

ITEM NO: 8

SUBJECT: PROPOSED REFORMS TO THE NSW PLANNING SYSTEM.

FILE NO: F00534

Recommendations:

1. *That the report relating to the Department of Planning Discussion Paper titled "Improving the NSW Planning System" dated November 2007, be received and noted.*
 2. *That this report and a covering letter be forwarded to the Department of Planning.*
 3. *That the report also be forwarded to the State Local Members, WSROC and the LGSA.*
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Report by Group Manager, Environmental & Customer Services:

Executive Summary

The Department of Planning has released a Discussion Paper titled "*Improving the NSW Planning System*" outlining proposed changes to the planning system as it operates in NSW. The Department has invited submissions from interested persons and stakeholders on the recommendations outlined in the Discussion Paper. The period for comment has occurred during the Christmas holiday period and Council recess limiting the time available for constructive dialogue by elected members and staff.

There is no argument that the NSW planning system has over time become overly complex and is in need of reform. The major reasons for this occurring were the significant amendments to the planning system introduced by the State Government in 1997, together with the complexity, the lack of consolidation of related legislation and the need for and time taken for referrals to State Authorities, often for minor matters.

Particular attention is drawn to section 8 of the key changes and recommendations referred to later in this report. Section 8.1 refers to the conversion of existing LEPs into a standard LEP. It is proposed to provide powers to allow automatic conversion into the new instrument without the need for the existing processes for the making of the LEP. Conversion would be possible where the strategic underpinning of an LEP remained sound and did not have to be subject to a major review. Facilitating the conversion of those LEPs into standard instruments would mean the possible amendment of the EP&A Act. This change is considered advantageous for the Blue Mountains City Council in the case of converting LEP 2005 into the standard instrument as required by the State Government.

Many of the changes canvassed in the Discussion Paper are welcome and are aimed at simplifying the process. However there is currently a lack of detail to form clear opinions on the effects of a number of these changes. Concerns are however raised about the changes relating to the introduction of a mandatory state-wide code for exempt and complying development and accreditation of Council building surveying staff. These changes have the potential to:

- a) Overly simplify development standards at the individual lot level that accumulatively may contribute to unacceptable outcomes for the Blue Mountains environment, both natural and built;
- b) Weaken the outcomes sought by the Council's Local Environmental Plan (LEP) 2005;
- c) Reduce decision making at a local level and empower private certifiers employed by the applicant to make discretionary decisions affecting neighbours, the local community and the environment which will not necessarily be in the community interest;
- d) Weaken local government's ability to attract and retain skilled staff; and
- e) Further shift responsibility and costs onto local government.

Background

In 1997 significant amendments were made to the provisions of the Environmental Planning and Assessment Act 1979 and Local Government Act 1993 which had the effect of:

- a) Transferring building control functions from the Local Government Act (LGA) to the Environmental Planning & Assessment Act (EP&A Act). These changes removed the minor type developments (car ports, garages, decks etc) from the former building application process under the LGA, and made them subject to the more complex development consent process under the EP&A Act;
- b) Introducing a hierarchy of development categories including exempt and complying development, local development and state significant development (legislative provisions relating to state significant development have been further amended with the subsequent introduction of Part 3A of the EP&A Act);
- c) Opening up the building control functions previously undertaken by local Councils to competition from private accredited certifiers, including:
 - Issue of Complying Development Certificates (development consent for minor works);
 - Issue of Construction Certificates (a compliance check of building or subdivision plans against the terms of development consent and, in the case of building work, the technical provisions of the Building Code of Australia and Australian Standards);
 - Issue of Compliance Certificates (certification that specified building or subdivision work complies with identified standards eg inspections of buildings under construction, or that a specified aspect of development complies with certain provisions, or that a specified condition of development consent has been complied with);
 - The role of Principal Certifying Authority (PCA) overseeing the construction and subdivision process, including the issue of Occupation and certain Subdivision Certificates; and
 - Inspections of buildings and subdivisions during their critical stages of construction.

Other key changes included the review of assessment criteria for development applications and the introduction of 'integrated' development consent, whereby concurrence from other authorities was integrated into the development assessment process.

There have been a number of subsequent amendments and reviews introduced by the State Government and the Department in recent years aimed at addressing problems identified in the planning and building control systems. This includes the 2002 Joint Select Committee on the Quality of Buildings chaired by the Hon. David Campbell, MP, (known as the Campbell Enquiry) which recommended significant changes in the regulation of the building construction process, one of which, included the accreditation of Council building surveyors. However to date, qualified professional staff undertaking building surveying roles for Councils have not been required to be accredited.

The most recent Discussion Paper argues that the existing planning system is in need of further reform and cites the following key issues as grounds for reform:

- The approval system is too long and complex;
- Under utilisation of complying development certificates resulting in too many DA's;
- Delays in the preparation of LEP's;
- Community input can be ineffective;
- The process often seems more important than the outcome;
- The system is not consistent across the State; and
- Planning resources are not utilised effectively.

