

ITEM NO: 10

SUBJECT: ITEM C1 IN CONFIDENTIAL BUSINESS PAPER – SPRINGWOOD TOWN CENTRE PROJECT ASSESSMENT OF EXPRESSIONS OF INTEREST

FILE NO: F03489

Recommendations:

1. *That Item C1 in the Business Paper be deferred for consideration until all other business of this meeting has been concluded.*

2. *That the Council close part of the Council Meeting for consideration of Item C1 in the Business Paper for Springwood Town Centre Assessment of Expressions of Interest, pursuant to the provisions of Section 10A(2)(c), and (d) of the Local Government Act 1993, as the report contains, and discussion is likely to involve:*
 - *information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting, or proposes to conduct, business; and*
 - *commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.*

Report by General Manager:

This matter has been listed in the Confidential Business Paper because consideration of the matter will involve discussion of tender commercial proposals and proponent performance issues that would best take place in a meeting which has been closed to the public in accordance with the provisions of Section 10A of the Local Government Act 1993.

The matter to be dealt with relates to Expressions of Interest (EOIs) received in relation to potential development of public land through RFT No. 2007-001 Springwood Town Centre Project. It involves discussion of the perceived attributes and risk profiles of individual proponents as well as specific tender matters of a commercial nature.

Section 10A of the Act requires that any proposal to close part of a meeting to the public be notified in the agenda, and a resolution to close part of a meeting to the public be passed setting out reasons for doing so. In this case, the reason for closing that part of the meeting to consider Item C1 in the Confidential Business Paper is that the report contains, and discussion is likely to involve, information that would, if disclosed, confer a commercial advantage on a person with whom the Council may conduct business; and contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.

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ITEM NO: 11

SUBJECT: SPORTS COUNCIL TERM FOUR MEMBERSHIP - UPDATE

FILE NO: F01200

Recommendation:

That the Council approves the inclusion of the new soccer representative in the membership of the Blue Mountains Sports Council for 2007/2008 and that the basketball position remains vacant until a nomination is made to fill the position.

Report by Acting Group Manager, Community and Corporate

Reason for report

This report is to advise the Council of, and seek the endorsement, for the new Sports Council Soccer Code Representative, as per point 2 of Council Minute 302, 30 October 2007.

Background

The Blue Mountains Sports Council was officially created on 10 December 2003. The Sports Council completed its third term in June 2007. A report was submitted to the Council Meeting of 30 October 2007 advising of the new Sports Council membership. Also submitted was the Sports Fees Operational Plan and updated Sports Council Terms of Reference.

At its meeting on 30 October 2007 the Council resolved:

- "1. That the Council approves the proposed membership of the Blue Mountains Sports council for 2007/8 and the updated Terms of Reference.*
- 2. That membership for vacant positions of soccer and basketball be reported back to Council as per the Terms of Reference.*
- 3. That the Councillors from each Ward remain as representatives on the Sports Council for 2007/8.*
- 4. That from the nominated Councillors, the Council elects the Sports Council Chair for 2007/8.*
- 5. That the Council adopts the draft Sports Fees Operational Plan.*
- 6. That part 1 of the Terms of Reference be altered by adding the following words to the printed recommendation: subject to clause 2.5 of the Terms of Reference being amended to read "Implement the Sports Fees Operational Plan by recommending to Council projects for the expenditure of the Sports Fees".*
- 7. That part 5 of the Terms of Reference be altered by adding the following words to the printed recommendations: subject to the Plan being amended to reflect*

the process that the expenditure of the Sports Fees is to be by way of recommendation of projects to Council."

(Minute No. 302, 30/10/07)

Soccer & Basketball Representation

The new soccer representative is Ian Monaghan. Ian Monaghan is the President of Blue Mountains Soccer Club based at Knapsack Park, Glenbrook. Due to no nominations being received from basketball, the position remains vacant. It is anticipated that the basketball representative position will stay vacant for this term of the Sports Council.

Conclusion

The Council endorse and congratulate Ian Monaghan as the Sports Council Soccer representative.

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ITEM NO: 12

SUBJECT: PROJECT COORDINATOR, PROVISION OF MANAGEMENT SERVICES, BLUE MOUNTAINS CULTURAL CENTRE ANCILLARY PROJECTS

FILE NO: F03616

Recommendation:

That the Council resolves to accept the hourly rates as submitted by Root Projects Australia Pty Ltd as part of their tender submission dated 20 July 2006 and resolve to engage Root Projects on an as needs basis to undertake project coordination for the Cultural Centre ancillary projects.

Report by Acting Group Manager Community and Corporate

Reason for Report

The Council resolved on 26 September 2006 to accept the Tender for Project Coordination; Provision of Management Services for the Blue Mountains Cultural Centre, submitted by Root Projects Australia Pty Ltd, Sydney for the lump sum price of \$376,379.92 (inclusive of GST). The tender scope accepted by the Council entailed only the first component of the tender submitted by Root Projects.

The component accepted by the Council is for the project coordination as required under the Option Deed for the Blue Mountains Cultural Centre and mixed use development and was defined in the tender documentation as Stream 1. Under the terms of the Deed, Blue Mountains City Council is required to appoint a project coordinator who acts on behalf of the Council. Root Projects were appointed as project coordinator following the Council resolution.

The second component of the tender related to the ancillary projects (Civic Centre and Civic connections, the World Heritage Interpretive Centre, public art program, Cultural Centre fit out and Library fit out) of the main Cultural Centre project and which were defined in the tender documentation as Streams 2 and 3. As part of the tender, the tenderer was asked to provide a schedule of hourly rates for project coordination work that is outside the scope of the Option Deed and directly attributable to sub-projects for which the Council is the developer.

