

**MINUTES OF THE DEVELOPMENT COMMITTEE MEETING
HELD 11 FEBRUARY, 2002, CIVIC CENTRE, OXLEY STREET
CAMDEN – 5.30PM**

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11 FEBRUARY, 2002**

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**MINUTES OF THE DEVELOPMENT COMMITTEE MEETING
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Present: Cr G Corrigan (Mayor/Chairperson), Cr S Winn, Cr C Patterson, Cr B Batros, Cr S Fekete, Cr N McFadden, Cr E Campbell, Cr F Anderson, Cr S Senise.

Staff: General Manager, Director Governance & Outcomes, Director Works & Services, Director Development & Environment, Manager Outcomes, Manager Development, Administration Officer.

**Mayoral Minute - Wollondilly Shire Council
Development Application for subdivision of Camden
Parklands Remembrance Driveway, Camden.**

(TC2869/9)

Tonight Wollondilly Council will be considering a development application for a three stage subdivision of land on Remembrance Driveway Camden which adjoins the Camden Local Government Boundary. In addition, a report is also to be considered on the Stormwater Strategy for Camden Park.

Camden Council has previously raised concerns relating to the impact of the stormwater discharge associated with the Camden Parklands development, on the Elizabeth Macarthur Estate.

Information provided, by the consultant preparing the Stormwater Strategy, fails to satisfy Council's concerns with respect to the impact, notwithstanding issues raised in previous correspondence. Issues that are of particular concern in respect of the Stormwater Management Strategy to Camden Council are:

Drainage System Analysis

Camden Council representatives, at a meeting held on 18 January 2002, requested the developer undertake detailed analysis of the stormwater drainage system, in its entirety, to determine the effects on the Elizabeth Macarthur Estate from the stormwater flows resulting from the Camden Parklands development. The information provided only analyses a small portion of the system and fails to assess the impacts on the overall Elizabeth Macarthur system. Council awaits the full analysis.

Council has reiterated its previous position relating to stormwater management from the development site;

“It is essential that stormwater drainage from the proposed Camden Park development through to Elizabeth Macarthur Estate via Griffiths Avenue be limited to the available capacity within the overall drainage system, so as not to jeopardise the integrity of the Elizabeth Macarthur Estate drainage system; this

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may require over attenuation to be designed into the Camden Park drainage system”.

This is additional to the recommendation contained within the Wollondilly Council report which states *“The strategy shall result in no adverse impact on any downstream drainage system”.*

Peak Discharges from the Development

At the same meeting Council sought clarification on the data contained within the Stormwater Management Strategy which indicated that peak stormwater discharges were significantly increased as a result of this development. It was highlighted at the meeting that the consequences of such a system would have significant and unacceptable adverse impacts on downstream properties. Council awaits the detailed calculations for the full range of storm events to adequately assess the impacts and relevance of the Stormwater Management Strategy.

Status of Easements

Finally, Council also sought clarification on the status of the easements which burden Lots 311 and 317, Griffiths Avenue. Council awaits receipt of the appropriate documentation to establish the status, rights and responsibilities of the said easements. Council believes it holds the rights to drainage within this easement and therefore awaits discussion from the consultant requesting use of the easement. Council’s position is that it will not grant or amend the rights until the above points of contention are resolved.

It is disappointing that the drainage issue, as highlighted last year, has not been addressed to the point where Council’s concerns have been obviated. The General Manager has today faxed a letter to Wollondilly Council setting out these issues.

Recommended: That Camden Council write to Wollondilly Shire Council expressing its extreme concern at the prospect of a development consent being issued in the absence of the above drainage issues being satisfactorily resolved.

Resolved on the Motion of Cr Corrigan, seconded Cr McFadden that Camden Council write to Wollondilly Shire Council expressing its extreme concern at the prospect of a development consent being issued in the absence of the above drainage issues being satisfactorily resolved.

DC007/02 THE MOTION WAS **CARRIED**.

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(The Mayor passed the Chair over to the Deputy Mayor, Cr S Winn for the remainder of the meeting.)

DEVELOPMENT COMMITTEE PUBLIC ADDRESSES

Mrs Lynn Page addressed the Committee in relation to Item 1 and Neidra Hill addressed the Committee in relation to Item 3.

**1. Proposed Construction of First Floor Balcony, No 54
(Lot 29 DP 201585) Somerset Ave, Narellan**

File No: DA7250.550-2 (Director, Development & Environment Division)
DA No: 2268/2001
Owner: B & M Ghassibe
Zoning: Residential 2(a) CLEP46

Purpose of Report

To advise Council of a new development application for the construction of a balcony at the rear of an existing dwelling and address objections which cannot be mediated.

Summary of Recommendation

The report recommends that the application be approved subject to conditions including additional privacy screening, given that the balcony's proposed size, design and potential use. It is considered that the development is not likely to unreasonably impact on the privacy or visual amenity of adjoining premises.

Background

In August 2001 Council resolved to refuse a section 96 application to construct a balcony at first floor level to the rear of the subject premises. The grounds for refusal were that the development was unacceptable in terms of likely impacts on the privacy and visual amenity of adjoining residents.

The applicant subsequently lodged an appeal with the Land and Environment Court however the Court upheld Council's decision. This decision was delivered at an on-site conference. In view of the Court's decision, an Order requiring demolition of the structure was served. No further action in relation to the Order has been taken until this new application is determined.

The Proposal

The applicant now seeks approval to construct a smaller, covered timber balcony to the rear elevation at first floor level.

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The proposal is 3.0m in length by 2.0m in width and would be accessed via a sliding door off bedroom 4. The balcony would stand approximately 4.5m above existing ground level and includes a solid privacy screen, screening direct views to the north-west (52 Somerset Ave).

It should be noted that during Land and Environment Court Appeal proceedings concerning the previous balcony, the Commissioner of the Court stated that a 'Juliet' type balcony (similar to that described above) would be a more appropriate development, given that the reduced size limited its potential use which consequently would reduce the impact on privacy. A copy of the submitted plans forms **Tabled Document "DC 1"**.