The State Government discussion paper has been made available to Councillors and is presently on public exhibition with submissions due to close on 8 February 2008.

Proposed Reforms

The Discussion Paper canvasses and identifies a number of key areas for reform and all up makes more than ninety (90) individual recommendations for change. The main proposals for change relate to eight (8) key areas as follows:

1. Changing Land Use and Plan-Making

The Discussion Paper details the current system of the three (3) levels of plan making being State Environmental Planning Policy (SEPPs), Regional Environmental Plans (REPs) and Local Environmental Plans (LEPs). There have been limited changes to the plan making provisions of Part 3 of the EP&A Act. Despite this, however, the Paper states that the plan making system has become cumbersome and complex with a lack of certainty until late in the process.

It is agreed that the process is cumbersome for minor rezonings and that reform is warranted.

Recent reforms to the plan making system have been summarised in the Discussion Paper as:

- New metropolitan and regional strategies – have been prepared in order to guide growth;
- New major projects assessment system (Part 3A) – effective for large projects only.
- SEPPs – there are some recent new SEPPs and reviews and updates to existing ones as well;
- Amendments to the EP&A Act – minor amendments have occurred;
- Standard LEP – to reduce the diversity of LEPs and controls across the State;

- LEP Review Panel – early review system;
- DCPs – single DCP for each parcel of land mandated; and
- Integrated planning and reporting – The Department of Local Government is currently finalising a series of planning and reporting reforms for local government.

The key changes and recommendations under consideration are:

- 1.1 To stream LEPs into different categories such as local and State significance so that the level of assessment, process, referral and consultation requirements align with the type and complexity of the issue. In addition, minor LEPs could be made without final sign off by the Minister.

Comment – The Discussion Paper includes sufficient examples of how such a system might work. An important innovation is that rather than having the Minister make all new LEPs, a Council may be able to finalise minor LEPs that have satisfied the “gateway screening”, with some LEPs also being finalised by the Director-General. The aim of the Department is to reduce the time taken for the making of LEPs and this change of approach is supported to reduce the considerable delays in the present system.

- 1.2 A ‘gateway screening’ system for new LEPs to be introduced. – The purpose of this system would be to cull inappropriate proposals at an early stage. A ‘Justification Report’ would be required to be produced by the Council and an example is provided in the Discussion Paper. It is not intended to complicate the proposed new system with the need to provide complex and lengthy reports at the early stage in the plan making process.

Comment – This proposed system is somewhat akin to the pre-DA system run by many Councils whereby the main issues of a proposal are addressed and early indications on the suitability of the proposal can be provided. Such a system for LEPs has considerable merit. The present system does not enable the Department and/or Minister to have input into whether the rezoning will be supported until after comprehensive and highly detailed submissions have been prepared and until after the Council has resolved to prepare a draft LEP. In fact, the Department and Minister can presently decide to not support draft plans at the final Section 69 stage, which can be after several years worth of work and processes (including public exhibition and consideration of submissions by the public). Such an approach would mean that a report can be presented to Councillors to commence a rezoning process in the knowledge that a plan has in principle support by the State Government. This would represent an improvement to the existing situation. The only draw back may be an increase in the number of speculative requests for rezoning, but the discussion paper indicates that a Council’s costs can be recovered.

- 1.3 For minor land use issues, consideration could be given to expanding those matters that can be dealt with under Section 73A.

Comment - 73A currently provides for the correction of minor errors without having to carry out the entire LEP process – there is administrative benefit in expanding the role of this Section to avoid unnecessary corrective LEP processes.

- 1.4 A fee for service for privately initiated LEPs.

Comment – Additional fees are certainly warranted and appropriate.

- 1.5 Early referral to State agencies with set time limits.

Comment – Receiving timely responses to referrals to State Agencies at an earlier stage would assist the plan-making process. A number of the State agencies seem to suffer from insufficient staffing levels. The reforms assume that additional staff can be engaged both at the state and local level. Being able to charge market fees for service can be charged from private developers, and then it may be possible to attract the required staff.

- 1.6 A system of accountability for LEPs would be introduced which might include:

- 1.6.1 Mandatory time frames for different stages of the process.
- 1.6.2 The ability to refer an outstanding LEP or land use issue to the proposed Planning Assessment Commission (PAC), or a Joint Regional Planning Panel (JRPP), where timeframes are not being met or finalisation of an LEP has stalled.
- 1.6.3 Extending the existing power in the EP&A Act (Section 74) to allow the State to directly amend an LEP where there are issues of State or regional significance.