The hourly rates as submitted by Root Projects range from \$ 150 / hour to \$ 300 / hour (GST exclusive) depending on who is doing the work.

Background

Root Projects provided these hourly rates as part of their tender. However the Council at that stage only resolved to accept the lump sum component of their tender, as it had not been determined how the Council would deliver the ancillary projects.

It is now envisaged that the Council will undertake the majority of the coordination and project management for the ancillary projects in-house. It is critically important that the coordination and interaction of the tasks for all seven projects (Blue Mountains Cultural Centre and Katoomba Library, Civic Centre and Civic connections, the World Heritage Interpretive Centre, public art program, Cultural Centre fit out and Library fit out) identified are implemented with a consolidated focus. The total project is complex, including the coordination requirements between the projects being undertaken under the Deed and the projects undertaken outside the Deed directly by the Council. Root Projects has had extensive involvement in and knowledge of the main project, therefore it will be beneficial for the Council to engage them on an as needs basis for coordination issues relating to the integration of the ancillary projects with the main project.

The hourly rates component as submitted as part of the tender was taken into consideration in the assessment and scoring as part of the tender evaluation process.

Root Projects has verified that the hourly rates as submitted in their original tender submission remain valid.

As the hourly rate component formed part of the original tender submission and was taken into account as part of the tender evaluation, the Council can resolve to accept the second component of the Root Projects tender to enable them to be engaged on an as needed basis for coordination of the ancillary projects with the main project.

Sustainability assessment

There are no sustainability implications arising from this report.

Financial Implications for the Council

There are no additional financial implications for the Council, as the funding involved with the engagement of Root Projects is covered within the ancillary projects' budget allocations. It will be of benefit to the Council to be able to draw on Root Projects' extensive knowledge of the Option Deed and the main project as well as on their extensive experience with cultural and interpretive projects.

Legal and Risk Management Issues for the Council

There are no legal or risk management issues involved with the report's proposed recommendation.

Conclusion

The Council is entering into the next phase of design works for the Blue Mountains Cultural Centre project – being the Cultural Centre ancillary projects – comprising the Civic Centre revitalisation and laneway connections, Cultural Centre fit out, World Heritage Interpretive Centre and public art.

Root Projects were engaged for project coordination and provision of management services, for the main Cultural Centre Project in 2006 and have therefore gained substantial knowledge of the project. It would be beneficial for the Council to utilise their services for coordination of the ancillary project on an as needs basis to ensure an integrated whole of project focus. Root Projects has confirmed that the hourly rates submitted as part of their original tender remain valid.

This report recommends that the Council resolve to accept the second component of the Root Projects tender to enable them to be engaged on an as needed basis for coordination of the ancillary project with the main project.

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ITEM NO: 13

SUBJECT: RFS WINMALEE – ACCOMMODATION OF FIRE TANKER

FILE NO: F01734

Recommendation:

That the Council notes this report.

Report by Acting Group Manager, Corporate and Community

Background

At the ordinary meeting of the Council on 29/01/08 it was resolved unanimously;

“That a report comes to the Council identifying where tanks are up to with the RFS to house the Winmalee 2 fire truck and to provide a Yellow Rock fire service base”.

(Minute number 395, 29/01/08)

The Rural Fire Service has allocated two fire tankers to the Winmalee Rural Fire Brigade, (Winmalee 1a and Winmalee 1b) to cover the areas of Winmalee, Hawkesbury Heights and Yellow Rock. The fire tanker, Winmalee 1b, was supplied by the RFS to the Winmalee RFB as an additional unit. At the time of its allocation there was no accommodation available for this appliance. Winmalee 1a is housed at the Winmalee RFS Station and Winmalee 1b is currently housed on private property at Yellow Rock. This is a mutual arrangement between the RFS and the property owner.

The Council has been informed by Superintendent Mal Cronstedt, Blue Mountains District RFS, that the owner of the property where Winmalee 1b is housed wishes to terminate the arrangement within months due to the pending sale of the property (correspondence received 12/02/08).

The Council is aware that the RFS and the NSW Fire Brigades are reviewing current boundaries, which should include a review of standards of fire cover for Winmalee and Yellow Rock. This review may influence fire service provision in the area, including the location of stations and appliances.

Current status

There is no Council owned venue that can temporarily house Winmalee 1b, and there has been no solution to the problem offered by the RFS. The situation is the same as previously reported to the Council on 20/02/07. There is no suitable publicly owned land available in the Yellow Rock area to locate a rural fire station.

Conclusion

The review of fire service standards may influence the need and location of stations or appliances. The Council should await the outcomes of the review before considering a

permanent housing option for Winmalee 1b. In the interim, the Council will formally write to the RFS seeking urgent discussion regarding the temporary housing of Winmalee 1b.

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ITEM NO: 14

SUBJECT: PREPARATION OF A DRAFT LOCAL ENVIRONMENTAL PLAN TO PERMIT TOURIST ACCOMMODATION ON LOTS 1 AND 2 DP 1009510 AND LOT 1 SECTION 9 DP 5140, NO. 36 MOUNT STREET AND NOS. 61 AND 63 KINGS RD, LEURA

FILE NO: O/2246/2007

Recommendation:

That the Council make representations to the Department of Planning requesting that the DLEP for Old Leura Dairy be supported in the form as submitted in December 2007 for the following reasons:

- 1. Old Leura Dairy is domestic in scale and has established that it is generally compatible with the residential setting;*
 - 2. Old Leura Dairy has established an international reputation as a quality eco tourist destination, thereby contributing both directly and indirectly to the promotion of the local tourist industry;*
 - 3. Tourism in general and ecotourism in particular are key drivers for the Blue Mountains economy and all reasonable endeavours should be used to promote that industry;*
 - 4. The time frame for the conduct of an appropriately wide-ranging review of the tourist accommodation uses within LEP 2005 is not compatible with the resolution of the legal status of this use on this site; and*
 - 5. The Council seeks an early resolution that avoids the closure of the site or major downscaling of the operation.*
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Report by Group Manager, Environmental and Customer Services:

Reason for report: to seek direction with respect to a previous Council resolution.

