

**MINUTES OF THE DEVELOPMENT COMMITTEE  
MEETING HELD 22 MARCH, 2004  
CIVIC CENTRE, OXLEY STREET, CAMDEN – 5.30PM**

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**Present:** Cr Anderson (Mayor/Chairperson), Cr Corrigan, Cr Patterson,  
Cr Campbell, Cr Winn, Cr Batros, Cr Fekete, Cr McFadden.

**Staff:** General Manager, Director Governance & Outcomes, Director  
Development & Environment, Director Works & Services,  
Manager Environment & Health, Manager Development,  
Manager Outcomes, Manager Assets, Manager Community  
Services, Senior Governance Officer.

**APOLOGIES**

An apology was received from Cr Senise from this meeting.

***(The Mayor read a statement from Cr Senise detailing his recent medical condition).***

*Resolved on the Motion of Cr Corrigan, seconded Cr McFadden that leave of absence be granted to Cr Senise.*

DC036/04 THE MOTION WAS **CARRIED**  
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**DECLARATION OF PECUNIARY OR CONFLICT OF INTEREST**

Cr Corrigan declared a conflict of interest in relation to items 2 and 3 as the persons subject of the report, made donations to his State Election Campaign in 2003.

Cr Campbell made a statement in relation to item 5 regarding her Ministerial appointment to the Belgenny Farm Trust and indicating no conflict of interest exists.

**DEVELOPMENT COMMITTEE PUBLIC ADDRESSES**

Mr Gary Murphy addressed the Committee in relation to Item 8.

Ms Helen Cowell addressed the Committee in relation to Item 4.

Mr Trousdale addressed the Committee in relation to Item 5.

Mr Barry Brown addressed the Committee in relation to Item 1.

**MOTION**

*Moved Cr Winn, seconded Cr McFadden that an extension of 2 minutes be granted.*

DC037/04 THE MOTION WAS **CARRIED.**  
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Mr Matt Hannaford addressed the Committee in relation to Item 10.

Miss Vivien Rixon addressed the Committee in relation to Item 1.

**MOTION**

*Moved Cr McFadden, seconded Cr Corrigan that an extension of 2 minutes be granted.*

DC038/04 THE MOTION WAS **CARRIED.**

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*(Cr Patterson left the Chamber – the time being 6.05pm)*

*(Cr Patterson returned to the Chamber – the time being 6.09pm)*

Mr Ron Childs addressed the Committee in relation to Item 10.

**MOTION**

*Moved Cr McFadden, seconded Cr Patterson that an extension of 2 minutes be granted.*

DC039/04 THE MOTION WAS **CARRIED.**

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*(The Mayor then sought the Committee's direction as to the reserve speakers).*

**MOTION**

*Moved Cr McFadden, seconded Cr Patterson that Mr Chris Evans be allowed to address the Committee in relation to Item 10.*

DC040/04 THE MOTION WAS **CARRIED.**

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*(Cr Batros voted against the Motion).*

Mr Chris Evans addressed the Committee in relation to Item 10.

**MOTION**

*Moved Cr McFadden, seconded Cr Patterson that an extension of 2 minutes be granted.*

DC041/04 THE MOTION WAS **CARRIED.**

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*(Cr Winn, Cr Batros and Cr Fekete voted against the Motion).*

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**MOTION**

*Moved Cr Batros, seconded Cr Winn that Mr Gary Murphy (Item 9) and Mr Ross Newport (Item 4) be allowed to address the Committee.*

DC042/04 THE MOTION WAS **CARRIED.**

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Mr Gary Murphy addressed the Committee in relation to Item 9.

Mr Ross Newport addressed the Committee in relation to Item 4.

**ORDER OF BUSINESS**

**MOTION**

*Moved Cr McFadden, seconded Cr Winn that Item 10 of the Development Committee be brought forward and dealt with at this time.*

DC043/04 THE MOTION WAS **CARRIED.**

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**10. Petition Re: Proposed Child Care Centre at 11 Valley View Drive Narellan**

(File No: DA7940.110) (Director, Development & Environment)

Council is in receipt of two petitions regarding the proposed child care centre at 11 Valley View Drive Narellan. In accordance with Council policy, this report brings the petitions before Council for information purposes.

The first petition states:

“As a group of concerned residents in this small estate we wish to lodge our strong concern to the above proposed development. We do agree that access to child care is desirable but it must be in the safest possible environment. The location of the proposed development would result in a potentially dangerous traffic situation as it is the only access road into the estate and is situated on the main feeder road into the estate. Any parking roadside on this estate causes problems at the best of times due to the narrow roadways and is even more so close to this particular corner.

We the undersigned **disagree strongly** with the proposed site development”.

The second petition states:

“As a community, the below listed people of Camden Views Estate and the Links Estate wish to formally oppose the application of this development through Camden Council”.

The first petition contains 75 signatories and the second petition contains 25 signatories and following staff’s assessment of the proposed development application, the matter will be brought to Council for determination.

In addition, Council has received 49 letters of objection to the same development.

Recommended: That:

- (i) The petition be noted.
- (ii) The petitioners be advised of Council’s consideration of the matter.

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*Resolved on the Motion of Cr McFadden, seconded Cr Campbell that:*

- (i) The petition be noted.*
- (ii) The petitioners be advised of Council's consideration of the matter.*

*DC044/04 THE MOTION WAS **CARRIED.***  
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**1. SEPP No 5 Housing for Older People or People with a Disability - 8 Unit Development; Tree Removal; Consolidation of Lots 6-8 DP 30293; Strata Subdivision & Construction of 8 Residential Units; Stormwater Drainage Across a Public Reserve, No 43 (Lots 6-8, DP 30293) Wilson Crescent, Narellan**

**File No:** DA8350.465-2/2 (Director, Development & Environment Division)  
**DA No:** 1344/2003  
**Applicant:** Top Ridge Constructions  
**Owner:** RJR Development Consultants Pty  
**Zoning:** Residential “A” – CLEP 46

**Purpose of Report**

This report is submitted to Council following deferment of the Development Application at the previous Council meeting. The DA which proposes the construction of a SEPP 5 development comprising 8 residential units, is submitted for determination.

**Background**

Council considered a report at the meeting of 8 March 2004 in relation to the above application to construct 8 residential units pursuant to SEPP 5 – housing for older people or people with a disability, in the form of a multi-unit housing in a detached housing zone.

At that meeting it was resolved to defer consideration pending a Council inspection to be carried out before the meeting of 22 March 2004. Arrangements have been made to inspect the premises prior to the meeting.

**Recommended:** That:

- (i) Development Application No 1344/2003 to develop a SEPP 5 Housing for older people or people with a disability – 8 unit development; tree removal; consolidation of Lots 6-8 DP 30293; strata subdivision and construction of 8 residential units pursuant to SEPP 5, at No 43 (Lots 6-8 DP 30293) Wilson crescent, Narellan, be approve subject to conditions which form **Tabled Document “DC 1”**.
- (ii) Those who made a submission be thanked and advised of Council’s determination of the application.

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*Resolved on the Motion of Cr Corrigan, seconded Cr McFadden that:*

- (i) Development Application No 1344/2003 to develop a SEPP 5 Housing for older people or people with a disability – 8 unit development; tree removal; consolidation of Lots 6-8 DP 30293; strata subdivision and construction of 8 residential units pursuant to SEPP 5, at No 43 (Lots 6-8 DP 30293) Wilson crescent, Narellan, be approve subject to conditions which form **Tabled Document “DC 1”**.*
  
- (ii) Those who made a submission be thanked and advised of Council’s determination of the application.*

DC045/04 THE MOTION WAS **CARRIED.**  
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**2. Service Station Including a Refreshment Room and a Free Standing Refreshment Room, No 705 (Lot 2, DP 594238) The Northern Road, Bringelly**

**File No:** DA5850.355-3 (Director, Development & Environment Division)

**DA No:** 960/2002

**Applicant:** Rhodes Haskew Associates

**Owner:** Mr F Pisciueneri

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

**Purpose of Report**

The report relists a Development Application which was deferred at the last Council meeting and recommends that the application be determined by way of refusal.

**Background**

Council considered a report at the meeting of 8 March 2004 in relation to the above proposed service station with a refreshment room as well as a free standing refreshment room, which has been proposed in a rural zone at No 705 The Northern Road, Bringelly.

The owner, Mr F Pisciueneri, requested immediately prior to this meeting by letter that the application be deferred and withdrawn from the meeting as the owner was "intending to engage an appropriately qualified expert to address the scenic and cultural landscape impacts of the development."

Further he advised the reason for the request was that "The recommendation for refusal basically relates to scenic and cultural landscape issues. As these matters have not been previously raised during the assessment of the application I have not had the opportunity to address these concerns."

Council resolved that:

- (i) *The item be deferred at the applicant's request, and*
- (ii) *The item be rescheduled for consideration by Council on the 22 March, 2004 Development Committee Meeting.*

Similar applications have been before Council and were refused on each occasion, refer to the deferred Council report's section 'Difference in Applications' for the details of the two previous applications and the current application.

The applicant for the first development application was Hilton Pty Ltd. The applicant for the second development application was Project Planning Associates Pty Ltd. While the applicant for

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the current development application is Rhodes Haskew Associates.

The basis for refusal for the first two applications included as part of the reasons, the following:

Application refused 15 June 1999:

“(ii) The concentration of proposed uses ...is out of character with the rural character of the area. This is contrary to Objective 1(c) and 1(e) of the Rural 1(a) zone of LEP 48, and the provisions of the Draft Scenic and Cultural Landscape Study.”

Application refused 23 July 2001:

“(ii) The proposed development is an overdevelopment of the site, which is out of character with the rural character of the area. This is contrary to Objective 1(c) and 1(e) of the Rural 1(a) zone of LEP 48.

“(iii) The proposed development is contrary to the rural character of the area as stated in the Draft Scenic and Cultural Landscape Study.”

Whilst there has been different applicants for each of the three development applications for the proposed service station on the subject site, part of the grounds for refusal, as quoted above have always identified the issue of the local rural character and the Draft Scenic and Cultural Landscape Study.

The current application addresses these issues in the submitted Statement of Environmental Effects (SEE) as follows:

“...the proposed development is compatible with current land uses in the area.... Invariably these centres are located in rural areas on main roads that extend beyond the Metropolitan Area. The development building form adopts a rural theme with well-spaced buildings in open landscaped grounds. Again these types of uses are common in rural environments with location relative to distance of travel between outlets being a determinant. The development can be carried out with a rural built form and need not detract from the existing rural character... There are no heritage issues.”

