

**MINUTES OF THE DEVELOPMENT COMMITTEE MEETING
HELD 24 NOVEMBER, 2003, CIVIC CENTRE, OXLEY STREET
CAMDEN – 5.30PM**

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Present: Cr Anderson (Mayor/Chairman), Cr Patterson, Cr Corrigan, Cr Campbell, Cr Winn, Cr Fekete, Cr Batros, Cr Senise.

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

APOLOGIES

An apology was received from Cr McFadden from this meeting.

Resolved on the Motion of Cr Batros, seconded Cr Winn that leave of absence be granted to Cr McFadden for this meeting.

DC107/03 THE MOTION WAS **CARRIED.**

DECLARATION OF PECUNIARY OR CONFLICT OF INTEREST

There were no declarations.

DEVELOPMENT COMMITTEE PUBLIC ADDRESSES

Neil Patterson addressed the Committee in relation to Item 2.

Moved Cr Senise, seconded Cr Winn that an extension of two minutes be granted.

DC108/03 THE MOTION WAS **CARRIED.**

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**1. Additions to Dwelling, No 6 (Lot 72 DP 24039)
Macquarie Avenue, Camden**

File No: 5100.110 (Director, Development & Environment
Division)

DA No: 1095/2003

Owner: A & A Ferguson

Zoning: 2(a) Residential pursuant to Camden LEP 46

Purpose of Report

To enable Council to make a determination on an application for additions to a dwelling on a site affected by flooding from the Nepean River.

Summary of Recommendation

That the application be approved subject to compliance with appropriate conditions of consent.

The Proposal

The applicant proposes a split-level addition to the rear of the dwelling, constructed from weatherboard cladding with a metal roof to match the existing building (refer **Tabled Document “DC 1”**). On the first floor the new work will provide a master bedroom with an ensuite and walk-in wardrobe. The upper ground floor, which is consistent with the level of the existing building, includes a bedroom, a deck, a laundry, a verandah and a storeroom. The lower ground floor is comprised of a rumpus room and an open sub floor area. The owners of the property intend to convert the smallest of the existing bedrooms to a study/computer room.

The north eastern wing of the addition is affected by the 1% flood line and is purposely designed to maintain all habitable floor areas in accordance with the requirements of the Upper Nepean River Floodplain Management Study and Plan. The sub floor area will maintain an open aspect for the unrestricted flow of floodwater. The provisions for evacuation and the flood compatible construction of the addition are discussed further in this report.

The proposed addition does not require the removal of any trees.

The Site

The site is approximately 676m² in area and is located on the eastern side of Macquarie Avenue with direct frontage to the road (refer **Tabled Document “DC 2”**). A single storey weatherboard dwelling currently occupies the site with similar

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dwelling adjoins the northern and southern boundaries. There are no dwellings located between the rear of the site and the Nepean River.

The land slopes down from the road to the rear boundary, which is surrounded by well-established shrubs and trees (refer **Tabled Document “DC 3”**).

Approximately a third of the land at the rear is affected by the 1% AEP flood event, located at RL 72.0m AHD. The impact of flooding and the level of inundation is assessed and discussed further in this report under the section entitled Upper Nepean River Floodplain Management Study and Plan.

Notification

The proposal was notified to affected residents in accordance with Council’s Development Control Plan 116 ‘Notification, Advertisements and Mediation’. At the conclusion of the exhibition period no submissions were received.

Planning Controls

The following documentation has been considered with respect to Council’s assessment of the subject application:

- Camden 2025
- Camden Local Environmental Plan No 46
- Sydney Regional Environmental Plan 20-Hawkesbury-Nepean river
- Residential Development Control Plan No 58
- Upper Nepean River Floodplain Management Study and Plan
 - Draft Flood Risk Management Policy

Assessment

The subject application has been assessed in accordance with section 79C of the Environmental Planning & Assessment Act 1979. The following points are provided in relation to the critical aspects of Council’s assessment:

- (a) the provision of any planning instrument, development control plan or matter prescribed by the regulations**

Camden 2025

The Strategic Plan aims to retain the traditional quality of Camden while meeting the needs of local communities.

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The submission proposes a development sympathetic to the locality and conserves the identity of the 'place' while productively improving the use of the site.

Camden Local Environmental Plan No 46

The land is zoned Residential 2(a) under Camden Local Environmental Plan 46. The development meets the aim of the LEP, which seeks to 'promote development suitable to particular localities' and also takes into consideration the traditional, urban character of the locality. The proposed development is permissible in the zone and meets the provisions of the LEP, relevant to the proposal.

Clause 21 in the LEP, which refers to flood prone land, states that Council may refuse an application to carry out any development that is subject to flooding if in the opinion of Council it will:

- (a) affect the flood level at any point above or below the development;
- (b) increase, to a substantial degree, the flow of water on any adjoining flood liable lands;
- (c) cause soil erosion, siltation or destruction of river bank vegetation;
- (d) affect the water table of any adjoining land; or
- (e) adversely affect riverbank stability.

This is discussed further in this report under the Upper Nepean River Floodplain Management Study and Plan.

Sydney Regional Environmental Plan No 20

The provisions of Sydney Regional Environmental Plan No 20 (SREP 20) apply to the property as it falls within the Hawkesbury-Nepean River Catchment.

The SREP provides an overall direction for the protection of the environment of the river. Sediment and erosion control measures shall be implemented during construction to minimise erosion and soil loss from the site; and the development is considered consistent with the plan.

