

CAMDEN COUNCIL

MINUTES OF THE DEVELOPMENT COMMITTEE

29 MARCH 2005

PRESENT

Cr Anderson (Mayor/Chairperson), Cr Cagney, Cr Campbell, Cr Dewbery, Cr Elliott, Cr Funnell, Cr Johnson, Cr Patterson, Cr Whiteman

STAFF

Acting General Manager (Director Governance and Outcomes), Director Development and Environment, Director Works and Services, Acting Director Governance and Outcomes (Manager Employee and Community Relations), Manager Development, Manager Outcomes, Manager Community Services, Manager Corporate Services, Senior Governance Officer

CENTRES

Resolution: That Council undertake the necessary consultations in accordance with Section 644 of the Local Government Act 1993 to re-establish the alcohol free zones in the Camden and Narellan town areas, as indicated on the plans provided at the end of the report.

Moved Councillor Campbell, Seconded Councillor Elliott that: the recommendation as above be adopted.

DC32/05 THE MOTION ON BEING PUT WAS **CARRIED**.

DC02 JOHN / HILL STREET CARPARK - ACQUISITION OF LAND

Resolution: Moved Councillor Campbell, Seconded Councillor Cagney that further consideration of this report be deferred pending a Councillor Workshop on the issue.

DC33/05 THE MOTION ON BEING PUT WAS **CARRIED**.

DC03 PROPOSAL FOR ADDITIONAL POKER MACHINES AT ARGYLE INN, 75 ARGYLE STREET, CAMDEN

Resolution: *(Councillor Patterson, having previously declared an interest in the item, took no part in discussion or voting and left the Chamber - the time being 6.09pm)*

That Council does not make any further submission in relation to the matter.

Moved Councillor Johnson, Seconded Councillor Campbell that: the recommendation as above be adopted.

DC34/05 THE MOTION ON BEING PUT WAS **CARRIED**.
(Councillor Cagney voted against the Motion)

(Councillor Patterson returned to the Chamber - the time being 6.12pm)

**DC04 REQUEST FROM LIONESSE CLUB OF CAMDEN FOR WAIVING OF
THE FEE FOR A FUNDRAISING CAR SHOW TO BE HELD AT
ONSLOW PARK, 1 CAWDOR ROAD, CAMDEN**

Resolution: THE MAYOR ADVISED THAT THE ITEM BE WITHDRAWN AS THE FEES HAVE BEEN PAID BY A THIRD PARTY.

DC35/05 THE MOTION ON BEING PUT WAS **CARRIED**.

**DC05 REVIEW OF DETERMINATION OF SECTION 94 CONTRIBUTIONS AT
8 PEPPERFIELDS PL GRASMERE**

Resolution: **MOTION**

Moved Councillor Dewbery, Seconded Councillor Elliott that Council upholds the original determination requiring the payment of Section 94 contributions as outlined in Conditions 2.0 (1), (2) and (3) of development consent 1442/2004, dated 31 January 2005.

THE MOTION ON BEING PUT WAS **LOST**.
(All Councillors voted against the Motion)

FURTHER MOTION

Moved Councillor Funnell, Seconded Councillor Cagney that the Development at No. 8 Pepperfields Place, Grasmere be treated as a 1 bedroom dwelling and Section 94 contributions be levied accordingly.

DC36/05 THE MOTION ON BEING PUT WAS **CARRIED**.
(Councillors Campbell and Cagney voted against the Motion)

The Meeting closed at 6.30pm.

DEVELOPMENT COMMITTEE

SUBJECT: APOLOGIES

Leave of absence tendered on behalf of Councillors from this meeting.

RECOMMENDED

That leave of absence be granted.

RESOLUTION

There were no leave of absence to be noted.

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

DC29/05

ACTIONS

DEVELOPMENT COMMITTEE

SUBJECT: DECLARATION OF INTEREST

Council Policy requires Councillors who have a Pecuniary Interest in an item on the Agenda to declare the Interest at this stage and to leave the Meeting during consideration of the item.

RECOMMENDED

That the declarations be noted.