The report submitted to the previous meeting details the consideration given to these issues and refutes the view that the proposed use is compatible with the rural area.

The applicant was advised of Council’s resolution on the following day ie to defer the determination until the 22 March

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2004. No further submission has been made on behalf of the applicant.

As the current application has addressed or acknowledged the issues that form part of the previous refusals and the current recommendations for refusal, the previous report is re-submitted for a determination.

Recommended: That:

(i) Development Application No 960/2002 to erect a service station including a refreshment room and a free standing refreshment room at No 705 (Lot 2 DP 594238) The Northern Road, Bringelly, be refused. The basis for refusal is that:

- (a) the proposal does not comply with the zoning objectives of Camden LEP 48 – Rural “A”;
- (b) the proposal does not comply with draft Camden LEP’s “desired future character” statement for Bringelly;
- (c) the proposal does not comply with draft Camden Scenic and Cultural Landscape Study;
- (d) the proposal does not comply with Camden 2025 – A Strategic Plan for Camden, in particular strategies for ‘Managing Urban Growth’ and ‘Environmental Systems’.
- (e) the proposal does not comply with state government’s NSW Agriculture Policy or ‘The Strategic Plan for Sustainable Agriculture – Sydney Region 1998’;
- (f) the proposal does not comply with Camden’s DCP 97 – Car Parking;
- (g) the proposal’s scale and building mass, potential signage, lighting and associated car parking and extensive paved areas being totally inappropriate for this site and the surrounding rural area.

(ii) Those who made a submission be thanked and advised of Council’s determination of the application.

***(Cr Corrigan, having previously declared a conflict of interest in Items 2 & 3, took no part in debate or voting on this matter, left the Chamber- the time being 6.51pm.)***

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*Resolved on the Motion of Cr Fekete, seconded Cr Batros that:*

- (i) *Development Application No 960/2002 to erect a service station including a refreshment room and a free standing refreshment room at No 705 (Lot 2 DP 594238) The Northern Road, Bringelly, be refused. The basis for refusal is that:*
- (a) *the proposal does not comply with the zoning objectives of Camden LEP 48 – Rural “A”;*
  - (b) *the proposal does not comply with draft Camden LEP’s “desired future character” statement for Bringelly;*
  - (c) *the proposal does not comply with draft Camden Scenic and Cultural Landscape Study;*
  - (d) *the proposal does not comply with Camden 2025 – A Strategic Plan for Camden, in particular strategies for ‘Managing Urban Growth’ and ‘Environmental Systems’.*
  - (e) *the proposal does not comply with state government’s NSW Agriculture Policy or ‘The Strategic Plan for Sustainable Agriculture – Sydney Region 1998’;*
  - (f) *the proposal does not comply with Camden’s DCP 97 – Car Parking;*
  - (g) *the proposal’s scale and building mass, potential signage, lighting and associated car parking and extensive paved areas being totally inappropriate for this site and the surrounding rural area.*
- (ii) *Those who made a submission be thanked and advised of Council’s determination of the application.*

DC046/04 THE MOTION WAS **CARRIED.**  
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**3. Proposed Legal Action in Relation to Nos 1-7 (Lot 166 DP 1061696) Barsden Street, Camden and No 10C (Lot 41 DP 270131) Yarmouth Place, Smeaton Grange**

**File Nos:** DA575.66 and DA8630.117 (Director, Development & Environment Division)

**DA Nos:** 25/2004 and 1204/2003

**Applicants:** Dickinson Developments (Barsden Street) and TJ O'Donnell and Associates Pty Ltd (Yarmouth Place)

**Purpose of Report**

Council officers have gathered evidence supporting a claim that works have been carried out at both sites without Development Consent under part IV of the Environmental Planning and Assessment Act, 1979 (the Act). Development Applications for both sites had been lodged with Council at the time of the alleged offence but had not been determined. These applications have subsequently been approved. The purpose of this report is for Council to recommend that legal action be commenced, under the provisions of the Act, against the company responsible for carrying out the works at both sites prior to consent being issued.

**Background**

This matter was deferred from the last Council meeting to allow consideration of the matter at the 22 March, 2004 meeting. Because the report recommends legal proceedings, the whole report is repeated to assist Council's determination.

On 29 September, 2003 a Development Application (1204/2003), being for filling of land at No 10C (Lot 41 DP 270131) Yarmouth Place, Smeaton Grange was lodged on behalf of the owners of the site (Dibblar Pty Ltd, Kentucky Cottages Pty Ltd, Mr Michael Reginald Scarce and Ms Christine Alice Scarce) by TJ O'Donnell and Associates Pty Ltd.

On 15 January, 2004 a Development Application (25/2004), being for Remediation Works (removal of inappropriate soil material) at Nos 1-7 (Lot 166 DP 1061696) Barsden Street, Camden was lodged on behalf of the owners of the site (Dibblar Pty Ltd), by Dickinson Developments Pty Ltd.

Assessment of both applications was in progress at the time of the alleged offences.

**Main Report**

On 19 February, 2004 Council Officers reported that filling of the Yarmouth Place site had commenced. On 20 February,

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2004 Council Officers reported that removal of material from the Barsden Street Site had also commenced. Officers collected evidence of these works over these two days. A representative of the company carrying out the work (Holmwood Builders Pty Ltd) was also verbally advised to discontinue the work.

On 20 February, 2004 principals of the company involved met with the Manager Development and one other Council Officer. At this meeting Council advised that the assessment of the Development Applications would be continuing, but that the issue of any determination would not occur until further advice had been obtained from Council's legal advisers. That advice was due to be obtained by 23 February, 2004. Council also further advised that work should not be occurring on the sites unless the appropriate consents had been issued. Despite this and the earlier directive, transportation of fill continued without any consent having been issued.

The works undertaken on each site without consent are considered to be of a substantial nature.

The Barsden Street works included the removal of soils identified by the proponents as being contaminated and therefore requiring remediation prior to other works being undertaken on the site. There is no evidence that the works have been undertaken in an unacceptable manner, however the actions of the company relied on the advice of their consultant and not Council's approval. The works involved the removal of 60 tonnes of material to a licensed waste facility.

Works undertaken on the Yarmouth Place site involved the filling of the site for the creation of an elevated building platform. This work involved the mass excavation of soil from the Barsden Street site. A large excavator was used at Barsden Street to load approximately 6 large trucks that transported the fill to Narellan. This activity created issues in relation to dust and noise and sedimentation issues as a result of rain.

Complaints were made by members of the public, one relating to each site, that work was occurring at the sites. Sediment was noted as being left on the road reserve as a result of the work at Yarmouth Place. Subsequently a Penalty Notice for a breach of Section 120 of the Protection of the Environment Operations Act, 1997 was issued for a failure to provide adequate controls in relation to the work, leading to the pollution of waters.

Legal advice received is that Council is able to pursue the matter by way of instituting legal proceedings against the company responsible for carrying out the work without consent in the Local Court, for breaches of the provisions of Sections s76A, s125 and s127 of the Act. This has the potential to

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result in a fine of up to 1000 penalty points at \$110 per penalty unit. This currently equates to an amount of \$110,000.

On 26 February, 2004 Development Applications 25/2004, being for the Barsden Street site and D1204/2003, being for the Yarmouth Street site were approved and consent was issued.

It is imperative that Council be provided with the opportunity to assess all aspects of a proposed development in accordance with 79C of the Act before that development commences. Only in this way can Council properly discharge its responsibilities in administering the Act and ensuring that development does not have unacceptable consequence for the environment. In this instance, this opportunity has not been provided. The commencement of legal action in the Local Court is considered the most appropriate response to the actions taken by Holmwood Builders Pty Ltd.

**Conclusion**

Council has gathered significant evidence that works requiring Development Consent has commenced at two sites, before such consents were issued. The actions taken by the builder in this regard is contrary to the Act and erode the basic responsibility of Council to fully assess and determine applications before they are commenced. Legal advice suggests that the recommended action is likely to be successful in the Local Court and may result in significant penalties.

Recommended: That

- (i) Council endorse the engagement of Council's legal advisers to commence legal action against Holmwood Builders Pty Ltd in the Local Court for alleged offences under the Environmental Planning and Assessment Act, 1979.
- (ii) A further report be brought before Council at a later date, advising of the outcome of the legal action

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*Resolved on the Motion of Cr Batros, seconded Cr Winn that*

- (i) Council endorse the engagement of Council's legal advisers to commence legal action against Holmwood Builders Pty Ltd in the Local Court for alleged offences under the Environmental Planning and Assessment Act, 1979.*
- (ii) A further report be brought before Council at a later date, advising of the outcome of the legal action*

DC047/04 THE MOTION WAS **CARRIED.**

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***(Cr Corrigan returned to the Chamber - the time being 6.58pm).***

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**4. Demolition of Existing Garage, Construction of a Detached Dwelling with attached Double Garages, Removal of One Tree and a Strata Subdivision at No 34 (Lot 15 DP 4542) Broughton Street, Camden**

**File No:** DA1125.430 (Director, Development & Environment Division)  
**DAS No:** 1023/2003  
**Owner:** Roucob P/L  
**Applicant:** Mr G Glancey  
**Zoning:** Town Centre Support '3(f)' pursuant to LEP 45

**Purpose of Report**

The application is referred to Council for determination given that the proposal does not comply with the requirements of DCP 58 [Amendment No 1] for car parking and objections from adjoining property owners have also been lodged against the proposal.

**Summary of Recommendation**

It is recommended that Development Application No 1023/2003 be approved subject to appropriate conditions of consent.

**Background**

Council, at the meeting of 24 February, 2003, refused a Development Application for the construction of a detached single storey dwelling on the subject land. In addition to the 9 reasons of refusal, Council resolved that 'the applicant be approached and encouraged to submit revised plans which better address the Park Street streetscape and provide details of the means of upgrading the existing dwelling to ensure its long term retention'. This application seeks to comply with Council's previous determination.

**The Site**

The subject site consists of a single allotment, containing an early 20th century dwelling, and a detached garage. The existing dwelling has its primary setback to Broughton Street and its secondary setback to Park Street.

The allotment has an area of 733.8 m<sup>2</sup> with a frontage of 16.15 metres and depth of approximately 58.6/53.9 metres. The site rises from RL 98.2 at the front north western corner of the lot to approximately RL 99.5 at the south eastern corner, resulting in a change in level over the site of approximately 1.3 metres.

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The site contains one (1) tree plus a number of shrubs. The tree is to be removed to allow the proposed development to proceed. Council's Tree Preservation Officer has inspected the site and has no objection to the removal of the tree.

A locality plan showing the subject site forms **Tabled Document "DC 2"**.