Residential Development Control Plan No 58

The Residential Development Control Plan No 58 (DCP 58) seeks to reduce the visual impact of dwellings by establishing building envelope limitations permitting a maximum external wall height of 7.0m and a maximum height to the roof ridge-line of 9.5m.

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The rear of the addition has a maximum wall height of 8.0m above natural ground level and, as such, does not comply with the respective wall height provision of the DCP. However, the overall height of the development to the roof ridgeline is 9.5m and therefore, does not exceed the maximum height control.

To provide a dwelling of reasonable contemporary size and design, with habitable rooms above the nominated flood level, has resulted in a building that exceeds the specified building envelope.

The adequacy of the particular design rests with its ability to satisfactorily address any impacts associated with extending the building envelope .

The form and scale of the building is appropriate to the character of the area and is not considered to have a detrimental impact on neighbours or the streetscape. The perception of the proposed building work from the street is significantly less than could be expected from a two-storey development constructed on top of the existing dwelling.

Similar development, with an aspect to the street as opposed to the rear, has been approved within the immediate vicinity at No.7 Macquarie Avenue (refer **Tabled Document “DC 4”**). The development as proposed will not have such a significant effect on the streetscape as little of it will be visible from the street due to the fall of the land.

Upper Nepean River Floodplain Management Study and Plan

The site is affected by the 1% flood event, located at RL 72.0m AHD, and is categorised in accordance with the Upper Nepean River Floodplain Management Study and Plan (FMP) as high hazard – flood fringe (refer **Tabled Document “DC 5”**).

The ground level at the north eastern corner of the proposed addition is estimated to be RL72.0m AHD and is subsequently affected by the 1% flood line. The depth of flooding during the 1% AEP may be expected to reach a depth of up to 200mm with minimal velocity.

The submission maintains the ascending flood free access afforded to the site and does not increase any potential hazard or demand on emergency services.

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The applicant has engaged a Structural Engineer to certify that the existing house and the design of the new building work is capable of withstanding the impact of floodwater, debris and buoyancy.

Thorough evaluation of the proposal has determined that the development complies with the objectives of the Floodplain Management Plan, while allowing the continuation of the locality as a residential area.

Draft Flood Risk Management Policy

Consideration of the Draft Flood Risk Management Policy has determined that the proposal can be carried out in a reasonable and responsible manner. In accordance with the criteria of the policy, the development is considered to be compatible with the indicated flood hazard of the land and minimises financial and personal risk to the community.

(b) Likely impacts of the development, including impacts on both natural and built environment including social and economic impacts

The proposed development is consistent with the zoning and amenity of the locality. The application is of a type that could be reasonably expected in the contemporary development of the local area. Conditions should be imposed on any consent issued which reduce site disturbance and minimise the potential for impact on the environment.

Conclusion

The proposed development complies with Council's LEP and generally with DCP58 with the exception of the building height to eaves. The site has a substantial slope down towards the rear and is affected by flooding. The flooding constraints of the land have been addressed in accordance with the criteria of the Flood Plain Management Study and Draft Flood Policy. The development as proposed by the applicant is site responsive and is considered to be preferable to extending the building further within the flood zone.

The land is surrounded by well-established trees and shrubs which create a screening effect preventing visual impact on adjacent neighbours and maintaining a privacy buffer area between properties.

Certification by the applicant's Structural Engineer confirms that the proposed development can be carried out in a

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structurally sound manner and not increase the flood hazard or risk to adjoining properties

The submission satisfactorily addresses the impacts of the development associated with conservation and enhancement of the area and the amenity of neighbouring properties. It is considered that the proposal will make a positive contribution to development in the locality and is therefore recommended for conditional approval.

Recommended: That Development Application 1095/2003 for additions and alterations at No 6 Macquarie Avenue, Camden, be approved subject to the conditions which form **Tabled Document "DC 6"**.

*Resolved on the Motion of Cr Corrigan, seconded Cr Winn that Development Application 1095/2003 for additions and alterations at No 6 Macquarie Avenue, Camden, be approved subject to the conditions which form **Tabled Document "DC 6"**.*

DC109/03 THE MOTION WAS CARRIED.

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2. Storage of Earth Moving Equipment, No 91 (Lot 42 DP 204127) Rossmore Crescent, Rossmore

File No: DA6800.140 (Director, Development & Environment Division)

DA No: 921/2003

Owner: Mr L Kumar & Ms R Devi

Zoning: 1(b) Rural “B” (2ha) pursuant to CLEP 48

Purpose of Report

To have Council consider a development application for the establishment of a Motor Vehicle Depot for the storing of up to four earthmoving machines on an occasional basis.

The matter is referred to Council because two submissions were received after notification of the application.

Summary of Recommendation

It is recommended that the development application be granted a one year consent, subject to conditions, mainly relating to the hours of operation.

Background

Council was made aware of this operation by a complaint relating to the parking of a grader on the subject site.

The owner of the site was interviewed and advised to lodge a development application seeking Council approval to use the site for the purpose of a motor vehicle depot.

The Site

The property is known as number 91 Rossmore Crescent, Rossmore. A locality map forms **Tabled Document “DC 7”**.

The land is located on the northern side of the road, is heavily timbered, falls from the road to a creek at the rear of the property and contains a single dwelling house and some outbuildings.

The Proposal

The owner of the property owns an earth moving business, comprising six pieces of equipment. He seeks Council permission to park this equipment on his property when that particular piece of equipment is not being utilised.