Applicant/Owner: Mr M F Hennessy

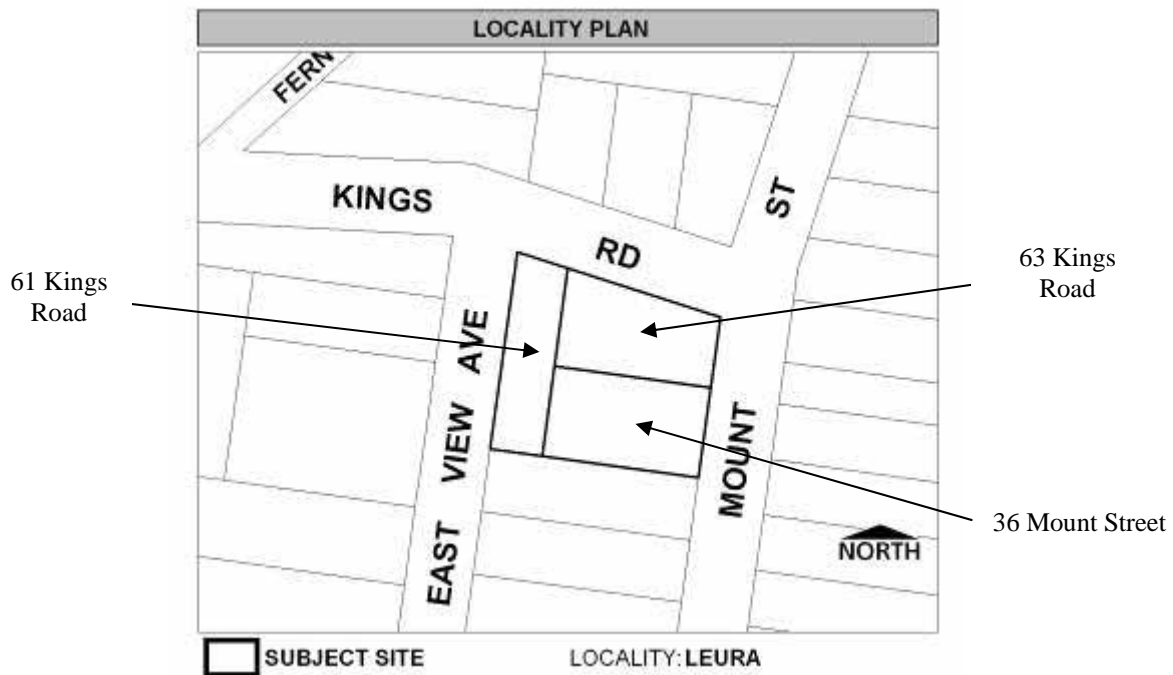
Application lodged: 26 September 2007

Property address

Lot 1 DP 1009510 – 36 Mount Street, Leura

Lot 1 Section 9 DP 5140 - 61 Kings Road, Leura

Lot 2 DP 1009510 - 63 Kings Road, Leura



Background

The Council considered a report on the proposal to prepare a draft local environmental plan in relation to this development, on 20 November 2007 where it was resolved:

- “1 That pursuant to Section 54 of the Environmental Planning and Assessment Act, 1979 (“EP&A Act 1979”), the Council resolve to prepare a Draft Local Environmental Plan to amend Blue Mountains Local Environmental Plan 2005 (LEP 2005) for Lots 1 and 2 DP 1009510 and Lot 1 Section 9 DP 5140, No 36 Mount Street and Nos 61 and 63 Kings Road Leura to permit tourist accommodation as an additional land use and to adopt the draft instrument attached to this report for exhibition.
- 2 That the NSW Department of Planning be informed of the Council’s decision in accordance with Section 54(4) of the EP&A Act 1979.
- 3 That the Council advise the Minister and the Director General of Planning that, in its opinion, an environmental study is not required pursuant to Section 57 of the EP&A Act 1979.
- 4 That the Minister be requested to grant delegation to the Council to certify the Draft Local Environmental Plan under Section 65 of the EP&A Act 1979.”

(Minute No 336, 20/11/2007)

A copy of the 20 November report to the Council is included as an Enclosure to this Report.

A Section 54 notification of the decision of the Council was lodged with the Department of Planning on 4 December 2007. (A copy of the draft local environmental plan (DLEP), as notified to the Department, is at Attachment 3 to the Enclosure.)

Department of Planning Advice

The Council has received advice from the Department of Planning advising that the proposed DLEP is not supported in its current form. The Director General has advised that he will not issue Authorisation for the Council to exercise its delegations in relation to the preparation of the draft local environmental plan (DLEP) and that S65 Certification to exhibit the DLEP is also unlikely to be issued by the Director General. A copy of the advice from the Department is at Attached.

The DLEP, as notified to the Department, proposed a site specific amendment to Blue Mountains LEP 2005 to permit 'tourist accommodation' on the site with development consent. Such a use is consistent with the present operation of the existing Old Leura Dairy development. Once this use was made permissible on this site under LEP 2005, Council could consider granting consent to the development, thus legalising the continued operation of the facility. The DLEP proposed to control the scale of the enterprise by limiting the accommodation to the equivalent of 30 single beds or less, and restricting the use of the land for conferences and the like to guests temporarily residing onsite.

The Department has advised that if the Council wishes to support such development in residential areas, then a review should be undertaken of the 'Living Bushland Conservation' zone in general and if appropriate, amend the instrument to permit tourist and visitor accommodation in the zone, controlling the nature and scale of such development through suitable zone objectives and a suitable Development Control Plan (DCP).