**The Proposal**

Consent is for the construction of an additional detached single storey residential building with an attached double garage at its western end and the demolition of an existing single garage. The development is to be sited on a single lot and strata subdivided into two lots. The proposed dwelling faces Park Street while the existing dwelling faces Broughton Street. The existing dwelling on the subject lot is to remain. A plan of the proposed development forms **Tabled Document "DC 3"**.

The proposed dwelling is positioned 900mm off the northern (rear) boundary and 3.047 m from the Park Street boundary at its closest point. The proposed dwelling contains 2 bedrooms, a kitchen, a living room, a dining room, a laundry, a bathroom, a WC and two attached garages. A private open space area is provided on the eastern side of the proposed dwelling extending southward to the front fence line. The existing dwelling is provided with a private open space immediately to its east. The proposal seeks a strata subdivision into 2 lots with the division falling along the dividing wall between the two garages.

The existing dwelling, which has already been internally upgraded, is to be further upgraded to enhance its heritage significance by painting the exterior with suitable heritage colours. No other changes are proposed at this stage. The applicant argues that the retention of the existing older residence on the subject lot, and therefore maintenance of the Broughton Street streetscape, justifies the variation to the policy requirements. Areas of non-compliance are detailed below.

**Notification**

The application was notified to adjoining residents. At the close of this period two (2) submissions were received. **(Copies have provided separately as handouts to Councillors)**. The concerns raised by the residents in their objections are discussed elsewhere in this report.

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**Planning Controls**

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

- Camden 2025
- Camden Local Environmental Plan No 45 (CLEP 45)
- Draft Camden Scenic & Cultural Landscape Study
- Development Control Plan No 58
- Sydney Regional Environmental Plan No 20 Hawkesbury-Nepean River (SREP 20).

**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 environmental planning instrument, development control plan [DCP] or matter prescribed in the regulations**

Camden 2025

Council has identified five [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 is consistent with the planning document, which encourages 'growth in a planned and orderly way' with appropriate 'service infrastructure provisions'.

Camden LEP No 45

The subject site is zoned 3(f) Town centre support wherein the proposed development is permissible as multi-unit housing with the consent of Council.

The relevant zone objectives are reproduced as follows:

- to encourage development that assists the conservation of historic buildings and streetscape.

Comments: The proposed development is consistent with this objective. The retention of the existing dwelling, will, when upgraded externally, assist in improving the character of Broughton Street. The traditional design of the new dwelling will assist in the conservation of the streetscape and will not present an adverse impact upon the streetscape.

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Clause 13 of LEP 45 sets out development principles for Zone 3(e) and 3(f). Of relevance to this application are:

- (b) the development will not detract from significant existing views and vistas;
- (c) the development is of a type, scale, design and character that complements the established character of the centre, having regard to the particular character of the particular part of the town centre in which the development is proposed to be carried out;
- (e) the development makes appropriate provision for the supply of parking space demanded by the development, whether on the same land as the development or other land, or both, relative to the characteristics of the development, possible future changes of use of the development, and the capacity of the street system serving the land on which the development is to be carried out.

These issues are addressed elsewhere in the report.

Development Control Plan No 58 [Amendment No 1]

Development Control Plan No 58 [Amendment No 2] did not come into force until the 1 December 2003. Given that the subject application was lodged prior to this date, the provisions of Amendment No 1 are applicable in this instance. DCP 58.1 relates to all residential development under LEP 45. Whilst there are no specific references to the 3(f) zone in this policy, the general principles apply pursuant to Clause 1.4 of the DCP. The application has been assessed as a multi-unit housing development (dual occupancy). The requirements applicable to this particular development are discussed below.

• Private Open Space

DCP 58.1 requires the provision of 160m<sup>2</sup> (80m<sup>2</sup> per residential dwelling) of private open space. The proposed development is compliant as it provides for a total of 82.6 m<sup>2</sup> for the existing dwelling and 82.64 m<sup>2</sup> for the new dwelling.

The existing fences are to remain along the northern and eastern boundaries. The front yard of the proposed dwelling is enclosed with a combination of timber picket and slightly taller paling fencing along the street boundary. The latter portion encloses the private open space area.

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- Car Parking

DCP 58.1 requires the provision of 1 car parking space per dwelling of less than 125 m<sup>2</sup> and 2 car parking spaces per dwelling of 125 m<sup>2</sup> or greater, plus 1 visitor car parking space per dwelling.

The existing dwelling has a floor area of approximately 188m<sup>2</sup>, which is in excess of 125 m<sup>2</sup> and requires 2 car parking spaces. The proposed dwelling has a floor area less than 125 m<sup>2</sup> and requires 1 car parking space. Visitor parking requires 1 car parking space per dwelling, thus 2 spaces are required. The total car parking requirement is therefore 5 spaces. The proposed development does not comply with DCP 58.1 in this regard, as it provides 4 car parking spaces (two in the garage and two in the driveway area).

The applicant is seeking a variation to the car parking requirement arguing that the deficiency of one space is justified by the reduced demand for car parking for this site due to its close proximity to the CBD. It is also asserted that visitor parking is available in the street for the majority of the time, only becoming scarce during weekends when the use of Macarthur Park is high. The configuration of the buildings on the site and the requirements for open space do not permit the fifth car space to be provided on site.

Comments: The dual garages will be setback at least 5.5m from Park Street which complies with DCP 58 and allows for stacked parking in front of each garage. The courtyard fence on the western side of the entrance to the garages has been splayed to provide an adequate sight envelope, which will ensure pedestrian and motorist safety for the users.

The proposed driveway width of 5.5 m will allow the single entry or exit of vehicular traffic at a time. The narrow width of the driveway will ensure that the domestic scale of the driveway crossing is retained and it will reduce the amount of hard surface area. A condition should be imposed to ensure that the driveway will be plain concrete coloured with a grey oxide in lieu of the originally proposed stencilled concrete. The existing gutter crossing will be replaced by a suitably designed driveway crossing. The gradient of the driveway that forms the stacked parking area has been reduced to an acceptable standard.

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- Privacy

DCP 58.1 provides that development should:

- (a) Avoid overlooking of main internal living areas or courtyards or the northern aspect of adjacent development.
- (b) Provide screening where overlooking is unavoidable.

The development has been designed to minimise the overlooking of the adjacent premises and therefore does not create any significant impact. The front setback is adequate to provide privacy for the front of the proposed dwelling.

- Building Character and Scale

DCP 58.1 has a number of objectives relating to design criteria. The objectives seek to:

- Provide setbacks, which will maintain existing streetscapes, provide space for enhancing or creating landscape features and for visual and acoustic privacy. Setback will vary according to circumstances.
- Enhance the existing or planned town character and streetscape.
- Provide buildings whose form, scale, siting, materials and colours shall be appropriate to the character of the area.
- Provide designs that should enhance any heritage buildings or landscape features, particularly when viewed from the street.
- Building heights are regulated to maintain the low-rise residential character of the Camden area and to minimise the impact on existing residential development.

The proposed dwelling will be appropriate for the character of the area in terms of its design, form scale and its heritage colours. The latter will be required as a condition of consent.

- Building Setback

Park Street is considered to be the site's secondary street frontage. DCP 58.1 requires a setback of 3 metres to a secondary street frontage. The proposed dwelling is setback over 3 metres from Park Street and is thus compliant.

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The impact of the proposed dwelling on the streetscape is considered to be acceptable because it has a favourable relationship with each of the existing flanking dwellings. The 3 metre front setback of the proposed dwelling is consistent with the secondary setback of the existing dwelling on the subject lot and, while 1.5 metres smaller than the primary setback of the existing dwelling to the east, the difference is mitigated by the 8 metre separation between these two buildings.

The visual impact of the proposed dwelling will be improved by the presence of front yard landscaping and the erection of a 1000 mm high timber picket front fence which elevates to 1200 mm around the private open space abutting the street boundary toward the east. This fencing will replace the blank face of the timber paling fence that presently addresses the street and therefore improve the visual quality of the streetscape in this respect.

- Building Height

The proposed dwelling has a maximum ridge height of 5.8 metres above ground level, which complies with the height limitations stipulated in the DCP 58.

- Overshadowing

The siting of the proposed dwelling toward the northern boundary and well clear of the eastern boundary ensures that overshadowing of adjacent properties is not problematic. The degree of overshadowing is within the acceptable guidelines as stipulated in the DCP 58.

- Drainage

The applicant has provided a concept drainage plan including an OSD system for the site, which has been assessed as acceptable.

- Garbage

The garbage bins that are to be stored out of sight from the street and are to be placed for collection on the footpath to the east of the driveway. No bin pads are required to be constructed.

Draft Camden Scenic & Cultural Landscape Study

In order to maintain the present consistency of housing form and massing, the study suggests that 'controls are

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desirable to limit buildings heights to one storey and to maintain present setbacks'. Park Street has been identified as a street 'consisting of mostly early 20<sup>th</sup> century single storey dwellings, some in weatherboard, some in brick, with 3 – 5 metre setbacks on the north side'. The proposal complies with the minimal secondary setback. The traditional design and scale of the proposed dwelling is considered to complement the other older housing styles in the street.

Regional Environmental Plan No 20

SREP 20 provides that Council shall not grant consent to any application to carry out development which drains to the Hawkesbury-Nepean River system, unless it has taken into account the effect that development will have on the river system. The development will be connected to Sydney Water's sewerage system and the Council stormwater system by way of detention basins and as such will have no significant impact on the Hawkesbury-Nepean River.

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

*The design of the proposed dwelling has architectural merit and is suitable for the locale because it is compatible with the other older buildings in the street. The application proposes the removal of a tree from the site, which is shown on the plan. No objection is raised to the removal of the tree by the objectors. Council's Tree Management officer has agreed with the removal of the tree.*

**(c) Suitability of the site**

*The site is fully serviced [ie water, electricity, sewer and telephone] and is located in close proximity to Camden town centre. The proposed development is located on Park Street which is a local road and is considered to be capable of catering for the modest increased traffic movements generated by the proposal. The vehicular entrance and egress path has good sight envelopes available.*

**(d) Any submission made in accordance with the Act**

*As stated elsewhere in this report Council received two submissions as a consequence of the notification process. The concerns raised in the submissions are summarised as follows:*

1. *The proposal fails to meet the DCP 58 requirement for a minimum lot size for this corner lot of 800m<sup>2</sup> for a dual occupancy development.*

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Comments: The above requirement is contained within DCP 58 [Amendment No 2], which was not in operation when the application was lodged and therefore cannot be considered in this assessment. The subject lot has an area of 733.8m<sup>2</sup>, which is compliant with DCP 58.1 in terms of the minimum site area.

