire Management

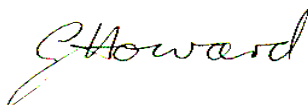
As detailed in our previous correspondence, DECCW has concerns that the Clean Air Regulation 2002 Notice of Approval Rural Areas and Villages may be misinterpreted by residents and be used to remove vegetation to reduce bushfire risk in extreme risk areas. The prescriptions under the POEO (Clean Air) Regulation 2002 do not cover bush fire hazard reduction works. A clear distinction between the purpose of pile burns and hazard reduction burns should be made with reference to the relevant assessment and approval processes required for hazard reduction works under the Bush Fire Environmental Assessment Code and The Rural Fires Act 1997. DECCW is concerned that misinterpretation of this Notice of Approval may result in an increased risk of bushfires in areas that have already been identified as extreme risk areas.

### Compliance

A random inspection program following changes to control of burning approvals would be beneficial to ensure compliance with the new Notice of Approval.

I trust you find this information helpful and I also wish to promptly set up a meeting between DECCW and Council to discuss the above, to ensure efficiency and clarity for all. Could you please contact Marcus Leslie on 9995 6849 or Deb Stevenson A/ Manager Metropolitan Projects and Support on 9995 6842 to arrange this meeting.

Yours sincerely



**GISELLE HOWARD**  
**Director Metropolitan**  
**Environment Protection and Regulation**  
13 August 2010

Enclosure

**AT - 3 - Draft Notice of Approval**

**Clean Air Regulation 2002  
Notice of Approval  
Rural Areas and Villages**

Hawkesbury City Council hereby grants general approval for the pile burning of dead and dry vegetation grown on that property, in the open, on land which is 4,000 square metres (one acre) or greater and/or is designated as an Extreme Risk under the Hawkesbury Bush Fire Risk Management Plan.

Properties from Yarramundi, Bowen Mountain, Tabaraga Ridge - Kurrajong Heights, "The Islands Estate", Blaxlands Ridge, Grose Vale and Kurrajong village are designated as Extreme Risk (or as amended from time to time by the Bush Fire Management Plan). ***In all circumstances Council should be contacted to confirm the individual property is designated Extreme Risk and to check whether any other approvals are required.***

This approval remains in force from 1 October 2010 to the 30 September 2015. **It is limited by the following prohibitions and conditions:**

**It is prohibited to burn**

1. For the purposes of bush fire hazard reduction. Bush fire hazard reduction burns are not covered under this Notice. Such burns need to be assessed and approved under the Rural Fires Act 1997 and residents should apply to the relevant local authority.
2. Without the approval of the NSW Fire Brigade throughout the year in the following areas: McGraths Hill, Windsor Downs, Bligh Park, South Windsor, Windsor, Vineyard, Clarendon, Richmond, and North Richmond.
3. Without the approval of the Rural Fire Service between 1 October to 31 March or until the commencement of the Bush Fire Season if declared earlier.
4. Ecological/bush regeneration burns to be carried out in vegetation which is listed as an Endangered Ecological Community (EEC) or which is habitat for threatened species will require a licence from the Department of Environment, Climate Change and Water (DECCW). See the DECCW website for further information about threatened species and EECS (<http://www.environment.nsw.gov.au/threatenedspecies/>) and for a licence application form (<http://www.environment.nsw.gov.au/wildlifelicences/ScientificResearchLicences.htm>).

**This approval does not include:-**

1. The burning of other matter other than dead and dry vegetation grown on the property.
2. The burning of vegetation resulting from land clearance. Development consent is required for the clearing of native vegetation which can be obtained from Council.
3. The burning of vegetation which has been cleared for commercial development or building construction as development consent must be obtained from Council.