The Site

The subject site area is approximately 690m² and falls from Somerset Ave to the rear. Existing improvements on the property include a two storey dwelling, detached garage and inground swimming pool. A location plan forms **Tabled Document "DC 2"**.

Notification

The application was notified to adjoining property owners in accordance with Council's Policy. One submission was received from an adjoining owner expressing concern about the impact on privacy (**a copy of the submission were handed out separately with the business paper**).

Planning Controls

The following plans and policies have been considered in assessing the proposal.

CLEP46

The proposed development is a permissible use and is considered to comply with objectives of the zone.

DCP58

The proposed development generally complies with the provisions of DCP58.

With regard to visual privacy, DCP58 suggests the use of screening to minimise privacy impacts, where balconies are within 12.0m of other dwellings. As such, the proposal incorporates a solid screen to the north-western side of the balcony that extends from floor level to the underside of the balcony roof.

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It is considered that this screening will afford reasonable privacy to residents adjoining the north-western boundary. It is suggested that the privacy screen be duplicated on the south-western side of the balcony, to afford privacy to current and future residents of the property adjoining that boundary. Although this is not reflected on the submitted plans, such changes could be required prior to issue of a construction certificate.

In addition to proposed screening, it is considered that the proposed size of the balcony limits potential use and therefore the extent of impact on privacy. Given the balcony may accommodate a maximum of two (2) to three (3) people at one time and is accessed via a upstairs bedroom, its potential use would be considered low impact.

It should be noted that Council is currently considering an application for the property to the rear of the subject development, however separation distances exceed that required by DCP58.

Assessment

Section 79c

(b) the likely impacts of the development, including environmental impacts on both the natural and built environments.

Given the size and appearance of the proposed balcony, it is considered that visual amenity will not be significantly impacted upon.

With regard to potential privacy impacts, it is considered that these are reasonably addressed as discussed in the report.

(d) any submission made in accordance with the Act or Regulations.

One submission was received from an adjoining owner, raising an issue that the structure will provide an invasion of privacy to residents of their property.

This issue has been addressed in the report.

Conclusion

The subject application has been considered in accordance with Council's policies and standards, as well as those issues raised in the submission received.

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With the implementation of proposed privacy screens and the fact that the balcony has been reduced to half the size as existing, the proposed balcony is suitable in terms of size, location and design and will not adversely impact on visual amenity or the privacy of surrounding residents.

Recommended: That::

- (i) Development application No 2268/2001 be approved subject to conditions which form **Tabled Document “DC 3”**.

- (ii) The objector be notified of Council’s decision

Resolved on the Motion of Cr Campbell, seconded Cr McFadden that this item be deferred until a site inspection has been carried out by Councillors.

DC008/02 *THE MOTION WAS **CARRIED**.*

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**2. Four (4) Lot Rural Residential Subdivision, No 211
Deepfields Road, Catherine Field (Lot 212 DP 27602)**

File No: DAS 2275.540 (Director, Development & Environment Division)
DA No: 53/2001
Owner: Messrs C, G, D, D Corte
Applicant: Lean Lackenby & Hayward Liverpool Pty Ltd
Zoning: Rural 'C' (0.4ha min) Camden LEP No 48

Purpose of Report

To further report to Council a development application that Council resolved on 10 December 2001:

“...be deferred and the applicants requested to submit alternate plans which relocate the battle-axe handle to the opposite side of the allotment.

The amended plans to be resubmitted to Council at the earliest convenience for determination.”

The proposed subdivision is contrary to the provisions of DCP 24 – Catherine Field Village and the recent draft DCP 119 – Catherine Field Village.

Also, 3 objections were received following the amended development application's notification during January, which cannot be mediated.

Summary of Recommendation

It is recommended that Council refuse Development Application No 53/2001.

The Proposal

The application is to subdivide a 2.269ha rural residential lot (refer to Locality Plan, **Tabled Document “DC 4”**) (owned by the Corte family) into 4 lots, 3 of which would be battle-axe lots all having access off Deepfields Road along the site's eastern boundary (refer to **Tabled Document “DC 5”**).

Background

The proposed access to the 3 battle-axe lots was originally identified in DCP 24 and currently DDCP 119, as coming off the cul-de-sac Yorkshire Close (refer to extracts from DCP 24 and DDCP 119, **Tabled Document “DC 6”**).

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The recent subdivision of the adjoining (eastern side) lot 2131 DP 826999, extended Yorkshire Close and created lot 2136 DP 1031396 which has been set aside to provide vehicular access from Yorkshire Close to the proposed subdivision as identified on the DCP (refer to approved subdivision plan, **Tabled Document “DC 7”**). Lot 2131 was owned by Mr & Mrs J & M Corte. It should be noted here to avoid confusion, that the Corte family, owners of the land the subject of this development application, are of a different family branch.

The originally approved plan for the subdivision of Mr J Corte’s land identified the 3 separate rights of way (ROW) as lot 2136, as part of the determination of DA 2611/99, which was determined 4 May 2000. A requirement of DCP 24, clause 6 was to have this lot made available to the adjoining landowner “... *at no cost to Council or beneficiary landowners*”, for vehicular access if the adjoining lot was landlocked. Also clause 6 states that “... *landlocked landholders relying on such reservation for access shall be required to meet the cost of constructing a public road (or battle-axe access) over that section of land previously required to be dedicated.*”

Mr J Corte made an objection to this requirement of the DA determination for the provision of ROW’s at no cost to the Corte family on 18 May 2000. An amendment to the determination was made in July 2000 following notification to the adjoining landowners. Unfortunately, the Corte family were not advised of the amendment.

The amendment allowed Mr J Corte to have only one ROW. 12m wide defined as a lot, which had to have a ‘restriction as to user’ placed on its title that states: “*Lot 2136 must not be used for any purposes other than providing access and services to adjoining Lot 212 in DP 27602.*” The rationalisation of the proposed 2 ROW’s minimised the impact of vehicles travelling beside the new lots fronting Yorkshire Close.

The subdivision plan was released May 2001 without the dedication of Lot 2136 as a road reserve, however, restricting use of the land to access to Lot 212 only.