Discussion

Given the advice from the Department, a resolution is required regarding the way forward.

The Department's advice indicates that an amendment to the whole of the 'Living - Bushland Conservation' (LBC) zone is more likely to gain support as it would not be a site specific amendment. However, as the LBC zone applies to some 17,300 allotments in the Blue Mountains, the broad-scale implications of introducing "tourist accommodation" as a permissible use across the primary residential zone in the City requires careful consideration.

In setting a context for this issue, it is to be noted that the Council first prohibited "Tourist Facilities" (which includes tourist accommodation) in the primary residential zones by way of a specific amendment to LEP 4 in 1986. The principle of limiting higher-order tourist uses in residential zones was carried forward under Draft LEP 1997. At that stage the draft plan also sought to prohibit the domestic scale "Bed and Breakfast Establishments" in the equivalent to the LBC zone under Draft LEP 1997. As part of preparing LEP 2005, and in response to the specific recommendations arising from the Public Hearing into Draft LEP 1997, the Council decided to extend "Bed and Breakfast Establishments" into the LBC zone. Together with "holiday lets", such uses are of a domestic or residential scale, with a number of controls that limit the number of guests and bedrooms associated with the use.

The intention of the LBC zone is to provide for a predominantly low density, residential zone comprising single dwellings; the presently permissible land uses reflect this outcome. The zone is applied to areas to the periphery of towns and in some cases at some distance from public transport and services. Increased traffic and noise in relatively quiet residential areas would require careful management. From a practical perspective, Sydney Water Corporation would be a primary stakeholder in identifying system constraints to introducing tourist accommodation more broadly. The capacity of the sewerage system to accommodate this

development form was canvassed in detail with Sydney Water Corporation during the preparation of LEP 2005 in 2000 and 2003.

At present, LEP 2005 restricts 'tourist accommodation' to the 'Village Town Centre', 'Village Neighbourhood Centre' and 'Village Tourist' zones. Restricting such a use to the town centre and areas with high level visitation (ie the Echo Point – Katoomba spine) is consistent with the land use structure adopted for LEP 2005. As tourist accommodation is a use permitted in town centres and in localities that permit multi-unit housing, there is an expectation of higher density land uses. In turn these are managed by way of specific precinct controls applying in the localities concerned. The definition of tourist accommodation does not serve to limit the scale of the enterprise and contemplates associated recreational use, refreshment rooms and space capable for the use of functions such as receptions or conventions.

The approach to Bed and Breakfast Establishments, and the broader role of the LBC zone and the Tourist zones, was considered during the extensive consultation process that formed part of the development of LEP 2005. The Public Hearing made strong recommendations about containing 'tourist accommodation' within established precincts and that the creation of new precincts should not be entertained. Councillors may recall the City Planning resources that went into this City wide review.

Against this context, it is considered that a competent review of tourist accommodation could not be confined to the 'Living Bushland Conservation' zone, but would at least have to extend to the other, less restrictive residential zones. That is a significant task requiring substantial resources and public consultation, including with peak tourism bodies. City Planning have advised that this cannot be appropriately done ahead of the work on the overall review and development of the Blue Mountains LEP consistent with the State Government's directions in relation to the Standard LEP template.

On the basis of the above overview, this report recommends that the Council take a precautionary approach to reviewing the permissibility of tourist accommodation as referred to by the Department. The full scope of such a review and its implications would need to be canvassed with the Department. On the basis of present policy, is unlikely to be supported as a separate process to the review of the City-wide plan.

An inability to proceed with a site-specific DLEP with respect to Old Leura Dairy would also present other issues. The Council has indicated support for Old Leura Dairy. The present development of the site represents an unusual case, where the scale and form of tourist accommodation across three allotments achieves a reasonable outcome. The Old Leura Dairy has also distinguished itself as an ecotourism business of high quality, being the recipient of small business and tourism awards over a number of years. It commonly operates with forward bookings for over a year and in view of its award winning status, profiles the Blue Mountains in the particular international market in which it operates.

Given the significance of tourism to the Blue Mountains economy it is considered that there are grounds to press the Department of Planning to reconsider the matter and move to support the preparation of the DLEP. This development potentially provides a model for an additional sub category of tourist accommodation that may assist in crafting appropriate provisions for wider application as part of the city wide review of LEP1991 and 2005.

The possibility of conducting each lot as a separate holiday let, which is permissible in the zone, has previously been canvassed with the owners but was not considered acceptable at that time. That, however, would appear to be the only way forward in the medium term if the Department of Planning does not agree to the preparation of the current DLEP.

Conclusion

The strategic assessment of potential wider amendment of LEP 2005 is not considered to be something that can be recommended at this time based upon an issue with just one site.

The Council has however expressed its support for Old Leura Dairy. The recommendation proposes that the Council make representation to the Department of Planning to reconsider the request to proceed with this DLEP, for the reasons as specified in that recommendation.

If the Department does not agree to the preparation of this DLEP, the Council will need to determine a way forward. Options that have been canvassed include:

- Further deferral of the matter pending the City-wide LEP review. This is not recommended as an appropriate option. The review will take a number of years and there is no certainty that the review will provide a solution specific to the subject site. In the meantime the unauthorised continues.
- Negotiate with the owners of Old Leura Dairy to define an appropriate operating regime for the site which would render the use permissible and provide time for a transition to the agreed arrangements. That negotiation would in all likelihood involve further legal submissions and advice.

* * * * *

Attachment – Department of Planning advice.