RESOLUTION

That the declarations be noted.

Councillor Patterson declared an interest in Item 3 as the Manager of Merino Tavern, an associated business in the Camden Business District..

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

DC30/05

ACTIONS

DEVELOPMENT COMMITTEE

SUBJECT: PUBLIC ADDRESSES

The Public Address segment in the Development Committee and Resources and Services Committee meeting provides an opportunity for people to speak publicly on an item listed for consideration by the Council at the meeting. Speakers must book in with the Council office by 4.00pm on the day of the meeting and only 7 speakers can be heard at any meeting.

Speakers may make a statement only and not direct questions to councillors or staff and only one speaker for and one speaker against any item are permitted. A second speaker for and against will be allowed, if time permits. All speakers are limited to 4 minutes and a 1 minute warning is given to speakers prior to the 4 minute time period elapsing.

Public Addresses are tape recorded for administrative purposes. It should be noted that speakers at Council meetings do not enjoy any protection from parliamentary-style privilege. Therefore they are subject to the risk of defamation action if they make comments about individuals. In the event that a speaker makes potentially offensive or defamatory remarks about any person, the Mayor/Chairperson will ask them to refrain from such comments. A copy of the tape recording may be available to third parties (in certain circumstances).

The Mayor/Chairperson has the discretion to withdraw the privilege to speak where a speaker continues to make inappropriate or offensive comments about another person.

RECOMMENDED

That the public addresses be noted.

RESOLUTION

That the public addresses be noted.

(Councillor Patterson, having previously declared an interest in Item 3, took no part in the public addresses and left the Chamber - the time being 5.39pm)

Mr Glen Stanford addressed the Committee in relation to Item 3.

(Councillor Patterson returned to the Chamber - the time being 5.43pm).

Mr Allan Goss addressed the Committee in relation to Item 5.

Moved Councillor Funnell, Seconded Councillor Campbell that an extension of 2 minutes be granted.

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

Mrs Maria Vukmirica addressed the Committee in relation to Item 2.

DC31/05

DEVELOPMENT COMMITTEE

DC01

SUBJECT: ALCOHOL FREE ZONES - CAMDEN AND NARELLAN TOWN CENTRES
FROM: Director Development and Environment
FILE NO: 3228A/3

Council has previously created "alcohol free zones" in the Camden and Narellan Town Centres and the period of validity of those zones will expire at the end of March. **Plans of the affected areas are provided at the end of the report.**

The Local Government Act does not provide for alcohol free zones to be extended, but does allow for them to be re-established for a further three year period. Therefore it is proposed to undertake the necessary consultations and seek the re-establishment of the two zones. The proposals will be notified by advertisement to the public and directly to the Chambers of Commerce, Licensing Police and all affected licensees in the area. At the closure of the exhibition period, a further report will be submitted to Council seeking the formal adoption of the zones.

RECOMMENDED

That Council undertake the necessary consultations in accordance with Section 644 of the Local Government Act 1993 to re-establish the alcohol free zones in the Camden and Narellan town areas, as indicated on the plans provided at the end of the report.

ATTACHMENTS

Alcohol Free Zone Area - Camden

Alcohol Free Zone Area - Narellan



Zone Area -
Camden



Zone Area -
Narellan

RESOLUTION

That Council undertake the necessary consultations in accordance with Section 644 of the Local Government Act 1993 to re-establish the alcohol free zones in the Camden and Narellan town areas, as indicated on the plans provided at the end of the report.

Moved Councillor Campbell, Seconded Councillor Elliott that:
the recommendation as above be adopted.

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

DC32/05

DEVELOPMENT COMMITTEE

DC02

SUBJECT: JOHN / HILL STREET CARPARK - ACQUISITION OF LAND
FROM: Director Development and Environment
FILE NO: DA392/2000 Sec 96 application 4375.290

PURPOSE OF REPORT

The purpose of this report is to enable Council to determine an application which seeks the review of the Development Consent issued for the property No 64 John Street, Camden and in particular condition 5.0(4) which requires the dedication of the portion of subject land (12.5m deep) adjoining the John/Hill Street carpark. Further, the report provides advice on the current status of the ownership of land adjoining the subject carpark in response to Council's resolution of 11 October, 2004 and canvasses the context of the carpark on a strategic basis.