The owner proposes to construct a compound on the site, which will partially house the stored equipment and block it

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from view of the road and the majority of adjoining properties (refer **Tabled Document “DC 8”**).

The compound is proposed to be established in the south-eastern corner of the site, 20m from the front property boundary and 10m from the eastern boundary.

Notification

The subject application was notified to five adjoining property owners in accordance with the neighbour notification process.

As a result of this notification two submissions were received from adjoining residents on the opposite side of the road, including the original complainant. **A copy of these submissions was handed out separately to Councillors with the Business Paper.**

The concerns raised in the submission are discussed further in this report.

Planning Controls

The following planning instruments have been considered in association with Council’s assessment of the subject application.

- Camden Local Environmental Plan No 48 (CLEP 48)

Assessment

The subject application has been assessed in accordance with Section 79c of the Environmental Planning & Assessment Act 1979. The following points are provided in relation to the critical aspects of Council’s assessment.

- (a) **the provision of any planning instrument, development control plan or matter prescribed by the regulations.**

Camden Local Environmental Plan No 48

The subject site is zoned 1(b) Rural (2ha) under the provisions of Camden Local Environmental Plan No 48.

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Objectives of Zone

The objectives of this zone are:

- (a) to provide for rural residential living opportunities on land having ready access to urban areas and facilities;
- (b) to ensure that development maintains and contributes to the rural character of the locality and minimises disturbances to the landscape and agricultural productivity;
- (c) to ensure that development does not adversely affect rural and residential amenity and does not create unreasonable or uneconomic demands for provision or extension of public amenities and services;
- (d) to make provision for a reasonable range of suitable activities associated with rural residential occupations of the land; and
- (e) to permit alternative forms of accommodation which do not imperil the rural productivity of the area and which are consistent with the environmental quality of the immediate area.

“motor vehicle depot” is described in CLEP 48 as a building or place used principally for the principal purpose of parking, and used incidentally for the servicing of motor vehicles, which may include trucks, trailers and buses;

a “motor vehicle depot” is not listed as being prohibited within the subject zone.

Referring to the objectives of the zone.

Clause (a) the existing dwelling satisfies this criteria however the proposal is inconsistent with this objective.

Clause (b) the proposed development will not adversely impact upon the rural character, landscape or agricultural productivity of the locality.

Clause (c) the proposed development will not create uneconomic or unreasonable demands for

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provision or extension of public amenities and services.

Referring to the proposed development adversely affecting the rural and residential amenity of the area, it is considered that the number of traffic movements to the site over a period of time, will be so few, that it will not interfere with the amenity of the locality nor will it generate the need for amplification of services.

Clause (d) the proposed development, provided it is for temporary storage only, is considered to be a suitable activity associated with rural residential occupation of the land.

Clause (e) the development proposed is inconsistent with this objective.

(b) likely impacts of the development, including impacts on both natural and built environment including social and economic impacts

The proposed development will have no adverse economic impact nor will it have any adverse impacts on the natural or built environment of the locality provided it is restricted to storage purposes only.

The proposed development will have minimal social impacts on the locality, in the form of noise generated from the movement of the machines whilst arriving and leaving the site.

This movement will be on such an infrequent basis, and with the time constraints to be imposed by the conditions attached to any consent that may be issued, it is considered that the impacts will be within tolerable limits.

(c) the suitability of the site for the development

The site is considered suitable for the proposed development, as it is well treed which limits its potential for any agricultural activity without the removal of the trees, and it is doubtful if any such approval would be granted. The operator of the business must live on site to ensure that any impacts are minimised.

(d) any submission made in accordance with this Act or the regulations

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Submissions

Council received two submissions as a consequence of the neighbour notification process.

Both submissions relate to the loading and unloading of the vehicles at night.

It is accepted that this is an unacceptable practice and should Council resolve to grant approval to this development application, a condition would be imposed restricting the hours of operation to normal working hours.

It should also be noted that there are very few of these movements. Since the first complaint was made relating to this operation in May 2003, no activity has ever been observed on the site. It has been observed however, that on a few occasions a piece of earth moving equipment had been deposited or removed from the site.

Both submissions raise the maintenance of the vehicles.

LEP 48 allow for consideration of the use of the site for the servicing of vehicles however in this case, due to the lack of proper buildings and environmental controls, this is not appropriate. Any use of the land is to be restricted to the parking of the equipment only.

Submission 1 refers to the storage and use of fuels and lubricants, and their possible contamination of the creek.

The application makes no reference of the storage and use of fuels and lubricants, and if Council were to issue a consent to this development application a condition should be imposed preventing the use and storage of fuels and lubricants on the site.

Submission 1 refers to the possible increase in the number of vehicles over time.

Should council grant consent to the application, approval will be granted for the storage of up to four vehicles, and if this number is exceeded then the applicant is in breach of his consent, and liable to prosecution.

Submission 1 raises the impact of the development on “the amenity for all neighbours not only for ourselves”.

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The operation of the site was investigated on many occasions and no unreasonable activity was ever observed.

Up until the neighbour notification only one person had contacted Council about the subject operation.

(e) the public interest

Apart from the matters raised in the submissions, which have been addressed elsewhere in this report, there are no public interest issues relating to this application. It is considered the concerns of residents can be addressed by conditions and the appropriateness of the use monitored during the 12 month trial period.

Conclusion

The application is seeking permission to store earth moving equipment on the subject site whilst the equipment is not being utilised on a work site. The equipment will only be transported to the site on an infrequent basis and conditioned so that it occurs during the day.