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4. The removal of dead or dying trees as written notification needs to be provided to Council under its Tree Preservation Order.
5. The removal or burning of any native vegetation that comprises an EEC or habitat for threatened species which requires assessment and approval under the Rural Fires Act.
6. The approval is granted subject to the provisions of the Protection of the Environment Operations (Clean Air) Regulation 2002 and to the following conditions:
7. Pile burning of dry and dead vegetation should NOT be seen as the best method for disposing of dry and dead vegetation. Alternative means of disposal such as re-use; recycling; composting; disposal through Council's waste service, kerbside collection service or waste management facility; should be thoroughly investigated and are the preferred disposal methods.
8. Only dry and dead vegetation originating on a property that is included in this approval shall be burnt on that property. Burning is to be conducted in accordance with the NSW Rural Fire Service "Standards for Pile Burning" February 2006;  
[http://www.hawkesbury.nsw.gov.au/data/assets/pdf\\_file/0003/1785/StandardsForPileBurning.pdf](http://www.hawkesbury.nsw.gov.au/data/assets/pdf_file/0003/1785/StandardsForPileBurning.pdf)
9. Burning must at all times be carried out by such practical means as are necessary to prevent or minimise air pollution. The potential for smoke impacting on any person due to wind direction and weather conditions must be taken into account.
10. In the event of a Total Fire Ban being declared, this approval is suspended. Any existing fire is to be extinguished and cannot be re-commenced until the Total Fire Ban is lifted.
11. In the event of a No Burn Day being declared by the EPA, this approval is suspended for the duration of the declaration. When a "No Burn" notice is issued, it applies to the lighting of new fires in the declared areas. Existing fires should be allowed to continue as extinguishing the fire will result in more smoke. "No Burn Notices" are notified in the Public Notices section of the Sydney Morning Herald not later than on the day on which the order is to take effect. Recorded information about "No Burn Notices" is usually available from 4pm the day before the notice comes into effect and can be accessed by calling ph: 131 555 or is available on the Department of Environment, Climate Change and Water (DECCW) website at  
<http://www.environment.nsw.gov.au/air/aboutnb.htm>
12. Adjoining neighbours and people likely to be affected by smoke are to be notified at least 48 hours before the fire is lit. This will allow for smoke-sensitive people such as asthmatics, to plan to be away from the area when the burn is conducted.
13. Written or oral notice is to be given to the Hawkesbury Rural Fire Service at least 24 hours prior to the burn. (The Rural Fire Service will require additional time during the Bush Fire Season). Such notice must specify the location, purpose, period and time of the fire proposed to be lit. Contact details include: **RFS Pile burning notification line Ph: (02) 4575 1143, FAX 4575 1475, email hawkesbury@rfs.nsw.gov.au**
14. A responsible supervising adult over the age of eighteen shall be on site at all times with enough water to extinguish the fire, if required, for that time the fire is active.
15. Burning shall only be conducted between the hours of 8am and 5pm on any day.
16. Any residue waste from the burning must be disposed of in an environmentally satisfactory manner and in accordance with the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 1996". On completion of the burn, the burnt area must be maintained in a condition that minimises or prevents the emission of dust from the area and prevents sediment or ash from fires being washed from the area into waters.

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Failure to comply with this approval may result in an On The Spot fine of \$500.00 for an individual or \$1,000.00 for a corporation. In the event of prosecution, the maximum penalty is \$5,500.00 for an individual and \$11,000.00 for a corporation.

***If you do not comply with the conditions specified above you are not permitted to burn without separate approval being issued by Council and/or the local Rural Fire Service authority.***

For further information please contact:

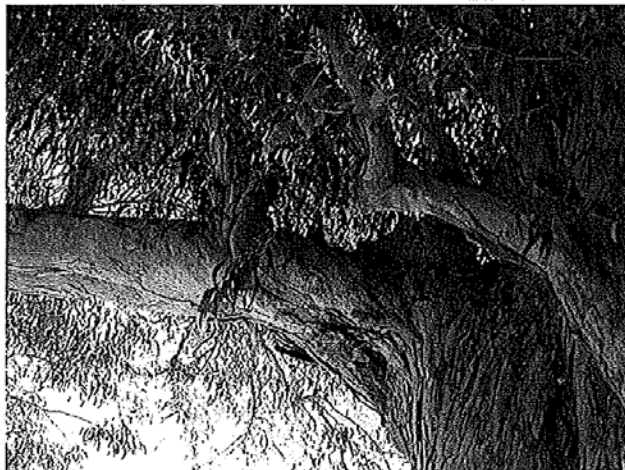
Hawkesbury City Council  
Regulatory Services  
PO Box 146  
Windsor NSW 2756

Ph: (02) 4560 4444  
Fax: (02) 4560 4400  
Email: [council@hawkesbury.nsw.gov.au](mailto:council@hawkesbury.nsw.gov.au)

oooO END OF REPORT Oooo

AT - 2 Copy of Council's Tree Preservation Order

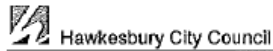
**tree preservation order**



**your guide**



**Hawkesbury City Council**



### **The Order**

A person shall not ring-bark, cut down, top, lop, remove, injure or wilfully destroy any tree within the Hawkesbury City Council area except with prior development consent of Hawkesbury City Council.

### **Exceptions to the Order**

Development consent is not required for works described in the Clause 1 if:

- (a) the works are exempt as specified in Clause 3 of this Order, or
- (b) the works fulfil the requirements for pruning as specified in Clause 5 of this Order, or
- (c) the works fulfil the requirements for transplanting as specified in Clause 6 of this Order, or
- (d) the works are on land managed by the Crown.