2. *The proposal does not have the 4.5m front setback or maintain the existing setback of the adjacent development.*

Comments: The requirement for a 4.5 metre front setback is contained within DCP 58.2. The proposal has a 3.0 metre setback from Park Street, which has been assessed as being satisfactory as a secondary setback for the second dwelling on the lot.

3. *The proposal does not have a 6.0m rear setback.*

Comments: Again the above requirement is contained within DCP 58.2 and hence can not be considered. The 900mm rear setback is compliant with BCA.

4. *Lots below 400m<sup>2</sup> with a wide frontage must have a minimum 27 metre depth.*

Comments: The above requirement is contained within DCP 58.2.

5. *The lot size was indicated in the Council report of 24 February 2003 as being 682.9m<sup>2</sup> and in the current documentation as 733.8m<sup>2</sup>.*

Comments: The correct lot size is 733.8m<sup>2</sup>. The area of 682.9m<sup>2</sup> was derived from Council's property database, which is an error.

6. *The respective areas of created by the proposed subdivision been shown as 396.87m<sup>2</sup> and 336.99m<sup>2</sup>*

Comments: it should be noted that the applicant does not seek approval for a fee simple subdivision in order to create two allotments. The respective areas are relevant to the proposed strata subdivision only.

7. *The proposal does not meet the number of car parking spaces required by the DCP. Street parking is scarce on weekends, especially when the park is used for weddings and by picnickers. Visitors to the new townhouses in Park Street often park in the street and add to the scarcity of street parking. The*

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*use of the proposed building for home business will add to the loss of street car parking.*

Comments: While the proposal does not meet the car parking requirements, this deficiency has been investigated and is not considered to be detrimental to the development due to its close proximity to the CBD and the ample provision of street parking at most times. Council is not aware of any proposal to use the new building as a home business. Any such proposal would need to be assessed on its merits and parking would be a consideration as part of the assessment should a Development Application be proposed.

8. *The small front setback will not allow the planting of screening vegetation in front of the proposed house.*

Comments: The front yard of the proposed dwelling will be provided with a range of landscape planting however, they will not be total screening of the building from the street.

**Conclusion**

The proposed development complies with the DCP 58.1 in all aspects except car parking. The deficit of one car parking space is justified due to the proximity to the CBD and the general availability of street parking at most times.

The proposed dwelling has merit in terms of its architectural style, its minimal overshadowing, and its minimal overlooking and compliant ridge height and front setback. The resulting development will not detract from the streetscape and the amenity of the occupants in its current form.

The objectives of the Local Environmental Plan encourage development of this type and there would appear to be a need within the community for a moderate sized small scale residential development in close proximity to the township.

Recommended: That Development Application No 1023/2003 at No 34 (Lot 15 in DP 4542) Broughton Street, Camden, for the construction of a detached dwelling and subdivision, be approved subject to the conditions of consent which form “**Tabled Document “DC 4”**”.

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*Resolved on the Motion of Cr Fekete, seconded Cr McFadden that Development Application No 1023/2003 at No 34 (Lot 15 in DP 4542) Broughton Street, Camden, for the construction of a detached dwelling and subdivision, be approved subject to the conditions of consent which form **“Tabled Document “DC 4“**.*

DC048/04 THE MOTION WAS **CARRIED**.

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*(Cr Campbell and Cr Winn voted against the Motion).*

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**5. Use of Belgenny Farm as a Place of Public Entertainment at No 100 (Lot 11 DP 658458) Elizabeth Macarthur Avenue, Camden South**

**File No:**        **DA2725.475-2**        (Director, Development & Environment Division)

**DA No:**         **111/2001**

**Owner:**        **Minister for Agriculture**

**Zoning:**        **Rural A 1(a) pursuant to Camden LEP46**

**Purpose of Report**

The application seeks approval to formalise the use of Belgenny Farm as a Place of Public Entertainment. Several objections to the proposal have been lodged with Council. These matters will be addressed in the report.

**Summary of Recommendation**

It is recommended that Development Application No 111/2001 be approved subject to conditions of consent relating to the use and management of the historic site. The application has been with Council for a considerable period of time due to the applicant not addressing necessary requirements, in particular acoustic issues.

**The Proposal**

Council has received an application to formalise the use of Belgenny Farm as a Place of Public Entertainment. For a number of years the Belgenny Farm Trust has managed the premises and successfully staged various historical, educational and commercial activities. These activities include:

- Public open days involving guided tours of the site. Held fortnightly and usually attracts up to 1000 people per day;
- Open Weekends involving themed events such as The Rum Rebellion. These activities will be held approximately 4-6 times per year attracting up to 2000 people per day. Activities including re-enactments, craft and trade displays, horse-drawn wagon rides and the like;
- Cultural events such as recitals and plays. Held monthly and attract approximately 50 to 100 people;
- Hiring out of the site for various events such as weddings, family celebration, conferences, and the like; and
- Group bookings for guided tours and sheep shearing demonstrations.

In addition to the above, the Department of NSW School Education and TAFE maintain an office and staff on nearby Camden Park Estate. Approximately eight thousand students visit the site per annum. Belgenny Farm is the focal point for

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most of the visits. To facilitate the learning activities of these students, Belgenny Farm staff run a number of educational programs.

**The Site**

The 169ha property is bounded to the east and south by land situated in Wollondilly Shire Council (a locality plan forms **Tabled Document “DC 5”**). To the north the property is bounded by the Nepean River and to the west by residential land. A portion of the land known as Camden Park Estate and owned by descendants of John & Elizabeth Macarthur can be found within the property. This application seeks approval to use only a small portion of the total site concentrated around the original homestead.

Belgenny Farm is considered to be the home of the foundation of the Australian wool industry and the focus of the pioneering agricultural pursuits of John and Elizabeth Macarthur. The property has an outstanding group of rural buildings, which serve to illustrate the evolution of farming techniques from the early days of the colony. The buildings are remarkably intact and remain virtually unaltered. The site is listed as a heritage item pursuant to Camden LEP 46 and is considered to have State significance.

**Notification**

A total of 66 residents were notified of the proposed development. Eight (8) submissions were received by Council. The concerns raised in the submissions relate to:

- increase in traffic volumes along Elizabeth Macarthur Road and associated problems including speeding and parking of vehicles on the footpath;
- noise and fume emissions from stationary cars at the Elizabeth Macarthur / Old Hume Hwy intersection;
- the potential for intensification of use;
- the proposed hours of operation;
- reduction in property values;
- noise generated by entertainment; and
- the poorly lit nature of Elizabeth Macarthur Avenue.

**A copy of the submissions were handed out to Councillors separately with the Business Paper.**

**Planning Controls**

The relevant planning instruments and development control plans are:

- Camden 2025

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- Camden Local Environmental Plan No 46 (LEP46)
- Local Government Act 1993
- Draft Camden Cultural & Scenic Landscape Study
- Building Code of Australia

**Assessment**

**(a) The provisions of any environmental planning instrument/ development control plan**

Camden 2025

The vision statement for the year 2025 makes reference to the retention of ‘Camden’s unique rural landscapes and vistas’. Belgenny Farm is a valuable future resource that will record the landscape of agricultural production in the bygone years. The importance of preserving the fabric and images of the historical site cannot be understated.

Camden Local Environmental Plan No 46

The site is zoned Rural 1(a) “Rural A” pursuant to Camden Local Environmental Plan No 46 (CLEP46). The planning instrument permits the establishment of ‘places of assembly’. The LEP also permits ‘tourist facilities’. Such uses are permitted provided the objectives of the LEP and zone are not compromised. The LEP seeks to:

- (b) *To promote the conservation of economic units of productive agricultural land*

The property has an area of approximately 169 hectares. Much of the site is used for agricultural purposes in association with the Elizabeth Macarthur Agricultural Institute. The area to be promoted and used as a tourist attraction and function centre is very small in terms of the overall site.

- (c) *To permit the development of appropriate agricultural land uses and prevent development of inappropriate non- agricultural uses.*

As suggested above, the facilities to be made available to the public is confined to a small area. The proposed development will promote the use and enjoyment of the heritage listed property without affecting the overall productivity of the land. Many of the activities offered by the Belgenny Farm Trust have a strong educational

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component. The benefit to the public in terms of the above out weighs the impact of the development on the agricultural viability of the site.

Clause 19 of the LEP requires Council to ‘consider the likely effect the proposed development will have on the heritage significance of a heritage item, heritage conservation area, archaeological site or potential archaeological site, when determining an application for consent to carry out development’. In this regard a Conservation Management Plan has been prepared for the site. The NSW Heritage Office has endorsed the Plan. The proposed use of the premises for various tourist activities and educational purposes is consistent with the Conservation Management Plan. The Plan requires the formation of a ‘Functions Policy’.

The applicant has provided Council with the “Terms and Conditions of Hire” for Belgenny Farm, the details of which satisfy the requirements for a function policy. It should be noted that these functions provide the prime source of additional income to the Belgenny Farm Trust, which is used to maintain and restore the premises as required. These funds ensure that the heritage significance of the place will not be eroded. Consequently the development is not expected to have any adverse impact upon the heritage significance of the property.

Local Government Act 1993

Schedule 2 of the Act contains prescribed conditions relating to the use and management of Places of Public Entertainment. It is proposed to include these conditions in any development consent issued by Council.

Building Code of Australia

The site has a number of small buildings in terms of floor area. The risk to life in these buildings is low given that evacuation times are very short in duration. It is proposed to use ‘The Granary’ as an assembly building for various functions. This particular building has been upgraded recently in terms of fire safety. The Granary is afforded with emergency lighting and illuminated exit signs to assist with evacuation of the building. Fire hose reels and portable fire extinguishes will also assist with

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the suppression of fire. The number of persons attending such functions would be limited to 170.

Draft Camden Scenic & Cultural Landscape Study

The importance of Belgenny Farm in terms of its scenic and cultural attributes is highlighted in the above-mentioned study. The site is considered to be a valuable historic record of grazing practices of the past. The study suggests that Council should aim to 'retain the rural visual character' of the site when assessing any application for proposed development. It should be noted that the subject application relates to the use of the property and does not propose any changes to the site in terms of the built and natural environment. Consequently the application is considered to be consistent with the aims of the study.

**(b) The impact of the development on the natural and built environment**

Noise Generation

The site is removed from adjoining residential development [approx. 300m]. This distance has the effect of attenuating, to a large degree, the sound from functions held at the premises. It should be noted that the 'Terms and Conditions' for hire of the Granary contain time restrictions relating to the service of alcohol and ceasing of all activities [currently midnight]. These provisions are designed to discourage anti – social behaviour.