The main point contained in the submissions is the movement of vehicles outside of normal working hours. This is considered a reasonable concern and it is to be recommended that Council grant consent to this application subject to a condition requiring all activities on the site to be conducted during normal working hours.

It is also to be recommended that approval should be granted for one year only. This will enable continuing monitoring of the site and give Council the opportunity to refuse any subsequent application, should the operation be observed to have an adverse impact on the amenity of the neighbourhood.

The storage of fuels and lubricants and the servicing of equipment on site should be formally prohibited through conditions on the consent.

Recommended: That Development Application No 921/2003 for a Motor Vehicle Depot for the storage of up to four earth moving machines on an occasional basis at No 91 (Lot 42 DP 204127) Rossmore Crescent, Rossmore be approved for a period of one year subject to the conditions which form **Tabled Document “DC 9”**.

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MOTION

Moved Cr Fekete, seconded Cr Patterson that Development Application No 921/2003 for a Motor Vehicle Depot for the storage of up to four earth moving machines on an occasional basis at No 91 (Lot 42 DP 204127) Rossmore Crescent, Rossmore be refused on the following grounds:-

- (i) It is inconsistent with the present zoning;*
- (ii) There are no provisions in this zoning for the storage of earthmoving equipment;*
- (iii) It will impact on the rural/residential amenity of the surrounding area;*
- (iv) Extra conditions to be added by DDE*

DC110/03 THE MOTION WAS **CARRIED.**

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3. Unauthorised Building Works at No 53 [Lot 69 DP 230494] Engesta Avenue, Camden

File No: DA2850.550 (Director, Development & Environment Division)
Owner: Mr R & Mrs P Burnett
Zoning: Residential 2 [a] pursuant to Camden LEP 46

Purpose of Report

To determine action in relation to non-compliance with an Order requiring demolition of an unauthorised structure.

Background

Council considered a report at the meeting of 10 November, 2003 in relation to non-compliance with the Notice of Order issued in relation to unauthorised building works at the above property.

At this meeting it was resolved to defer consideration pending a works inspection to be carried out before the meeting of 24 November, 2003. Arrangements have been made to inspect the premises prior to the meeting.

The opportunity for the owners of the land to make representations in relation to the Notice of Order have expired, the Order has been issued and not been complied with. For this reason, it is appropriate that Council proceed to Court to ensure compliance with the Order.

Recommended: That the matter be referred to Council's solicitors so that court proceedings can be instigated against Mr Raymond & Mrs Patricia Ann Burnett of 53 Engesta Avenue, Camden [Lot 69 DP 230494]. The proceedings relate to an offence committed by the above persons pursuant to Section 125 of the Environmental Planning & Assessment Act 1979.

MOTION

Moved Cr Anderson, seconded Cr Patterson that this matter be referred to Council's solicitors for an opinion on the validity of the order, due to it not being in accordance with Council's original resolution.

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

(Cr Corrigan, Cr Campbell, Cr Winn, Cr Batros and Cr Fekete)

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FURTHER MOTION

Moved Cr Campbell, seconded Cr Fekete that:

- (i) the matter be referred to Council's solicitors so that court proceedings can be instigated against Mr Raymond & Mrs Patricia Ann Burnett of 53 Engesta Avenue, Camden [Lot 69 DP 230494]. The proceedings relate to an offence committed by the above persons pursuant to Section 125 of the Environmental Planning & Assessment Act 1979.*
- (ii) in the event the work required under the order is carried out at any time leading up to the proceedings the court action be withdrawn*
- (iii) the matter be brought back to Council at the January 2004 Development Committee Meeting reporting on the progress achieved.*

DC111/03 THE MOTION WAS **CARRIED.**

(Cr Patterson, Cr Anderson and Cr Winn voted against the Motion).

4. **Land & Environment Court Mediation - Proposed
Amendment of the Original Application of Five (5) Lot
Rural Subdivision (Four Additional Lots) to a Three
Lot Rural Subdivision (Two Additional Lots), 220
Kirkham Lane, Kirkham (Lot 1, DP 776002)**

File No: DA5125.260-2 (Director, Development &
Environment Division)
DA No: 4/2003
Applicant/
Owner: Mr & Mrs Gimellaro
Zoning: Rural “A” (40ha) Zone – CLEP 48

Purpose of Report

Council is in receipt of an amendment to the original proposal to create five rural residential lots as refused by Council in May 2003. This report seeks Council support to the proposed mediation proposal of three lots instead of five, which will be submitted to the Land & Environment Court at the next callover on 2 December 2003.

Summary of Recommendation

The report recommends that Council concur to the proposed amended subdivision for three rural residential lots as a mediated solution to the original five lot subdivision refusal and that Council proceed with the Land and Environment Court Appeal by way of consent orders.

Background

Council resolved on 26 May 2003 (DC054/03) that:

‘Development Application No. 4/2003 to subdivide lot 1 DP 776002 Kirkham into five rural residential lots be refused. The basis for refusal is that:

- (i) The proposal is inconsistent with clause 10 of Camden LEP 48; “... Council shall not consent ... unless, in the opinion of Council ... the development is desirable due to planning, design, ... or similar criteria relating to the most appropriate development of the land.”*
- (ii) The proposal is not desirable because of its impact to the adjoining land and the scenic quality of the ridge (elevated land) where the development is located.’*

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Amended Proposal

The hearing dates in the proceedings were adjourned to allow for mediation between the parties. An amended subdivision layout for two new lots (total of 3 lots including the existing dwelling) has been submitted to Council for consideration.