NSW GOVERNMENT
Department of Planning

ENTERED	
DATE	BY

22/12/07

Office of the Director-General

Contact: Megan Hollingsworth
Phone: (02) 9228 6111
Fax: (02) 9228 6177
Email: Megan.Hollingsworth@planning.nsw.gov.au
Postal: GPO Box 39 Sydney NSW 2001

Mr Phil Pinyon
General Manager
Blue Mountains City Council
Locked Bag 5
KATOOMBA NSW 2780

DOC No.	Our ref: S07/02091
	Your ref: O/2246/2007
Rec'd Records	BMCC
REFER	<i>S. D. ...</i>
REMARKS	REC No

Dear Mr Pinyon

Re: Section 54(4) Notification – Draft Blue Mountains LEP 2005 (Amendment 3)

I am writing in response to Council's letter dated 4 December 2007 advising, pursuant to section 54(4) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), of the Council's decision to prepare a draft local environmental plan ('LEP') to permit tourist accommodation on the "Old Leura Dairy", Lots 1 & 2 DP1009510 and Lot 1 Section 9 DP5140, 36 Mount Street and Nos 61 & 63 Kings Road, Leura through an enabling clause in Schedule 8 of Blue Mountains LEP 2005.

The proposed draft amendment is not supported in its current form. Should Council wish to permit such land uses in residential areas it should review the Living – Bushland Conservation zone generally. If deemed appropriate, Council could permit tourist and visitor accommodation uses in the zone, controlling the nature and scale of such development through suitable zone objectives and DCP controls.

The Department does not consider it appropriate for site specific controls to be developed to validate an illegally established land use. For this reason a strategic review of the land uses permitted in the zone applying to the land is the preferred approach.

For the above reasons I have determined that an Authorisation will not be issued in this instance and therefore the Council will not be able to exercise any functions under the delegation in respect of the draft LEP referred to above.

Should the Council decide to proceed with the draft LEP in the terms proposed, you should be aware that I am unlikely to certify the draft plan pursuant to section 65(1) of the EP&A Act.

Should you have any queries in regard to this matter please contact Ms Lois Gray, LEP Review Panel on (02) 9228 6204.

Yours sincerely

SHaddad
Sam Haddad
Director-General

22/12/2007:

ITEM NO: 15

SUBJECT: DEVELOPMENT APPLICATION NO. X/903/2007 FOR THE CONTINUED USE OF LANDSCAPING ON LOT 43 DP 702706, NO. 8 FITZROY STREET, LEURA.

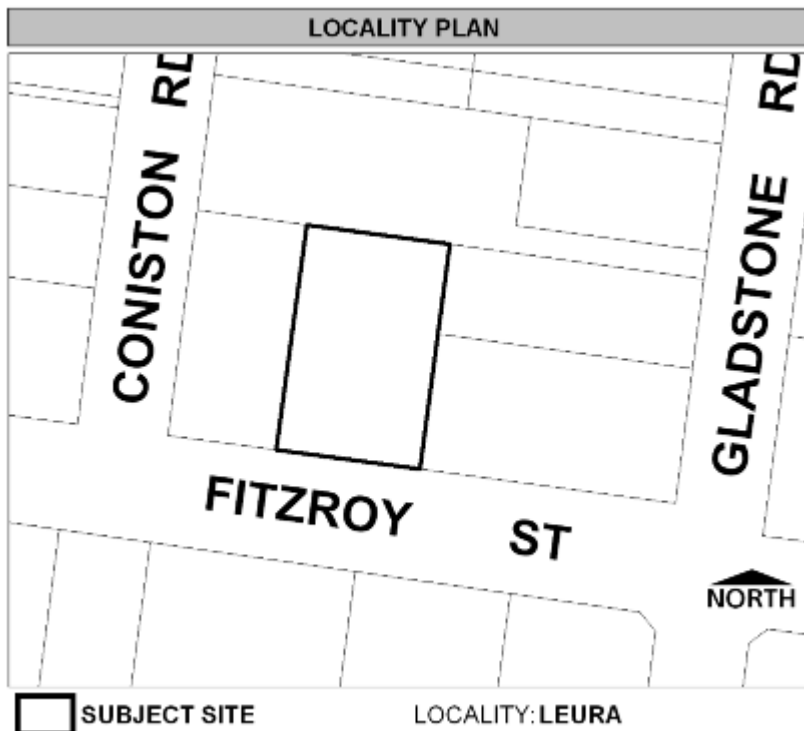
FILE NO: X/903/2007

Recommendation:

That the Development Application No. X/903/2007 for the continued use of landscaping on Lot 43 DP 702706, No. 8 Fitzroy Street, Leura be determined pursuant to S.80 of the Environmental Planning and Assessment Act 1979 by the granting of consent subject to conditions shown in Attachment 1 to this report.

Report by Group Manager, Environmental and Customer Services:

Reason for report	Referred by Councillors.
Applicant	Woodland Designs Pty Ltd
Owner	Lansdowne Cottage Pty Limited
Application lodged	18 September, 2007
Property address	Lot 43 DP 702706, No. 8 Fitzroy Street, Leura



Site description

The subject land is located on the northern side of Fitzroy St and has a total site area of 1609m². The site contains a single storey dwelling and existing landscaping and is surrounded by similar development of a residential nature. The site has a moderate fall from the front to the rear north western corner.

The land is zoned Living Conservation under the provisions of Local Environmental Plan 2005 and is located within Protected Area - Water Supply Catchment Area and Protected Area - Period Housing Area.

Proposal

A Development Application has been submitted for the continued use of landscaping in the rear yard of the subject property.

A copy of the plans showing the proposal is provided in Attachment 2 of this report.

Background

In June 2007, construction of a number of retaining walls and associated landscaping works was commenced on the site without the consent of the Council. The works included the terracing of the rear yard and the construction of retaining walls up to a maximum height of 1.8 metres above natural ground level. The retaining walls consist of reinforced concrete block construction with ironstone facing as a finish.