A letter was sent to Mr J Corte in October 2001, requesting ... “*Council is now desirous of having you dedicate Lot 2136 to it (free of cost) having regard to the conditions of the development consent and the terms of the restriction as to user ...*”.

It has been indicated to Council that Mr J Corte has offered Lot 2136 to the Corte family, firstly for the amount of \$103,000 in June and more recently for \$45,000. Both amounts are unacceptable for the Corte family who also confirmed at a meeting with Council officers on 28 November 2001 that they

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are still seeking access off Deepfields Road for their proposed subdivision.

To provide clarity as to the value of Lot 2136, valuations have been obtained, firstly from an independent valuer and secondly from the State Valuation Office. The value has been assessed at considerably less than the price sought by Mr J Corte for the acquisition of Lot 2136 to expedite access to Lot 212 DP 27602.

As mentioned above, clause 6 of DCP 24 states that it only applies to lots that are landlocked, however Lot 212 has direct frontage to Deepfields Road and is therefore technically not landlocked.

Notification

All adjoining landowners were advised of the new proposal with 3 objections received. **A copy of the submissions were provided to the Councillors separately with the Business Paper.**

Assessment

Section 79C (1) Matters for Consideration

(a) the provision of any environmental planning instrument

The site is zoned Rural 'C' (0.4ha) pursuant to LEP 48. The proposed development is permissible with the consent of Council. The relevant objectives of the zone applicable to this application are:

- (a) to provide for small holding rural residential living opportunities on land not being of prime crop or pasture potential and having ready access to urban areas and facilities;
- (b) to control by means of a development control plan the density of development for land within the zone considering access, natural hazards, landscape quality and physical environment;

DCP 24 and DDCP 119 require that access for the three proposed battle-axe lots are to be from Yorkshire Close and that their access handles be of a reasonable length.

DCP 24 – 'Aims and Objectives' (ii) states "To ensure reasonable utility of each rural/residential allotment likely to be created having regard to typical demands likely to be imposed upon same." The proposed excessively long access handles are in conflict with this

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objective, in particular with the provision of waste collection services.

DDCP 119, clause 8.6 Battle-axe lots - has a standard for their handle widths as a minimum of 6m and a maximum length of 100m. The proposed subdivision has its three proposed battle-axe access handles as approximately 90m, 175m and 260m long.

If vehicular access was provided as shown on DDCP 119, two of the proposed lots will have access handles 55m long, with the third lot having approximately a 145m long access handle.

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

The proposed subdivision will have minimal environmental impact on the site as it is devoid of any significant vegetation and the lots are of sufficient size to cater for on-site septic disposal.

However, it does not meet the “Urban Development Objective: To manage urban development to ensure ... growth occurs in a planned and orderly way, ...” of Council’s Strategic Plan for Camden – Camden 2025.

(c) the suitability of the site for the development

The site is contained within the Catherine Field Village and is therefore identified for a 4 lot rural residential subdivision.

(d) any submissions made in accordance with this Act or Regulation

Three objections were received to the amended proposal. Two are from recent land purchasers who abut the eastern boundary of Lot 212 and are concerned that the proposal will have considerable impact on their future living amenity and value of their property.

The third objector is from the owner of Lot 2136, who is seeking that the proposed subdivision comply with Council’s DCP.

(e) the public interest

The proposal as amended achieves an outcome acceptable to the applicant however, it does impact on

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adjoining properties along its eastern boundary. Two of these properties are currently vacant and the third, an existing small cottage fronting Deepfields Road, has just been sold by Mr J Corte.

Subdivision Options

The previous report to Council discussed four options to subdivide Lot 212, which were as follows:

- Subdividing as per first development application – battle-axe handles located on western side of site with access off Deepfields Road;
- As above except battle-axe handles located on eastern side of site ie current development application;
- Subdividing as per DCP – battleaxe lots having access off Yorkshire Close;
- Subdividing as per DCP – Council intervenes with acquisition/resumption of lot 2136 to permit vehicular access to the Corte’s family property from Yorkshire Close.

Objections have been received for the first two options and as previously mentioned the third option is not possible because the amount being sought for the sale of Lot 2136 is too high a price to be acceptable to the applicants.

The fourth option is for Council to compulsorily acquire Lot 2136 as a road reserve to provide vehicular access to Lot 212. An indicative layout has been drawn to show a potential four lot subdivision utilising Lot 2136 as an extension of Yorkshire Close (refer **Tabled Document “DC 8”**).

Compulsory Acquisition

The process of compulsory land acquisition is achieved pursuant to firstly the Roads Act 1993 and secondly the Land Acquisition (Just Terms Compensation) Act 1991. Following a Council resolution, the landowner is given notice of the proposed acquisition. Before the proposed acquisition notice is sent, Council is required under the Roads Act to seek the approval of the Minister of Roads. A period of 90 days must be given before the land is compulsorily acquired. The landowner seeking compensation must lodge a claim with the authority within the period specified in the notice. This cannot be less than 60 days.

With the approval of the Governor, the authority acquires the land with a notice published in the Government Gazette. Within 30 days after the publication of the acquisition notice,

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the former owner must be given written notice of the compulsory acquisition, their entitlement to compensation and the amount of compensation offered (as determined by the Valuer-General).

If the owner does not, within 90 days after receiving a compensation notice, accept the amount or lodge with the Land and Environment Court an objection to the amount of compensation offered, the offer is taken to have been accepted.

The main concern with this option to permit the subdivision of lot 212 is the delay in processing the Corte family's proposed four lot subdivision. An indicative layout has been prepared that shows how a four lot could be implemented utilising lot 2136 as vehicular access for three of the proposed lots. As the land is currently vacant, one house can be erected now before any subdivision is approved.

As there is a minimum of three months before Council can acquire the land, should this option be adopted, rather than a further report be submitted to Council with an amended layout utilising lot 2136 as road access, as shown by the amended layout (refer to **Tabled Document "DC 8"**), it is suggested that delegation be given to the General Manager to approve a four lot subdivision based on the amended layout. This layout accords to the DCP and DDCP and has not been the subject of any objection.