BACKGROUND

The issue of parking in Camden Town has been the subject of a number of reports to Council. The John/Hill Street parking area has also been considered on a number of occasions. In order that Councillors are aware of the history in relation to that carpark, a brief summary of reports considered and resolutions passed is provided. **Copies of each report are provided in the supporting documents.**

At the meeting of 26 July, 1999 Council considered a report regarding parking generally in Camden and passed a resolution that the John/Hill Street carpark be expanded at ground level, that such expansion initially occur in a south westerly direction (ie acquire the rear of the John Street properties to add to those currently dedicated) and the carpark be so extended so as to provide for approximately 60 additional spaces at a cost within the order of \$400,000 (source of funds - Camden Carparking Trust Fund)

At the Council meeting of 26 April, 2000 Council considered a report which provided advice on the position at that time in relation to the acquisition of land for the purposes of carparking from No 62 to No 74 John Street. Council resolved to defer consideration of this matter to allow all Councillors to review various car parking options for the Camden Town Centre.

At the Council meeting of 24 July, 2000 Council considered a follow up report on the revised carparking strategy for the Camden Town Centre. Council resolved amongst other strategies that it should review the viability of the further dedication of land in John/Hill Street without the requirement for compulsory acquisition. Compulsory acquisition would only apply where no consent requires dedication and mutual agreement to acquire the land could not be reached. Where a consent requires dedication Council can proceed to enforce the consent.

Since these matters were considered by Council, it has been resolved to construct a decked carpark at the John/Murray St carpark site. Planning for this construction is currently underway.

Finally, on 11 October, 2004 Council considered a report as a response to a Question

Without Notice from Councillor Whiteman in respect to the current status of Council's undertaking in relation to blocks of land in John Street and also asked, if Council is not continuing with acquisition, will the land be sold back to owners.

Council resolved that a further report be provided to Council on the current status of the ownership of land in John Street carpark.

The Development Application for alteration/addition to the existing building and the use of the building as an office at No 64 was approved on 13 July, 2004 subject to a condition which requires dedication of a portion of land (12.5m deep) for enlargement of the John/Hill Street Carpark in accordance with the Council's previous resolutions. **The location plan showing the location of work is provided at the end of the report.**

MAIN REPORT

Following Council's resolution of 24 July, 2000 no further action has been taken with regard to compulsorily acquiring further land at the rear of the properties in John Street, nor has action been taken to enforce conditions of consent which required dedication. There have only been three development applications for the buildings in this part of John Street, two for extensions to the medical building at 70 John Street where the dedication of a part of the rear of the building had been previously required as a condition of consent issued in 2000. A later consent for further additions to the building did not require any additional dedication.

In the case of Hill Street, Council has ownership of one site and this has been developed for parking purposes. No conditions of consent requiring dedication of land apply to any other sites in Hill Street immediately adjacent to the carpark, however Council's records suggest a requirement for dedication has been imposed at No 31 Hill Street. The land has not been dedicated to Council and is used as a yard.

It should be noted, however, that as can be seen from the plan of subdivision, the whole of the carpark has been acquired by Council purchasing either the rear section of a site or whole lots to provide access to the carpark.

Development Consent 392/2004 approved on 4 August, 2004 for "alteration / addition to the existing building and use as Office at 64 John Street includes a condition for dedication of land towards carpark enlargement. The applicant has however requested a review of this condition under Section 82A of the EP&A Act.