A plan of the proposed amended subdivision forms **Tabled Document “DC 10”**.

An on-site meeting was held 26 September 2003, to discuss grounds for mediation with the owner, his consultant and officers of Council. Two options were presented by Council to allow only two new lots with identified building platforms that had a dwelling floor level no higher than 90.5m AHD and a maximum ridge height (including all aerials, antennae etc) of 96.5m AHD.

The two options discussed (refer to **Tabled Document “DC 11”**) were firstly one lot off Kirkham Lane and the second lot off Macquarie Grove Road. The second lot would have a building envelope below the ridge near the existing houses that have access at the cul-de-sac head of Camelot Close. The second option was two lots with frontage to Kirkham Lane. This option has been adopted by the applicant.

All building envelope options had floor levels of 90.5m AHD and maximum ridge heights of 96.5m AHD.

The principal outcome of the proposed amended subdivision layout is to preserve the Macquarie Grove ridge, existing avenue of trees along Macquarie Grove Road and the significant view corridors to St John’s church spire and Camden.

In August Council received advice from both DIPNR and the NSW Heritage Office regarding the SEPP 1 objection as submitted with the original subdivision application. Their advice was that as the matter was before the Land and Environment Court as a ‘deemed refusal’, the SEPP 1 application would most likely have been refused on the grounds that it would:

“likely to compromise the character of the area and result in further fragmentation from setting an undesirable precedent for similar future subdivision requests.” and;

“The Heritage Office considers it important that any development in this area continues its historic use of and heritage values as farming land, does not dominate

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the rural setting of Wivenhoe, Camelot and Kirkham Stables and is recessive.

The Heritage Office considers the cumulative impact of an approval of this proposal on the subject properties and surrounding similar properties such as Wivenhoe estate would be unacceptable, given the area's historic land use and heritage values as farm estates."

Council's proposed expert witness for the court case, Dr Richard Lamb (visual and landscape heritage consultant) has viewed the amended subdivision plan and has provided the following comments.

"... the overall layout is acceptable. This is because the residue lot preserves the open setting of the existing house and the integrity of the ridge when seen from the east and south.

..., I consider the outcome to be acceptable and favourable to the Council's preference for no development to occur on the ridge in the future."

Notification

The amended application was sent to all the previous objectors to the original five lot subdivision for their further consideration and comment as well as the adjoining landowner in Kirkham Lane, who has the most affected property. Before the close of the notification period (Wednesday 19 November 2003) three submissions were received. **Copies of the submissions were provided separately to Councillors with the Business Paper.**

Two submissions concur with 'the proposed compromise ... to minimise the adverse impact of the subdivision and subsequent houses.' Also '... would prefer to see the height of the development along these important cultural landscape ridge-lines kept to the heights set at the original Harrington Park Commission of Inquiry.' Further '... request Council make it a condition of approval that this subdivision is the final subdivision for these subject lots, due to their highly visible location and their significance for cultural landscape protection.'

The second submission identified two major concerns; firstly the increase in the building height restrictions to RL 90.5 setting a dangerous precedent. Secondly, the use that the new owners would make of land eg. would trucks be allowed to be garaged on the property? Strict covenants that apply throughout the Camelot precinct should apply to this development.

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Also it was suggested that a screening hedge be a requirement of the subdivision.

Comment:

The proposed amendment to the subdivision layout allows the conservation of the Macquarie Grove Road ridge, as well as not disturbing the street trees with the need for vehicular access off Macquarie Grove Road.

The minor increase in the building floor level has not been taken lightly. It is recognised as a compromise, which with the building ridge height restrictions, provides an outcome that will only provide a minor impact to this area, but will conserve the ridge which is the prime outcome being sought by Council.

The second concern about the use of the property relates to the zoning of the land. In this case it is zoned Rural 1(a), which allows certain agricultural activities. Council's draft Local Plan should provide some control over the 'rural residential' development as distinct from operative rural land. Trucks are allowed on the land if the truck is owned and operated by the land owner.

The draft conditions of consent have included the requirement for landscaping screening at adjoining properties and that the lots are not to be further subdivided.

Any further submissions received before the closure of the notification will be included with the one already received and provided to Councillors.

Land and Environment Court

Council's solicitors have obtained directions from the Land and Environment Court in relation to the Council of Camden at Gimellaro court proceedings by way of a Callover.

The Registrar has made the following orders by consent:

- a. Council to file and serve its Statement of Issues on or before 2 December 2003;
- b. Matter listed for callover on 2 December 2003 to fix dates for a hearing or Consent Orders; and
- c. If the matter is to be dealt with by way of Consent Orders, Council is to advise at the next Callover whether any objectors will be giving evidence.

A set of draft 'conditions of consent' have been prepared based on the amended subdivision for the Court's consideration in

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their determination of the application (refer to **Tabled Document “DC 12“**).

Summary

The amended proposal is considered an appropriate solution in order to resolve this matter by mediation. The proposed two additional dwellings fronting Kirkham Lane with the applied restrictions of building envelope and heights plus a proposed building envelope and restrictions on the existing dwelling and its lot will minimise the impact on the Macquarie Grove Road ridge. The restriction to prevent any further subdivision of the lots created reflects the agreement between Council and the applicant and will prevent the increase in housing density and the adverse visual impact of development on or above the RL90 contour.