Land and Environment Court

The Corte family have verbally advised that they are currently proceeding to take their development application to the Land and Environment Court, it is assumed as a deemed refusal. The original application for subdivision was registered with Council 27 April 2001.

This action may take up to five months before it is resolved by the Court. The Corte family is considering having their access off Deepfields Road on their western boundary.

The impact of this action by the Corte family may provide an outcome before Lot 2136 is compulsorily acquired by Council. If this is the case, Council is able to withdraw from the compulsory acquisition process before the land is acquired. As the use of Lot 2136 is the preferred option for road access to three of the four proposed lots in the subdivision of Lot 212, the proposed compulsory acquisition should proceed until a different outcome is imposed on Council.

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Summary

The subject property can, with consent, be subdivided into 4 lots (each approximately 5300m² plus). Three of these lots are required to be battle-axe lots with the preferred access being off Yorkshire Close as identified in the previous planning of the Catherine Field Village.

Objections were received from adjoining property owners on both the western and the eastern side of Lot 212 when access to the new battle-axe lots was identified off Deepfields Road on both these sides of the allotment. The amended subdivision layout (refer to **Tabled Document “DC 8”**) provides a reasonable option to the Corte family to subdivide their land without undue impact on the adjoining vacant lots. The purchasers of these two new lots fronting Yorkshire Close were aware of Lot 2136 and its purpose for access to Lot 212 as indicated by DCP 24 off Yorkshire Close.

The only option to achieve this outcome is for the compulsory acquisition of Lot 2136, because of the complication of this lot being created as a lot for vehicular access only and not dedicated to Council as a reserve for road access.

Conclusion

Considering the above assessment and the indicated course of action that the applicant (Corte family) is pursuing the Development Application No 53/2001 proposing battle-axe lots off Deepfields Road should be refused. It is recommended that the necessary actions be undertaken to compulsorily acquire Lot 2136 DP 1031396 to provide the road access to Lot 212.

The basis for refusal is that:

- (a) The proposal is inconsistent with Council’s Strategic Plan for Camden – Camden 2025 “Urban Development Objective: To manage urban development to ensure ... growth occurs in a planned and orderly way,”;
- (b) The proposal is inconsistent with the objective for land to which Camden LEP 48 Rural ‘C’ zone applies in particular, objective (b) “to control by means of a development control plan the density of development for land within the zone considering access...”;
- (c) The proposal is inconsistent with the objective for land to which Camden DCP 24 applies in particular ‘Aims and Objectives’ (ii) which states “To ensure reasonable utility of each rural/residential allotment likely to be

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created having regard to typical demands likely to be imposed upon same.”;

- (d) The proposal is inconsistent with the objective for land to which Camden DDCP 119 applies in particular, clause 8.6 Battle-axe lots – which has the standard for a battle-axe handle as being a maximum length of 100m;
- (e) The proposal is inconsistent with Camden DCP 24 and DDCP 119 plans, in particular the requirement that the vehicular access for the proposed battle-axe lots are to be from Yorkshire Close;
- (f) The proposal is unacceptable in terms of the objections received from adjoining landowners.

Recommended: That

- (i) Development Application No 53/2001 to subdivide No 211 Deepfields Road, Catherine Field (Lot 212 DP 27602) into four (4) rural residential lots be refused.

The basis for refusal is that:

- (a) the proposal is inconsistent with Council’s Strategic Plan for Camden – Camden 2025 “Urban Development Objective: To manage urban development to ensure ... growth occurs in a planned and orderly way.”;
- (b) the proposal is inconsistent with the objective for land to which Camden LEP 48 Rural ‘C’ zone applies in particular, objective (b) “to control by means of a development control plan the density of development for land within the zone considering access...”;
- (c) the proposal is inconsistent with the objective for land to which Camden DCP 24 applies in particular ‘Aims and Objectives’ (ii) which states “To ensure reasonable utility of each rural/residential allotment likely to be created having regard to typical demands likely to be imposed upon same.”;
- (d) the proposal is inconsistent with the objective for land to which Camden DDCP 119 applies in particular, clause 8.6 Battle-axe lots – which has the standard for a battle-axe handle as being a maximum length of 100m;
- (e) the proposal is inconsistent with Camden DCP 24 and DDCP 119 plans, in particular the requirement

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that the vehicular access for the proposed battle-axe lots are to be from Yorkshire Close;

- (f) the proposal is unacceptable in terms of the objections received from adjoining landowners.
- (ii) The process to compulsorily acquire Lot 2136 DP 1031396 commence for the provision of a road as an extension of Yorkshire Close under section 177 of the Roads Act 1991.
- (iii) The approval of the Minister for Roads be sought for the issuing of the proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991.
- (iv) Those who made a submission be thanked and advised of the determination of the application.

Resolved on the Motion of Cr Corrigan, seconded Cr Fekete that

- (i) *Development Application No 53/2001 to subdivide No 211 Deepfields Road, Catherine Field (Lot 212 DP 27602) into four (4) rural residential lots be refused.*

The basis for refusal is that:

- (a) *the proposal is inconsistent with Council's Strategic Plan for Camden – Camden 2025 "Urban Development Objective: To manage urban development to ensure ... growth occurs in a planned and orderly way,";*
- (b) *the proposal is inconsistent with the objective for land to which Camden LEP 48 Rural 'C' zone applies in particular, objective (b) "to control by means of a development control plan the density of development for land within the zone considering access...";*
- (c) *the proposal is inconsistent with the objective for land to which Camden DCP 24 applies in particular 'Aims and Objectives' (ii) which states "To ensure reasonable utility of each rural/residential allotment likely to be created having regard to typical demands likely to be imposed upon same.";*
- (d) *the proposal is inconsistent with the objective for land to which Camden DDCP 119 applies in particular, clause 8.6 Battle-axe lots – which has the standard for a battle-axe handle as being a maximum length of 100m;*
- (e) *the proposal is inconsistent with Camden DCP 24 and DDCP 119 plans, in particular the requirement*

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that the vehicular access for the proposed battle-axe lots are to be from Yorkshire Close;

