

**MINUTES OF THE DEVELOPMENT COMMITTEE MEETING
HELD 12 JULY, 2004, CIVIC CENTRE, OXLEY STREET, CAMDEN
5.30PM**

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

Staff: General Manager, Director Development & Environment, Director Governance & Outcomes, Acting Director Works & Services (Manager Community Services), Acting Manager Development (Team Leader Specialist Team), Acting Manager Outcomes (Environmental Project Officer), Manager Engineering, Acting Senior Governance Officer (Administration Officer).

APOLOGIES

An apology was received from Cr Johnson from this meeting.

Resolved on the Motion of Cr Funnell, seconded Cr Kernohan that leave of absence be granted to Cr Johnson.

DC083/04 THE MOTION WAS **CARRIED.**

DECLARATION OF PECUNIARY OR CONFLICT OF INTEREST

There were no declarations.

DEVELOPMENT COMMITTEE PUBLIC ADDRESSES

Mr Alan Dudley addressed the Committee in relation to Item 3 of the Development Committee.

Mrs Pam Browne addressed the Committee in relation to Item 6 of the Development Committee.

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1. Proposed Alterations and Additions to an Existing Dwelling at No 7 (Lot 612 DP 224250) Michele Place, Camden South

File No: DA5475.70 (Director Development & Environment Division)

DA No: 466/2004

Owner: PR Greig

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

Purpose of Report

This report is submitted to Council following deferment of the Development Application at the Council meeting of 28 June, 2004. At this meeting it was resolved to defer consideration pending the Councillor workshop in relation to the draft flood policy which was held on July 5, 2004 and consider the matter at the next Council meeting.

The matter is referred to Council to make a determination on a development application for an addition to a dwelling on a site affected by flooding from the Nepean River.

Summary of Recommendation

It is recommended that the application be refused due to the level of flood affectation on the subject site.

The Site

The property is known as No 7 (Lot 612 DP 224250) Michele Place, Camden South and is located on the eastern side of Michele Place, which is a traditional residential area. The land has an ascending grade from the rear boundary to the road and then further ascends to Martine Avenue. A copy of the locality plan forms **Tabled Document "DC 1"**.

A single storey brick veneer dwelling currently occupies the site with similar residential development adjoining the northern and southern boundaries. A public reserve adjoins the rear boundary of the land.

The property is affected by the Probable Maximum Flood (PMF) event (flood level at RL 76.2m AHD) and 1% AEP flood event [flood level at RL 72.6m 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.

The Proposal

The applicant proposes to construct:

- internal alterations including the conversion of an existing garage to a rumpus room,
- a two storey, brick veneer addition to the rear of the dwelling, and
- a timber deck.

On the first floor, the new addition would include the provision of a master bedroom with an ensuite, study and a walk-in wardrobe. The proposed work including the master bedroom is required to provide additional living space for the family. A copy of the plans form **Tabled Document "DC 2"**.

The ground floor area below the addition is intended to accommodate the laundry and the relocation of the garage. Rear access to the dwelling is proposed by way of a stairwell within the addition. It is proposed to construct the addition using flood compatible materials, ie masonry walls and steel posts. The applicant has engaged the services of a Structural Engineer who has stated that the proposed work is capable of withstanding the forces imposed by flooding during a 1% AEP.

The habitable floor levels of the new work are intended to be consistent with the existing floor level of the dwelling which is located at RL 73.2m. This is 0.6m above the 72.6m 1% flood level. This meets the requirements of the Upper Nepean River Floodplain Management Study and Plan.

The impact of flooding and the provisions for evacuation are discussed further in this report under the heading of Upper Nepean River Floodplain Management Study and Plan.

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

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
- NSW Floodplain Management Manual
- Upper Nepean River Floodplain Management Study and Plan

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 Strategic Plan – 2025

The proposed development is consistent with the traditional and social characteristics of the locality. The proposal complies with the objectives for the planned and orderly growth of Camden.

Camden Local Environmental Plan No 46

The land is zoned Residential 2(a) under Camden Local Environmental Plan No 46 (LEP 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 objectives of the LEP.

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 it will:

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

Clause 21 is discussed further in this report under the heading Upper Nepean River Floodplain Management Study and Plan.

NSW Floodplain Management Manual

The land is affected by the PMF at RL 76.2m AHD, and the 1% AEP at RL 72.6m AHD, together with more frequent flood events. Pursuant to the NSW Floodplain Management Manual the site has been categorised as High Hazard – Flood Fringe, see attached **Table Document “DC3”**. This map is difficult to interpret and for this reason was provided separately to Councillors with the previous agenda and defines the flood lines in colour.

Council’s plans suggest that flood free access from the dwelling can be obtained in a 5% AEP flood.

During a 1%AEP storm event the flood line is predicted to be located between the dwelling and Michelle Place, affecting passage from the dwelling to the street by floodwater to a depth of approximately 600mm. The street level of Michelle Place is located above the 1% AEP and further ascends to Martine Avenue. The Manual advises that wading through floodwaters is unsafe in depths greater than 0.8 metres even when the velocity is zero.

Broader assessment of the locality has revealed that Martine Avenue is affected by the 1% flood event in the vicinity of Brigalow and Coolalie Avenue to the northwest and Bowman Avenue to the southeast. Evacuation from Martine Avenue to Coolalie Avenue is anticipated to be affected by flooding to a depth of 1.5m. Access to Bowman Avenue may be inundated to a depth of 2.5m.

In the event of an extreme flood it is expected that the PMF will affect the entire area containing Michele Place and Martine Avenue. Levels in Michele Place are anticipated to reach depths varying from approximately 0.3m to 3.5m with levels in Martine Avenue predicted

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from 0.6m to 5.3m. This means that it is not possible to evacuate the site safely in a flood event.

The applicant has provided structural certification from a suitably qualified engineer attesting to the proposed development's ability to withstand the impacts of flooding. However the applicant has failed to satisfactorily demonstrate that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure the timely, orderly and safe evacuation of people from the area should a design flood or greater occur. The NSW Floodplain Management Manual requires such a demonstration to be possible for all events up to and including the PMF event. In addition it also fails to demonstrate that the displacement of these people will not significantly add to the overall cost and community disruption caused by the flood.

Upper Nepean River Floodplain Management Study and Plan

The Study recommends that all future development should demonstrate that evacuation and flood free access is readily available.

Council has interpreted the requirement for 'flood free access' to be legal and permanent, fail safe and maintenance free. Assessment of the submission has established that access from the dwelling to land located above the 1%AEP flood level in Michele Place may be achieved by wading through flood waters up to a depth of 600mm. During a PMF residents and emergency services may be required to negotiate floodwaters 3.5m deep within Michele Place with a depth of 4.9m further in Martine Avenue.

The concerns raised by the proposal are due to the potential isolation of Michele Place in the event of a 1:100 year flood or during a PMF when access through Martine Avenue is restricted. The depth of flooding predicted in the area during extreme floods may impede evacuation from Michele Place and Martine Avenue for residents and delay access for emergency services.

The proposal to increase the number of bedrooms from three to four raises the potential occupancy rate of the dwelling, and in so doing, potentially increases risk of flood damage and the number of residents requiring evacuation. The works are designed to accommodate the growing needs of the family and whilst this is understandable, the proposed additions are likely to accommodate more people than without the additions.

Such an outcome is not sustainable and not supported by the NSW Floodplain Management Manual, which is the regulatory standard for consideration of flood impact assessment. The Manual requires Council to consider the cumulative impact of their decision and therefore if the occupancy of each house that is flood affected by the 1% ARI is increased by one person, potentially hundreds of additional persons may require evacuation in a flood event.

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 would be required to be implemented during construction to minimise erosion and soil loss from the site.

Development Control Plan No 58

The design of the proposal blends with the character of the locality and complies with the development criteria of the residential Development Control Plan No 58 [ie height, setbacks, vehicle accommodation etc].