The matter was investigated by Council officers and the owner directed to cease work and submit a development application for Council's consideration.

Development Application No X740/2007 was submitted to Council on 31 July 2007 seeking consent for alterations and additions to the existing dwelling and erection of a detached garage/studio on the subject property. That application was withdrawn following concerns raised by Council officers in relation to aspects of the proposed development, including the need to resolve the unauthorised landscape works.

The development application presently before Council was subsequently submitted seeking consent for the continued use of the landscape works. The applicant has indicated that the landscaping work is in preparation for the future proposed garage and additions to the house, however those matters do not form part of this application.

Council officers raised a number of concerns regarding the development with the applicants, including issues identified following the neighbour notification process.

A Councillor site inspection was also held on 15 December 2007.

Amended plans were then submitted to Council reducing the height and length of the rear retaining wall and the adjacent finished ground levels. These plans were re-notified to adjoining property owners.

Further amended plans have now been submitted to Council further reducing the length of the rear retaining wall and correcting inaccuracies in the finished ground levels. The final design, which is the subject of this report, proposes a reduction of the overall height and length of the retaining wall adjacent to the northern boundary, a corresponding reduction in the height of the fill in that area, and the construction of a low treated timber retaining wall adjacent to the eastern boundary. The amendments also include the completion of the proposed works including stormwater drainage to absorption pits.

Development controls

Local Environmental Plan 2005
 Better Living Development Control Plan
 Drinking Water Catchments Regional Environmental Plan No 1

Zoning

Living Conservation 100%

Protected Areas

Water Supply Catchment Area 100%
 Period Housing Area 100%

Notification

This application has been notified in accordance with the Council's requirements on two separate occasions during the assessment process.

1. Adjoining/surrounding property owners were notified of the original proposal for a period of 14 days from the 6 November to 20 November 2007.

One submission was received which included a report from an Aborist. Follow up submissions were also received.

2. Adjoining/surrounding property owners were re-notified of the revised design for a further 14 day period from 24 December 2007 to 14 January 2008.

Two submissions were received.

The main issues raised in submissions received can be summarised as follows:

1. The validity of the Council granting a retrospective approval for an illegal structure.
2. The completeness of the applications documentation.

3. Potential impacts of the development on existing trees at 85-87 Gladstone Road, Leura.
4. The control of stormwater runoff.

Assessment Issues

Statutory environmental planning instruments
Public submissions and impacts on neighbouring properties

1. Statutory Environmental Planning Instruments

The application has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act 1979 (as amended), in particular the Section 79C matters for consideration. The application was also assessed against the requirements of LEP 2005 and the Council’s Better Living DCP. The assessment in relation to LEP 2005 is outlined below:

Compliance Table: Local Environmental Plan 2005

Clause	Standard	Proposed	Compliance
cl.12 and cl.23	Compliance with the principal objectives of the plan and the zone that are relevant to the development.	An emphasis on retaining and/or enhancing significant character elements of the local area is an underlying objective of the plan and the retention of a prominent traditional garden setting and landscape character is the primary zone objective. The application is consistent with the existing garden setting of surrounding development and therefore meets this requirement.	Yes
cl.32	Permissibility	The proposed development is permissible within the zone.	Yes
cl.44	Development shall be designed and sited to minimise as far as practicable any adverse environmental impact.	The landscaping works are taking place within existing cleared areas and all terraced areas are proposed to be fully retained and landscaped.	Yes
cl.48	Protected Area: Water Supply Catchments	The application is accompanied by a Statement of Environmental Effects which addresses the objectives, requirements and standards of clause 48 of the LEP. The application proposes no new impervious areas and suitable measures to control stormwater runoff are included as part of the new landscaping.	Yes
cl.56	Site disturbance and erosion.	An erosion and sedimentation control plan has been prepared to minimise site disturbance whilst considering the natural characteristics of the land.	Yes

Clause	Standard	Proposed	Compliance
cl.57	Stormwater Management	<p>Hydraulic plans have been submitted to the Council indicating the collection of surface water. The water will be disposed of to an absorption pit in the rear yard area. An appropriate condition can be imposed in relation to the disposal of seepage water from behind the retaining wall. This matter is discussed in further detail in a following section of the report.</p> <p>No new building works or additional impervious areas have been proposed as part of this application and therefore the amount of potential water being disposed of will not increase.</p>	Yes
cl.58	Modification of land form. Development is to minimise “cut” and “fill” as far as practicable.	<p>The application proposes a series of retaining walls to terrace an area of the rear yard for levelled recreational purposes and residential landscaping.</p> <p>The final design proposes that the maximum depth of the filling behind the retaining walls will be 1.4 metres. This is considered acceptable given the proposed landscaping associated with the retaining walls and the location of the wall in relation to boundaries.</p> <p>This matter is discussed further in this report.</p>	Yes
cl.60	Character and Landscape	An assessment of character has been provided in conjunction with a detailed landscape plan. It is considered that the landscaping will enhance the character of the area and streetscape quality.	Yes.
cl.61	Protected Area: Period Housing	<p>An assessment of character has been provided.</p> <p>No alteration of the existing dwelling is proposed and the completed landscaping, will enhance the appearance of the existing dwelling.</p>	Yes
cl.65	Landscaping for residential development.	A detailed landscaping plan has been submitted to the Council which satisfies the requirements of clause 65 of the LEP.	Yes

Schedule 2 - Locality Management			
	Setbacks	The development as proposed complies with the minimum setback requirements having a 5 metre setback from the eastern side boundary and a 5 metre setback from the northern rear boundary.	Yes
	Site Coverage	This application does not involve any increase in building site cover. The proposed area of soft, pervious or landscaped areas is approximately 76% of the site.	Yes
	Character and Landscape considerations	This application proposes terracing of the rear yard of the subject property and associated landscaping and is considered to be in keeping with the garden setting of the Leura village character.	Yes