- (f) the proposal is unacceptable in terms of the objections received from adjoining landowners.*
- (ii) The process to compulsorily acquire Lot 2136 DP 1031396 commence for the provision of a road as an extension of Yorkshire Close under section 177 of the Roads Act 1991.*
- (iii) The approval of the Minister for Roads be sought for the issuing of the proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991.*
- (iv) Those who made a submission be thanked and advised of the determination of the application.*

DC009/02 THE MOTION WAS **CARRIED.**

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3. Development of Softball Park, Rotary Cowpasture Reserve, No 2 (Lot 1 DP 612829) Argyle Street, Camden

File No: DA 350.20 (Director, Development & Environment Division)
DA No: 1871/2001
Owner: Camden Council
Applicant: Macarthur District Softball Association
Zone: 6(a1) Existing Open Space

Purpose of Report

Council is in receipt of a Development Application for the construction of two (2) batting tunnels, a practice pitching area and two light towers.

The application also seeks Council approval for the backnets and dugouts currently constructed on the reserve without development consent.

The applicant has submitted a master plan for the ultimate development of the reserve and a flood evacuation plan for Council's consideration.

The matter is referred to Council given that the development is on Council owned land, and is severely flood affected from the Nepean River.

Summary of Recommendation

Because of the severe impact and velocity of flooding on the site, the application is recommended for refusal. The MDSA should be advised that all unauthorised structures are to be removed and that Council will not consider any applications for the erection of any structures on the reserve unless it can be demonstrated that the structures will not adversely affect flood behaviour, and they can be retained on-site in a flood event.

Background

Council granted conditional approval in April 1994 for the establishment of sporting fields for the MDSA. Conditions of consent required amongst other matters the preparation of a site specific plan of management for the reserve, incorporating provisions for the reserve to be made available for other sporting groups on reasonable request.

The following should be noted. The plan of management is still to be prepared, and the existing softball field layout is different to the approved plan.

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No mention was made on the above mentioned development application for the construction of backnets or dugouts.

On the 28th of August 1995 Council resolved to grant development consent for the construction of an amenities building/club house on Cowpasture Reserve for the MDSA subject to a site specific plan of management being prepared for the reserve. The plan of management was to indicate that the facilities are to be made available to all community users and not exclusively for the MDSA.

Council's Resources and Services Committee on 9 November 1998 resolved to grant the Wanderers Softball Club \$1391.00 under the Community Financial Assistance Program for the construction of the dug outs on field 3. These nets have since been constructed without formal development consent.

Council considered a report on the 24th of January 2000 relating to the construction of perimeter fencing on fields 1, 2 & 3. The report recommended that the application be refused because of flood impacts.

Council resolved that the MDSA be advised that Council supports the construction of full 1.2m high fencing to fields 1, 2 & 3 and consent was subsequently issued, contrary to officer's recommendations.

A development application was submitted to Council on 20 November 2000 for the enclosure of 3 softball fields with chain wire fencing to a maximum height of 1.2m. The application was supported by a statement that the chain wire will be secured to the top rail using PVC electrical ties, designed to break free in the event of flooding, allowing the chain wire fence to drop to the ground whilst still securely tied to the bottom rail, thus allowing the floodwaters to flow across the fence.

Development consent was subsequently granted for the enclosure of the 3 softball fields. The existing chain wire fence is currently secured to the top rail with wire in accordance with that consent.

The Site

The subject land comprises a 12.3ha parcel situated within the Nepean River floodplain, bounded by the Nepean River on the east, the Nepean River cycleway on the west and south and a 348 metre frontage to Argyle Street on the north.

The site is currently developed as a softball complex with nine (9) fields and associated facilities. Council over a period of time has allowed and encouraged the development of Rotary

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Cowpasture Reserve as a softball facility, to the extent of giving financial assistance to the development of the reserve.

A plan showing the subject site forms **Tabled Document “DC 9”**.

The Proposal

The development application submitted seeks Council approval for the construction of two (2) batting tunnels, a practice batting and pitching area and two 18m high lighting towers.

The batting tunnels are 20 metres long x 6 metres wide x 3.5 metres high, chain wire structure supported on a metal pipe frame. The tunnels have been designed to enable the rear wall to be dropped in time of pending floods.

The practice batting and pitching area is to be established adjacent to the batting tunnels. This is a flat area with a dolomite surface used for the hitting and throwing of balls into the side of the pitching tunnel.

The light towers are 18m high freestanding poles with lights attached to the top and directed onto the practice areas. The lights are not designed to be used for night games however are of sufficient capacity to be used for training. Lux diagrams have not been submitted with the application and it will be necessary for the MDSA to submit these to show that the lighting will not impact on residents adjacent to the grounds. Such requirement could be on the basis of a deferred commencement consent should the assessment of the application indicate the lights are appropriate to approve. This will be addressed later in the report.

Backnets have been erected on eight (8) of the nine fields and dugouts have been erected on four (4) of the fields. Dugouts are currently under construction on two (2) other fields, all without development approval.

The Master Plan

The master plan provides for the establishment of nine (9) softball fields of different sizes and standards, each with backnets and dugouts of various sizes depending on the standard of the ground. Ancillary structures including an electronic scoreboard on the main field, manual scoreboards on fields 2 & 3, a total of nine (9) 18/21m high light towers, portable spectator stands, the above mentioned batting tunnels and batting and pitching area, an amenities/club building, a storage container, car parking and other associated structures are also shown on the Master Plan. A plan showing the master plan forms **Tabled Document “DC 10”**.

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The master plan also shows the following features to be developed by Council. An extension of the cycleway, the establishment of fitness stations, picnic tables and the provision of children's playground equipment.

To maintain the multi purpose nature of the reserve, required by Council's Plan of Management for Cowpasture Reserve, the master plan shows three less than full size football fields located over the softball fields.

Flood Evacuation Plan

The applicant has provided a flood evacuation plan, which requires the MDSA to be placed on the SES early flood warning list of a pending flood. Upon the MDSA receiving this information a team of officials will attend the reserve to drop all fencing and netting to the ground and actually remove all that can be removed from the reserve within an eight hour time frame.