In accordance with the above report, it is recommended that Council concur with the amended plan of subdivision for referral to the NSW Land and Environment Court for consent orders.

Recommended: That

- (i) Development Application No. 4/2003 as amended to subdivide Lot 1 DP 776002 Kirkham into three rural residential lots be accepted for referral to the Land and Environment Court.
- (ii) The draft Development Consent conditions be accepted for referral to the Land and Environment Court.
- (iii) Those who made a submission be thanked and advised of the Council’s position to resolve by way of consent orders, this matter currently with the NSW Land and Environment Court.

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

- (i) *Development Application No. 4/2003 as amended to subdivide Lot 1 DP 776002 Kirkham into three rural residential lots be accepted for referral to the Land and Environment Court.*
- (ii) *The draft Development Consent conditions be accepted for referral to the Land and Environment Court.*

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(iii) *Those who made a submission be thanked and advised of the Council's position to resolve by way of consent orders, this matter currently with the NSW Land and Environment Court.*

DC112/03 THE MOTION WAS **CARRIED.**

(Cr Campbell voted against the Motion).

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**5. Manooka Valley (Spring Hill Northern Extension)
Release Area -Local Environmental Study (LES), Draft
Local Environmental Plan (LEP) and Draft Master Plan**
(File 4412/5) [Director Governance and Outcomes]

Purpose of Report

This report provides feedback on the public re-exhibition in October- November 2003 of the Draft LEP, and Master Plan for the Manooka Valley Release Area. The report addresses the issues arising during the exhibition and recommends action to progress the rezoning.

Site and Locality

The subject site is known as Lots 466 DP 1017742; 34,36,37 & 38 DP 28024 and 351 &352 DP 809159, Currans Hill. The site is bounded to the north and west by private properties and St Gregory's Agricultural College and to the south by Turner Road and the northern boundary of 'Spring Hill Village'. A portion of the site, to the east of 'Spring Hill Village', extends south to the Christian Life Centre. A location plan of the site forms **Tabled Document "DC 13"**.

The site's topography is generally undulating from around RL90 at its lowest to RL147.8 at its highest point, although there are some steep sections. The majority of the site vegetation has been cleared in previous farming activities, however significant tracts of Cumberland Plain Woodland remnants exist in the eastern portions of the site.

Resolution to Prepare LES/ DLEP

Council in August 2000 resolved to prepare an LES and Draft LEP in respect of the subject land.

At its meeting on 11 June 2002, Council resolved to place on public exhibition the planning documents for the Manooka Valley Release Area. Such exhibition was conducted in August 2002 and revealed the need to further refine the planning strategy and documents.

At its meeting of 22 September 2003, Council resolved to re-exhibit the planning documents as they had been significantly amended subsequent to the previous exhibition.

Public Exhibition

The planning documents for Manooka Valley (DLEP and Draft Masterplan) were initially publicly exhibited from 17 July 2002 to 17 August 2002. In addition to this, all relevant State Government departments, service providers, local schools,

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Release Area land owners and occupiers and immediately adjoining land owners and occupiers were notified that the documents were available for viewing and their comments sought.

The LEP and Masterplan were publicly re-exhibited from 8th October to 5th November 2003. This report details the comments made in response to the exhibition and outlines any further amendments necessary prior to forwarding the LEP to DIPNR for gazettal.

Master Plan

A Master plan for the site was prepared to outline the nature of the future development potential (refer to **Tabled Document “DC 14”**). The Manooka Valley development will comprise a residential subdivision, in the order of 350 lots that contains a range of lot types and size with larger urban edge lots which act as a transition/ interface between the urban development and the surrounding rural areas.

Exhibition of Draft Local Environmental Plan

The DLEP (**Tabled Document “DC 15”**) as prepared and exhibited, proposes to amend Camden LEP’s 47 and 48 to create new environmental protection zones with ecological and scenic objectives and a flexible residential zone. Specifically it is proposed to create a 7(d1) (Environmental Protection (Scenic Zone) under both LEP 47 and LEP 48 and two new zones under LEP 48 which comprise: 2(d1) (Residential “D1”(Manooka Valley) Zone) and 7(d2) (Environment Protection (Bushland) Zone).

Responses to the Exhibition

Some eight (8) submissions were received in response to the re-exhibition, of which 3 were from the community

Copies of all submissions have been **made available to Councillors separately**, with the key issues and responses summarised below.

• **Government and Service Authority Submissions**

Submissions were received from the following government agencies and service authorities:

- NSW National Parks and Wildlife Service.
- Department of Environment and Conservation (former EPA)
- NSW Department of Mineral Resources
- Sydney Water
- RTA

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Issue:

High conservation values are likely to be compromised in the 7(d3) zone if demolition and subdivision remain as permissible uses.

Comment:

The proposed 7(d2) and 7(d3) zones have been “pioneered” so as to permit limited residential development in a manner compatible with major bushland conservation. Specifically, it is proposed that community title developments, with dwellings restricted to the 7(d2) zone manage large tracts of contiguous bushland in the 7(d3) zone.

The Masterplan outlines a generally appropriate lot configuration, providing guidance for subdivision within each zone. Subdivision and demolition of incidental structures is not considered to be problematic given the support of zonal objectives and proposed development guidelines.

Accordingly it is not proposed to amend the draft plan provisions in respect of the subject zones.

Issue:

Masterplan is inadequate to allow appropriate assessment of the environmental impact of the development.