Current status of the land acquisition of properties on John Street is as follows:

Property No	Current Status	Comments
No 62 John St	No conditions apply however owner had previously agreed to Council acquiring part of land	No action has been taken to acquire the land in view of Council not having passed a suitable resolution to acquire
No 64 John St	Condition of consent requires dedication of land to Council	Subject to Sec 82A application
No 66 John St	Condition of consent requires dedication	Privately used and not pursued in accordance with previous Council resolutions
No 68	No conditions or agreement to	-

John St	acquire reached previously and no recent approaches made	
No 70 John St	No condition and owners previously indicated they were not willing to sell any portion of the land.	-
No 72 John St	Dedication complete	Privately used
No 74 John St	Condition of consent requires dedication of land to Council	Privately used and not pursued in accordance with previous Council resolutions

The expansion of the John/Hill Street carpark at ground level provides the opportunity for approximately 60 additional parking spaces when incorporating the John Street land and further spaces if the Hill Street premises were incorporated.

From the above, it can be seen that Council could enforce conditions of consent in relation to No 66 and 74 John Street where dedication has been conditioned yet not occurred. Whilst such a course of action has been recommended to Council in the past, no decision in relation to the matter has been made.

With the proposed dedication of land at No 64 under the DA 392/2004, there is an opportunity to provide additional parking jointly with No 66. Thus the parking strategy in John/Hill Street could be implemented in stages. Similar situations apply to properties No 72 and 74 when land in No 74 is obtained.

As Council resolved not to pursue compulsory acquisition, it is important to acquire land when opportunities arise at the development assessment stage of subject properties. It should be noted that a report to Council on 26 April, 2000 identified No 64 John Street to be a property for compulsory acquisition. An opportunity now exists for dedication of land for carparking purposes with the current DA.

Section 94 of the Environmental Planning and Assessment Act 1979 states:-

- (1) Subject to subsection (2), if a consent authority is satisfied that a development, the subject of a development application or of an application for a complying development certificate, will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant consent to that application subject to a condition requiring:
 - (a) the dedication of land free of cost, or
 - (b) the payment of a monetary contribution, or both.
- (2) A condition referred to in subsection (1) is to be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services mentioned in that subsection.

This provision allows Council to require dedication of land for parking purposes and is consistent with Council's parking strategy and Section 94 plan. The resolution of action in relation to parking in this precinct is therefore necessary before Council determines the Section 82A application. Camden's Section 94 plan identifies a need to provide additional parking in Camden within existing carparks and also recognises the need to construct a decked carpark on one of these sites. A total of 22 spaces are required annually.

In relation to the John/Hill Street carpark, a number of options are available to Council which are:-

Option 1

Actively pursue the dedication of that land which is required as conditions of consent and negotiate with the owners of the remaining land to acquire their sites to allow completion of the carpark. This may require compulsory acquisition in some cases should negotiations fail. Continue the practice of dedication of land with development applications for additions/conversions.

Option 2

Actively pursue the dedication of that land which is required as conditions of consent and stage the development of the carpark as land becomes available thereby avoiding the need to compulsorily acquire the land. Continue the practice of dedication of land with development applications for additions/conversions. This option however does not facilitate efficient parking layouts in the interim period but does allow for additional public parking.

Option 3

Actively pursue the dedication of that land which is required as conditions of consent, wait for additional land to become available and when all the land needed is acquired develop the carpark. Continue the practice of dedication of land with development applications for additions. Council could commence negotiations with owners of land advising them of Council's desire to acquire the land as it becomes available but not proceed to compulsory acquisition. Continue to condition consents for additions to dedicate land to Council.

Option 4

Abandon the project, sell the sites at current land valuation to the adjoining owners and return the money to Section 94 to be used for the provision of parking in other parts of Camden. This could be problematic if the owners of the adjoining land do not wish to purchase the sites. It would not be possible to sell the sites to others as they do not have access rights.

It is considered that the most appropriate option is Option 2 as this would provide for additional parking at minimal cost. To forgo the dedication of land would mean that should Council decide at some time in the future to provide additional parking in Camden, not only would they need to finance the construction of the project, they would also need to acquire the land which is often more complex without the rights endorsed under a development consent.

The provision of additional carparking at grade in this particular location has considerable merit as it is efficient in terms of traffic management, is readily accessible and well located and appropriate in terms of urban design and heritage considerations. The loss of opportunity to plan for future needs of the community and businesses in Camden should not occur.

