

**MINUTES OF THE DEVELOPMENT COMMITTEE
MEETING HELD 10 MAY, 2004
CIVIC CENTRE, OXLEY STREET, CAMDEN – 5.30PM**

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**COUNCIL MEETING – 10 MAY, 2004
DEVELOPMENT COMMITTEE – 5.30PM**

Present: Cr Anderson (Mayor/Chairperson), Cr Dewbery, Cr Elliott, Cr Kernohan, Cr Campbell, Cr Whiteman, Cr Cagney, Cr Funnell, Cr Johnson.

Staff: General Manager, Director Works & Services, Director Development & Environment, Director Governance & Outcomes, Manager Development, Acting Manager Environment & Health (Senior Environmental Health Officer), Manager Corporate Services, Senior Governance Officer.

APOLOGIES

There were no apologies.

DECLARATION OF PECUNIARY OR CONFLICT OF INTEREST

There were no declarations.

DEVELOPMENT COMMITTEE PUBLIC ADDRESSES

There were no Public Addresses.

1. Development Application for Construction of a Studio/ Workshop/Storage Shed at No 53 (Lot 69 DP 230494) Engesta Avenue, Camden

File No: DA2850.550-3 (Director, Development & Environment Division)
DA No: 37/2004
Applicant: Mr R Burnett
Owner: Mr R & Mrs P Burnett
Zoning: Zone No 2 (a) Residential

Purpose of Report

This report is submitted to Council following deferment of the Development Application at the previous Council Meeting. The Development Application proposes the construction of a studio/workshop/storage shed which resulted in an objection to the proposal, and despite attempts to mediate the matter the objection cannot be resolved. In accordance with current delegations to staff the matter must be determined by Council.

Background

Council considered the Development Application at the meeting of 27 April, 2004. At the meeting it was resolved to defer consideration pending a Council inspection to be carried out before the next Development Committee meeting of 10 May, 2004. Arrangements were made to carry out the inspection prior to the meeting.

Recommended: That:

- (i) Development Application 37/2004 for a workshop/storage outbuilding at No 53 Engesta Avenue, Camden, be approved subject to conditions which form **Tabled Document "DC 1"**.
- (ii) Those who made the submission be thanked and advised of Council's determination of the application.

Resolved on the Motion of Cr Johnson, seconded Cr Funnell that:

- (i) *Development Application 37/2004 for a workshop/storage outbuilding at No 53 Engesta Avenue, Camden, be approved subject to conditions which form **Tabled Document "DC 1"**.*
- (ii) *Those who made the submission be thanked and advised of Council's determination of the application.*

DC059/04 THE MOTION WAS **CARRIED**.

(Cr Kernohan voted against the Motion).

**2. Unauthorised Tree Felling - 164 (Lot 21 DP 32098)
Anthony Road, Leppington**

File No: PF250.150 (Director, Development &
Environment Division)
Owner: Mr Xurong Cai & Mrs Chong Juan Li
Zone: Rural 1(b) (2ha) under CLEP 48

Purpose of Report

The purpose of this report is to advise Council that investigations have been conducted in respect of unauthorised tree felling at the site and to recommend that the matter be referred to Council's Solicitor to commence legal proceedings against the owners of 164 Anthony Road, Leppington.

Background

Mr Cai & Mrs Li are the owners of No 164 (Lot 21 DP 32098) Anthony Road, Leppington, zoned Rural 1(b) (2ha). The owners have stated that it is their intention to establish a market garden on the property. This is a land use that may require Council consent under the relevant planning instrument, Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River (No 2 – 1997), depending on the type of farming practice utilised. However between November and December 2003, trees were cut down on the property. This is an activity that does require consent.

A locality plan forms **Tabled Document "DC 2"**.

LEP 48 adopts the Model Provisions of the Environmental Planning and Assessment (EPA) Act 1979. Under these provisions development is defined as the use of land, the subdivision of land and the carrying out of work. Works carried out on the land are therefore defined as development and require the consent of Council prior to being carried out. The various clauses of LEP 48 that apply to the subject land pertaining to trees are as follows:

Clause 5

"A tree is defined as follows:

Any tree, sapling or shrub which:

- (a) is 3 metres or more in height;*
- (b) has a girth of 300mm or more at a height of 1 metre above natural ground surface; or*
- (c) has a branch span of 3 metres or more.*

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A significant number of trees removed on this property exceed the definition of a tree as specified in clause 5.

Clause 28 (1) (Protection of Trees)

"A person shall not ringbark, cut down, top, lop, remove, injure or wilfully destroy any living tree, or cause such tree to be ringbarked, cut down, removed or wilfully destroyed, without development consent."

The felling of trees required Council consent pursuant to this Clause.

Clause 29 (1) (Clearing)

"Land within Zone No 1(a), 1(b), 1 (c), 1(v), 5(a), 5(b), 6(a) or 7(d) must not be cleared for any purpose, except with the consent of the Council."

The subject property is zoned Rural 1(b) (2 hectares) and therefore Council consent is required to remove trees or clear any portion of this land.

No development application for tree removal or land clearing had been submitted, therefore no development consent authorised the removal of the trees.

Section 76A of the EPA Act, 1979 cites 'if an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless:

- (a) such a consent has been obtained and is in force, and
- (b) the development is carried out in accordance with the consent and the instrument.'

A breach of the EP&A Act has occurred in so far as work has been done without consent, an offence as described in Section 125 of the EP&A Act.

Further, under Section 126 of the Act, a person guilty of an offence against this Act shall be liable to a penalty. Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person:

- (a) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth, and

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- (b) to provide security for the performance of any obligation imposed under paragraph (a).