Comment:

It is agreed that the Masterplan alone provides insufficient information upon which to assess the appropriateness and environmental impact of proposed development. The Masterplan, however, in concert with the DLEP provisions and proposed development guidelines, which are to be incorporated in a DCP, are considered to provide an appropriate framework for development assessment inclusive of environmental impact.

The masterplan as exhibited delineates the form of development appropriate in the various proposed zones to enable residential development which positively responds to the high conservation values of the site. Areas of significant riparian and threatened vegetation are protected by limited development opportunities and sympathetic development forms on their interface, with areas of more traditional development. Whilst the Masterplan indicates suggested building envelopes, these should not be agreed to at this stage and are more appropriately determined when the subdivision application is lodged.

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Issue:

Additional controls and requirements would better assist comprehensive water cycle outcomes.

Comment:

Principles of Water Sensitive Urban Design which have been developed for Elderslie and Spring Farm will ultimately be adopted universally through urban release areas. These principles will be incorporated in the proposed DCP development guideline document.

Issue:

Removal of the Desired Future Character Statement and Density and Carparking provisions from draft LEP.

Comment:

Parliamentary Counsel deleted the Desired Future Character Statement from the draft LEP subsequent to its exhibition in August 2002. However, the Desired Future Character Statement and both the density and carparking provisions are considered fundamental to the plan as prepared and are proposed to be re-inserted in the plan in the manner detailed in **Tabled Document “DC 16”**.

Issue:

Energy Conservation provisions should be aligned with the “Basix” package.

Comment:

Council has for a number of years championed energy efficiency and has energy efficiency provisions in a prevailing comprehensive Building Energy Conservation DCP. The subject DCP will continue in force pending the introduction of “Basix”. “Basix” as an assessment tool will be applied when ultimately introduced.

Issue:

Prohibition of underground mining in 7(d1), 7(d2) and 5(a) zones.

Comment:

The Department of Mineral Resources consistently requires provision for subsurface mining. Such provisions exist in the proposed residential zone and given the nature of the resource

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should be uniformly applied to all zones. Accordingly the underground extraction of coal and other mineral resources is proposed to be inserted in the 'only with development consent' section of the zoning table for both the 5(a), 7(d2) and 7(d3) zones to avoid sterilisation and permit appropriate access to all mineable resources.

• **Community Submissions**

Community submissions raised the following issues of objection:

- Protection of the Scenic Hills
- Development above RL 90
- Lack of professional heritage or cultural landscape advice
- Development in the north-western corner of the site
- Lack of community input

Discussion of the issues raised in each submission is outlined below.

Issue:

Lack of assessment, protection for the scenic hills and heritage landscapes and contravention of RL90 "development principle".

Comment:

The Draft Camden Scenic and Cultural Landscapes Study (Lambcom 1998) recognises the need to maintain scenic quality, visual access to the landscape and to landmark features, the historic meaning of the landscape and the ability to interpret, conserve and manage visual and cultural heritage impacts.

A landscape assessment commissioned during the environmental study process highlighted the sensitivity of the area scenically and the need for revegetation works to integrate with dwelling placement and siting, so as to prevent the effect of urban development 'rolling over' the landscape. The landscape is not considered to have heritage or cultural significance in its own right, given its considerable transformation through the extensive removal of vegetation and past agricultural practices.

The proposed Manooka 'urban edge' development envisages a rural/urban interface that does not compromise Camden's rural features or the ridgeline backdrop to the north of Currans Hill.

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In addition, the 'urban edge' development identifies areas to be revegetated to reinforce existing vegetation or enhance the development's backdrop. Other areas have been identified as areas where vegetation management, especially in the Cumberland Plain Woodland areas in the East Village area, will retain and enhance important elements of the site's natural character.

RL 90 is also very much part of the limit to urban development debate. A Commission of Enquiry in respect of the Harrington Park urban release area established in 1982 the general extent of urban development in that Scenic Hills precinct to be RL90 and RL 94 near Crear Hill grading across the horizon. This level largely equated with the primary horizon line and facilitated retention of the natural landscape background to urban development.

At largely the same time RL 90 represented a water servicing constraint at Grasmere and Camelot. Further, it largely related to the nature of ridges in those areas and was used as a planning criteria to guide ridgeline preservation in these areas.

The bulk of the development in the Mount Annan and Currans Hill urban release areas is above RL90 (refer to map reproduced as **Tabled Document "DC 17 "**). However, the critical factors in determining the suitability of a site for development are:

- the relationship of the "footslope" to the more prominent "vertical" slopes;
- the extent of ridgeline as an undeveloped backdrop to urban development.

RL90 is somewhat incidental to the preceding critical factors, the determining factor is in fact the height of the ridges themselves. Experience at Kirkham Meadows shows that by restricting development along the line of RL90, built form has in fact scarred the landscape and would have been better considered in relation to the backdrop of the land.

It is possible to sensitively develop above RL90 by nestling development in largely visually secluded folds and plateaus by restricting building envelopes to the "footslopes" and precluding development on the prominent vertical slopes culminating in the ridge/s. This development scenario is also contingent upon a major revegetation scheme focussing in particular upon the exposed denuded "vertical" slopes linking to the revegetated riparian areas and significant remnants.

The plan produced as **Tabled Document "DC 18"** depicts where building envelopes will be restricted relative to the steep vertical slopes/ridges and where revegetation schemes will generally be adopted. There also exist areas of proposed

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residential development on a plateau and generally behind the ridge in the north-western area of the site.