Comment – Mandatory timeframes are appropriate in certain situations. The Minister is currently concerned that the current process stalls because there are no time requirements to complete various tasks. Timeframes that are reasonable could assist in prioritising the various steps involved in plan-making. The concerns for the Council however will firstly be the ability to apply the required commensurate staff resources to such prioritised work given current staff shortages. The second concern is that timeframes will not be realistic. There is a clear need for target times to account for delays arising from all referral agencies and the Department of Planning. It is important that imposition of time frames does not compromise the quality of final outcomes. However, as the Council has previously been concerned about delays in the plan making process (particularly by the State Government) these innovations are agreed. The Government’s commitment to reduce processing times for LEPs by 50 per cent is acknowledged. The setting of the timeframes for LEP process should be contingent on the State Government meeting commitments to improve the plan-making process via e-planning initiatives it proposes in the Reform documentation.

There is concern that various processes or decisions could be shifted away from Local Government if timeframes are not met. This will be dependant on the precise circumstances where a stalled LEP is completed by the Planning Assessment Commission or a Joint Regional Planning Panel.

- 1.7 The Department of Planning to streamline and reduce the number of SEPPs and REPs.

Comment – There are a large number of SEPPs and this can at times make the

development and planning system overly complex. Rationalisation of these plans is strongly supported. However this should be done in a comprehensive and integrated fashion. The current piecemeal process of releasing changes on an almost weekly basis via the Government Gazette adds to staff workloads as constant updating of internal systems (such as those associated with Section 149 Certificate production) is currently required. For example the Infrastructure SEPP 2007 gazetted 21 December 2007 repeals various SEPPs and has created this type of work for the Council.

- 1.8 The Department of Planning would issue guidelines for different levels of LEPs and DCPs to support a new system that would identify the appropriate content and timeframes of these Plans and level of community consultation. Non-compliance with State policies would be prevented.

Comment – Whilst guidelines can be of assistance in formulating policy, the Discussion Paper tends to indicate that the ‘guidelines’ may be more akin to regulations. The requirement that LEP 2005 be replaced with the standard instrument has caused concern for the Council and the community. A further restriction upon the Council’s ability to apply locally responsive controls (particularly where these have previously been agreed by the Department in making LEP 2005) is of considerable concern.

- 1.9 The following measurable outcomes are recommended for the changes to plan-making:

- 1.9.1 Reduce processing time for LEPs by 50 per cent.
- 1.9.2 Reduce the number of SEPPs/REPs by 50 per cent.

Comment – The reduction of processing times for LEPs is certainly desirable in certain circumstances particularly for minor or ‘spot’ rezonings. As mentioned however, this will rely principally upon Councils’ improved processing times. This will be a resourcing issue for many Councils, and will depend on full cost recovery.

The reduction in the number of SEPPs and REPs is desirable however if the same controls are retained and are effectively moved from two (2) SEPPs into one (1) then this target can be said to have been achieved without any meaningful reduction in ‘cumbersome or complex’ legislation. It is considered that a large number of SEPPs could be rationalised, which was initially proposed in the late 1990s.

In summary, the majority of proposed changes to the plan-making process are endorsed in principle. The Council has previously been concerned about delays in this process. The ‘gateway’ concept has merit to the extent that it avoids the situation of Councils, the community and proponents getting well advanced in preparing LEPs to find that the LEP will not be supported or requires substantial amendment. Equally there is benefit in streamlining LEPs, particularly for minor matters.

The Council trusts that the State Government acknowledges that the complexity of LEPs is not just a product of the development type, but the sensitivity of the environment in which it is proposed. Similarly, the workability of the new reforms will depend significantly on how the system is administered by the State Government. Should an inflexible approach be taken to assessing consistency with State policies or an approach that fails to recognise legitimate

local issues, it could be at the cost of achieving valid local environmental outcomes and values via LEPs.

The primary strategic planning focus of the Council, as required by the State Government, is completing the review of LEP 1991 and integrating this with LEP 2005 to create a new standard planning instrument. Some of the reforms may assist the joint objective of the Council and the State Government to maintain the planning outcomes and standards established by LEP 2005 and are endorsed on that basis.

Recommendations:

- 1. The majority of proposed changes to the plan-making process are endorsed in principle;**
- 2. A flexible approach needs to be taken by the State Authorities in administering consistency with State Policies to recognise legitimate local issues;**
- 3. Council supports the streamlining and reduction in SEPPs and REPs and would be willing to participate in any review panel;**
- 4. Council’s support for the reforms is based on the existing standards and outcomes established by LEP2005 being able to be integrated into the new planning template.**

2. Development Assessment and Review

The key changes and recommendations under consideration can be summarised as:

- 2.1 Establishing a hierarchy of decision-making authorities reflecting the different levels of development assessment including:
 - 2.1.1. Delegation of the majority of ministerial-level determinations to a new Planning Assessment Commission (PAC), excluding applications for critical infrastructure and strategic major projects. The PAC would be comprised of a permanent chair and a panel of up to eight other part time members.
 - 2.1.2. Creating Joint Regional Planning Panels (JRPP) to determine applications of regional significance. The Joint Panels would comprise three (3) State nominees and two (2) Council nominees and would determine regionally significant projects (typically those applications with a value of more than \$50 million) or those lodged by other State agencies.
 - 2.1.3 Councils remaining the consent authority for locally significant applications (typically less than \$50 million in value). Council’s would be encouraged to utilise Independent Hearing & Assessment Panels (IHAP’s) under certain circumstances yet to be determined.
 - 2.1.4 Significantly increasing the scope and use of Exempt and Complying development to reduce the number of DA’s submitted to Councils.

Comment – The different categories of development, and therefore the level of assessment, is based solely on the value or size of the development rather than the complexity of the development, and its potential impacts on the natural and built environment and the community.

In relation to the introduction of the PAC and JRPPs there are issues concerning who and how the members are appointed, their skills, expertise and knowledge of issues, particularly local issues, and their independence.

The \$50 million threshold for developments to be categorised as regionally significant is arbitrary and may or may not be regionally significant in its context. The \$50 million value, particularly over time, has the potential to encompass locally significant development. If this method is to be used, it is considered appropriate to consider a higher threshold and to index that against the CPI.

Similarly, there are issues regarding the expertise, knowledge and independence of members of IHAP's. The use of IHAP's also raises concerns relating to complicating and 'adding' a further step in the assessment process and increasing costs to fund and resource such panels.

The issue of expanding the scope of exempt and complying development is discussed in detail in the following section of this Report.

- 2.2 Amending deemed refusal times based on the size and complexity of the proposal as follows:
- 20 days for minor local development;
 - 40 days for small-scale development;
 - 60 days for medium-scale development;
 - 90 days for development with potentially significant environmental and amenity impacts.

Comment – It is appropriate to have different 'deemed refusal' times for different categories of applications. However, the proposed time frames, particularly the 20 day period for minor development proposals, assume applications are compliant and complete at the time of lodgement. Evidence would suggest otherwise, and the time frames will force the Councils to adopt an 'approve' or 'refuse' approach rather than provide good customer service and negotiate with applicants to achieve a better outcome. Deemed refusal times should only apply to lodged as complete applications with strict criteria developed by the government outlining to applicants what is expected.

- 2.3 Introducing 'Planning Arbiters' to hear initial appeals, including deemed refusal appeals, for minor developments, and reviews of determination. Planning Arbiters would be appointed by Councils from a register agreed upon by the Department of Planning and Local Government and would undertake the review within 21 days.

Comment – There are unresolved issues associated with funding and resourcing of planning arbiters and the practicalities of Councils being able to assess and prepare documentation within the proposed timeframes. There are no details of what level of resourcing will be required and at what cost.

There is also a question around the outcome of such a system and how Planning Arbiters are used. Will Arbiters be overly used to work around Council decisions and be just another step and cost in the process?

2.4 Streamlining integrated development and concurrences.

Comment - It is agreed that the integrated development and concurrence process with State Government agencies requires streamlining. It is considered appropriate to place greater emphasis on applicants obtaining approval/accreditation from agencies (eg Rural Fire Service, Sydney Catchment Authority etc) prior to pre-lodgement such as is the case with BASIX.

2.5 Matching development assessment fees for service.

Comment – The proposal to enable Councils to match the fee charged to assess a development application to the service is strongly supported.

2.6 Improving the structure of consents and conditions.

Comment – There is support for uniformity in the structure and conditions of consents provided the changes maintain the ability to address non-standard matters such as protection of vegetation, protection of water supply catchments, character etc. Standard conditions should not be mandated based on the lowest common denominator for all developments.

2.7 Meaningful community involvement. The Paper proposes that the Department issue consultation guidelines incorporating community consultation principles and standardised notification procedures that would then apply.

Comment – Any guidelines should include provisions reflecting that the impacts of a development, even minor, may extend beyond immediate neighbours, and will depend on matters such as the topography and environmental sensitivity of the area e.g. the potential for traffic or noise from a particular development to impact on properties in close proximity, but not immediately adjoining the site.