For this reason, it is not appropriate to vary the conditions of Development Consent No 392/2004 by removing the condition requiring dedication of land for parking purposes.

CONCLUSION

The Section 82A application relating to Development Consent No 392/2004 which seeks deletion of the condition requiring the dedication of land for enlargement of carparking should be upheld and the land required to be dedicated to allow the

expansion of the carpark in accordance with Council's Section 94 plan.

Further, the current approach of acquiring land as and when the opportunity arises is still appropriate as part of the development assessment process.

Additionally, Council needs to pursue further dedication of land adjoining John/Hill Street carpark which is already committed under previous development consents in order to continue enlargement of the car park.

RECOMMENDED

That:

- i. Council upholds the original determination requiring the dedication of 12.5m wide parcel of land at the rear of the subject property.**
- ii. Council pursue further dedication of land in John/Hill Street already committed under the previous development consents; and**
- iii. The information on the current status of the land be noted.**

ATTACHMENTS

Location Plan

Copy of Previous Reports (Supporting Documents)



Location Plan



Copy of Previous
Reports (Supp Doc)

RESOLUTION

Moved Councillor Campbell, Seconded Councillor Cagney that further consideration of this report be deferred pending a Councillor Workshop on the issue.

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

DC33/05

DEVELOPMENT COMMITTEE

DC03

SUBJECT: PROPOSAL FOR ADDITIONAL POKER MACHINES AT ARGYLE INN,
75 ARGYLE STREET, CAMDEN
FROM: Director Development and Environment
FILE NO: PF350.340

This report is to provide Council with an update following its resolution from the previous meeting of Council on 14 March, 2005 in relation to progress of an application to the NSW Liquor Administration Board (the Board) which seeks to increase the number of poker machines at the Argyle Inn from 14 to 18.

Under current licensing provisions, hotels in NSW are permitted to hold up to 30 gaming machine licences. The Gaming Machines Act 2001 caps the number of poker machines in the state to 104,000 of which 25,980 are available to hotels and 78,020 to clubs. Clubs, other than large-scale clubs are restricted to 450 machines.

In accordance with the resolution of 14 March, 2005 Council wrote to the Board advising of the resolution and in particular to draw to the attention of the Board the negative social impacts that gambling causes families. A reply to Council's correspondence has been received which draws Council's attention to the matters that will be considered in determination of the application. **A copy of the reply is provided with the Business Paper Supporting Documents.** These are limited under Section 37(3) of the Gaming Machines Act 2001 to the following:-

- the social impact assessment complies with the requirements of this Division and the regulations in relation to social impact assessments, and
- the social impact assessment has demonstrated that the gambling activities involving approved gaming machines in the hotel or club concerned will be conducted in a responsible manner, and
- in the case of an application involving a new hotel or new club - there is no school, place of public worship or hospital in the immediate vicinity of the hotel or club, and
- in the case of a class 2 social impact assessment - the overall economic and social impact of granting the application will not be detrimental to the local community.

As the application is for only 4 additional machines in an existing establishment, a Class 1 social impact assessment is required. A more rigorous statement is required for Class 2 matters. Pursuant to clause 34 of the Gaming Machines Regulation the following information must be included in a Class 1 social impact assessment:

- (a) details of the measures that the hotelier or registered club has taken, or proposes to take, to ensure that gambling activities in the hotel or club will be conducted in a responsible manner,
- (b) the internal floor space (in square metres) of the hotel or the premises of the club,
- (c) in the case of an application by a new hotel or new club—a list of the schools, places of public worship and hospitals that may reasonably be considered to be in the immediate vicinity of the hotel or club premises, including a map showing the location of the hotel or club premises and the location of those schools, places of public worship and hospitals.

Councillors were previously provided with a copy of the application and no specific statement was submitted, however the requirements were met in that an affidavit accompanied the application that deals with the means of ensuring the activities are conducted in a responsible manner and the floor space of the hotel has been identified. No other action on behalf of the applicant is required.