At the request of Council an Acoustic Report has been commissioned by the applicant. The report provides an assessment of the expected external noise levels associated with the night –time use of the Granary as a function centre. Council staff are satisfied that potential noise from the use of the function centre can satisfy the noise control guidelines provided the control measures outlined in the acoustic report are implemented by the applicant. The control measures include:

- The doors on the western side of the Granary should be kept closed whilst music is being played. Patrons should be encouraged to use the eastern door during these times.
- The function centre should be provided with a sound level meter to ensure the maximum internal levels of 100 dB[A] and 100dB [Lin] are not exceeded. Alternatively the function centre should obtain and

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install a sound activated power cut off device should the maximum internal levels be exceeded.

It should also be noted that this use has been carried out for a number of years without causing any significant impact on adjoining residents. The development application in essence is legalising this land use.

Traffic Generation

Belgenny Farm boasts a large informal car park on the north of the historic building complex. The car park has a holding capacity of two thousand vehicles. If required adjoining paddocks can be opened on the day to cater for any additional demand. The need for a formalised car park with a hard stand finish and line marking is considered unnecessary given the periodic use of the site. The current arrangement is more in keeping with the heritage significance of the site.

At the request of Council a traffic study was carried out during the Rum Rebellion Festival. Traffic volumes along Elizabeth Macarthur Avenue increased in the order of 1500 to 2000 vehicle movements per day. The results of the traffic study were subsequently referred to the Local Development Traffic Committee. The Committee has endorsed the recommendations made in the Traffic Report, which suggest that traffic volumes generated during events such as the Rum Rebellion do not warrant upgrade of the Old Hume Highway/Elizabeth Macarthur Avenue intersection.

Air/Water Generation

The proposed development is not expected to result in any adverse impact upon the environment in terms to air and water pollution. The method of sewage management is that the site pumps to the sewer in Elizabeth Macarthur Avenue.

Built Environment

The applicant does not seek to make any structural alterations to the various buildings found on the site. The Conservation Management Plan addresses the issue of appropriate use of the site to ensure the fabric and form of the buildings is not destroyed. The activities carried out on site will generate income to pay for maintenance and restoration works.

**(c) The suitability of the site**

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The heritage value of the premises is based on its role in the commencement of agricultural activities in New South Wales. In order for the site to be preserved some re-use of the site is necessary. The proposed use of the site combines a mixture of activities. The proposed activities will have little or no detrimental impact on the heritage value of the site. Therefore, it is considered that the site is suitable for the proposed development.

**(d) Any submissions**

As a consequence of the neighbour notification process, Council received eight [8] submissions. The following comments are provided with respect to the concerns raised:

- (i) *‘These proposed open days, together with the South Camden development [Bridgewater Gardens] will ensure that egress [from Elizabeth Macarthur] will be unobtainable unless traffic lights are installed.....Alternatively there is an entrance to Belgenny Farm off Remembrance Drive just south of the Cawdor Road turn off that is well away from residences’.*

Comments: The applicant would prefer not to use the alternative access arrangements referred to above given that the road is not sealed and/or fenced on either side to protect stock. The traffic report commissioned by the applicant states that traffic volumes generated during events such as the Rum Rebellion do not warrant upgrade of the Old Hume Highway/Elizabeth Macarthur Avenue intersection. This view has been supported by Council’s Traffic Committee.

- (ii) *‘Others and I are somewhat dubious/fearful.....when the comparative overall narrowness, undulating and winding section of our street are borne in mind.....Elizabeth Macarthur Avenue is also a very poorly lit street’.*

Comments: Elizabeth Macarthur Avenue has an undulating and curved alignment. However, the condition of the road is not considered to be treacherous for motorist to negotiate.

- (iii) *‘We need to close the doors and windows due to excess noise and fumes. Cars sit in a long line of traffic and keep moving slowly forward to turn right into Remembrance Drive’.*

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Comments: The traffic report lodged with the application documents traffic volumes and delays during the recently staged Rum Rebellion. The Rum Rebellion is the biggest event of the year held over 2 days. The majority of traffic movements occur between 9.00am and 4.00pm. Traffic volumes on the days were 415 on Saturday (1079 persons attended) and 890 on Sunday (2314 persons). The findings of the report state that during peak hours the average vehicle delay at the intersection is only marginally longer than normal. In this regard the report states that during normal times the average vehicle delay is 8.8 seconds, whilst with Belgenny Farm traffic, the delay is 9.3 seconds. It should be noted that these figures were based on the largest event held at the site. The delays are considered to be acceptable.

The Acoustic report commissioned by the applicant addresses the issue of sleep disturbance caused by vehicles moving along Elizabeth Macarthur Avenue. The report suggests that a person sleeping approximately 15m from noise source with the window open has a 5 to 10% chance of being awoken by the noise. Based upon these findings, vehicles leaving Belgenny Farm late at night would comply with the LAeq [1 hour] noise limits.

- (iv) *'Most of Elizabeth Macarthur Ave does not have a footpath....Cars also park on the road, most drivers exceed the speed limit'.*

Comments: The traffic report commissioned by the applicant states that during the recently staged Rum Rebellion 'no visitor vehicles were recorded as parking on street in Elizabeth Macarthur Avenue'. Given the availability of on site parking and the relatively minor delays associated with vehicles leaving the site, the parking of vehicles along Elizabeth Macarthur Avenue is not expected to be a major problem. The speed limit along Elizabeth Macarthur is 50 km/hr. The issue of speeding is a matter for NSW Police Service to monitor and enforce. It is appropriate to include as a condition of consent that the operators be required to ensure the Police are given a minimum of 4 weeks notice of all events with an expected attendance of 500 or more.

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- (v) *'It is an established fact that homes drop in value when there is excess noise and pollution'.*

Comments: The applicant seeks approval to formalise a use that has been carried out upon the subject site for a considerable period in order that statutory requirements are met, particularly those which relate to Places of Public Entertainment. Accordingly the approval of this particular application is not expected to result in a reduction in property values. In addition no documentation has been submitted that supports this comment. A condition of consent is proposed to ensure that intensification of use does not occur without first submitting further applications to Council for consideration.

- (vi) *'We raise our objection to the extension of music and bar licenses to 12.00 midnight unless more stringent control of noise levels from the site are instituted'.*

Comments: Belgenny Farm Trust currently hold a Governor's Licence under the Liquor Act, which permits the sale of alcohol between the hours of 5.00 am and 12.00 midnight. In this regard the applicant is not seeking an extension of the bar licence. With respect to music it is intended to require [by way of consent condition] all music to cease at 11.30pm in order to facilitate the winding up of evening functions. It should be noted that the duration of noise generation by the playing of music tends to be less than 3<sup>1/2</sup> hours.

This is particularly the case for weddings given that meal service and speeches tend to conclude no earlier than 8pm. The on-site Caretaker and/or Functions Coordinator can manage noise levels. As suggested elsewhere in this report considerable separation [approx. 300m] exists between the function centre and the nearest affected resident and a number of buildings are also located on-site to attenuate noise. The Acoustic Report commissioned by the applicant suggested that provided certain safe guards are put into place the use of the function centre should not exceed the recommended noise limits.

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**(e) The public interest**

The proposed use of the premises will ensure the continued viability of the heritage site without detrimentally affecting its heritage value. The public stands to benefit from the development not only because of the preservation of the heritage item but also in terms of the use and enjoyment of the property. The activities provided on site will have a strong educational component. The development is therefore considered to be in the interest of the public.

**Conclusion**

The application seeks to formalise activities which have taken place on the site for many years to ensure compliance with all legislative requirements. The continued use of the premises will ensure the heritage site remains viable without detrimentally affecting its intrinsic values.

Recommended: That Development Application 111/2001 for the use of No 100 (Lot 11 DP 658458) Elizabeth Macarthur Avenue, Camden South as a place of public entertainment, be approved subject to the conditions of consent which form **Tabled Document "DC 6"**.

*Resolved of the Motion of Cr McFadden, seconded Cr Patterson that Development Application 111/2001 for the use of No 100 (Lot 11 DP 658458) Elizabeth Macarthur Avenue, Camden South as a place of public entertainment, be approved subject to the conditions of consent which form **Tabled Document "DC 6"**.*

DC049/04 THE MOTION WAS **CARRIED.**  
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**6. Modify the Consent Previously Issued for the Staging of a Fortnightly Produce Market, John Street, Camden [Northern End]**

**File No:** DA4375.01-2 (Acting Director, Development & Environment Division)  
**DA No:** 527/2002A  
**Owner:** Community Land  
**Applicant:** Macarthur Growers Pty Ltd  
**Zoning:** 3 [e] 'Town centre' pursuant to Camden LEP 45

**Purpose of Report**

This application seeks the deletion of a condition within the current consent (DA 527/2002) for a fortnightly produce market in John Street, Camden. The proposal has been referred to Council for determination as the current consent was issued by Council.

**Summary of Recommendation**

This report recommends that the application to modify a condition of consent be approved.

**The Site**

The market is held in John Street Camden immediately north of the Mitchell Street intersection and south of the intersection of Exeter Street. A location plan forms **Tabled Document "DC 7"**.

**The Proposal**

The current consent gives approval for the operation of a 60 stall street market in John Street, Camden. The market was given approval as part of a strategy to promote the local area and its produce, by permitting Macarthur growers to sell locally grown produce directly to the public. To ensure that these constraints were effectively implemented, the following condition was imposed upon the consent:

*"(13) PARTICIPATION AS A STALLHOLDER – People can only be a stall holder in the Produce market if they comply with all of the following requirements:*

- (a) being a 'Macarthur' resident only residing in the Camden, Wollondilly and Campbelltown Local Government areas;*
- (b) being a person who is not operating retail or wholesale business premises within other commercial centres anywhere in the Macarthur*

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*region if they are selling value added products which are available from businesses within Camden CBD;*

- (c) *being a person who is selling produce that is only grown and produced in the Macarthur region.*

The application before Council at this time seeks an amendment that will amend Condition 13.

The amendment does not seek to alter any other aspect of the current approval. All other conditions and market operations will remain unchanged including stall numbers, market location and times of operation. The current consent expires in August 2005. After this time a new application will need to be lodged for this activity.

**Notification**

The current application has been notified to the Camden Chamber of Commerce and the Main Street Committee in accordance with Council's Policy. Council has received one submission, which expressed support for the application. **A copy of this submission was handed out separately to Councillors with the Business Paper.**

**Planning Controls**

The following plans and policies were considered in assessing the proposal.