(b) The likely impact of the development including environmental, social and economic impacts

The proposed development is consistent with the residential zoning and amenity of the locality. Conditions would need to be imposed on any consent to reduce site disturbance and minimise the potential for impact on the local environment. In a flood event, a house with the potential to house a greater number of people is likely to place greater demands on rescue services, thereby causing adverse social and economic impacts.

(c) The suitability of the site for the development

The site is fully serviced (i.e. water, electricity, sewer and phone) and is similar to development found in the general area. However the site is not able to be safely evacuated from during a PMF event, as is required by the NSW Floodplain Management Manual.

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Conclusion

During a PMF event the depth of floodwater predicted in Martine Avenue could effectively isolate the area containing Michele Place, hindering evacuation and impeding access for emergency services. The proposed increase in the number of bedrooms raises the potential occupancy rate of the dwelling and increases the risk to life and property during an extreme flood event. Permanent and fail safe access from the area during a PMF event is not available.

Recommended: That Development Application 466/2004 for a proposed addition to an existing dwelling at No 7 (Lot 612 DP 224250) Michele Place, Camden South be refused for the following reasons:

- (i) Permanent, fail-safe, maintenance free measures are not available to ensure the timely, orderly and safe evacuation of people from the area, in all events up to and including the PMF event.
- (ii) The proposed development increases the potential to cause loss of life and/or property in the event of a major flood event.
- (iii) The proposed development increases the potential to impact upon State Emergency Services ability to render assistance to existing residential property in the event of a major flood event.
- (iv) The proposed development may add to the costs and demands on emergency services in a flood event.

MOTION

Moved Cr Funnell, seconded Cr Kernohan that Development Application 466/2004 for a proposed addition to an existing dwelling at No 7 (Lot 612 DP 224250) Michele Place, Camden South be approved subject to the appropriate conditions of consent.

DC084/04 THE MOTION WAS **CARRIED.**

2. Land & Environment Court Proceedings - Council of Camden vs Gimellaro, and Section 82A EP&A Act - Review of Determination (Refusal) of DA 4/2003, 220 (Lot 1, DP 776002) Kirkham Lane, Kirkham

File No: DA5125.260-2 (Director, Development & Environment Division)

DAs No: 4/2003

Applicant/

Owner: Mr M Gimellaro

Zoning: Rural "A" (40ha) Zone - CLEP 48

Purpose of Report

Council is in receipt of a Section 82A application for a review of Council's determination of May 2003 to refuse DA 4/2003, which proposed the subdivision of an existing allotment into five rural residential lots.

Summary of Recommendation

The proposed amended subdivision for three rural residential lots be recommended for approval pursuant to s. 82A EP&A Act, and that the Land and Environment Court be advised of Council's resolution.

Background

Council resolved (DC054/03) 26 May, 2003 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."*

A plan of the original proposal forms **Tabled Document "DC4"**.

Council's decision was the subject of an appeal to the Land and Environment Court and as a result of negotiations in relation to those proceedings, the applicant submitted an amended proposal for a 3 lot subdivision. To assist Council officers in obtaining Council's direction regarding the amendment, a

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report was submitted to the 24 November, 2003 meeting where Council resolved (DC112/03) 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.”*

The plan considered at this meeting is identical to that which is the subject of this application (refer to **Tabled Document “DC5“**).

The hearing at the Land and Environment Court was held 1 March, 2004, to obtain resolution of this development application by way of consent orders. The Commissioner in considering the evidence expressed concern in relation to the following.

The Court’s primary concern was the applicant’s SEPP 1 objection to vary the minimum lot size requirement of 40ha. While DIPNR’s comments had been sought by Council in relation to the original five lot subdivision application, DIPNR was not consulted with respect to the amended three lot subdivision application.

Notwithstanding that the Court has the power to assume the concurrence of the Director of DIPNR in relation to the SEPP 1 objection, the Court was unwilling to use the delegation in circumstances where the Council itself does not have the delegation and the amended three lot subdivision had not been considered by DIPNR.

Accordingly, should it be necessary for the matter to go before the Court again, the Court would be interested in knowing DIPNR’s attitude to the lot size variation.

Following from this the Court was concerned that in the circumstances of the case the SEPP 1 variation may not be appropriate and a more appropriate course would be to rezone the subject site. The Court stated that *“whilst not determinative, there would be a precedent effect of supporting a SEPP 1 objection in these circumstances, and it may amount to a de facto rezoning”*.

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The Court expressed the view that the amended Application may be more appropriately dealt with by way of a Section 82A Review by the Council.

In view of the Court's concerns, it was agreed that the matter be stood over for a period of time to obtain the DIPNR's view on the SEPP 1 objection for the proposed amended three rural residential lot subdivision, and to give the applicant the opportunity to lodge a Section 82A Review Application for Council to consider.

DIPNR has only recently concurred to the SEPP 1 objection as submitted by the applicant for a three lot rural residential subdivision. This is detailed later in this report.

A Callover on the 21 June, 2004 with the Land and Environment Court was adjourned with the consent of the applicant's solicitor for a further Callover until 19 July, 2004.

Section 82A EP&A Act Application

The applicant submitted the S. 82A application to review Council's refusal of the above DA in April 2004. This was accompanied by a revised SEPP 1 objection (refer to **Tabled Document "DC6"**).

Section 82A of the EP&A Act provides that an applicant may request within a 12 month period, a review of Council's determination of their application, which in this case was for a five lot rural residential subdivision. Section 82A also provides that as part of the review process an applicant may make amendments to the application with Council empowered to change its original determination of the application.

The proposed three lot rural residential subdivision which was submitted with the S. 82A application, is as reported to Council on 24 November, 2003 and approved for referral to the Land and Environment Court.

A plan of the proposed amended subdivision forms **Tabled Document "DC5"**. The draft conditions of consent as adopted by Council in November 2003 for referral to the land and Environment Court had the following controls on the proposed subdivision:

- each new parcel of land or lot created under this consent shall not be further subdivided into smaller parcels of land;
- the floor level of buildings on the two vacant new lots are restricted to a RL90.5 AHD and the building ridge height is restricted to a RL96.5 AHD (including all structures, eg aerials, antennae, etc).

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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. The location of the two dwellings on Kirkham Lane has restricted building envelopes, floor level and ridge height. They will have some visual impact on the main ridge as viewed from Kirkham Lane. They can be argued to have a limited relationship with the development across the road at Kirkham Meadows and the adjoining existing house within the Camelot estate.

As previously reported Council's proposed expert witness for the court case, Dr Richard Lamb - visual and landscape heritage consultants, 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."

SEPP 1 Objection

A SEPP 1 objection is required for this application as the minimum lot area for this zoned land (Rural 1(a)) is 40ha, pursuant to LEP 48. To vary this LEP standard a SEPP 1 objection is required with Council seeking DIPNR's concurrence before the application can be approved. Now that DIPNR has provided its concurrence to allow the variation to the standard, it is within Council's power under s82A to allow the SEPP1 objection and approve the amended development application.

Notification

The s. 82A application was sent to all adjoining properties, CRAG and Camden Historical Society, some of whom had prepared submissions to the two previous notifications (ie to the five lot subdivision and the subsequent three lot amendment) for their further consideration and comment. At the close of the notification period one submission was received. A copy of the submission forms **Tabled Document "DC7"**.

The submission makes two comments as follows:

- As the subdivision is part of the Camelot Estate it is suggested that the same conditions as applied some 15 years ago should be applied to the new lots. This would include matters such as: floor level not to exceed RL 90; all services to be underground; prohibition of all business

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related activities; parking of vehicles eg trucks on the property or in the street etc. These restrictions were imposed by way of a restriction to user under S88B of the Conveyancing Act on the title of the land.

- Overall height including chimneys/aerials not to exceed the height specified in the original approval for residential development in Camelot Estate.