As there is limited opportunity for Council to make a submission in relation to the matter, the responsible gaming area is the only area that would apply in this instance. In this regard a copy of the affidavit supporting the application has been obtained and is **provided with the Business Paper Supporting Documents**. Unless Council can demonstrate that there is evidence that proper control of machines will not occur, there appears to be no grounds on which to make a further submission. In any event, should Council resolve to make a further submission, the Board has advised that this submission would need to be received by 30 March, 2005.

RECOMMENDED

That Council does not make any further submission in relation to the matter.

ATTACHMENTS

Reply from the Liquor Board (Supporting Document)
Affidavit (Supporting Document)



Affidavit (Supp
Doc)



Liquor Board Reply
(Supp Doc)

RESOLUTION

(Councillor Patterson, having previously declared an interest in the item, took no part in discussion or voting and left the Chamber - the time being 6.09pm)

That Council does not make any further submission in relation to the matter.

Moved Councillor Johnson, Seconded Councillor Campbell that:
the recommendation as above be adopted.

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

(Councillor Cagney voted against the Motion).

(Councillor Patterson returned to the Chamber - the time being 6.12pm).

DC34/05

DEVELOPMENT COMMITTEE

DC04

SUBJECT: REQUEST FROM LIONESSE CLUB OF CAMDEN FOR
WAIVING OF THE FEE FOR A FUNDRAISING CAR SHOW
TO BE HELD AT ONSLOW PARK, 1 CAWDOR ROAD,
CAMDEN

FROM: Director Development and Environment

FILE NO: DA1500.100-11

PURPOSE OF REPORT

The purpose of this report is to enable Council to determine an application for a waiver of the Development Application Fee for the determination of an application lodged by Camden Lioness Club.

BACKGROUND

On 21 February, 2005 Camden Lioness Club submitted a letter to Council foreshadowing that they would be submitting a Development Application for their annual Westpac Helicopter Fundraising Car Show and that, as a non-profit organisation, would appreciate Council waiving the Development Application Fee. **A copy of the submission is provided with the Business Paper Supporting Documents.**

On 23 February, 2005 the Development Application was received by Council. This application is for a car show to raise money for the Westpac Rescue Helicopter and is to be held at Onslow Park, Camden on 29 May 2005. The application is currently being assessed despite the fact that the fee has not been paid to date.

MAIN REPORT

The appropriate fee for such a Development Application is \$220. Council is entitled to charge this fee, which is set by Clause 250 of the Environmental Planning and Assessment Regulation, 2000. Currently the Park is covered by a generic Plan of Management (PoM) which does not recognise activities such as the proposed car show, and therefore separate consent is required for each event. Council is currently preparing a specific PoM for Onslow Park, and therefore by incorporating such uses as appropriate uses, the need for separate consent would not occur.

The applicant has indicated that they seek a waiver as they are a non profit organisation. Council often receives Development Applications from non-profit organisations. Whilst it is recognised that the work of these groups is very important to the community, it is considered that the fees which are received by Council for applications such as these are equally important. The funds raised through levying fees are used to provide a range of services to the community. The absence of this revenue source would seriously limit Council's ability to deliver the services sought by the local community.

Waiving the fees associated with this development is expected to create a level of expectation from other similar organisations that their fees will similarly be waived when making development applications for activities associated with their charity work.

The cumulative effect of waiving fees such as this are expected to be significant.

CONCLUSION

A request to waive a Development Application fee has been received from the Camden Lioness Club. The Development Application seeks approval to hold a car show at Onslow Park.

It is considered that waiving this fee would create an expectation that Council will waive fees in similar situations in the future. The cumulative effect of this loss of revenue will impact on Council's ability to deliver the range of community services that are expected of it.

The application has been considered on its merits and it is recommended that the fee not be waived and to be paid to allow completion of determining the application.

RECOMMENDED

That Council upholds the requirement for the Development Application fee of \$220 to be paid by the Camden Lioness Club for their application to hold a car show at Onslow Park, Camden and require this fee to be paid to allow completion of determination of the development application.