Recommendations:

- 5. All panels having a role in the assessment process (including the PAC, JRPP and IHAP's) include only those persons having the requisite skills, knowledge and expertise to assess the application together with at least one locally elected representative to identify and advocate local community views;**
- 6. Appropriate protocols be developed to ensure the independence of panel members and planning arbiters;**
- 7. The costs associated with establishing and resourcing panels and planning arbiters should not be a cost impost on local government;**
- 8. The threshold value for developments to be considered as regionally significant be set at \$100 million and indexed annually to the CPI;**
- 9. The time frames after which an application is deemed refused be increased to realistic levels and take into account administrative processing and mandate that the time frames only apply to complying applications;**
- 10. Provisions requiring applications to be accompanied by documentation/reports required by a Council LEP to be mandated in legislation;**
- 11. Development application fees be increased to cover the cost of assessment;**
- 12. Concurrence/integrated approval procedures to be streamlined with greater emphasis placed on having proposals certified/accredited by agencies prior to lodgement;**

13. **Standardisation of consents/conditions should still retain ability to address non-standard issues;**
14. **Reforms to retain provision for consultation with community in relation to development proposals particularly where the impacts may extend beyond the site and immediate neighbourhood.**

3 Exempt and Complying Development

The changes to the planning system as outlined in the Discussion Paper that have the potential to have the most profound impact on development in the Blue Mountains relate to the proposal to significantly expand exempt and complying development. The proposed changes aim to increase the extent of development that is categorised as complying development across the State from the present figure of 11%, to 30% within two years and 50% within four years.

- 3.1 As part of the reforms, the Department of Planning proposes to establish a Complying Development Expert Panel (CDEP) which would have the responsibility for developing a series of State-wide complying development codes. These codes would be made mandatory default codes to apply to all relevant development categories unless an alternate local code has been accredited by the CDEP.

The Paper envisages that the mandatory code would provide for exempt and complying development in a wide variety of circumstances such as:

- Housing in a range of locations: new release, in-fill, brownfield, coastal, rural residential, rural and for a range of housing types;
- Different types of housing such as single and two storey;
- Different residential lot sizes;
- Different landscape and slope characteristics;
- Residential alterations and additions across a range of locations, housing types and lot sizes;
- Industrial within industrial estates; and
- Commercial and retail, particularly fitouts and small scale modifications.

It is proposed that the first mandatory default code will apply across the State from 1 July 2008.

Councils would be permitted to develop an alternate complying development code which must be generally consistent with the State codes, and accredited by the Department on advice from the CDEP.

Comment – The Discussion Paper cites the significant increase in the number of development applications needing to be lodged with Councils following the 1997 reforms as the basis for now needing to significantly expand exempt and complying development. Prior to those reforms, the significant majority of minor structures such as garages, car ports, pools, dwelling additions/alterations and most new single dwellings, only required building approval under the Local Government Act rather than development consent. The Building Application process was a less complex and more efficient process.

The proposed changes are in effect aimed, at least in part, to returning to this model and removing the need for most minor single residential type developments to be the subject of a development application.

There is no doubt a well founded case for expanding exempt and complying development to encompass those inconsequential structures that traditionally did not require approval of Councils such as garden sheds, fences, BBQ's, clothes lines, flag poles and the like, or for other minor development such as car ports, awnings, decks etc not impinging on the amenity of neighbours or the neighbourhood.

However, there is one fundamental difference to the operation of the former assessment system and that presently operating and proposed to be expanded. Rather than the development assessment responsibilities resting with Council as the independent and accountable arbiter, they will, in effect be re-assigned to the certifier of the applicant's choice, being private or Council. In short key environmental and design issues will be determined at the discretion of the applicant's certifier whoever that might be. The chances of a gaining consistency across the City and in the same street would be doubtful.

The role of Government is to work in the interest of the community as a whole, not any one or more particular interest groups. The proposal to significantly expand exempt and complying development to include the majority of new dwellings appears to be aimed principally at faster processing times for the development industry, at the expense of quality development outcomes for the benefit of the wider community.

The proposed expansion of exempt and complying development is based on the assumption that all environmentally sensitive land is either identified through land zonings and the like, or is fully mapped.

This assumption is not correct. Using BMCC as an example, mapping of sensitive vegetation units and other environmental constraints undertaken as part of LEP 2005 is extensive and well advanced compared to other Council's. However, it was based substantially on interpretation from aerial photos and has not been extensively validated for every single lot by on the ground inspections. Furthermore, many of the species and communities listed for protection under the Threatened Species Conservation Act are not extensively mapped with the impact of development on them needing to be assessed on a case by case basis.

While the proposal to expand exempt and complying development is supported in principle, the adoption of a mandatory State-wide default code has the potential to undermine the outcomes sought by the Council Local Environmental Plans (LEP 2005 and LEP1991). Approximately 80% of development in the Blue Mountains is single residential type development, with the provisions contained particularly in LEP 2005 developed on a detailed and sound environmentally sustainable basis.

The proposal that Councils will be able to develop their own code to respond to local circumstances is welcomed. However, given the nature and sensitivity of the Blue Mountains environment, it is difficult to foresee how the Government's target of 50% of development being complying development State wide could be achieved

locally. Accordingly, it is critical that the Department of Planning recognise and accept that any code developed for the Blue Mountains needs to make provision for local issues that are addressed in our LEP including built character, heritage, sensitive vegetation communities, watercourses, Sydney water supply catchments, bush fire, slope and topography etc.