### **Exemptions**

Development consent is not required in relation to:

- (a) any tree that is not a heritage item and if documented evidence can be produced that is satisfactory to Council to prove that:
  - i) the owner of the tree has agreed; and
  - ii) the tree was dying or dead or had become dangerous. In this case such evidence is to be provided to Council prior to its ring-barking, cutting down, topping, lopping, removal, injuring or wilful destruction or where a tree poses imminent danger, immediately after; or
  - iii) that taking action was reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the tree was situated; or
  - iv) that written notice about the proposed action was given to Council, before the action was taken, confirmed in writing:
    - that the tree was in a fuel free zone within the meaning of the document entitled "Planning for Bush Fire Protection" published by the Department of Bush Fire Services; and
    - that, if Council has classified species of trees as being likely to present a significant fire hazard, the tree was of such a species; or
  - v) that written notice about the proposed action was given to Council, a period of not less than 14 days occurred after the notice was given (and before the action was taken) and Council did not advise the person during that period that it opposed the action being taken.

In this subclause, "notice" means a notice that includes the name and address of the person who gives it and that explains that a tree of a named species situated in a specified position on land described in the notice is intended to be ring-barked, cut down, topped, lopped, removed, injured or wilfully destroyed for the purpose of bush fire hazard reduction,
- (b) any tree with a height less than 4 metres, or a branch spread of less than 3 metres, or the diameter of the trunk 1 metre above ground level is less than 15cm. Note this does not apply to the clearing of native vegetation,
- (c) any tree which is identified for removal on a development consent authorising a land use,

## ORDINARY MEETING

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Hawkesbury City Council

- (d) the removal or clearing of trees in association with the construction or use of a building or work for which development consent has been granted, including the removal of vegetation and ongoing maintenance of fuel load limits within identified and approved asset protection zones, but only in accordance with the terms and conditions of that consent,
- (e) all trees that are located within the pathway or roadway, sewerage or drainage works or other works, including bush regeneration works, authorised to be carried out by an approval issued under Part 5 of the Environmental Planning and Assessment Act 1979, as amended,
- (f) trees of any of the following species:
  - i. *Salix spp.* (all Willow species)
  - ii. *Populus spp.* (all Poplar species)
  - iii. *Ligustrum lucidum* (Broad - leaf privet)
  - iv. *Ligustrum sinense* (Small - leaf privet)
  - v. *Ricinus communis* (Castor Oil plant)
  - vi. *Gleditzia tricanthos* (Honey Locust)
  - vii. *Ailanthus Altissima* (Tree of Heaven)
  - viii. *Cortaderia Selloana* (Pampas Grass)
  - ix. *Olea europaea* (African Olive)
  - x. *Acer Negundo* (Box Elder)
  - xi. *Toxicodendron succedaneum* (Rhus Tree)
  - xii. *Cinnamomum camphora* (Camphor Laurel)
  - xiii. *Pinus radiata* (Radiata Pine)
  - xiv. *Cocos Palm*,
  - xv. *A species that has been declared a noxious plant under the Noxious Weeds Act 1993*
- (g) any trees which are:
  - i. in an area which the council or the Rural Fire Service has authorised their removal as part of a hazard reduction program, where that removal is necessary in order to manage risk,
  - ii. required to be removed under the Rural Fires Act 1997, or
  - iii. removed by a Rural Fire Brigade because they pose or will pose a significant threat to access along required fire trails or to human life, building or other property during a bushfire,
- (h) any tree the immediate removal of which is essential for emergency access, or emergency works by Council, the State Emergency Service or a public authority,
- (i) the removal or clearing of vegetation in accordance with an order issued by Council under the provisions of the Act or the Local Government Act 1993,
- (j) the removal or clearing of any vegetation, in accordance with the Surveying Act 2000 or any regulation made under that Act, between properties for the purpose of enabling a survey to be carried out along that boundary by a registered surveyor where no alternative survey method is feasible,
- (k) the removal or clearing of any vegetation on land zoned for Housing with an area of 1,000 square metres or less, except for land located in Kurrajong or Kurrajong Heights.

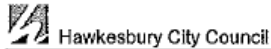
### Approved Landscaping, Heritage Items, Environmental Protection Zones and Environmental Constraint Areas

Nothing in subclauses (3) (b, f, h, j, k) permits without development consent:

- (a) the ring-barking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree that is part of landscape planting required by a development consent, or
- (b) the damaging or despoiling of a tree that is a heritage item / the damaging or despoiling of any tree on land which a heritage building, work or relic is situated or comprised of, or

Tree Preservation Order - Your Guide

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- (c) the felling of trees on land that is zoned 7(a), 7(d) or 7(d1), or
- (d) the removal of trees on land covered by an Environmental Constraint Area.