ATTACHMENTS

Lioness Club Submission



Submission (Supp
Doc)

RESOLUTION

THE MAYOR ADVISED THAT THE ITEM BE WITHDRAWN AS THE FEES HAVE BEEN PAID BY A THIRD PARTY.

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

DC35/05

DEVELOPMENT COMMITTEE

DC05

SUBJECT: REVIEW OF DETERMINATION OF SECTION 94
CONTRIBUTIONS AT 8 PEPPERFIELDS PL GRASMERE
FROM: Director Development and Environment
FILE NO: DA6235.80

PURPOSE OF REPORT

To enable Council to review the determination of a development application for a dual occupancy dwelling at No 8 (Lot 29 DP1071576) Pepperfields Place, Grasmere. The application has been referred to Council for determination in accordance with Council's delegations. The review request is in respect of the Section 94 requirements of the development consent.

BACKGROUND

Development Application No 1442/2004 for a single storey dual occupancy dwelling at No 8 (Lot 29 DP1071576) Pepperfields Place, Grasmere was approved under delegated authority on 31 January, 2005. **A copy of the location plan is provided at the end of the report.**

The development consent required the payment of Section 94 contributions in accordance with the section 94 plans appropriate to the land as follows:

- Contributions Plan No 16 amended in November 2003 requires a contribution be paid to Council of \$982 per additional lot or dwelling (total \$982) for Roadworks, Traffic Management Facilities and Water Quality Facilities.
- Camden Contributions Plan adopted in November 2003 requires a contribution be paid to Council of \$7342 per additional lot or dwelling (total \$7342) for s.94 Administration and Management, Community Facilities, Recreation Facilities, Open Space.
- Contributions Plan No 20 adopted in October 1996 requires a contribution be paid to Council of \$15 per additional lot or dwelling (total \$15) for Fire and Other Emergency Facilities and Equipment.

The Section 94 levies have been paid and the construction certificate has been issued.

The contributions were calculated as two thirds that of the full rural residential contribution for an additional dwelling. This was based on the second dwelling being considered as a two bedroom unit, and that Council levies payments as one third for one bedroom occupancies, two thirds for two bedroom occupancies and full levy for three or more bedrooms. The discount is representative of potential expected occupancy rates and the effect on Council's service provisions. The actual occupancy at any particular time may vary from expected and this will be discussed later in the report.

On 11 February, 2005 and in accordance with Section 82A of the Environmental Planning and Assessment Act (the Act), the applicants sought to have conditions 2.0

(1), (2) and (3) amended. Section 82 of the Act allows an applicant to seek a review of Council's determination of the whole application or individual conditions. This allows an applicant to seek Council's redetermination of a refusal of an application or just the inclusion or wording of some of the consent conditions. In this instance, the applicant is seeking the latter.

The application is for the review of conditions of development consent requiring the payment of Section 94 contributions for an additional dwelling within a dual occupancy dwelling development. The applicant has requested that the required Section 94 contributions be revoked or reduced and the payments refunded. The applicant has indicated within the application that the section 94 levies are unfair and unreasonable for the second dwelling in this instance.

MAIN REPORT

The approved dual occupancy dwelling is to be located on an allotment in the new "Pepperfields" estate at Grasmere.

The dual occupancy dwelling has a primary dwelling with plans indicating a lounge, dining, family/rumpus, kitchen, meals, billiard, study, workshop, two bathrooms four bedrooms and garaging for four vehicles. The plans for the second dwelling indicate a lounge, dining, kitchen, bedroom, study, separate bathroom, laundry, and garage / workshop. **Plans of the proposal are provided to the Councillors under separate cover.**

In considering the section 94 contributions for the secondary dwelling the dwelling was assessed as a two bedroom dwelling based on the size of the "study" of 14.5m² and that the bathroom is a separate bathroom and not an ensuite to the main bedroom. The dwelling is 122m² with an attached garage /workshop of 38m². The average three bedroom "first home owner" dwellings are under 100m².