Adoption of a mandatory State-wide default code or local code that does not have adequate regard to the Blue Mountains environment, also has the potential to threaten the World Heritage listing of the Blue Mountains National Park. One of the prime concerns during the listing process was the impact of urban development on the National Park. Undertaking development without due regard to both the individual and cumulative environmental effects of the proposal has the potential to increase impacts on the Park, threatening the listing which is reviewed from time to time and can be removed.

In conclusion, the proposal to significantly increase the extent of exempt and complying development:

- Is focused on reduced processing times rather than optimising development outcomes;
- Is biased toward the applicant's interests at the expense of the wider community benefit;
- Assumes that the private certifier has the necessary skills and community interest to be impartial when dealing with an applicant with whom they have a pecuniary relationship.
- Is not focussed on Triple Bottom Line outcomes.

Any code applying to the Blue Mountains needs to have regard to local issues including but not limited to:

- Living conservation zoned land;
- Period housing areas;
- Bushfire prone land;
- Slope constraint areas;
- Vegetation constraint areas;
- Ecological buffer areas;
- Sydney water supply catchment areas;
- Escarpment areas;
- Riverine scenic corridor areas;
- Watercourses;
- Significant vegetation communities and rare species of plants;

each of which has been recognised in the Council LEPs by specific map-based controls or tailor made planning provisions.

3.2 The other major change foreshadowed in the Discussion Paper relates to the management of minor variations to complying development standards. It is proposed to allow a certifier to:

- Condition the complying development certificate so that it complies; or

- Agree to the variation where it is considered to be acceptable in the circumstances.

Where a certifier proposes to agree to allow a variation to the standard, they would issue a provisional complying development certificate and refer it to the Council for consideration. The Council would then have a period of seven (7) days in which to call in the matter for consideration if it considered the variation not to be minor. If the Council did not respond within the seven day period it would be deemed to be approved.

Comment – The proposal to introduce merit based assessment for minor variations to complying development standards is not supported on the grounds that:

- The use of provisional complying development certificates will only create further uncertainty, confusion and disputation;
- The proposed seven (7) day processing time for Councils is impractical;
- It provides the private certifier and the State Government with an escape clause for poor decisions made by certifiers that have adverse outcomes; and
- It may open Councils up to litigation for decisions that they did not make by virtue of the default clause.

Recommendations:

15. Any mandatory code applying to the Blue Mountains City Council LGA must have regard to local issues including but not limited to:

- **Living conservation zoned land;**
- **Period housing areas;**
- **Bushfire prone land;**
- **Slope constraint areas;**
- **Vegetation constraint areas;**
- **Ecological buffer areas;**
- **Sydney water supply catchment areas;**
- **Escarpment areas;**
- **Riverine scenic corridor areas;**
- **Watercourses;**
- **Significant vegetation communities and rare species of plants;**

each of which has been recognised in Council’s LEP 2005 by specific map-based controls or tailor made planning provisions;

16. The proposal to introduce provisional complying development certificates not proceed.

4. ePlanning Initiatives

The Discussion Paper identifies a number of areas where technology can assist the planning assessment process and makes a number of recommendations including:

- Within two (2) years 80% of Councils to have online tracking of DA’s;
- Within two (2) years 100% of exempt and complying codes will be online (State provided) and 50% of Council codes (as accredited by the State);

- Within three (3) years 50% of Councils to provide online Section 149 planning certificates;
- Within three (3) years 50% of Councils to have online LEP tracking systems.

Comment – Council supports the move to ePlanning. It is acknowledged that the use of electronic tools has the potential to improve the way Councils and State agencies administer the planning system. It also has benefits in improving customer service by ensuring an applicant and community members have ready access to information regarding the development process or a particular proposal.

Blue Mountains Council has been steadily incorporating a number of electronic tools in the planning process and is well positioned to respond to the Government’s direction.

While the approach is supported and the Blue Mountains City Council is well progressed, the State Government may need to provide adequate financial and other resources to Councils to ensure they are in a position to develop and implement ePlanning services in a timely manner, including the cost of improving data accuracy, and to maintain systems.

Recommendation:

17. Council supports the introduction of ePlanning initiatives and suggests that the Department of Planning/State Government consider providing appropriate assistance to Councils in developing, implementing and maintaining ePlanning systems.

5. Building & Subdivision Certification

The proposed changes likely to have a significant impact for Councils relates to changes in the operation of building and subdivision certification.

- 5.1 Proposal is to broaden accreditation of certifiers to include Council officers. Under the proposed system, Councils would be required to seek corporate accreditation, with all individuals who are required to sign part 4A Certificates or undertake mandatory inspections being deemed to be accredited at A3 level of accreditation. These deemed accredited certifiers would only be permitted to certify or undertake inspections of single residential type development. All other developments would need to be certified by appropriately accredited certifiers either from the Council or the private sector. It is also proposed to require key professionals involved in the design and certification of key building elements to be accredited.