- Camden LEP 45
- Camden Town Centre Masterplan
- Development of Flood Affected Land within the Camden Town Centre.
- The Roads Act 1993.
- Camden Strategic Plan - 2025

**Assessment**

The following comments are provided with respect to the planning assessment undertaken by Council.

- [a] **The provision of any planning instrument, development control plan or matter prescribed in the regulations**

Camden LEP 45

The proposed amendment does not alter the activity in any way that changes the compliance with any Environmental Planning Instrument.

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Camden Town Centre Masterplan

The proposed amendment will improve the market's chances of realising the objective of the Camden Town Centre Masterplan, which seeks to encourage economic development by permitting the now financially stressed market operation to become economically viable and thereby more effectively contribute to the local economy. The proposed amendment is expected to improve the tourism opportunities in the township which the applicant claims have flagged under the current restrictive operating conditions.

Camden Strategic Plan – 2025

The Strategic plan adopted by Council identifies the need 'to support the agribusiness and primary production opportunities'. The proposed amendment may be considered to marginally reduce the sense of place created by the exclusive sale of local produce but this is expected to be more than adequately compensated by the positive improvement in economic prosperity through the ultimate survival of the market.

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

Economic impact of compliance with existing condition

The market operation is currently facing significant operational problems which are jeopardising its future and are expected to soon lead to its total demise. The primary problem is the significant loss in overall economic viability which is highlighted by the progressive reduction in stallholder numbers which have fallen from between 32 and 38 stall holders between November 2001 and March 2002 to 15 to 18 between March 2003 and September 2003.

The market is currently unable to generate sufficient income to cover the ongoing accompanying costs. The present low stallholder numbers are unsustainable and the growers predict that the market will not survive beyond early 2004. This will result in a loss of social and economic benefit to the community.

The directors of the market assert that the economic problem has been caused by the decline in customer numbers which they deem to be a result of a lack of diversity in produce/products offered for sale. Customers are being attracted to other, more diverse

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markets which do not have the trading restrictions imposed by Camden Council. Declining customer numbers are believed to be, in turn, responsible for falling stallholder numbers. The financial downturn experienced by the produce market has reduced its capacity to advertise which has further contributed to the general decline of the market viability.

While the Macarthur Growers seek the deletion of condition 13, they have been proactive in developing a new plan to regulate the recruitment of new stallholders, or the re-instatement of former stallholders. This will ensure that Macarthur produce/products still constitute the majority of the goods offered for sale and that the vast majority of the stallholders are from the Macarthur region. The plan includes a screening process which will require the potential stallholder to write to the Directors seeking a stall site and provide details of the produce/products to be sold including their origin and photographs of the goods.

The stallholder application would be monitored by the Directors to ensure that the majority of the produce/products sold are derived from the Macarthur region and also that the majority of the stallholders are residents of the Macarthur region. Priority will be given to Macarthur residents and Macarthur produce/products in all cases. This measure will ensure that the market maintains the local content in terms of its vendors and the goods for sale and does not become an externally dominated or focussed operation.

While the application has not made reference to any direct approach to or response from the shopkeepers in the Camden CBD regarding the proposal, the Camden Chamber of Commerce which has been informed through the notification process, supports the removal of the restrictive condition. The Mainstreet Committee has not tendered a submission.

Traffic

The amendment will not alter the current arrangements for road closures and traffic control in John Street and Exeter Street. The streets will be closed on the second and fourth Saturday of the month as currently practised and the hours will remain unchanged at 6.00am to 1.00pm and will be opened to through traffic after 1.00pm in summer months. The road will be closed between 7.00am to 2.00pm and opened to through traffic after 2.00pm in winter months. The summer and winter month regimes will still be indexed to daylight

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saving. All road closures will still be operated and supervised in accordance with current practices.

Carparking

The amendment may increase the demand for carparking by a moderate amount which is expected to be accommodated by the unused capacity in the surrounding streets, particularly Exeter Street.

Noise Generation

The amendment is not expected to generate any significant increase in noise over that currently produced. The market management will continue to control noise levels and its impact on local residents. All activities will still occur within daylight hours.

Waste Generation

Individual stallholders will still remove all waste from the site. Disposal of waste generated by the public will still be via garbage bins provided on site. The entire site will still be scanned and cleaned of litter at the close of trade by the market management.

Advertising

The amendment will not result in any increased advertising. Each market event will still be advertised in the local papers for promotion and to advise the community of the changed traffic conditions associated with the road closure of parts of John and Exeter Street in accordance with the Roads Act 1993.

Promotional advertising and directional signage will still be limited to four (4) signs posted at strategic positions. Two (2) signs will be posted on the roundabout at Argyle Street. The signs will still be erected at 6.00am in summer months and 7.00am in winter months and removed at 1.00pm in summer months and 2.00pm in winter months on the day of the market.

Streetscape

The amendment will not alter the temporary nature of the market and will not permanently impact upon the streetscape.

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Public Amenities

The amendment may result in a minor increase in the use of public amenities which are available in close proximity to the site, at the rear of the library and within Onslow Park. The increased use is expected to be adequately catered for by these facilities.

**(d) Any submissions made in accordance with this Act of the regulation**

The notification process generated a single submission from the Camden Chamber of Commerce which supported the deletion of Condition 13. The Chamber do not oppose the growers' desire to sell a more diverse range of products than is available from the Macarthur region. The Chamber feels that removal of this condition will stimulate the interest in and therefore the growth of the markets, at the same time bringing people to the retail areas of Camden which will benefit local businesses.

**[e] Public interest**

Community support for a more diverse range of goods being offered for sale has been established by the inclusion in the application of a 135 signature petition which supports the expansion of the diversity of goods for sale. **A copy of this petition was provided separately to Councillors with the Business Paper.**

The objective of Condition 13 is to ensure the market operates as a produce market only and does not develop to a general market, craft market or the like. It was also ensuring the market did not adversely impact on local businesses.

The widening of the area of production to include produce derived from within the Sydney Basin and sold by the producer would ensure the market remains a genuine produce market.

**Conclusion**

The market is being adversely affected by the restrictive nature of condition 13 which is expected to lead to its demise early this year. The market's doubtful future may be vastly improved by the removal of the restrictive condition which is expected to re-invigorate the markets and boost tourism in Camden (the market will sell produce derived from the Sydney Basin). This initiative is supported by the Camden Chamber of Commerce.

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The removal of the condition that ensured absolute local content in stallholder tenancy and goods for sale, will be balanced by the new recruitment strategy that will ensure the dominance of local stallholders and local goods.

A successful market is consistent with Council's vision for Camden as a "working country town" as articulated in Camden 2025. It also fosters the promotion of local agricultural pursuits as identified in the recently adopted Camden Local Economic Development Plan. The Camden Chamber of Commerce supports the amendment of the condition.

The amendment will ensure the market continues to add vitality to the town centre. Accordingly, the proposal is recommended for approval.

Recommended: That Development Application No 527/2002 be modified in the following terms:

(i) Condition No 13 be reworded as follows:

"13 PARTICIPATION AS A STALLHOLDER

People can only be a stallholder in the Produce Market if they comply with all of the following requirements:

- (a) sell the below-listed produce/value added farmgate products derived from the Sydney Basin that cannot be seasonally sourced from Macarthur at that time, provided the seller produces these goods.

The definition of the "produce" as applied to the goods to be sold at the Produce Market is:

Produce derived from the land through agriculture, horticulture, animal husbandry, poultry and fish farming and specifically includes:

- All fruits and vegetables
- Flowers
- Nuts
- Poultry and game
- Eggs
- Meat and dairy products
- Fish and shellfish
- Honey, beeswax and propolis
- Plants, including flowers, bulbs, trees, shrubs and seeds
- Grains'

The definition of "value added farmgate produce" as applied to the goods to be sold at the produce Market is:

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Produce derived from the land through agriculture, horticulture, animal husbandry, poultry and fish farming that is value added and materially forms the basis or character of the final product and specifically includes:

- Jams, chutneys and sauces etc
- Dried fruits/vegetables
- Dried flowers (not in arrangements)
- Split firewood
- Organic fertiliser, worm castings and mulches
- Fruit and vegetable juices
- Salad and soup mixes
- Roasted and/or smoked nuts, meats etc
- Dairy products and processed dairy products
- Scented products such as soaps and creams
- Oils such as olive, lavender and other essential oils'

(ii) All other conditions of consent remain unchanged.

*Resolved on the Motion of Cr Corrigan, seconded Cr Patterson that Development Application No 527/2002 be modified in the following terms:*

(i) Condition No 13 be reworded as follows:

**“13 PARTICIPATION AS A STALLHOLDER**

*People can only be a stallholder in the Produce Market if they comply with all of the following requirements:*

*(a) sell the below-listed produce/value added farmgate products derived from the Sydney Basin that cannot be seasonally sourced from Macarthur at that time, provided the seller produces these goods.*

*The definition of the “produce” as applied to the goods to be sold at the Produce Market is:*

*‘Produce derived from the land through agriculture, horticulture, animal husbandry, poultry and fish farming and specifically includes:*

- *All fruits and vegetables*
- *Flowers*
- *Nuts*
- *Poultry and game*
- *Eggs*
- *Meat and dairy products*
- *Fish and shellfish*
- *Honey, beeswax and propolis*

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- *Plants, including flowers, bulbs, trees, shrubs and seeds*
- *Grains'*

*The definition of “value added farmgate produce” as applied to the goods to be sold at the produce Market is:*

*‘Produce derived from the land through agriculture, horticulture, animal husbandry, poultry and fish farming that is value added and materially forms the basis or character of the final product and specifically includes:*

- *Jams, chutneys and sauces etc*
- *Dried fruits/vegetables*
- *Dried flowers (not in arrangements)*
- *Split firewood*
- *Organic fertiliser, worm castings and mulches*
- *Fruit and vegetable juices*
- *Salad and soup mixes*
- *Roasted and/or smoked nuts, meats etc*
- *Dairy products and processed dairy products*
- *Scented products such as soaps and creams*
- *Oils such as olive, lavender and other essential oils'*

*(ii) All other conditions of consent remain unchanged.*

*DC050/04 THE MOTION WAS **CARRIED.***

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**7. Freestanding Garage, No 20 (Lot 125 DP 1008458) The Outlook, Kirkham**

**File No:** DA7713.200 (Director, Development & Environment Division)

**DA No:** 201/2003

**Owner:** Mr M MacIel and Ms J Watson

**Zoning:** 1(C) Rural Residential pursuant to Camden LEP 48

**Purpose of Report**

To enable Council to make a determination on an application for a freestanding colour bonded metal shed. The matter is referred to Council for determination given that the site is affected by flooding from the Nepean River.