Comment

The issue of floor level has been considered in the formulation of the proposed amended subdivision layout and associated building envelopes. The proposed RL 90.5m AHD floor level and proposed ridge height are acceptable, as the location of the building envelopes will result in minimal impact on the surrounding area. Services within the lots can be conditioned to be underground. Parking of trucks is not a 'restriction as to user' to the original Camelot Estate, however the only additional use that may occur is for a 'home business'. This policy of Council applies for the whole local government area.

Camelot Estate is controlled by DCP 30, which restricts dwelling houses to two storeys above natural ground level. No specific height restriction is defined within DCP 30. The proposed development will be restricting dwelling houses to a ridge height, inclusive of aerials, chimneys etc of RL 96.5m. The proposed height restrictions will reflect the adjoining Camelot Estate.

NSW Heritage Office

Following a site inspection (May 2004) with an officer of the Heritage Office, comments have been received (refer to **Tabled Document "DC8"** and are summarised as follows:

"The Office supports the reduction of 5 lots to 3 lots as having lesser impact on the setting of Camelot ..., and on the location on top of a visually prominent ridge.

The Office would have preferred to support only one house envelope located on Kirkham Lane rather than the two before the Land and Environment Court.

While the three lot subdivision is a far better outcome than the original five lot proposal, it is supported with some reluctance, as it will still lead to a 'suburbanisation' of what remains of the former rural nature of Kirkham Lane, with few houses along it.

Council is encouraged to consider a development consent condition requiring the provision of hedging facing Kirkham Lane to buffer some of the visual impact of new houses and landscaping of the proposed two lots."

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Other comments made in the Office's previous letter are still relevant, ie the desirability of retaining rural land, rather than groomed, highly watered gardens.

Conditions recommended by the Heritage Office have been incorporated into the draft conditions of consent.

DIPNR

Also, following a site inspection (June 2004) with an officer of DIPNR, the following comments have been provided (refer to **Tabled Document "DC9"**). An extract follows:

"Council is advised that pursuant to clause 7 of SEPP 1, the Director-General concurs with Council granting consent to the variation of the 40ha subdivision standard applying to the 1(a) Rural zone under clause 12(2) of LEP 48, to enable the subject land to be subdivided into three allotments strictly in accordance with development application 4/2003, as amended by the S 82A Review process and referred to the Land and Environment Court.

It is noted that while other means than SEPP 1 would be normally preferred to be used in such circumstances, the amended application achieves Council's planning objectives for the area and therefore has public benefit.

Council is encouraged to adopt the recommendations made by the Heritage Office to ameliorate the visual impact of the new dwellings along Kirkham Lane in finalising the development application."

Land and Environment Court

Council's solicitors have obtained a direction from the Land and Environment Court in relation to the Council of Camden vs Gimellaro court proceedings that the matter be adjourned for further Callover on 19 July, 2004.

Should the Council approve the s82A application the applicant will then be in a position to discontinue the proceedings once being satisfied with the conditions of consent.

Conclusion

As previously recommended to Council the amending three lot rural residential subdivision proposal, whilst not fully meeting Council's desire to conserve this site as a rural area to preserve those areas above RL 90 AHD, 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

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dwelling and its lot, will minimise the impact on the Macquarie Grove Road ridge.

The subsequent s.82A application by the applicant to review Council's determination in May 2003 to refuse the five rural residential subdivision can be supported. It is recommended that Council approve the amended three lot rural residential subdivision with the draft conditions of consent (refer to **Tabled Documents "DC10"** and advise the Land and Environment Court of its amended determination.

Recommended: That

- (i) Development Application No DA 4/2003 as amended (three rural residential lots) pursuant to a section 82A review of determination be approved subject to the draft conditions of consent.
- (ii) The Land and Environment Court be advised of Council's determination to approve the subdivision of Lot 1 DP 776002 Kirkham into three rural residential lots and the applicant invited to file a Notice of Discontinuance in the proceedings.
- (iii) Those who made a submission be thanked and advised of the Council's position to resolve this matter currently with the NSW Land and Environment Court.

Resolved on the Motion of Cr Cagney, seconded Cr Funnell that

- (i) *Development Application No DA 4/2003 as amended (three rural residential lots) pursuant to a section 82A review of determination be approved subject to the draft conditions of consent.*
- (ii) *The Land and Environment Court be advised of Council's determination to approve the subdivision of Lot 1 DP 776002 Kirkham into three rural residential lots and the applicant invited to file a Notice of Discontinuance in the proceedings.*
- (iii) *Those who made a submission be thanked and advised of the Council's position to resolve this matter currently with the NSW Land and Environment Court.*

DC085/04 THE MOTION WAS **CARRIED.**

(Cr Campbell and Cr Kernohan voted against the Motion).

**3. Application to Conduct Small Markets for between
20 – 50 Stallholders each Saturday at Mount Annan
Public School, No 12 (Lot 1 DP 854437) Stenhouse
Drive, Mount Annan**

File No: DA7425.115 (Director, Development &
Environment Division)
DA No: DA 1254/2003
Owner: NSW Department of Education
Applicant: Colleen Pitchford, Campbelltown City Markets
and Car Boot Sale
Zoning: Zone No 2(d) (Residential D) under LEP 47

Purpose of the Report

The purpose of the report is to allow Council to determine an application to conduct small markets at Mount Annan Public School every Saturday.

Summary of Recommendation

It is recommended that Council refuse the application for the reasons set out in this report.

The Site

The subject site has an area of 3.22 hectares and is known as Lot 1 DP 854437, located at 12 Stenhouse Drive, Mount Annan. The site contains the existing primary school and associated playgrounds and car parking areas. A locality plan forms **Tabled Document "DC11"**.

The Proposal

The applicant seeks Council consent to conduct small markets at the school every Saturday between the hours of 8.00am and 3.00pm. Stallholders would be permitted to commence setting up at 7.00am and pack up after 3.00pm to be off the site by 4.00pm. The proposed number of stallholders would be in the range of 20 to 50. The types of goods to be sold at the markets would range from arts and crafts to second hand goods, plants, produce and garage sale items. The school has given its consent to stallholders entering the site and parking vehicles in the staff parking area on site during the markets. Stalls would be located in the administration and hall areas through to the general assembly area of the school.

Notification

The application has been publicly exhibited in accordance with the requirements of Council's Development Control Plan No 116 "Notification, Advertisements and Mediation", and the

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Environmental Planning & Assessment Regulations 2000. In this regard all adjoining properties were notified for a period of two weeks, as well as residents in Stenhouse Drive, Hibertia Place, Hop Bush Place and Hovea Way.

At the close of the exhibition period, a total of 12 submissions were received and one petition containing 22 signatures. Council noted the petition at the 15 December Meeting. All of the submissions objected to the proposed Small Markets. Copies of the submissions form **Tabled Document "DC12"**. The matter has been delayed in coming to Council in an attempt to have the applicant address traffic issues.

Planning Controls

The following planning provisions have been considered in the assessment of this application:

- Camden 2025
- Camden Local Environmental Plan No 47 (CLEP 47)
- Development Control Plan No 97 – “Car Parking”
- State Environmental Planning Policy No 11 (SEPP11) – Traffic Generating Development

Assessment

The application has been assessed in accordance with Section 79C of the Environmental Planning & Assessment Act 1979. The following comments are made with respect to critical aspects of the application.

(a) The provisions of any environmental planning instrument

Camden 2025

Council has identified 5 key areas for the purpose of achieving the vision of Camden by the year 2025. Aspects of the proposed development relate to Environmental Systems and Managing Urban Growth. These two areas seek to control and effectively manage a balance between new development and environmental sustainability. Council’s strategic plan emphasises the need protect the quality of life from creeping background noise levels.