The assessment in relation to the Council’s Better Living DCP is outlined below:

Compliance Table: Better Living Development Control Plan

Clause	Standard	Proposed	Compliance
D1.2.1	Biodiversity. Alteration of the natural ground level by greater than 1 metre of fill is not permitted	It is proposed to reduce the height of the retaining wall adjacent to the northern boundary. The depth of fill in the north western corner of this wall will be up to 1.4 metres. Reference should be made to the discussion in this report regarding this matter.	No
D1.4	Stormwater	Suitable details have been submitted outlining adequate provision for the disposal of collected surface waters as part of this application.	Yes
D1.5	Streetscape Character	The development when completed, including the establishment of the associated landscaping, will maintain and enhance the character of the surrounding developments and local streetscape.	Yes

Alteration of natural ground levels

This application has been assessed against the relevant standards and requirements of Local Environmental Plan 2005 and the Council’s Better Living Development Control Plan. In this regard, the proposal generally complies with these provisions with the exception of the height of the main retaining wall at the rear.

Clause 58 of the LEP requires that development minimise cut and fill as far as is practicable. Within the Living – Conservation zone there is no height limit stipulated for this requirement. However Clause 1.2.1 of the Council’s Better Living Development Control Plan states that the alteration of natural ground level greater than 1 metre cut or 1 metre fill is not permitted.

The maximum height of the main retaining wall, which was erected without the consent of the Council, was 1.8 metres above natural ground level. After negotiations with the Council’s Assessment Officers the applicant has agreed to reduce the height of the retaining wall and fill at the rear by 2 courses of blockwork or approximately 400mm. This would reduce the height of the rear retaining wall to a maximum of 1400mm above natural ground level.

The additional 400mm height above the Council’s DCP standard has been proposed on one corner of the main retaining wall. This increase in level is for a small portion of the main retaining wall and is located 12 metres away from the eastern boundary and 5 metres away from the northern boundary of the site. Given the proposed landscaping associated with the retaining walls, it is considered that the additional height of the retaining wall and associated fill will not have an adverse impact on the amenity of the area or privacy between properties.

The partial increase in height is considered acceptable due to the minor nature of the departure and the location of the area in question in relation to boundaries. In addition, the retaining wall comprises only a small portion of the overall development, whereby once the proposed landscaping is completed, the additional height on the retaining wall would not be readily noticeable from the neighbouring properties or street reserve.

2. Public Submissions and Impacts on Adjoining Properties

As indicated above, the Council notified adjoining and nearby property owners of the application on two separate occasions. As a result of this process, a number of submissions, including three Arborist Reports, were received from the owner of 85-87 Gladstone Road, Leura and one submission was received from the owner of 6 Fitzroy Street, Leura.

In summary the following concerns were raised

1. The validity of retrospective approvals for illegally constructed works;
2. The incomplete nature of the development application;
3. The control of stormwater runoff from the development; and
4. The impacts on established trees on 85-87 Gladstone Road.

Comments:

a. The validity of retrospective approvals for illegally constructed works

Under the provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Environmental Planning and Assessment Regulations 2000 retrospective approval cannot be issued for works carried out without development consent. The significant majority of the retaining walls and associated earthworks were undertaken prior to the submission of the development application. However development consent is being sought for the continued use of landscaping in lieu of demolition. The final design also seeks consent for the partial demolition of the retaining wall adjacent to the northern boundary to reduce the overall height and length, a corresponding reduction in the height of the fill in that area and the construction of a low treated timber retaining wall adjacent to the eastern boundary. The application also proposes the completion of the landscaping and other works including site remediation.

A certificate from a Practising Structural Engineer attesting to the structural integrity of the wall has been received by the Council.

Section 80 of the EP&A Act provides that a development consent may be granted:

- (a) for the development for which the consent is sought, or
- (b) for that development, except for a specified part or aspect of that development, or
- (c) for a specified part or aspect of that development.

Accordingly, while consent cannot be granted to that part of the retaining walls and earthworks already undertaken, consent can be granted for the proposed modifications of, and completion of the works outlined in the approved plans.

b. The incomplete nature of the development application

The initial application was submitted to the Council on the 18 September 2007. A preliminary assessment of the proposal identified a number of issues requiring attention prior to further assessment of the application. The applicant was requested to submit additional information including:

- Accurate plans reflecting the conditions on site
- Revised plans reducing the height of the retaining wall
- An assessment of character and a detailed landscape plan
- An environmental assessment
- Full details of the stormwater disposal system.

Throughout the course of the assessment process, additional information has been submitted to the Council to satisfy the requirements of Schedule 1 of the Environmental Planning and Assessment Regulations 2000. This has included:

- Architectural / landscaping plans
- Stormwater drainage plans
- A Statement of Environmental Effects addressing the requirements of LEP 2005 including character
- An Arborist report addressing the impacts on the trees on the adjoining property.

c. The control of stormwater runoff from the development

The erection of retaining walls and alteration of ground levels in the rear yard area has the potential to influence both the surface and sub-surface drainage on the site. In order to address this issue the applicant was requested to provide full details of a stormwater disposal system. Plans from a Hydraulic Engineer were submitted indicating surface drainage points and other water control measures to prevent surface runoff impacting on the site and the adjoining properties. While the engineering details do not address the disposal of water from agricultural drains installed behind the base of the retaining walls, it is proposed to impose a condition on any development consent to provide additional drainage to collect and dispose of any seepage water from these structures. It is considered that given the limited volume of water involved, there is sufficient space at the rear of the property to dispose of such water without any significant adverse impacts on adjoining properties.

All collected roof water from the existing dwelling and surface runoff from the new works will be disposed to an absorption trench located in the centre of the rear yard. It is considered that this will improve the existing situation and will minimise the impacts of any stormwater runoff.