**Summary of Recommendation**

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

**The Site**

The site is located on the southern side of The Outlook Kirkham and has direct frontage to the road. The land is 9.6ha in area and is adjoined by allotments with similar dimensions. The rear property boundary is bound by Narellan Creek. The property is occupied by a single storey dwelling and is surrounded with similar rural residential development. The land is affected by the 1% AEP flood event with a current flood level at RL 71.4m AHD. The 1% AEP flood line is approximately 1.0 metre to the rear of the existing dwelling.

A locality map forms **Tabled Document “DC 8”**.

**The Proposal**

The applicant proposes to construct a freestanding 3 car garage, 9m long and 7m wide. The shed will be located 11m from the rear of the dwelling and approximately 130m from the rear property boundary. At Council’s request, it should be noted that the applicant has relocated the proposed location of the shed in order for the shed to be above the 5% AEP flood event.

The garage is intended for the accommodation of the owner’s two classic cars, and a tractor/slasher. It is proposed to construct the building with a colourbond roof and walls in colours to complement the appearance of the existing dwelling.

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A copy of the submitted plans form **Tabled Document “DC 9”**. The proposed development does not require the removal of any trees.

**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 48
- Sydney Regional Environmental Plan 20 - Hawkesbury-Nepean River
- Development Control Plan No 83.1
- 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 2025

Camden 2025 seeks to manage urban growth to ensure that ‘growth occurs in a planned and orderly way’ and conserves the traditional qualities of the Camden area. The proposed development achieves the intent of the strategic plan for Camden by effectively utilising the site while maintaining the established aspect of the locality.

Camden Local Environmental Plan No 48

The land is zoned Residential 1(C) under Camden Local Environmental Plan 46 (LEP 48). The proposed development is permissible in the zone and meets the objectives of the LEP. The planning instrument also contains development standards relating to flood prone land. The proposed development is not inconsistent with these standards.

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.

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

Development Control Plan 83.1 “Kirkham”

The proposal maintains the character of the locality and generally complies with the development standards of Development Control Plan 83.1”Kirkham”.

Upper Nepean River Floodplain Management Study and Plan

The site is located within the Narellan Creek back water flooding zone. The site is affected by the 1% AEP flood event, located at RL 71.4m AHD, and is categorised in accordance with the Upper Nepean River Floodplain Management Study and Plan as low hazard – flood fringe and is adjacent to a flood storage zone. The velocity of the flood water in the vicinity is considered minimal and is determined as ‘still water’. The 1% AEP flood line traverses the land east to west to the rear of the existing dwelling. The dwelling and access to the dwelling is not affected by the 1% AEP flood event.

The garage is inundated to approximately 1.2m at the 1% AEP flood event. Site constraints make locating the garage any higher impractical.

The applicant has engaged a Structural Engineer to certify that the building has been designed to withstand the impact of floodwater, debris and buoyancy.

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

The proposed development is consistent with the zoning and amenity of the locality. Conditions shall be imposed on the consent to reduce site disturbance and minimise the potential for impact on the local environment.

**(c) Any submissions**

Council’s Notification Policy does not require notification of the application, and therefore no submissions have been received.

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**Summary**

The Upper Nepean River Floodplain Management Study and Plan requires development to be compatible with the flooding characteristics of the locality and not increase the flood hazard or risk to adjoining properties. The proposed garage has been designed to comply with the specific design requirements of the Study, in particular, any areas in a building below the flood level to be used for non-habitable purposes only. The proposed development has been certified to be structurally adequate in the event of flood and will not be detrimental to the flooding effects experienced in the locality.

Recommended: That Development Application 1425/2003 for a free standing garage at No 20 (Lot 125 DP1008458) The Outlook Kirkham, be approved subject to appropriate conditions of consent which form **Tabled Document “DC 10”**.

*Resolved on the Motion of Cr McFadden, seconded Cr Winn that Development Application 1425/2003 for a free standing garage at No 20 (Lot 125 DP1008458) The Outlook Kirkham, be approved subject to appropriate conditions of consent which form **Tabled Document “DC 10”**.*

DC051/04 THE MOTION WAS **CARRIED**.

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**8. Proposed Addition to an Existing Dwelling at No 6 (Lot 19 DP 29126) Onslow Avenue, Camden**

**File No:** DA5975.30-2 (Director, Development & Environment Division)

**DA No:** 1550/2003

**Applicant:** J & M Delaney

**Zoning:** Partly Zoned Residential 2[a] and Partly Zoned 6(a1) Open Space Existing Pursuant to Camden LEP 46

**Purpose of Report**

To enable Council to make a determination on an application for an addition to a dwelling. The matter is referred to Council for determination given that the site is affected by flooding from the Nepean River. The application is also subject to an unresolved neighbour objection.

**Summary of Recommendation**

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

**The Site**

The 5728m<sup>2</sup> site is located on the eastern side of Onslow Avenue and contains a two storey brick and weatherboard dwelling, see attached photographs which form **Tabled Document “DC 11”**. A vacant site is located along the northern boundary with a two-storey dwelling situated on the adjoining southern property. Recreational land and the Nepean River are located behind the site.

The land slopes down from the road and is surrounded by well-established shrubs and trees. A locality map forms part of **Tabled Document “DC 12”**.

The 1% and the 5% flood event affect the land. 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 application proposes an addition, comprising of a living room, a bedroom with an ensuite and walk in wardrobe and an extension to the timber deck. The addition increases the habitable area by 119m<sup>2</sup> and would be constructed from a blend of timber cladding and brickwork to maintain a design consistent with the existing dwelling. The ground floor would remain non-habitable (ie store, laundry, and workshop) with

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the area below the proposed new work providing an open aspect to allow for the ebb and flow of floodwater.

The submission indicates that the habitable floor level of the proposed addition will be equal with the floor level of the existing dwelling, which is situated at RL 72.55m AHD, 550mm above the level of the 1% AEP (RL 72.0m AHD).

The provisions for evacuation and the flood compatible construction of the addition are discussed further in this report.

A copy of the submitted plans forms **Tabled Document “DC 13”**.

**Notification**

Notification was carried out in accordance with the guidelines of Council’s Development Control Plan 116 ‘Notification, Advertisements and Mediation’ notification. As a result one objection was received. The issues raised in the submission are addressed elsewhere in this report.

**Planning Controls**

The following planning instruments and development control plans have been considered in association with Council’s assessment of the subject application:

- Camden 2025
- Sydney Regional Environmental Plan 20 – Hawkesbury–Nepean River
- Camden Local Environmental Plan No. 46 (LEP 46)
- Development Control Plan 58
- NSW Floodplain Management Manual
- Upper Nepean River Floodplain Management Study and Plan
- Flood Risk Management Policy

**Assessment**

**(a) The provisions of any environmental planning instrument/ development control plan**

Camden 2025

Camden 2025 seeks to manage urban growth by ensuring that ‘growth occurs in a planned and orderly way’ and recognises that the impact of flooding will ‘provide constraints and opportunities in structuring urban development’.

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Flood affected land limits opportunity for residential development because of the risk to property and life, of both the occupants and rescue personnel. Council's policies therefore do not promote the development of flood affected lands where that development represents a risk to life and property.

Sydney Regional Environmental Plan No 20

The provisions of Sydney Regional Environmental Plan No 20 (SREP 20) apply to the property as it falls within the Hawkesbury-Nepean River Catchment. The SREP provides an overall direction for the protection of the environment of the river. Sediment and erosion control measures shall be implemented during construction to minimise erosion and soil loss from the site.

Camden Local Environmental Plan No 46

Clause 21 of the planning instrument stipulates that Council may refuse an application for development of flood affected land where the development will:

- (a) affect the flood level at any point above or below the development;
- (b) increase to a substantial degree, the flow of water on any adjoining flood liable lands.

The NSW Floodplain Management Manual suggests that flood fringe areas may be developed and filled providing there is no adverse affect on flooding. However, effective risk management requires consideration to the long term consequences of flood affected development and the cumulative impact on flooding behaviour.

Residential Development Control Plan No 58 (DCP 58)

The aim of the DCP is to provide well designed development to meet the needs of the current and future community of Camden. The proposed development complies with the provisions of DCP 58 in terms of building design.

NSW Floodplain Management Manual

The Floodplain Management Manual contains general principles and a process for floodplain risk management. It provides guidelines to enable Council to determine development applications in flood affected areas.

The land is affected by the 1% AEP, at RL 72.0m AHD, together with more frequent flood events. Pursuant to

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the Manual the area of the site containing the dwelling has been categorised as High Hazard – Flood Fringe, refer to **Tabled Document “DC 14”**. Velocity of the waters is determined as ‘slow moving’.

During a 1% flood Council records estimate that the portion of the site containing the dwelling may be inundated to a depth varying from 2m to approximately 3m. The front of the land would be affected by floodwaters to a depth of 2m, impacting on safe access and egress. The Manual advises that wading through flood waters is unsafe in depths greater than 0.8 metres even when the velocity is zero.

The existing and proposed floor levels of the habitable areas would be located at RL 72.55m AHD, 50mm below Council’s policy requiring 600mm freeboard above the 1% AEP.

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. 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.

It is estimated that the street level in front of No 6 Onslow Avenue will be approximately 2m below the 1% AEP flood level, making it necessary to traverse flood affected waters to leave the site. The study recommends that all future development should demonstrate that the property could be readily evacuated and provided with flood free access. The study proposes the property for inclusion in any flood proofing scheme.

Council has interpreted the requirement for ‘flood free access’ to be legal and permanent, fail safe and maintenance free. Assessment of the submission has failed to satisfy that flood free access can be afforded to the development in accordance with Council’s requirements.

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Further, documentation submitted with the application indicates that during a 1% AEP floodwaters will affect the dwelling to a depth up to 3m, detrimentally impacting on occupants and affecting property and contents.

Flood Risk Management Policy

The purpose of the policy is 'to ensure that development of flood affected properties is carried out in a reasonable and responsible manner'. The policy requires development to be compatible with the flooding characteristics of the locality and not increase the flood hazard or risk to residents.

With regard to the aims and objectives of the policy and the flooding constraints of the property, it is considered that the development increases the potential risk to life and property.

**(b) The suitability of the site**

Reticulated water supply, sewer and electricity service the subject property. The site is substantially covered by large trees and shrubs with several trees located along the front boundary, refer to attached photographs which form **Tabled Document "DC 11"**. The application indicates the provision of a driveway along the southern side of the front yard. Access from the road at this point will require the removal of several trees along the front boundary. Council's Vegetation Management Officer has indicated that generally there are no objections to the removal of the majority of the trees, however he has advised that a Chinese elm tree located towards the southwestern corner of the site is a viable long term specimen which could be made suitable for retention (more than 40 years) by remedial tree care.