Camden LEP No 47

The subject site is zoned 2(d) Residential “D” under LEP47. This plan adopts the Model Provisions 1980 whereby the proposed use for Small Markets can be defined as a “shop”, which whilst being permissible with Council consent is not consistent with the proposed

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location of shops within Mt Annan under the relevant masterplan for the subdivision. The objectives stipulated in the planning instrument are as follows:

- *To promote a distinctive character and quality of development in each release area, based on the historic and natural characteristics of the land; and*
- *To retain a close physical and visual contact with the rural setting; and*
- *To ensure the provision of accessible and convenient commercial, social, recreational, community and employment facilities and satisfactory public transport to serve the needs of the residential district for educational, recreational, religious, community service and welfare activities; and*
- *To provide land for use as an appropriate urban drainage system in an environmentally sensitive manner so that it may also be used as recreational land; and*
- *To provide accessible open space suitable for the active and passive recreation of the population generally and of young children in particular; and*
- *To allow land for pedestrian and cycle routes between areas of activity.*

The proposed development is not inconsistent with the objectives of the zone.

Development Control Plan No 97 – Car Parking

The site caters for a total of 30 on site car parking spaces. The use can be termed as a retail market under the DCP. The DCP requires 1 space per 40m² of “market area”. On this basis the application complies with the requirements of DCP 97.

Council’s experience with existing markets in the Camden area is that a much greater requirement for car parking is necessary. Both the Camden and Cobbitty markets generate far in excess of 30 parking space demand. A review of DCP 97 is warranted and will commence in the near future. Recommendations in respect of that review will be made to Council at the completion of the review.

The approval of the markets could result in the loss of car spaces within Council’s reserve on Hibertia Place,

thereby reducing spaces available for local residents wishing to drive to Council's reserve.

State Environmental Planning Policy No 11 (SEPP11) –
Traffic Generating Developments

The proposed development falls within the requirements of Schedule 1 to SEPP11 due to the number of parking spaces proposed in relation to the development and the possible traffic impact. The application was therefore referred to the Local Traffic Committee Meeting on 13 April, 2004 with representatives of Council and Roads & Traffic Authority present. It was concluded at the meeting that the applicant provide a Traffic Management Plan in line with the RTA's Guide to Traffic & Transport Management for Special Events. To date the requested Traffic Management Plan has not been submitted to Council.

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

Traffic & Parking

The school site currently provides a total of 30 on-site car spaces. It is anticipated that these would mostly be used by the stallholders and organising volunteers, particularly if the markets were to attract 50 stallholders, as it is likely that all people conducting a stall would bring a car, van or truck to the site. The applicant has submitted a site plan indicating available spaces. These are located between the school buildings and the street. An additional 30 spaces along the northern boundary fence are marked on the plan. The school's approval has specifically stated that no further areas within the site are to be used for parking and therefore it is likely that the use will result in on street parking throughout the day with associated traffic conflicts.

On school days teachers use the 30 unmade spaces to park their vehicles, however this is not a formalised car park; and considering the potential noise impacts on adjoining residents this is an inappropriate location for car parking, either for stall holders or visitors to the site.

As detailed earlier in the report the applicant is required to provide a Traffic Management Plan, and this has not been submitted to Council despite having been requested on two occasions. The applicant does however acknowledge that vehicles will park on street and that "this is not encouraged but cannot be policed on an

ongoing basis.” From experience with the markets that operate in Camden it is clear that traffic management is required to ensure that no impact on traffic flow or access to adjacent properties occurs. The applicant has failed to provide this vital assurance that traffic associated with the markets can be controlled.

Noise

The impact on the built environment has been assessed. An acoustic report did not accompany the application. It is anticipated that the approval of the small markets would result in an adverse impact on the acoustic amenity of the adjoining and adjacent residential properties. Whilst the site is used as a school during weekdays and residents are familiar with the noise associated with this activity, no similar disturbance occurs on weekends. The establishment of an activity which commences at 7.00am would have an undesirable impact on the amenity of adjoining residents.

Social & Economic Impact

The social impacts of the development have been assessed and are anticipated to be adverse. The residential character of the locality will be altered each Saturday. On this basis it is considered that the small markets will result in a use that is incompatible with residential uses in the locality. Further, commercial use of the site had not been anticipated in the masterplanning for Mount Annan.

(c) Suitability of the site

Whilst the site currently accommodates the existing primary school, playgrounds and associated parking areas, noise impacts from the proposed small markets could potentially impact on the residential amenity of the locality. In addition, traffic impacts from the site require management and no planning for this has been made. It is acknowledged that traffic issues associated with the school occur throughout the week, however these are in part mitigated by the 40kph school zone which controls the flow of traffic and the fact that the peak occurs only for a limited period of time twice a day, rather than through the whole day. These concerns render the site unsuitable for the proposed development.

(d) Any submissions made in accordance with the Act or the Regulations

The issues raised by the objectors and petitioners include:

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Traffic congestion – Additional traffic will occur within the local roads that will result in congestion and conflict for road users.

Comment:

It is considered the additional traffic will result in congestion and conflict. The application has not been supported by a Traffic Management plan, which has been requested twice by Council and the RTA, but has not been supplied.

Parking – The additional traffic to Stenhouse Drive will result in cars being parked on those sections of Stenhouse Drive that are no stopping, or in other streets surrounding the school. On site parking will not accommodate the intended use and the Principal of the school has specifically stated that no additional areas within the school will be made available for parking.

Comment:

30 car spaces are available on site. Notwithstanding the compliance with DCP 97, it is anticipated that on average 6 car spaces will be required for each stallholder. This is calculated on an estimate of the existing markets at Cobbitty. Based on this, there will be a need for approximately 300 car spaces.

Impact on existing commercial uses within the District Centre – The approval of these markets will impact on the viability of retail services in the District Centre.

Comment:

Due to the range and type of goods it would be unlikely that the proposed location of the markets would adversely impact on the viability of the District Centre.

Resident/Children Safety – The markets will introduce unfavourable characters to the area that may jeopardise the safety of homes residents and children.

Comment:

The operation of other markets within the LGA has not shown evidence of any undesirable behaviour.

Increased Rubbish – The markets will result in an increase of litter in the school grounds and nearby streets.

Comment:

The applicant has stated that the grounds (including school facilities) will be cleaned after the closure of the

markets. The applicant has not indicated how and when nearby streets will be managed in relation to waste.

(e) Public Interest

The proposed small markets will provide an alternative location for the exchange of a range of goods and a source of fundraising for the primary school. The additional parking demand that would be generated by the intended use cannot be achieved on site and would disrupt the local road network, residential amenity and character of the locality. Clearly, the proposed use would be more appropriate at an alternative site where parking need is provided for and residential uses do not adjoin.

Conclusion

This application seeks to conduct small markets of between 20 to 50 stallholders selling crafts, second hand goods, plants and garage sale items each Saturday between the hours of 8am to 3pm. The application has been placed on public exhibition and as a result Council received 12 submissions objecting to the proposed markets and a petition containing 22 signatures. The site currently provides 30 car spaces which is considered inadequate for the intended markets. The proposed markets are likely to adversely impact on the acoustic and residential amenity of the locality. Based on these factors the application is not supported by Council.

Recommended: That Council refuse Development Application No 1254/2003 to Conduct Small Markets at 12 Stenhouse Drive, Mount Annan for the following reasons:

- (i) The proposed Small markets are not in the public interest as the presence of the markets would result in increased noise within a residential locality due to large numbers of vehicles.
- (ii) Additional information relating to the management of traffic at the site has not been submitted in accordance with Section 54 of the Environmental Planning & Assessment Regulation 2000.

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Resolved on the Motion of Cr Funnell, seconded Cr Kernohan that Council refuse Development Application No 1254/2003 to Conduct Small Markets at 12 Stenhouse Drive, Mount Annan for the following reasons:

- (i) The proposed Small markets are not in the public interest as the presence of the markets would result in increased noise within a residential locality due to large numbers of vehicles.*

- (ii) Additional information relating to the management of traffic at the site has not been submitted in accordance with Section 54 of the Environmental Planning & Assessment Regulation 2000.*

DC086/04 THE MOTION WAS **CARRIED.**

(Cr Campbell voted against the Motion).