It is considered that the planning framework and development templates prepared for Manooka have had regard to the unique circumstances of the case and draw upon past positive experiences, seek to avoid past pitfalls and pioneer sensitive innovation. More detail in respect of some of the elements of the development scheme's responsive nature are presented in **Tabled Document "DC 19"**.

Issue:

Community input into the planning process was lacking

Comment:

Considerable opportunities were available during the two exhibition periods for the community to comment on the proposal as it evolved over several years.

The most recent exhibition included separate notification to all relevant statutory authorities, advertisements in local press for a minimum of 28 days and separate notification to residents likely to be impacted by the proposal.

Other Matters

Developer Agreement/Section 94

The adoption of the comprehensive Section 94 Contributions Plan generally negates the need for developing a complex series of Developer Agreements to ensure appropriate contributions to community infrastructure. It is acknowledged that the Landcom Wolin Group can address their drainage requirements on site and link to an approved system. The Driver Group, have also intimated, in principle, a preparedness to enter into an agreement to address their combined drainage needs.

Interim Transport Levy

Despite Council's constant representations to the State Government about the application of the Interim Transport Levy in respect of regional transport infrastructure to the proposed development, the Government has displayed an unwillingness to vary its policy so as to apply to developments of less than 1,000 lots.

Even the RTA in their submission have petitioned collecting monies for improvements to the immediate regional transport network.

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This is a most disturbing position as:

- ❑ Potentially approximately \$5.25 million is foregone
- ❑ Elderslie and Spring Farm developers complain of inequity and a ‘non-level playing field’.

Council in forwarding the DLEP to DIPNR should again make a submission encouraging the application of the Interim Transport Levy to the subject release.

Servicing Constraints

Land above RL112 is dependant upon a private water supply system for which Sydney Water would provide a metered connection point. Ownership of a private system would need to be in the form of a Community Title Scheme. The land above RL112 proposed for housing is shown on **Tabled Document “DC 14”**.

Development Control Plan/Development Guidelines

The LEP is worded in such a manner that many DCP styled development controls are embodied in the LEP. There is still, however, the need to augment these with further guidelines in the form of a DCP. A design guideline DCP is currently being finalised and should not preclude advancement of the rezoning. The draft plan will be submitted to Council for consideration early in 2004. The LEP does not allow Council to determine any development applications until such time as the DCP and plan of management for the environmental corridors are in place.

Proposed Amendments to the DLEP and Masterplan

The exhibition and submissions have prompted amendments to the DLEP and Masterplan. Such changes have been made to these planning documents, with the amended documents being produced as **Tabled Document “DC 16”**. The principal amendments in brief include:

- ❑ Inclusion of the Desired Future Character Statement.
- ❑ The complying development provisions be amended so as to require placement of dwellings and outbuildings within a nominated building envelope for all proposed allotments between 450 – 900m²
- ❑ Inclusion of ‘underground extraction of coal and other mineral resources’ in the 5(a) Special uses zone, and 7(d2) and 7(d3) zones; and
- ❑ Insertion of the development standards relating to density and carparking provision.
- ❑ The land designated proposed “Urban Edge” lots greater than 1000m² be deferred from the adoption of the Masterplan. That the indicative subdivision pattern for such

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lands be revised in order that the proposed building envelopes do not encroach upon the “vertical slope”, and that the revegetation corridor be amended to more fully align with the vertical slope.

Conclusion

The rezoning of the subject land has been a challenging and somewhat protracted process. The challenges have largely been occasioned by the fragmented land ownership pattern and a need to ‘weld a common vision/ approach to achieving innovative and complex residential and environmental outcomes. The planning has taken place at a time when Council has been developing principles of water sensitive urban design and long term vegetation conservation strategies. The planning framework/ template for the site seeks to reinforce these important ‘building blocks’ for a sustainable new urban release and have particular regard to the visual sensitivity. More detailed development guidelines are required to augment the comprehensive LEP/Masterplan framework in the form of a DCP.

Recommended: That:

- (i) Council resolve to submit the draft LEP to DIPNR for gazettal;
- (ii) Council strongly encourage the Government in making the LEP to introduce a requirement for payment of the Interim Transport Levy in respect of the subject site;
- (iii) Council adopt the Masterplan applying to the site with the exception of the larger urban edge lots above RL112 in such plan, which are deferred pending a redesign;
- (iv) Supplementary Design Guidelines be formalised for the development in the form of a DCP;
- (v) All owners of land within the proposed release area and persons/bodies responsible for submissions be advised of the resolution; and
- (vi) Appropriate broader publicity to the immediate Spring Hill Community be made in respect of Council’s decision.

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Resolved on the Motion of Cr Corrigan, seconded Cr Patterson that:

- (i) Council resolve to submit the draft LEP to DIPNR for gazettal;*
- (ii) Council strongly encourage the Government in making the LEP to introduce a requirement for payment of the Interim Transport Levy in respect of the subject site;*
- (iii) Council adopt the Masterplan applying to the site with the exception of the larger urban edge lots above RL112 in such plan, which are deferred pending a redesign;*
- (iv) Supplementary Design Guidelines be formalised for the development in the form of a DCP;*
- (v) All owners of land within the proposed release area and persons/bodies responsible for submissions be advised of the resolution; and*
- (vi) Appropriate broader publicity to the immediate Spring Hill Community be made in respect of Council's decision.*

DC113/03 THE MOTION WAS **CARRIED.**

(Cr Batros voted against the Motion).

Meeting closed 6.55pm