Flooding

The site is severely flood affected, and is classified by the NSW Floodplain Development Manual as 'High Hazard – Floodway'.

The Manual suggests that whilst new development should not be considered in a "high hazard – floodway", it may be acceptable under special conditions. Such conditions should involve a detailed review of the impact of the new development on flooding and of the potential hazard of flooding on the new or existing development.

The Manual requires any new development within a "high hazard – floodway" to be capable of withstanding the force of flowing floodwaters, including debris and buoyancy forces, and requires details to be provided by a consulting engineer satisfactorily demonstrating that the development will not increase the flood hazard or flood damage to other properties or adversely affect flood behaviour.

The ground level at site falls from RL 66.4 along the riverbank to 64.4 near the entrance to the reserve.

Flood levels and water velocity over the reserve are as follows:

EASTERN END			
	RL	Velocity m/sec	
		in channel	over reserve
5% AEP	70.0	1.8	0.9
1% AEP	71.7	2.0	1.1
PMF	75.5	2.1	1.4

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WESTERN END			
	RL	Velocity m/sec	
		in channel	over reserve
5% AEP	69.9	1.5	1.0
1%AEP	71.6	1.7	1.2
PMF	75.7	2.1	1.6

The velocity 'in channel' figure represents the velocity of water in the middle of the river, whilst the over reserve figure represents the velocity of flood water as it travels over the reserve

The above information indicates the following: -

- that during a 1% flood event, waters crosses the subject site at a depth of between 7.3m and 5.2m at a velocity of 1.1m/sec to 1.2m/sec.
- that during a 5% flood event water crosses the subject site at a depth of between 3.6m and 5.4m at a velocity of 0.9m/sec to 1.0m/sec.

Insurance

Council's insurance brokers have indicted that as Council staff have recognised that the erection of the backnets and dugouts may be a potential hazard to personal/property damage, Council should not automatically assume that if the nets or dugouts cause injury or property damage, its protection providers will provide indemnity to Council in such circumstances. This is a significant consideration for Council, particularly as the applicant has not addressed the requirements of the NSW Floodplain Development Manual by demonstrating that the structures will not adversely affect flood behaviour or cause damage to other property.

Planning Controls

The following plans and policies have been considered in the assessment of the application:

- Camden LEP 46 (CLEP46);
- Camden Scenic and Cultural Landscape Study (CSCLS);
- The NSW Floodplain Development Manual; and
- Sydney Regional Environmental Plan No 20 Hawkesbury – Nepean River (SREP 20).

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Assessment

Camden Local Environmental Plan No 46

The land is zoned 6(a1) Open Space Existing under the provisions of CLEP 46 wherein the proposed development is permissible with Council consent.

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

SREP 20 provides that Council shall not grant consent to any application to carry out development which drains to the Hawkesbury – Nepean River system, unless it has taken into consideration the effect that development will have on the river system. The proposal is to establish facilities associated with the establishment of a softball sporting complex, and as such will have no adverse impact on the river system.

Camden Scenic and Cultural Landscapes Study (CS&CLS)

CS&CLS, while not making specific reference to the reserve, identifies the subject site as part of the Nepean River flood plain, which is an important spatial feature of the landscape of Camden which should be protected and maintained as an open area.

The proposed development being the establishment of chain wire facilities associated with the establishment of a softball complex will maintain the area as open space with a number of open structures scattered across the complex. The impact of the height of the proposed lighting towers, being 18m, is significant and it is considered that any such structures should be at a maximum height of 8m, which would be similar to that of the existing amenities building and below the canopy crown of nearby vegetation.

Section 79c Considerations

(a) The provision of any:

Environmental Planning Instrument

The application is not inconsistent with any SEPP or REP.

Local Environmental Plan

As stated above, the property is zoned 6(a1) Open Space Existing under the provisions of CLEP 46 wherein the proposed development is permissible with Council

consent.

(b) Likely impacts of the development on both natural and built environment

Generally the proposed development will have minimal impact on the natural and built environment. However concern is expressed at the possibility of the nets catching flood debris during a major flood event and either being washed away or acting as a barrier and diverting flood waters to other localities. This matter is addressed later in the report.

(c) Relationship to adjoining developments

The development is in keeping with the character of the adjacent floodplain in that it is basically open space. The height of the lighting tower has been discussed previously.

Site Assessment

The site being floodway is ideal for development as a sporting complex. Such a use is also in accordance with the recommendation of the CS & CLS.

Flooding

It has been shown above that the site is within the highest flood risk category and therefore any structure erected therein should be built in accordance with the requirements of the NSW Floodplain Manual.

The NSW Floodplain Manual requires any development application submitted, for structures in this area to be accompanied by details provided by a consulting engineer satisfactorily demonstrating that the development will not increase the flood hazard or flood damage to other properties or adversely affect flood behaviour.

The applicant has not submitted the above information demonstrating that the structures will not increase the flood hazard or flood damage to other properties or adversely affect flood behaviour.

Insurance

Council's insurance brokers have been provided with a copy of the submitted flood evacuation plan and the comments in reply by the SES to same.

Council's insurance brokers have responded in the same

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manner as previously, advising that Council should not automatically assume indemnity, should injury or damage to property occur as a result of the nets being washed away.

A copy of the reply from Council's insurers forms **Tabled Document "DC 11"**.

Master Plan Assessment

The Master Plan shows the reserve as it is currently configured, that is, with nine (9) softball pitches of various sizes, and associated infrastructure. The Master Plan also provides for the provision of an electronic scoreboard on the main field, manual scoreboards on fields 2 & 3, a total of nine (9) 18/21m high light towers, portable spectator stands, batting tunnels, the batting and pitching area, the amenities building/club house, car parking and other associated structures.

The plan also shows the following features to be developed by Council; an extension of the cycleway and the establishment of fitness stations, picnic tables and the provision of children's playground equipment.

In an attempt to maintain the multi purpose nature of the reserve, required by Council's Plan of Management for Rotary Cowpasture Reserve, the MDSA's master plan shows three less than full size football fields located over the softball fields.