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**4. Requests for Review of Determination of Tree removal
Development Applications (x 4)**

(Director, Development & Environment Division)

Item 1 No 3 (Lot 3 DP 270312) The Lanes, Kirkham

File No: PF7714.30

DA No: 620/2003 – Removal of One Tree

Applicant/

Owner: Mr CJ & Mrs K Stokoe

Zoning: Zone No 1(a) Rural A (40 ha) CLEP 48

**Item 2 No 19 (Lot 631 DP 224250) Martine Avenue,
Camden South**

File No: 5200.160

DA No: 22/2004 – Removal of One Tree

Owner: Mr J & Mrs KA Chanter

Applicant: Kerrie Chanter

Zoning: Zone No 2 (a) Residential CLEP 46

**Item 3 No 10 (Lot 32 DP 239513) Cruikshank Avenue,
Elderslie**

File No: 2100.90

DA No: 82/2004 – Removal of One Tree

Owner: Mr L Madgwick & Ms JB Poland

Applicant: Mr L Madgwick

Zoning: Zone No 2 (a) Residential CLEP 46

Item 4 15 (Lot G DP 37921) Cawdor Road, Camden

File No: 1500.150

DA No: 134/2004 – Removal of One Tree

Applicant/

Owner: Clintons Motors Pty Ltd

Zoning: Zone No 3 (f) Town Centre Support

Purpose of Report

The purpose of this report is to advise Council of four separate appeals for review of tree removal determinations and of arborist inspection reports to assist in final determination of the appeals.

Summary of Recommendation

Item 1 - No 3 (Lot 3 DP 270312) The Lanes, Kirkham – Removal of one tree – refused.

Recommended that Council uphold determination.

Item 2 - No 19 (Lot 631 DP 224250) Martine Avenue, Camden South – Removal of one tree – refused.

Recommended that consent be issued to allow removal.

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Item 3 - No 10 (Lot 32 DP 239513) Cruikshank Avenue, Elderslie – Removal of one tree – refused.

Recommended that Council uphold determination.

Item 4 – No 15 (Lot G DP 37921) Cawdor Road, Camden – Removal of one tree – refused.

Recommended that Council uphold determination.

Background

At its meeting of 23 February 2004, Council resolved:

"That where a development application is refused under delegated authority and the applicant wishes for the matter to be reviewed, that review be determined by the Council at a meeting of the full Council."

A request for a review of the determination of a Development Application is possible in accordance with section 82A of the Environmental Planning and Assessment Act, 1979. That section states that as a consequence of its review, the council may confirm or change the determination.

The Proposals

Item 1 - No 3 (Lot 3 DP 270312) The Lanes, Kirkham

Mr CJ & Mrs K Stokoe lodged a Development Application (DA 620/2003) for the removal of one tree located in the rear of the property. The application for the tree removal was refused, however substantial pruning was approved.

The tree (*Eucalyptus moluccana*, Grey Box) is a mature specimen of remnant native woodland forest. The subdivision of the "The Lanes" estate occurred with careful planning for the retention of as many trees as possible. Advice to this effect was provided to the present owners, before and after their purchase of the property. In the determination of application DA 620/2003 consent was issued for pruning only. Instructions were provided on the method and extent of pruning considered to be acceptable. Some pruning work did occur, however a limb has subsequently fallen in the back yard prompting owners to seek this review.

Two inspections have occurred since, one by the Vegetation Management Officer (the original assessment officer) and the second by an independent arborist (CPE Tree Services). A Safe Useful Life Expectancy (SULE) category matrix was used in both inspections. The table which explains these categories forms **Table Document "DC13"**. Council determined a SULE

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category of B1. This means *"Trees that could be made suitable for retention in the long term by remedial tree care"*. A SULE category of B3 was determined by CPE. This means *"Trees that could live more than 15 years but may be removed for safety or nuisance reasons"*.

In summary, the tree, if treated for termites and subsequently pruned as originally prescribed, will continue to contribute to the local amenity of The Lanes until such time as the subdivision tree planting is well established. For this reason it is considered appropriate to retain the tree. The owners should be advised of the importance of the necessity to carry out this remedial work to render the tree safe and ensure its preservation as it contributes to the landscape of the estate. Consent has been granted to permit the work.

Item 2 - No 19 (Lot 631 DP 224250) Martine Avenue, Camden South

Mr J & Mrs KA Chanter submitted a Development Application (DA 22/2004) for consent to remove a mature tree (*Eucalyptus moluccana*, Grey Box) from the front yard of their property. Tree removal was refused, however substantial pruning was permitted as part of the development consent. A submission was received requesting a review. The independent inspection of the tree (by CPE Tree Services) has found cracks, high up in the main trunk. CPE have determined a SULE category of C4. This means *"Dangerous trees because of structural defects"*.

Given this new information, it is recommended the consent for DA 22/2004 be amended to allow removal of the tree.

Item 3 - No 10 (Lot 32 DP 239513) Cruikshank Avenue, Elderslie

A Development Application (DA 82/2004) was submitted by Mr L Madgwick & Ms JB Poland. The application sought approval to remove two trees from their property. The application was determined allowing a pine tree located in the front yard to be removed and the Liquidambar in the rear to be retained.

The owners now seek a review of the second tree and cite a number of reasons in support of their appeal. These include plumbing problems, the amount of debris, solar access and fear of slipping on spiky balls that drop each year. The Liquidambar is a fine specimen approximately 20 years old and can further be described as a viable landscape element that contributes significantly to the local amenity.

The tree was assessed as having a SULE category of A1 by Council. This means *"Structurally sound trees located in positions that can accommodate future growth"*. The tree was assessed by CPE as having a SULE category of E4. This means

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“Trees that could live for more than five years but may be removed to prevent interference with more suitable individuals or to provide space for new plantings”.

It is considered the health, condition and location of the tree and the amenity value this tree offers and will continue to offer are sufficient to warrant its retention.

Item 4 - No 15 (Lot G DP 37921) Cawdor Road, Camden

Clintons Motors Pty Ltd submitted a Development Application (DA 134/2004) for the removal of one tree (*Cedrus deodara*) located in the front of their premises. A development consent was issued allowing minor uplift pruning to improve pedestrian and vehicle clearance. The tree was assessed as having a SULE category of A1 by Council. This means *“Structurally sound trees located in positions that can accommodate future growth”*. An independent tree report was supplied by the owner, however the report has not properly identified the tree and also making reference to frequent large limb loss, of which no evidence could be seen.

For this reason there is not considered to be sufficient evidence to support the removal of the subject tree.

Conclusion

Item 1 - No 3 (Lot 3 DP 270312) The Lanes, Kirkham – A Development Application to removal of one tree was refused. A review of the refusal has requested. The SULE categories determined by Council and CPE do not warrant removal.

Item 2 - No 19 (Lot 631 DP 224250) Martine Avenue, Camden South – A Development Application for the removal of one tree was refused, however pruning was approved. A review of the refusal has been requested. The determination of the SULE category by CPE supports the removal and it is recommended that the original determination be amended to allow removal.

Item 3 - No 10 (Lot 32 DP 239513) Cruikshank Avenue, Elderslie – A Development Application for the removal of one tree was refused. A review of the refusal has been requested. On consideration of the SULE category determined for the tree and the amenity offered by the tree, it is recommended that Council uphold the original determination.

Item 4 - No 15 (Lot G DP 37921) Cawdor, Road Camden – A Development Application was submitted for the removal of one tree. A review of the refusal has been requested. It is recommended that the refusal be upheld.

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Recommended: That

- (i) DA 620/2003, No 3 (Lot 3 DP 270312) The Lanes, Kirkham – Removal of one tree. Council uphold determination to allow pruning only with a review two years from the date of consent
- (ii) DA 22/2004 - No 19 (Lot 631 DP 224250) Martine Avenue, Camden South – Removal of one tree. Council amend consent to allow removal of the subject tree.
- (iii) DA82/2004 – No 10 (Lot 32 DP 239513) Cruikshank Avenue, Elderslie – Removal of one tree. Council uphold determination and not permit the removal of the subject tree.
- (iv) DA 134/2004 - No 15 (Lot G DP 37921) Cawdor Road, Camden – Removal of one tree. Council uphold determination to not permit removal of the subject tree.