The property is severely flood affected and does not have suitable flood free access during a 1% or 5% flood event.

**(c) Any submissions**

Following completion of the notification period, Council is in receipt of one submission expressing concerns regarding size, height and overlooking. **A copy of the submission was provided separately to Councillors with the Business Paper.** Council officers, despite several attempts, were unable to contact the author of the submission to arrange for mediation. Consequently, assessment of the objection was carried out which established the following:

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Size

In terms of bulk and scale the proposal complies with the requirements of Residential Development Control Plan No 58. The design of the building is consistent with existing development in the locality.

Height

The height complies with the Residential DCP and is not considered to have a detrimental impact on the character of the area.

Overlooking

The requirement for all habitable areas to be located above the flood level results in all living areas being situated on the first floor. The proposed development is separated from the objector's property by well-established shrubs in conjunction with vacant land and is therefore not considered to have an adverse impact on the neighbour's amenity.

**Conclusion**

A principle of the Floodplain Management Plan requires that assessment of development entail consideration to the collective impact on the floodplain.

The application does not provide a finished floor level 600mm above the 1% flood level, nor has it demonstrated that 'legal and permanent, fail safe and maintenance free' flood free access is available, as interpreted by the relevant planning instruments. If allowed to proceed, the development would result in the likely loss of property and the need for evacuation and temporary housing in the event of a major flood.

The application proposes an additional bedroom, which potentially increases the occupancy rate of the dwelling and therefore the number of people residing in the high hazard areas of the floodplain. This increases the encumbrance on emergency services and requires more residents to seek temporary accommodation in a flood event. This further increases the burden and costs to the community during an event.

The applicant approached the SES who were unable to provide comment other than to indicate that the local unit would respond to requests for assistance in accordance with the procedures contained in their local flood plan. This would relate directly to the degree of emergency, the amount of

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warning time, the rate of rising flood waters and the mobility of the occupants. During a major event the volunteer services of the SES may not be readily available to assist the occupants with evacuation.

Because of the threat to life and property and the strain on emergency services in a flood event, Council should not approve any development without flood-free access.

Recommended: That Development Application No 1550/2003 for construction of additions to a dwelling at No 6 [Lot 19 DP 29126] Onslow Avenue, Camden be refused on the following grounds:

- (i) The applicant has not demonstrated 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.
- (ii) The proposed development has the potential to cause loss of life and/or property in the event of a major flood event.
- (iii) The proposed development has 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 will add to the costs and demands on emergency services in a flood event.

**MOTION**

*Moved Cr Corrigan, seconded Cr McFadden that having considered the report on the application and also considered the application in good faith and on its merits, Development Application No 1550/2003 for construction of additions to a dwelling at No 6 [Lot 19 DP 29126] Onslow Avenue, Camden be approved with standard conditions.*

DC052/04 THE MOTION ON BEING PUT WAS **CARRIED.**  
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**9. Proposed Two Storey Dwelling at No 32 (Lot 147 DP 21564) Lerida Avenue, Camden**

**File No:** DA4850.360 (Director, Development & Environment Division)

**DA No:** 1548/2003

**Applicant:** A & M Rolf

**Zoning:** Residential 'A' 2 [a] pursuant to Camden LEP 46

**Purpose of Report**

To enable Council to make a determination of an application for the construction of a new dwelling on a site that is affected by flooding from the Nepean River.

**Summary of Recommendation**

It is recommended that Development Application No 1548/2003 be refused.

**The Site**

The 626m<sup>2</sup> site is currently vacant land situated on the eastern side of Lerida Avenue, a locality map forms part of **Tabled Document "DC 15"**. The site slopes from the road to the rear boundary and the Nepean River. The adjoining northern and southern properties each contain a single storey dwelling while the area behind the site contains rural land. The property is devoid of trees with large shrubs along the rear boundary.

The 1% and the 5% flood event affect the entire parcel of land to a depth of up to 2.9 metres during a 1% flood event. The impact of flooding and the level of inundation is assessed and discussed further in this report under the sections entitled NSW Flood Plain Management Manual and Upper Nepean River Floodplain Management Study and Plan.

**The Proposal**

The application proposes the erection of a three-bedroom dwelling designed to address the flood prone nature of the site. Specific features include:

- Two storey construction with all habitable spaces confined to the second storey [bedrooms, living and family rooms];
- The finished floor level of the second storey will be a minimum 600mm above the 1 % flood level [RL 71.9m AHD];
- Non habitable use of the lower level [ie garage, storage, entry and laundry];
- Flood proof construction of the lower storey [ie concrete slab floor and brick walls];

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- A structural engineer has attested to the building's ability to withstand the impact of rising and descending floodwater.

A copy of the submitted plans forms **Tabled Document "DC 16"**.

**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 planning instruments and development control plans have been considered in association with Council's assessment of the subject application:

- Camden 2025
- Sydney Regional Environmental Plan 20-Hawkesbury-Nepean River
- Camden Local Environmental Plan No. 46 (LEP 46)
- NSW Floodplain Management Manual
- Upper Nepean River Floodplain Management Study and Plan
- DCP 58
- Flood Risk Management Policy

**Assessment**

**(a) The provisions of any environmental planning instrument/ development control plan**

Camden 2025

The strategic document recognises that the impact of flooding will 'provide constraints and opportunities in structuring urban development'. Camden 2025 seeks to manage urban growth by ensuring that 'growth occurs in a planned and orderly way, including appropriate service infrastructure provision'.

Flood affected land has limited opportunity for residential development because of the risk to property and life, of both the occupants and rescue personnel. Council's policies therefore do not promote the development of flood affected lands where that development represents such a risk.

Camden Local Environmental Plan No 46

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Clause 21 of the planning instrument stipulates that Council may refuse an application for development of flood affected land where the development will:

- (a) affect the flood level at any point above or below the development;
- (b) increase to a substantial degree, the flow of water on any adjoining flood liable lands.

The NSW Floodplain Management Manual suggests that flood fringe areas may be developed and filled provided such work does not adversely affect flooding, however effective risk management requires consideration to the long term consequences of flood affected development and the cumulative impact on flooding behaviour.

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.

SREP 20 provides an overall direction for the protection of the environment of the river. Sediment and erosion control measures could be implemented during construction to minimise erosion and soil loss from the site.

DCP 58

The aim of the DCP is to provide well designed development to meet the needs of the current and future community of Camden.

The proposed development complies with the provisions of DCP 58 in terms of building design. However, consent may be refused despite compliance with set standards if the proposal is not considered suitable for the site.

NSW Floodplain Management Manual

The subject site has been categorised pursuant to the NSW Floodplain Management Manual as High Hazard Flood Fringe. The extent of flooding expected during a 1:100 year flood is predicted to isolate the portion of Lerida Avenue containing the development site between Macquarie Avenue to the south and Victory Avenue to the north, refer **Tabled Document “DC 17”**.

During a 1% event access and egress from the development may be affected by floodwaters to a depth of approximately 2.9m and categorised as high hazard

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flood fringe. It should be noted that the Manual suggests that wading through flood waters is unsafe in depths greater than 0.8 metres even when the velocity is zero.

In accordance with Appendix I of the Manual, the matters in relation to the particular flooding category have been carefully considered.

Whilst the proposed development achieves the requirements for flood affected development, ie habitable floor levels 600mm above the FPL, flood compatible materials and certification from a Structural Engineer, the application fails to demonstrate an essential requirement 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.'

In addition, the proposal fails to demonstrate that the displacement of the occupants will not significantly add to the overall cost and community disruption caused by the flood.

The State Emergency Services have indicated that they may not be able to render any assistance to the applicant [should the development proceed] 'apart from the initial warning to evacuate'. The SES stress that its members are volunteers and during major flood events resources are 'stretched to the limit'. The site is currently vacant and therefore poses no demands on emergency services in a flood event. The proposed dwelling containing three bedrooms could be reasonably expected to house at least four (4) and possibly more residents who would require temporary accommodation in a flood event. This would add to the costs to the community in a flood event.

Upper Nepean River Floodplain Management Study and Plan.

The Upper Nepean River Floodplain Management Study and Plan identifies areas within the floodplain that experience particularly high flood impacts and are hazardous to residents.

The Study recommends that all future development within these areas should demonstrate that the property may be readily evacuated and provided with flood free access. Permitting development, albeit subject to locating floor levels 600mm above the 1 in 100 year flood, has the potential to create a false sense of security and delaying response time.

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As discussed elsewhere in this report the applicant has failed to demonstrate that flood free access can be afforded to the development.

Flood Risk Management Policy

The purpose of the policy is 'to ensure that development of flood affected properties is carried out in a reasonable and responsible manner'.

With regard to the aims and objectives of the policy and the flooding constraints of the property, it is considered that non-compatible development of the land increases the potential risk to life and property.

**(b) The suitability of the site**

Reticulated water supply, sewer and electricity service the subject property. The property is severely flood affected and does not have suitable flood free access during a 1 or 5% flood event.

**Conclusion**

The application has failed to satisfactorily address the issue of permanent and safe evacuation for pedestrians or vehicles during a major flood event. Consideration must be given to the additional burden to critical facilities such as Police, SES, Ambulance and Fire Services.

Imposing the requirement for safe and permanent evacuation provisions provides a significant means of reducing flood related risks to occupants and emergency services.

The development, if allowed to proceed, poses a risk to life in terms of occupants and emergency personnel. It also creates a potential for loss and damage of property and the need for evacuation and temporary housing in the event of a major flood.

Recommended: That Development Application No 1548/2003 for construction of dwelling at No 32 [Lot 147 DP 21564] Lerida Avenue, Camden be refused on the following grounds:

- (i) The applicant has not demonstrated 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.

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- (ii) The proposed development has the potential to cause loss of life and/or property in the event of a major flood event.
- (iii) The proposed development has 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 will add to the costs and demands on emergency services in a flood event.

**MOTION**

*Moved Cr Corrigan, seconded Cr McFadden that having considered the report on the application and also considered the application in good faith and on its merits, Development Application No 1548/2003 for construction of dwelling at No 32 [Lot 147 DP 21564] Lerida Avenue, Camden be approved subject to standard conditions.*

DC053/04 THE MOTION ON BE PUT WAS **CARRIED.**  
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*(Cr Campbell, Cr Winn and Cr Batros voted against the Motion).*

The Meeting closed at 7.51pm.