It is open to Council to commence proceedings at either the Local Court or Land & Environment Court, however only the Land & Environment Court can make orders in respect of repairing damage as in section 126 above.

Main Report

Unauthorised tree felling affecting some 60 trees at 164 Anthony Road, Leppington came to the attention of Council Officers on 2 December, 2003. A notice was sent to the owners of the subject property alerting them to a site inspection to be conducted on 8 December, 2003. The owners, Mr Xurong Cai & Mrs Chog Juan Li did not attend the arranged meeting and later said that they did not collect their mail until after the scheduled date. **Tabled Document “DC 3”** shows photographs taken at that site inspection.

On 15 December, 2003 the owners did attend an interview with Council officers. At that meeting Mr Cai said he cut the trees down to prepare the land for a market garden. They both apologised for doing the work and alleged they were unaware of the need to apply for consent to remove trees. It was explained to Mr Cai and Mrs Li that the investigation of this matter would form the basis of a report for the Council to decide whether or not to proceed with legal action. It was explained to the owners they could assist by commissioning an environmental report detailing the impact of the tree felling and provide a plan for the remediation of the site.

A Vegetation Management Plan prepared by Envirotech on behalf of the owners was received on 15 March, 2004. The report describes the extent of clearing and identifies existing flora and potential fauna impact caused by the clearing. The report includes a conservation strategy which divides the property into four elements. Each element contains a matrix of actions, suggested timing and responsibilities for the retention and enhancement of conservation areas identified on the property. Finally, the report describes measures to ensure the long-term viability of the conservation areas by providing a guide for sustainable market garden practices.

The owners endorse the recommendations contained in the Consultant’s report. They also ask Council to consider not requiring them to install internal fencing as specified in the report. The fencing is required to define the conservation areas and ensure that animals are kept off the area. The owners have not given a reason why they do not want to fence the area however this is an important aspect of the plan and must be implemented.

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The Vegetation Management Plan closely reflects the balance between the pursuit of agricultural livelihood and natural asset conservation that is ordinarily strived for when assessing similar proposals. It does not however provide any offer as security or assurance that the plan is adhered to.

Conclusion

Council was not given the opportunity to conduct a development assessment as required by the relevant legislation. An assessment would have determined that some areas of trees that were removed should have been retained.

The implications of not proceeding with legal action may include creating the perception within the community that development can proceed in advance of receiving development approval, provided that approval is sought at a later date. It is clear that a significant number of trees have been removed without consent and that there is an admission of responsibility for undertaking that work. It is estimated that the trees removed would have an age varying from approximately five to eighty years, and therefore it would be a considerable time until the area regenerated.

The suggested legal action will guarantee that any remediation plan has the effect of a Court order and therefore has legal standing. Pursuing action allows Council to demonstrate it is committed to the preservation of native vegetation. For this reason, it is considered appropriate to proceed with the matter by referring it to Council's solicitors.

Recommended: That:

- (i) The matter be referred to Council's solicitors for action to proceed against Mr Xurong Cai and Mrs Chong Juan Li for unauthorised tree felling and land clearing at 164 Anthony Road, Leppington.
- (ii) The Vegetation Management Plan be accepted as a viable plan for the conservation of remaining vegetation and be made available to the Court in its consideration of orders, if any.

MOTION

Moved Cr Funnell, *seconded* Cr Cagney *that further consideration of this matter be deferred for a site inspection.*

DC060/04 THE MOTION ON BEING PUT WAS **CARRIED**.

(Cr Campbell voted against the Motion).

**3. Media Release of Outcome of Prosecution Proceedings
Initiated Against the Proprietors of a Camden
Chinese Restaurant**

(File No: PF350.190) (Director, Development &
Environment Division)

Purpose of Report

The purpose of this report is to provide Council with a copy of information to be provided in a media release outlining the results of the legal proceedings against the proprietors of a Camden Chinese Restaurant for breaches of the Food Regulations 2001 and Food Standards Code.

Background

At Council's meeting of 27 April, 2004 it was resolved that the media release in respect of the outcome of legal proceedings against the subject restaurant be brought back to Council for review prior to it being released. A copy of the proposed Media Release is forms **Tabled Document "DC 4"**.

Recommended: That Council release the information to the media.

Resolved on the Motion of Cr Funnell, seconded Cr Johnson that Council release the information to the media.

DC061/04 THE MOTION WAS **CARRIED.**

4. Receipt by Council of an Australian Institute of Landscape Architecture NSW Award

(Director, Development & Environment Division)

Purpose of Report

The purpose of this report is to advise Councillors of Council's success in the recent Australian Institute of Landscape Architecture (AILA) NSW Awards.

Main Report

The Spring Farm Landscape Master Plan provides an overall landscape vision, strategy and design guidelines to guide future development of the release area.

The plan is a high value document, which will serve to ensure quality landscape outcomes are achieved within the Spring Farm release area.

The production of the Spring Farm Landscape Master Plan occurred in 2002-2003 and was project managed by a cross organisational team, which included several branches within Council.

Early this year, Council entered the Spring Farm Master Plan into the AILA NSW Awards. At the awards, held on 22 April 2004, Council received a Commendation for the master plan. This was the highest level of award received at the awards and was received by only four other entrants. This recognition will assist Council officers in ensuring the successful implementation of the plan.

Recommended: That Council note the receipt of the Award.

Resolved on the Motion of Cr Johnson, seconded Cr Cagney that Council note the receipt of the Award.

DC062/04 THE MOTION WAS **CARRIED.**

The Meeting closed at 6.53pm.