MOTION

Moved Cr Kernohan, seconded Cr Campbell that Council resolve these items individually and in the order they appear.

DC087/04 THE MOTION WAS **CARRIED.**

MOTION

Moved Cr Funnell, seconded Cr Campbell that DA 620/2003, No 3 (Lot 3 DP 270312) The Lanes, Kirkham – Removal of one tree. Council uphold determination to allow pruning only with a review two years from the date of consent

THE MOTION WAS **LOST**

(Cr Anderson, Cr Dewbery, Cr Elliott, Cr Kernohan, Cr Whiteman, Cr Cagney and Cr Funnell voted against the Motion).

FURTHER MOTION

Moved Cr Cagney, seconded Cr Funnell that DA 620/2003, No 3 (Lot 3 DP 270312) The Lanes, Kirkham – Removal of one tree. Council allow removal of the subject tree.

DC088/04 THE FURTHER MOTION WAS **CARRIED.**

(Cr Elliott, Cr Campbell and Cr Kernohan voted against the further Motion).

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MOTION

Moved Cr Funnell, seconded Cr Kernohan that DA 22/2004 - No 19 (Lot 631 DP 224250) Martine Avenue, Camden South – Removal of one tree. Council amend consent to allow removal of the subject tree.

DC089/04 THE MOTION WAS **CARRIED.**

MOTION

Moved Cr Kernohan, seconded Cr Anderson that DA82/2004 – No 10 (Lot 32 DP 239513) Cruikshank Avenue, Elderslie – Removal of one tree. Council uphold determination and not permit the removal of the subject tree.

DC090/04 THE MOTION WAS **CARRIED.**

(Cr Campbell voted against the Motion).

MOTION

Moved Cr Funnell, seconded Cr Elliott that DA 134/2004 - No 15 (Lot G DP 37921) Cawdor Road, Camden – Removal of one tree. Council uphold determination to not permit removal of the subject tree.

DC091/04 THE MOTION WAS **CARRIED.**

(Cr Campbell voted against the Motion).

5. SEPP 1 Objection - Proposed Subdivision [One Lot into Two Lots], No 36 (Lot 12 DP 619041) Woolgen Park Road, Leppington

File No: DA8450.40 (Director, Development & Environment Division)
DA No: 389/2004
Owner: H & L Dietrich
Applicant: Ron Lewis Planning
Zoning: 1 (b) Rural "B" pursuant LEP 48

Purpose of the Report

The purpose of this report is to allow Council to consider the merits of an objection made under the provisions of State Environmental Planning Policy 1 (SEPP 1). The Objection seeks to vary Clause 12(2)(b) of Camden Local Environmental Plan No 48 to permit the creation of one allotment with an area less than the prescribed standard.

If Council endorses the objection, concurrence will need to be sought from the Department of Infrastructure Planning and Natural Resources (DIPNR).

Summary of Recommendation

It is recommended that Council refuse the SEPP 1 Objection application to vary Clause 12(2)(b) of LEP 48.

The Proposal

The applicant seeks approval to vary the development standard in Clause 12(2)(b) of CLEP48, which states:

"The Council shall not consent to the subdivision of land to which this clause applies unless each allotment created by the subdivision will have an area of not less than:

(b) in the case of land within Zone No 1(b) – 2 hectares."

The proposed subdivision intends to create two lots of the following size:

- Proposed Lot 121 - 2.213 hectares
- Proposed Lot 122 - 1.578 hectares

Proposed Lot 122 does not comply with the requirements of Clause 12 (2)(b) of CLEP 48. A copy of the proposed subdivision plan forms **Tabled Document "DC14"**.

Access to proposed Lot 121 would be via the existing driveway off Woolgen Park Road. Access to Proposed Lot 122 would be

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via a right of carriageway over the existing access to the adjoining Lot 11 (No 1187, Camden Valley Way). This provides access to Camden Valley Way. The owners of the adjoining Lot 11 have provided Council with written consent to the proposed Right of Carriageway.

The site owners currently operate a poultry farm from two of the existing three sheds on site. The applicant has advised Council that prior to the release of the Linen Plan, the owners would surrender all valid consents that relate to the use of the land for poultry sheds. The owners of the subject property also own the adjoining property [Lot 23 DP205952]. Lot 23 contains another two poultry sheds. Existing consents relating to this property would also be surrendered. This would be included as a condition of consent should Council approve the application following concurrence from DIPNR because it would not be possible to approve the construction of a dwelling on the land due to the close proximity of the poultry operations and the associated odour impacts.

The existing poultry sheds have consent and may continue in the absence of any arrangement to surrender that right.

The Site

The site is located on the eastern side of Woolgen Park Road approximately 220m north of George Road, Leppington. In addition to the Woolgen Park Road frontage, the site also has frontage to Camden Valley Way. Improvements on the site include three (3) poultry sheds, machinery shed, greenhouse and dwelling. The site lies north of the existing Sydney Water Supply Facility, treatment plant and pumping station and east of the Optus Telecommunications Tower, which is approximately 125m from the proposed boundary between proposed Lot 121 and Lot 122.

A crest forms where the proposed boundaries between Lots 121 and 122 would be created and the land falls northwest and southeast from that crest. A site plan forms **Tabled Document "DC15"**.

Notification

In accordance with Council's adopted policy "DCP 116 – Notifications, Mediation and Advertisements", the application was placed on public exhibition for a period of two weeks. Council received one late submission. The submission, from Sydney Water, did not object to the proposal. A copy of the submission forms **Tabled Document "DC16"**.

Planning Controls

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

- Camden Local Environmental Plan No 48
- State Environmental Planning Policy No 1
- Sydney Regional Environmental Plan No 20
- Camden 2025

Assessment

The application has been assessed in accordance with Section 79C of the Environmental Planning & Assessment Act 1979. The following comments are made with respect to the critical aspects of the application.

Camden 2025

Council has identified 5 key areas for the purpose of achieving the vision of Camden by the year 2025. Aspects of the development relate to Managing Urban Growth and Environmental Systems. The proposed development, which would result in the discontinuation of a rural activity, is inconsistent with Camden's rural and small town cultures and lifestyles being preserved, as well as the preservation and enhancement of the visual, cultural and scenic landscape qualities.

(a) The provision of any environmental planning instrument

**Sydney Regional Environmental Plan No 20 –
Hawkesbury Nepean River (SREP20)**

SREP 20 provides that Council shall not grant consent to any application to carry development that drains to the Hawkesbury Nepean river system, unless it has taken into account the effect that development will have on the river system.

Proposed Lot 121 has an existing approved dwelling and on site effluent disposal. The approval of this subdivision will result in one additional on site effluent disposal system on proposed Lot 122. Provided this system is kept operational, the proposed subdivision and any subsequent dwelling erected on the land should not adversely impact on the river system

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Camden Local Environmental Plan No 48

The objectives of the 1(b) Rural "B" zone are:

- *To provide for rural residential living opportunities on land having ready access to urban areas and facilities;*
- *To ensure that development maintains and contributes to the rural character of the locality and minimises disturbances to the landscape and agricultural productivity;*
- *To ensure that development does not adversely affect rural and residential amenity and does not create unreasonable or economic demands for provision or extension of public amenities and services;*
- *To make provision for a reasonable range of suitable activities associated with rural residential occupations of the land; and*
- *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.*

As already detailed in this report, Clause 12(2)(b) specifies the minimum size of an allotment of land in the applicable 1(b) Rural "B" zone as 2ha. The proposed development intends to create two allotments, one of which will total 1.578ha. This represents a shortfall of 0.422ha. To allow Council to consider this discrepancy, the application has submitted an objection under SEPP1, which seeks approval to the creation of the under-sized allotment.

State Environmental Planning Policy No 1 (SEPP1)

SEPP1 was gazetted in 1980 and sets out the general principle that a development standard in an environmental planning instrument may be varied where it can be demonstrated to Council that strict compliance with the standard is unreasonable or unnecessary or would tend to hinder the attainment of the objectives specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979.