It should also be noted that the property is located within a drinking water supply catchment and therefore Regional Environmental Plan (REP) No.1 (Drinking Water Catchments) applies. In this regard, an assessment has been made of the potential impacts of the proposed development under the REP and it has been determined that there will be a neutral or beneficial effect (NorBE) on water quality

d. The impacts on established trees on 85-87 Gladstone Road

A significant landscape feature of the adjoining property at 85-87 Gladstone Road is a row of 14 *Cupressus torulosa* (Bhutan Cypress) which are located adjacent to the eastern side boundary of the subject property. The initial excavation works which were carried out without the consent of the Council caused damage to the root system of these trees. The owner of 85-87 Gladstone Road lodged a number of submissions raising concerns over the wellbeing of these trees both prior to and during the assessment process. These submissions included reports from a consulting Arborist.

The applicant has also submitted reports from a separate consulting Arborist in relation to both the original and the amended proposal.

All Arborist reports recommended that no fill or structures should be located within approximately 4 to 5 metres of the trees. The initial reports from the Arborist on behalf of the adjoining property owner also recommended a number of remediation measures to repair the damage to the root systems of the trees.

The remediation work in the area of the root zone of the *Cupressus torulosa* has been completed and following an on site meeting with the applicant amended plans were submitted and renotified on 24 December 2007. These plans proposed cutting back the retaining wall to a distance of 3 metres from the side boundary and the construction of a low treated timber retaining wall to return to natural ground level. The plans also indicated the partial demolition of the rear wall to a maximum height of 1.4 metres. As a result of the assessment and the neighbour notification process, it was noted that the finished levels which appeared on the final design were incorrect and therefore misleading. It was also noted that the 3 metre setback from the side boundary was also contrary to the advice of the Arborists. Further amended plans were therefore requested and received which corrected these matters.

The revised design which is now before the Council is to partially demolish the retaining wall to achieve a 5 metre setback from the side boundary. A low treated timber retaining wall will return to natural ground level and subsurface drainage provided to ensure all seepage and surface waters are collected and disposed of clear of the root zone of the adjacent trees. The existing rear retaining wall will also be reduced to a maximum height of 1.4 metres and the plans now correctly indicate a corresponding reduction in height of the garden above the retaining wall. The finished level of the lawn area has also been corrected to show that the lawn will be at the same level as the stairs. The latest revised plans addressed the majority of the issues raised in the submissions and corrected mistakes in the levels. As the amendments did not introduce new or significant potential for adverse impacts, it was not necessary to renotify the amended plans.

It is considered that the revised landscape plan addresses the issues raised in the various Arborist reports. The current retaining wall will be reduced in height and partially demolished, moving it away from the eastern boundary to a setback of 5 metres. Suitable

measures have been proposed to control surface water runoff which will protect the root zone of the adjoining trees. The height of the fill will also be adjusted to accommodate the altered levels of the retaining wall. It is therefore considered that the revised design will enhance the landscape character of the area and minimise any adverse impacts on adjoining properties.

Conclusion

The development application for the continued use of landscaping has been considered in accordance with the relevant provisions the Environmental Planning and Assessment Act 1979 and the requirements of LEP 2005 and the Council’s Better Living DCP.

The applicant has modified the original proposal to address concerns raised by both the Council and the adjoining property owners in order to negate impacts on existing surrounding vegetation and to control storm water runoff.

The proposal, when completed, will meet the objectives of the zone under LEP 2005 and enhance the streetscape quality of the area.

Accordingly the application is recommended for approval, subject to the conditions shown in attachment 1 of this report.

* * * * *

Attachment 1 - Conditions of Development Consent

Confirmation of relevant plans

1. To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by Woodland Designs dated February 2008 and the drainage design plan prepared by Barker Ryan Consulting, numbered 07190E1-A dated 15/1/2008 and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.

Period of development consent

2. Physical commencement of construction is required within a two year period from the date of this consent. Should this not occur, the development consent will lapse.

Sydney Water Stamping of plans

3. The approved plans must be submitted to a Sydney Water Quick Check agent or Water Servicing Coordinator to determine whether the development will affect any Sydney Water Asset’s sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site www.sydneywater.com.au for:

- Quick Check agent details – see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building Developing and Plumbing then Building and Renovating
- or telephone 13 20 92.

A copy of the stamped plans or other documentary evidence from Sydney Water’s accredited agent demonstrating that the plans have been stamped by them is to be submitted to the Principal Certifying Authority prior to construction commencing.

Building Code of Australia

4. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Site management

5. To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the construction period:

Site and building works (including the delivery of materials to and from the property) shall be carried out

Monday to Friday between 7am-6pm and on Saturdays between 8am-3pm. Alteration to these hours may be possible for safety reasons but only on the approval of the Council.

Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.

Building operations such as brickcutting, washing tools, concreting and bricklaying shall be undertaken on the building block. The pollutants from these building operations shall be contained on site.

Builders waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.

Erosion & sediment controls

6. To preserve the unique environment of the Blue Mountains and to contain soil and sediment on the property, controls in accordance with Council’s Better Living Development Control Plan are to be implemented. This will include:
 - The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment.
 - Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.

Plans on site

7. A copy of the stamped and approved plans, development consent and the construction certificate are to be on the site at all times.

Stormwater drainage

8. To control rainwater runoff, drainage lines and retaining wall agricultural lines shall be connected to a stormwater drainage system as designed in accordance with details submitted by Barker Ryan Consulting (reference 07190E1).

The seepage water from the drainage system located within the base of the retaining wall shall be collected and piped to a stormwater pit measuring 600mm wide x 600mm deep x 2m long. The pit shall be located at least 4m from any property boundary.