Comment - The Discussion Paper cites that the proposed accreditation of Council officers is in response to concerns regarding Council officers being adequately trained to deal with large and complex proposals as well as being truly accountable for their decisions. The Paper relies on an example of one building certified by a Council officer and significant fire safety problems as proof that the present system of Council officers undertaking building inspection/certification is flawed and grounds for requiring accreditation of Council officers undertaking this role.

However, there is no evidence that there has been a systemic problem with the Councils’ traditional role in undertaking this work over a very long period of time.

Furthermore, the proposal fails to acknowledge the role played by the layers of organisational management, such as delegations, supervision, procedures and peer reviews, aimed at ensuring the competency of Council staff. The decisions made by Council officers in undertaking the certification role are scrutinised by, and are accountable to, the community as a whole and not merely to the fee-paying client. Presiding over these staff is a management layer under the General Manager who is responsible to the elected Councillors. The Council's staff do not have a pecuniary interest in the outcomes and their objectivity and impartiality is guaranteed.

The proposed introduction of an accreditation system for Council officers is seen as a response to the predicaments of private certifiers, not local government. Other professional fields involved in the building industry such as architects, engineers, surveyors etc are not subject to an outdated system of accreditation. These professionals and their businesses only take on work that they are skilled to do. Councils are no different and are acutely aware of the professional indemnity issues. The proposed system for Council staff creates its own difficulties down the track.

The proposal to accredit Council certifiers is considered problematic:

- 5.1.1 A significant number of Council staff involved in the building assessment and inspection process undertake at least some work beyond the A3 accreditation level proposed in the reforms. However, it is unlikely that many Council officers will be able to obtain an accreditation level above A3 due to their current range of work and experience depending on the circumstances.

This will create significant difficulties in the Council being able to allocate such work and provide the community with this service.

- 5.1.2 The significant majority of, if not all, private accredited certifiers commenced and gained their experience in local government. Many of those presently accredited above the A3 level would be unlikely to be accredited at that level today. That being the case many of those currently accredited will be entitled to do this level of work and charge accordingly for it in a newly created closed market.
- 5.1.3 Councils have traditionally, and continue to, undertake the training role in up-skilling building surveyors with the requisite skills and knowledge to inspect and certify class 2-9 buildings.

Without an ability to undertake this work, most Councils will no longer be in a position to provide training in assessing and inspection of Class 2-9 buildings to new staff in the industry. This will create a 'closed shop' of an ever decreasing professional base in an industry already suffering from under supply.

- 5.1.4 The proposal to mandate that Councils be required to offer a certification service for all classes of buildings, even when they do not have professional staff with the requisite level of accreditation, will require them to engage consultants, driving up costs for applicants and the wider

community and monopolising the market with existing accredited certifiers, some of whom were just in the right place at the right time when the original system commenced.

It is understood that under the present accreditation system, practitioners must be able to demonstrate substantial recent experience in assessing applications relevant to the level of accreditation sought. Such a system tends to ignore skills and knowledge that may have been gained over a number of years, in favour of immediate past experience. This severely restricts the pool of certifiers available to be accredited at Level A1 or A2. It is likely to lead to a situation where the only persons accredited to assess or inspect Class 2-9 buildings will be confined to those employed by larger private certification firms and Councils within the Sydney metropolitan area. While this may be appropriate for the accreditation of certifiers seeking to undertake assessment of performance-based designs, it is not practicable or financially viable for developments relying on 'deemed to satisfy' provisions of the Building Code of Australia.

- 5.1.5 The difficulty in the Council being able to offer suitable work to enable a practitioner to receive and retain accreditation at A2 and the A1 level will make it difficult for Councils to attract and retain staff and will impact significantly on the future of the industry, and ultimately the effectiveness and efficiency of the approval and development process.

There is a recognised national shortage of building surveyors and other development assessment professionals and the ability of private sector organisations to offer more attractive remuneration packages will in all probability lead to a 'brain drain' away from local government. This will reduce the capacity and capability of local government to offer these services and could lead to it being vulnerable and at risk of systemic failure down the track.

The then Department of Infrastructure, Planning & Natural Resources (DIPNR) on 5 July 2004 released an earlier Discussion Paper relating to the accreditation of Council officers involved in building certification. This Paper acknowledged that introducing the same accreditation system for both the Council and private certifiers is likely to lead to a shortage of accredited certifiers. This observation is considered valid and requires due consideration.

Whatever accreditation system is adopted, it should recognise the past work history in assessing a certifier's level of skill and competence and the role Councils play in training and developing professionals for the industry.