Considerations for the levying of section 94 contributions for second dwellings include:

- That dwellings have an expected life span of a minimum of 60 years.
- Home ownership changes hands on a 7 year average and the majority of dwellings have multiples of owners during the building's lifespan.
- Second dwellings have rental opportunities when family uses cease.
- Camden is a growth centre and second dwelling occupants do place additional demands on Council's services and infrastructure.
- Section 94 contributions can only be levied at development stage and cannot be re-levied on the change of circumstance of second dwelling occupancies.
- The majority of rural/rural residential dual occupancies and "two dwellings" developments in residential zones are on one allotment of land and cannot be subdivided into individual allotments, and under current rating requirements are rated as a single dwelling apart from a possible additional garbage service.

The applicant has indicated the following key reasons for seeking a reduction or waiver of the Section 94 fees:

- (i) It is difficult to accept that additional contributions should be levied to a "Grandfather flat" over and above that already collected on the initial development.

Comment:

The initial development was levied at subdivision stage under Section 94 of the Act

on the assumption that only one residence would exist on each site. Council has adopted the Contributions Plan to reflect the need to levy additional funds where a greater residential usage of the land is proposed.

- (ii) It is unlikely that the intention of the legislation covering Section 94 contributions was intended to require heavy payments from senior citizens.

Comment:

The legislation was written in such a way as to allow for the fact the home ownership does vary with time and while the current ownership is held by a senior citizen, this may not remain the case in perpetuity. The legislation does not permit Council to collect additional payments on change of circumstances and therefore contributions levied must reflect the expected average occupancy of the development over its lifetime.

In the event that Council was to adopt a different approach, that is to consider occupancy rates, a similar request could be received from a couple who buy a block of land and build a four bedroom home and seek refund of contributions paid due to the fact that they have no family at the time. In the future however, it is quite possible that they will have children and the four bedrooms would be occupied and the demand and range of services required of Council increased and changed. For this reason it is appropriate that Council consider the application of Section 94 contributions over the life of the building.

The full submission has been provided with the Business Paper Supporting Documents.

CONCLUSION

The approved dual occupancy is a generous two bedroom dwelling which during its lifespan would expect to have occupancy levels creating demand on Council's services and infrastructure thus activating the nexus of the relevant section plans requiring the levying of the Section 94 contributions. The contribution rates have been previously adopted by Council as part of Camden Contributions Plan, Contribution Plan 16 and Contribution Plan 20. The levying of Section 94 contributions is in the public interest to ensure the community resource needs generated by the uses of this development are able to be met. For these reasons, it is considered appropriate that Council uphold the original development consent conditions relating to Section 94 contributions.

RECOMMENDED

That Council upholds the original determination requiring the payment of Section 94 contributions as outlined in Conditions 2.0 (1), (2) and (3) of development consent 1442/2004, dated 31 January 2005.

ATTACHMENTS

Location Plan
Applicant's Submission (Supporting Document)
Plans of Proposal (Councillors Only)



Plans of Proposal
(Councillors Only)



Applicant's
Submission (Supp Doc)



Location Plan

RESOLUTION

MOTION

Moved Councillor Dewbery, Seconded Councillor Elliott that Council upholds the original determination requiring the payment of Section 94 contributions as outlined in Conditions 2.0 (1), (2) and (3) of development consent 1442/2004, dated 31 January 2005.

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

(All Councillors voted against the Motion).

FURTHER MOTION

Moved Councillor Funnell, Seconded Councillor Cagney that the Development at No. 8 Pepperfields Place, Grasmere be treated as a 1 bedroom dwelling and Section 94 contributions be levied accordingly.

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

(Councillors Campbell and Cagney voted against the Motion).

The Meeting closed at 6.30pm.

DC36/05

**THE MINUTES OF THE DEVELOPMENT COMMITTEE MEETING HELD ON 29
MARCH 2005 WERE ADOPTED AT AN ORDINARY COUNCIL MEETING HELD 26
APRIL 2005. MIN. NO. 62/05**

A handwritten signature in black ink, appearing to read 'D. Anderson', written in a cursive style.

CHAIRPERSON