Clause 12(2)(b) of LEP 48 is the development standard which is proposed to be varied. The applicant has argued that whilst the proposed subdivision will result in an allotment of land less than the 2ha minimum, the

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proposal will be consistent with the intended or desired density of the zone. This arises because the current owners of Lot 12 had previously owned the adjoining (now historic) Lot 3 DP560646. **Tabled Document "DC17"** shows that Lot 3 comprised 4.04ha until 1973 when Sydney Water acquired 4491m². This left a residue of 3.6ha. From this, a 2ha lot was then subdivided and the residue was consolidated with Lot 22 to form the current Lot 12.

If the acquisition had not taken place, the current owners could have lawfully subdivided Lot 3 into 2 lots of 2ha each and a SEPP 1 Objection would not be required. However the original Sydney Water acquisition was lawful and the resultant lot size does not permit the current proposed subdivision.

The objectives of Section 5(a)(i) and 5(a)(ii) of the Environmental Planning & Assessment Act 1979 are:

- (a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, town and villages for the purposes of promoting the social and economic welfare of the community and a better environment;*
 - (ii) *the promotion and coordination of the orderly and economic use and development of land.*

The applicant has not demonstrated that strict compliance with the minimum lot size of 2ha is unreasonable and unnecessary and would tend to hinder in the circumstances of this case, the attainment of the objectives of Section 5(a) (i) and (ii) of the EP & A Act 1979.

In particular, the proposed subdivision will not encourage the proper management of land or resources in the locality, as it is actually proposed to cease an agricultural use to allow housing in its place. This is inconsistent with the aims of the zone.

The applicant argues that a density provision of one dwelling per ha is achieved when taking into account the land excised to facilitate Sydney Water's acquisition. Whilst this can be the basis of an argument, the application of such an approach is likely to create a precedent for further applications to subdivide lots which may achieve a density, but fail to achieve the minimum lot size.

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

Natural Environment

The impact on the natural environment is anticipated to be limited to the addition of an effluent disposal area as a result of the subdivision. Impacts on adjoining neighbours have been assessed and the additional allotment will not result in any adverse impact on amenity in the locality.

Built Environment

The proposed subdivision will enable Proposed Lot 122 to be in separate ownership and would result in a dwelling house being erected on the site with Council consent. The impact of the proposed subdivision on the existing built environment will be minimal, however the potential for conflict with land use decisions associated with the Bringelly release are significant.

Social and Economic Impact

In general terms, the proposed subdivision will eliminate the existing poultry sheds owned by the current owners on this and the adjoining Lot 23. The social and economic impacts are limited to the possible hampering of planning for future urban expansion and will have expected social and economic effects.

(c) Suitability of the site

The site is serviced except for sewer and is currently zoned to enable rural residential purposes. The site has provision for access to Camden Valley Way for proposed Lot 122 and an area for a dwelling house set back from Camden Valley Way. The application proposes that access to the site will be provided from an existing driveway off Camden Valley Way rather than providing for the construction of an additional driveway, however any proposal which results in more vehicles gaining direct access to Camden Valley Way should not be encouraged because of the poor road conditions and high traffic volumes.

(d) Any submissions made in accordance with the Act or the Regulation

As stated elsewhere in this report, Council received one late submission as a result of the notification process. The submission was made by Sydney Water and raises concerns with respect to the proximity of any future residence to the nearby Water Treatment Facility. Sydney Water wishes to highlight the likelihood of any dwelling to be erected on the land as being impacted by noise, construction impacts and also the visual prominence of their operations.

(e) The Public Interest

It is not considered in the public interest in that the proposed SEPP1 Objection may impact on the future planning of the metropolitan area. Further, the approval of this subdivision is likely to provide a precedent to more undersized allotments in the location.

Conclusion

This application is a SEPP 1 Objection that seeks to vary the minimum lot size requirement for the 1(b) Rural "B" zone under Camden LEP 48. Should Council support the SEPP 1 objection, it will be referred to DIPNR for concurrence. As the land is located within the South-West Sydney Investigation Area (Bringelly investigation), it is unlikely that DIPNR would grant concurrence as the subdivision would fragment land holdings and make orderly development of the land more difficult. The proposed subdivision would result in two lots being created, one lot being 2.213ha and the other 1.578ha. The applicant has attempted to argue that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case and would tend to hinder the attainment of the objects of Section 5(a) (i) and (ii) of the EP&A Act. This view is not supported.

The proposed variation to the minimum lot size required under the zoning in LEP 48 is very significant, being 21% below the minimum required. The result is a lot size which is contrary to that which was envisioned with the current zoning.

Based on the above, the SEPP1 Objection should not be allowed and the application for the two-lot subdivision refused.

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Recommended: That:

- (ii) Council refuse the SEPP 1 Objection made in relation to the minimum lot size for a proposed subdivision of one lot into two lots at 36 Woolgen Park Road, Leppington.

- (iii) Development application No 389/2004 be refused on the following grounds:
 - (a) The proposed subdivision does not comply with the minimum allotment size for land within the Rural 1(b) zone.

 - (b) The proposed subdivision is not consistent with the objectives of the Rural 1(b) zone.

 - (c) The proposed means of access to the site off Camden Valley Way is unsatisfactory and will increase the risk of traffic conflicts on that road.

 - (d) The proposed subdivision will result in fragmentation of allotments thereby prejudicing the orderly development of the land for any future urban purposes.

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

- (i) *Council refuse the SEPP 1 Objection made in relation to the minimum lot size for a proposed subdivision of one lot into two lots at 36 Woolgen Park Road, Leppington.*

- (ii) *Development application No 389/2004 be refused on the following grounds:*
 - (a) *The proposed subdivision does not comply with the minimum allotment size for land within the Rural 1(b) zone.*

 - (b) *The proposed subdivision is not consistent with the objectives of the Rural 1(b) zone.*

 - (c) *The proposed means of access to the site off Camden Valley Way is unsatisfactory and will increase the risk of traffic conflicts on that road.*

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(d) *The proposed subdivision will result in fragmentation of allotments thereby prejudicing the orderly development of the land for any future urban purposes.*

DC092/04 THE MOTION WAS **CARRIED.**

(Cr Kernohan voted against the Motion).

6. Local Environmental Study Narellan Township

(File 4768/2) (Director Governance & Outcomes)

Purpose of the Report

The purpose of this report is to have Council adopt a community consultation strategy for the preparation of the Narellan Local Environmental Study (LES).

Background

Council adopted a Masterplan for the Narellan Township at its meeting of February 9 2004. The Masterplan was developed as part of the Narellan Urban Improvement Program (UIP) process and was exhibited in the form of an Indicative Development Plan attached to Draft Development Control Plan (DCP)126.

Many of the land uses proposed in the Masterplan are inconsistent with the prevailing land use zoning. It is therefore necessary to undertake an LES and to prepare a Draft LEP to facilitate a change to those land use zones.

Consultation

It should be noted that community consultation is not a statutory requirement for the preparation of an LES, although the Environmental Planning and Assessment Act makes provision for Council to “consult other persons as the Council determines”.

It is considered appropriate in this instance that Council include community representation in the LES/DLEP preparation given:

- The level of interest expressed by the Narellan community during the exhibition of Draft DCP 126/Masterplanning process.
- The length of time that will have elapsed before the Draft LES is reported back to Council (approximately 5 months), and,
- The length of time that will have elapsed before a document is available for exhibition and community comment.

In an effort to facilitate community participation in the preparation of the LES it is proposed that a Community Reference Group (CRG) be established. The Group would meet approximately 4 times during the process, and would involve:

- An introduction to the aim of the Group, its role and responsibility, an overview of the brief and the consultant group.

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- A meeting with the consultant group to discuss methodology, key issues etc.
- A mid term update from the consultant group, and,
- A final meeting to discuss the studies findings and relevance to a DLEP.