It must be accepted however that with the number of softball fields, the amount of softball specific infrastructure, the all year round use and the degree of that use by the MDSA, it is virtually impossible for any other sport to use the reserve. Therefore the masterplan does not in fact provide for multi-purpose use of the reserve.

The master plan is considered acceptable in relation to the layout of the softball and football field layout.

Referring to those aspects of the plan relating to softball facilities, ie. the establishment of scoreboards lighting towers, portable spectator stands, batting tunnels and so on, Council should be mindful of the comments of the insurance brokers. Consent to the construction of any structures on the reserve should not be granted unless it can be demonstrated that the structures will be capable of withstanding the forces of floodwaters, including debris and buoyancy forces or can be retained on the site in a flood event.

The existing shipping container is considered to be an inappropriate structure incapable of being anchored to the site and should be removed from the site forthwith because of the high potential for damage to property in a flood event.

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Those features shown on the Master Plan for Council to provide, being a future cycleway, fitness station and picnic tables, are located within the riparian zone between the softball complex and the river, and as such should not be established.

Flood Evacuation Plan Assessment

The flood evacuation plan requires the MDSA to be placed on the SES early warning list. Upon being advised of a potential flood event the MDSA ground committee will attend the reserve and drop all netting, rolling and removing as much of the netting as possible, and leaving the remainder on the ground for flood waters to flow across.

The intention of the dropping of the nets is to reduce the possible hazard of the nets catching debris and acting as a barrier to the free flowing of the water, which could lead to two possibilities:

- the nets and structures being washed away with the possibility of causing further damage downstream;
- the nets staying in place causing a back up of waters, and adversely affecting the flood behaviour.

With the removal of the netting, the potential to have an adverse impact on the floods behaviour would be greatly reduced as the barrier to the flow of water would be greatly reduced. The structures would still be standing but due to the sparse nature of these supports will have little impact on the flow of water. The MDSA acknowledges that any repairs required to these structures caused by a flood event would be at their own expense

The proposed evacuation plan has been referred to the local SES, who have replied accordingly:

- There should be no distinction between the evacuation plan for any flood event, because the determining factor in the evacuation of the site, is that road access to the site is cut by any flood above a 10% flood event.
- It would be necessary for the MDSA to start evacuating the site on the first warning that a flood level was expected. This would result in the evacuation plan being enacted on many occasions when it would not be necessary.
- It would not be possible to wait until the 8 hour notice of impending floods is issued before enacting the evacuation plan as proposed, because by this time road access to the site would have already been cut.

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- Our experience is that it is always difficult to arrange the required number of persons at short notice and alternatives to the Flood Response Group should be considered.

A copy of the response from the SES forms **Tabled Document “DC 12”**.

It would appear from the comments of the SES that the submitted flood evacuation plan is not practicable, because no reasonable early warning of the necessity to evacuate the site can be given.

If the flood evacuation plan is enacted as required on the first warning of an impending flood, this will result in the MDSA being advised to evacuate the site on many occasions when it would not be necessary. This could, over a period of time, result in apathy developing amongst Committee members and no response given in a real flood event.

Batting Tunnel, Practise Pitching Area and Light Tower Assessment

The batting tunnels and practice pitching area are an integral part of softball training, just as cricket nets are an integral part of cricket training.

The nets will not cause any major visual intrusion of the area as they would be located behind the existing amenities building and club house.

The tunnels would be fitted with a drop down back, and be orientated in line with the flow of the flood waters, which it is anticipated will greatly reduce their impact on flood waters. The applicant has not however provided details from a structural engineer demonstrating that the structures will be capable of withstanding the forces of floodwaters, including debris and buoyancy forces or alternately, will drop and be retained on site in a flood event. It is considered that retaining all structures on site is the important factor and this will not lead to off-site damage. The MDSA acknowledge that damage will occur to the structures in a flood event because of the location of the site in the floodway.

The practice batting and pitching area is no more than a prepared area where balls are thrown or hit into the batting tunnel net. No objection is raised to the establishment of this area as it will have no adverse impact on floodwaters.

It is anticipated that the two 18m high light towers will have little impact on floodwaters due to the slim nature of the poles, however, no details have been provided from a structural

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engineer demonstrating that the light towers will be capable of withstanding the forces of floodwaters, including debris and buoyancy forces.

Existing Backnets and Dugouts Assessment

There are currently eight (8) fields with backnets of different sizes and four (4) with dugouts, two (2) other sets of dugouts are currently under construction. All these structures have been constructed without development consent, and are located across the flow of any future floodwaters, thus increasing their potential to be a hazard to floodwaters.

All these structures have been erected without development consent and the MDSA have asked that approval be granted for these structures as part of this determination.

There is no objection to the establishment of these structures however great concern is expressed at the impact they may have on any future floodwaters. Consent should not be granted until details have been received from a structural engineer demonstrating that the structures will not have an adverse impact on future floodwaters, and are capable of being retained on-site in all flood events.

Conclusion

Council has in the past supported the establishment of Rotary Cowpasture Reserve as a softball park.

Rotary Cowpasture Reserve being located on a flood plain is ideal for the establishment of sporting fields.

Concern is expressed at the construction of large netting structures, within a floodway, as the netting could act as a barrier to flood waters, which may result in the netting being washed away or alternatively redirecting floodwaters to other areas.

The MDSA has submitted a flood evacuation plan, which requires the ground committee to attend the reserve on the early advice of the SES to drop all netting and remove as much as possible from the site. It is considered however that the flood evacuation plan is not practicable.

Council's insurance brokers have placed Council on notice that, as Council has identified a potential hazard, it is foreseeable that if personal/property damage resulted as a result of this hazard being washed away in a flood, indemnity cannot be assumed.

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Bearing in mind the above Council should not issue a consent to any structures on this reserve, without a structural engineer's certificate demonstrating that the structures will not have an adverse impact on future floodwaters, and are capable of being retained on site in all flood events. Until such time as the applicant can demonstrate this is possible, the application should be refused, and to ensure that no potential for damage to other property occurs in a flood event, all unauthorised structures should be removed from the site.