### **Pruning**

A development consent is not required for the following:

- (a) pruning of a hedge,
- (b) the seasonal pruning of fruit trees for the purpose of maintaining fruit production,
- (c) "deadwooding", being the removal of dead wood from a tree, if the branches removed are not branches with hollows on a *likely habitat tree* specified in an order made under Clause 7,
- (d) selective pruning, being only pruning to remove branches back to the nearest branch collar or junction to clear a roof, where trees directly overhang the roof of a dwelling, garage or commercial building, and only if the owner of the land where the centre of the tree originated or where the majority of the trunk of the tree is growing, is in agreement,
- (e) to remove any species of parasitic mistletoe or parasitic plant from any part of a tree to ameliorate the effects on the tree from such a parasite,
- (f) pruning for the purposes of seed collection where less than 10% of the seed resource is removed.

This clause does not allow the pruning of a tree unless it is carried out in accordance with Australian Standard AS 4373-1996, Pruning of amenity trees.

### **Transplanting**

The following may be transplanted without development consent:

- (a) specimens that have originated in and have grown continuously in a container which is not permanently fixed to a structure,
- (b) a tree that has remained continuously confined within a container, but not a tree in a planter box where the box is part of a building,
- (c) a field-grown tree propagated as part of a commercial horticultural or agricultural enterprise for the purposes of harvesting and selling it as an advanced specimen for relocation and re-establishment.

### **Likely Habitat Trees**

The Council may, by its order, specify particular trees, or trees of a species or other class, to be *likely habitat trees* for the purposes of this clause.

For further enquiries please phone Hawkesbury City Council on 4560 4444.

Address all correspondence to:

The General Manager  
Hawkesbury City Council  
P O Box 146  
WINDSOR NSW 2756

Email: [council@hawkesbury.nsw.gov.au](mailto:council@hawkesbury.nsw.gov.au)

This document contains important information. If you do not understand it,  
contact the Telephone Interpreter Service on 131 450

**oooO END OF REPORT Ooo**

**INFRASTRUCTURE SERVICES**

**Item: 250            IS - Jones Road, Lower Portland - (95495, 79344)**

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**REPORT:**

**Executive Summary**

An existing right of way provides the only access off Lower Colo Road to the public road segment of Jones Road, Lower Portland. The dedication of this right of way as public road will not set a precedent as a similar situation does not exist in the Hawkesbury area. It is recommended that Council accept the dedication of the right of way subject to no monetary compensation being sought and subject to an agreement by all property owners on the basis of Council meeting all reasonable survey and legal costs in the 2011/2012 Capital Works Program.

**Consultation**

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

The residents at this location have previously sought Council's assistance in maintaining the private right of way in conjunction with the routine maintenance of the public road segment.

**Background**

Representations have been received from a number of residents in Jones Road, Lower Portland seeking Council's assistance in the maintenance of a 1.6 km Right of Way which is the only access to Jones Road from Lower Colo Road.

The alignment known as Jones Road comprises two distinct sections namely a 1.6 km private right of way and a 2.0 km public roadway. The Right of Way commences at its junction with Lower Colo Road and provides a physical link to the public road section. Although the private Right of Way is not maintained by Council it is necessary for Council's plant and equipment to traverse over this access in order to maintain the public road. It should also be noted that an unformed Crown Reserve Road is located within a creek bed north of the right of way and deemed unsuitable for access due to the terrain, flooding issues and potential damage to the wetland.

A subdivision application for a boundary adjustment was approved on 15 March 1993 and resulted in the creation of a right of way over an existing track. It is understood from correspondence received from Bowdens Surveyors dated 16 January 1993 that the track has been in existence since the last century and it was proposed to create a right of way over this track to formalise a practical access to the properties and the nearby public road.

Under the Roads Act 1993, Council is not required to maintain a private access however the current situation is considered to be an exception and it is recommended that the dedication of the private right of way for public road purposes be accepted by Council on the basis of no monetary compensation being sought.

The acquisition process should not commence until all property owners agree to the proposal and it is considered appropriate for Council to bear all reasonable survey and legal costs.

The existing right of way is poorly drained and will require improvements as part of the maintenance process. These improvements and drainage works are estimated to cost \$20,000.

**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**

The estimated cost associated with the survey and legal process is \$30,000. The initial road and drainage works is estimated at a further \$20,000. The additional maintenance costs associated with this new road section is approximately \$5,000 per annum per visit.

Having regard to the total estimated cost of \$50,000 it is recommended that this proposal be listed for Council's consideration for inclusion under Component 53 of the 2011/2012 Capital Works Program.

**RECOMMENDATION:**

That:

1. Council agree to accept the dedication of the right of way known as Jones Road, Lower Portland as a public road, subject to the agreement of all property owners and no monetary compensation being sought for such dedication.
2. All reasonable survey and legal costs to be borne by Council.
3. Funding estimated at \$50,000 be made available to cover survey and legal costs, drainage works and road improvements, from within the 2011/2012 Capital Works Program.

**ATTACHMENTS:**

**AT - 1** Map of Jones Road, Lower Portland – Right of Way

**Meeting Date:** 9 November 2010

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