It is proposed that an invitation to participate be forwarded to each of the seven key interest groups currently active within Narellan, these include:

- Narellan Chamber of Commerce,
- Camden Area Community Resource Centre Inc, (CACRC)
- Wilson Richardson Area Residents Group, (WRARG)
- Narellan Action Group, (NAG)
- Narellan Landcare Group
- Camden Historical Society, and
- Harrington Park Community Association Inc.

Each group would be asked to nominate one member.

To ensure the broader interests of the community are represented it is considered important that at least 2 Councillors be represented on the CRG.

Promotion of Narellan Centre Planning and Development Advisory Committee

The Harrington Park Community Association Inc has written to Council suggesting the establishment of a Planning and Development Advisory Committee “to be directly involved in the early completion of a new Narellan Strategic Management Plan”.

A copy of the submission in this regard forms **Tabled Document “DC18“**.

A Committee functioning as detailed in **Tabled Document “DC18“** is not considered warranted and would run the risk of potentially assuming a role as a “de facto” Council. The additional studies suggested are at the heart of the proposed LES process, whilst the involvement of authorities is clearly provided for in consultations pursuant to Section 62 of the Act in the LES/DLEP preparation. Further, given the state government’s commitment to the Urban Improvement Program in Narellan to date it is unlikely to see them servicing a Committee of the subject nature.

There is no dispute that all parties are seeking to champion quality and sustainable “win/win” outcomes, however, the need for a Committee is challenged.

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Representation of the Harrington Park Community Association Inc. on the proposed CRG, as suggested previously in this report, is considered to be the appropriate mechanism to gain their valuable contribution to the planning process.

Community Update

To ensure the broader community of Narellan is informed as to the progress of the planning and the preparation of the LES it is proposed that:

- Each person or organisation making a submission to the exhibition of Draft DCP 126 be informed of the progress to date, and
- A notice of intention and progress of the LES be included in Council's newspaper advertising column on at least 2 occasions during the Study period.

Conclusion:

It is clear from the past level of community interest and indeed on going interest in the planning of the Narellan Township that structured opportunities should be made available for community input during the LES process. A CRG is considered to be a representative and useful tool to provide structured input without unduly delaying the passage of the LES.

Recommended: That Council:

- (i) Adopt the Consultation Strategy in the manner outlined in this report, for the preparation of the LES for the Narellan Township.
- (ii) Endorse the establishment of a Community Reference Group in the manner outlined in this report.
- (iii) Nominate two Councillors to participate on the Community Reference Group.
- (iv) Write to those persons who made submissions to the exhibition of DCP 126 to update them of the progress of the Masterplan.
- (v) A notice of intention and progress of the LES be placed in Council's newspaper advertising column on at least 2 occasions during the Study period.

MOTION

Moved Cr Campbell, seconded Cr Whiteman that Council:

- (i) *Adopt the Consultation Strategy in the manner outlined in this report, for the preparation of the LES for the Narellan Township.*

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- (ii) *Endorse the establishment of a Community Reference Group in the manner outlined in this report with the addition of participation by the Macarthur Greens and advertise expressions of interest for a maximum of two individual community representatives.*
- (iii) *Nominate three Councillors, one from each ward being, Councillor Peter Johnson (North Ward), Councillor Robert Elliott (Central Ward) and Councillor Liz Kernohan (South Ward) to participate on the Community Reference Group.*
- (iv) *Write to those persons who made submissions to the exhibition of DCP 126 to update them of the progress of the Masterplan.*
- (v) *Place a notice of intention and progress of the LES be placed in Council's newspaper advertising column on at least 2 occasions during the Study period.*
- (vi) *Exhibit appropriate material on the Council website and at the Camden and Narellan Libraries.*
- (vii) *Advise the Harrington Park Community Association that Council believes that the process proposed is an appropriate way to further the planning and development of the Narellan centre; and invite it to nominate a representative to participate on the Community Reference Group.*

DC093/04 THE MOTION WAS **CARRIED.**

**7. Camden Local Environmental Plan No 117 - Elderslie
Release Area and Development Control Plan 124 -
Elderslie Release Area**

(File 3445/22) (Director Governance & Outcomes)

Purpose of Report

The purpose of this report is to advise Council that Camden Local Environmental Plan 117 – Elderslie Release Area (LEP) was gazetted on the 25 June 2004 and that the Development Control Plan 124 – Elderslie Release Area (DCP) came into effect on the date of the gazettal of the LEP. This report also recommends adoption of an amendment to the DCP, for the area deferred from the original DCP adjoining Coopworth Road and open space at the end of Bates Close, for public exhibition.

Background

Council at its meeting on the 15 December 2003 resolved to forward draft LEP No 117 – Elderslie Release Area, to the Minister accompanied by advice that it is capable of being made. Council also resolved to adopt the amended draft DCP 124 – Elderslie Release Area and establish an operational date in accordance with the Regulations as soon as possible after gazettal of LEP 117 – Elderslie Release Area. An area in the south-west of the release area abutting existing open space was deferred from the DCP to enable an amended layout to be prepared that addresses the interface with the existing suburb of Elderslie.

Camden LEP No 117 – Elderslie Release Area

The Elderslie Release Area LEP was gazetted on the 25 June 2004. DCP 124 Elderslie Release Area came into effect on that date. Owners of land within the release area have been advised of the gazettal of the Plan. In addition a copy of the LEP and DCP are being put on Council's web site together with a list of frequently asked questions.

Deferred Area

The area located in the south-west corner of the release area was deferred to enable the preparation of a discrete solution which addresses the interface with the existing suburb of Elderslie in particular the interface with the existing open space area. Because of the small scale and generally linear nature of the existing open space it was considered undesirable to have back fences of residential properties as the interface with the open space. Any development in this location should preferably have an "open" transition into the parkland as opposed to a fence. Passive surveillance would also be occasioned by such an approach.

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An amended layout for this area has been prepared. The layout provides for a road reservation adjoining the existing open space with vehicular access only to Coopworth Road, as previously established by Council. The road reservation extends the length of open space area and ensures dwellings will front the open space providing passive surveillance of that area. Pedestrian access is maintained to Bates Close, Elliotdale Close and Southdown Road.

A preliminary consultation process was held with owners of adjoining land within the release area and owners of land adjoining the deferred area in Bates Close, Elliotdale Close, Southdown Road, Coopworth Road and Dormer Close. Generally the response to the consultation was positive with no major concerns arising from the amended layout.

A copy of the original layout and the amended road layout is contained within **Tabled Document "DC19"**. The amended layout will need to be formally exhibited for at least 28 days. If any submissions are received which oppose the amended layout, these will be reported to Council.

Conclusion

Camden LEP No 117 was gazetted on the 25 June 2004 and DCP 124 came into effect on that date.

An amended layout for the deferred area in DCP 124 has been prepared. The amended layout addresses the interface with the adjoining Elderslie area and provides an "extension" of the existing open space and locates a road adjoining the open space to ensure future lots face the open space providing passive surveillance of that area. It is recommended that the amended layout for the deferred area be inserted into DCP 124 and placed on public exhibition for a period of 28 Days.

Recommended: That

- (i) The information be noted
- (ii) The amended layout for the deferred area in DCP 124 - Elderslie Release Areas be adopted by Council and placed on public exhibition for a period of 28 days. If any submissions are received opposing the amended layout, the matter be referred back to Council for determination.
- (iii) In the absence of any submissions the amended plan be adopted and publicly notified in accordance with the regulations.

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Resolved on the Motion of Cr Kernohan, seconded Cr Elliott that

- (i) The information be noted*
- (ii) The amended layout for the deferred area in DCP 124 - Elderslie Release Areas be adopted by Council and placed on public exhibition for a period of 28 days. If any submissions are received opposing the amended layout, the matter be referred back to Council for determination.*
- (iii) In the absence of any submissions the amended plan be adopted and publicly notified in accordance with the regulations.*

DC094/04 THE MOTION WAS **CARRIED.**

Meeting closed at 6.35pm.