The Master Plan as it relates to the establishment of the softball and football fields is supported however no work should be carried out within the riparian zone

Recommended: That:

- (i) The Macarthur District Softball Association (MDSA) be advised that Council agrees in principle to those aspects of their master plan for Rotary Cowpastures Reserve relating to the establishment of nine softball fields and three football fields, car parking, amenities building/club house and associated infrastructure subject to further development applications being submitted to Council for that work not included in Development Application No 1871/2001 and demonstration that the structures will not adversely affect flood behaviour, are capable of being retained on-site and will not cause any off-site damage in a flood event..
- (ii) The Macarthur District Softball Association (MDSA) be advised that Council does not agree with any aspects of the master plan relating to development within the riparian zone.
- (iii) Development Application 1871/2001 for the establishment of two (2) pitching tunnels, a practice pitching and batting area and two (2) 18m high light towers, eight (8) backnets and six (6) sets of dugouts at Rotary Cowpasture Reserve Camden, being No 2 (Lot 1 DP 612829), Argyle Street, Camden be refused on the following grounds:
 - (a) it has not been demonstrated that the structures will not adversely affect flood behaviour and can be retained on-site in a flood event;
 - (b) the height of the proposed lighting towers is excessive and will adversely impact on views fro adjacent residential areas across the floodplain and will protrude above the canopy of surrounding vegetation;

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- (c) no illumination details have been provided to ensure the lights will not adversely impact on the amenity of adjacent residential areas.
- (iv) All unauthorised structures to be removed from the site within 3 months of the date of determination, however the shipping container shall be removed from the site forthwith.
- (v) Council permission be obtained prior to the placement of portable grandstands, or any improvements covered by the masterplan, on the reserve for specific purposes, and the structure is to be removed within two (2) days of the completion of the event.

MOTION

Moved Cr Campbell, seconded Cr Corrigan that the Item be deferred

- (i) *until a Structural Engineer's report be supplied to Council as regards to the back nets and dug out area in the event of a flood and the effects the area has on existing flood flow.*
- (ii) *A Structural Engineer's report be supplied to Council regarding the suitability of the lighting towers.*
- (iii) *An on-site inspection of the Cowpastures Reserve has been carried out by Councillors.*

DC010/02 THE MOTION WAS **CARRIED**.

FURTHER MOTION

Moved Cr Anderson, seconded Cr Corrigan that

- (i) *The on-site inspection date by Councillors of the Cowpastures Reserve be for the 18th February, 2002.*

THE FURTHER MOTION ON BEING PUT WAS **LOST**.

(Crs Patterson, Senise, Campbell, McFadden & Batros voted against the Further Motion).

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MOTION

Moved Cr McFadden, seconded Cr Campbell that

- (i) *The on-site inspection date of the Cowpastures Reserve by Councillors be set before the next Council meeting to be held on 25th February, 2002.*

DC011/02 THE MOTION WAS **CARRIED**.

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4. Land & Environment Court Proceedings - Broughton Street, Camden

(File DA 1125.760) (Director, Development & Environment Division)

Purpose of Report

The purpose of this report is to advise Council of the discontinuance of Land and Environment Proceedings in respect of an application to erect 8 town houses at Broughton Street, Camden.

Background

Council, at the meeting on 11 December 2000, refused an application to erect 8 town houses on the site for a number of reasons, mainly having regard to non-compliance with DCP 58 and that the development was out of character with residential development in the area.

As a result of the decision, the applicant lodged an appeal in the Land and Environment Court. The matter was set down for hearing, however, prior to the matter being heard the applicant entered into discussions with Council staff in order to reach an agreement as to the appropriate form of development for the site.

As a result of these discussions the applicant lodged amended plans, which were subsequently approved by Council at the meeting of 10 December 2001.

Main Report

Council's solicitors have advised Council that the matter of the earlier appeal to the Court has been discontinued and have submitted an account in the amount of \$1349 for their costs in this matter.

Recommended: That the information be noted.

Resolved on the Motion of Cr Campbell, seconded Cr McFadden that the information be noted.

DC012/02 THE MOTION WAS **CARRIED**.

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5. Local Court Proceedings – Mr C Neasy, The Northern Road, Oran Park

(File PF 5850.540 & PF 550.10) (Director, Development & Environment Division)

Properties

No 944 (Lot Part A DP 41793) The Northern Road, Oran Park & No 5 (Lot 2 DP 618409) Barry Ave, Catherine Field.

Purpose of Report

To advise Council of the result of the Court case against Mr Colin Neasy for the unauthorised removal of trees from his property.

Background

On Friday, 28 September 2001, Council Officers entered the property of Mr Neasy, 5 Barry Ave and proceeded to his adjoining property No 944 The Northern Road. Mr Neasy was found to be felling trees and vegetation without Council consent for such works.

Councillors carried out a site inspection of the unauthorised tree felling on Monday, 12 November 2001 at Mr Neasy's property, No 944 The Northern Road, Oran Park.

At the Development Committee Meeting on Monday 12th November 2001, Council resolved to take legal action in respect of the unauthorised tree felling.

Main Report

The matter was heard in the Camden Local Court on Wednesday 30 January, 2002 before Magistrate Spence. Marsden's Solicitors represented Council with Baker and Mackenzie, Solicitors representing Mr Neasy. After hearing representations from the solicitors, Magistrate Spence ordered a conviction against Mr Neasy, fined him \$2,000, ordered him to pay solicitor's costs in the amount of \$660 and Court costs of \$58.

Conclusion

The conviction recorded against Mr Neasy should assist Council in efforts to control the unauthorised removal of trees and vegetation and shows the Court's positive attitude towards the importance of preserving vegetation in Camden.

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Recommended: That Council note the results of the Local Court matter in respect of Mr Neasy for the unauthorised removal of trees.

Resolved on the Motion of Cr Campbell, seconded Cr Corrigan that Council note the results of the Local Court matter in respect of Mr Neasy for the unauthorised removal of trees.

DC013/02 THE MOTION WAS **CARRIED**.

The Meeting closed at 6.05pm.