The proposal to require key professionals involved in the design and installation of critical building elements eg. hydraulic services, mechanical services and fire services to be accredited is supported.

- 5.2 Enforcement and discipline. It is proposed to clarify that the Councils have an obligation in the enforcement role by:

- Mandating that it is the Councils' responsibility to enforce development consents, whether or not the PCA is an accredited certifier;
- Providing penalties against Councils where they are made aware of an issue but do not act;
- Increasing the Councils powers of enforcement.

Comment - The need to introduce legislative provisions to audit certifying authorities and to enforce consents could well be interpreted as a 'lack of faith' in the private certification system.

The proposal to mandate that Councils have a responsibility to enforce consents when there has been a private certifier appointed as the PCA is another example of the Government 'cost shifting' onto Councils and assumes Council's have the staff and financial resources to undertake the task. It is not agreed that this task should be solely the responsibility of Councils to enforce. The certifying body should have a mandatory role in the process of enforcing consents and the actions of its approved certifiers.

The proposal to rely on increased penalties and fines for Councils to recover their costs ignores realities. The imposition of fines and legal action can be politically unacceptable while courts are reluctant to award Councils their operating costs in taking enforcement action. In addition, court action is resource intensive and costly and takes staff away from proactive services to the community.

5.3 Appointment of Certifiers. The reforms propose to place further restrictions on the appointment of certifiers as follows:

- Limiting the number of construction certificates or complying development certificates that can be issued to any one client by an accredited certifier;
- Provide for the Building Professionals Board to appoint certifiers for large or complex projects;
- Clarify that only landowners, not developers or builders, are permitted to appoint a certifier to issue a construction certificate or complying development certificate.

Comment - Restricting the volume of work undertaken by an accredited certifier for any one client and appointment of an accredited certifier for larger developments by the Building Professional Board may have trade practice implications. Furthermore, while the reforms acknowledge the practice of building companies, architects and the like effectively engaging a certifier in lieu of the property owner, they do not indicate how it is intended to address the practice.

Again the need for such additional administration devices underscores the risks inherent in substantial reliance on private certification.. This approach could be interpreted as a 'lack of faith' in the private certification system.

5.4 Certification of Land Subdivisions. The Paper proposes that a review be undertaken of the role accredited certifiers play in respect to the issue of subdivision certificates and recommends consideration be given to allowing them to issue certificates subject to:

- A developer could only appoint a certifier from a list of five identified by the local Council; and
- The certifier would be required to lodge a provisional subdivision certificate with the Council which would become effective after fourteen days unless challenged by the Council.

The reforms also propose that consideration be given to enabling a greater range of strata subdivision to be a complying development across NSW.

Comment - Providing a list of 5 accredited certifiers for a developer to choose from raises probity and transparency issues. If the use of private accredited certifiers is operating satisfactorily, why is it necessary for Council to shortlist a small number from the overall list? This again appears to indicate a failure or 'lack of faith' in the system. Furthermore, requiring a Council to assess a provisional subdivision certificate within 14 days may be impractical depending on the completeness and accuracy of the accompanying supporting documentation. Any fee able to be charged by the Council must be sufficient to cover its costs.

Recommendations:

- 18. Council opposes the need for the Council's qualified building surveyors to be accredited for the reasons outlined.**
- 19. Should the government pursue the accreditation system introduced for Council certifiers it needs to have regard to:**
 - **The Council certifier's past work history in assessing their level of skill and competence;**
 - **The role played by the layers of organisational management, such as delegations, supervision, procedures and peer reviews, aimed at ensuring the competency of Council staff;**
 - **Councils' role in training and developing professionals in the industry; and**
 - **Councils role as the certifier of last resort.**
- 20. Introduce appropriate legislative provisions that ensure builders and developers do not play a role in the appointment of certifiers;**
- 21. Introduce accreditation for professionals involved in the design and installation of key building elements such as fire hydrant systems;**
- 22. Introduce appropriate legislative provisions that enshrine that all certifiers, whether private or Council, have a responsibility to enforce the development consent;**
- 23. Introduce appropriate legislative provisions enshrining the State Government with the responsibility to monitor and take enforcement action in relation to developments in which a private accredited certifier is appointed as the Principal Certifying Authority.**
- 24. Introduce appropriate legislative provisions to enable Councils to recover any costs incurred in undertaking enforcement action;**
- 25. Introduce appropriate legislative provisions that address the problems with regularising unauthorised works;**
- 26. Resolve any probity, transparency and liability issues associated with Councils providing a list of accredited certifiers for subdivision certificates.**

6. Strata Management Reform

Changes are proposed to strata management legislation to provide greater protection for owners and purchasers. These changes do not impact on Councils.

7. Resolving Paper Subdivisions

Paper subdivisions are those subdivisions that were made approximately 100 years ago. However no services such as water, roads or sewer have ever been provided to the subdivision. Examples include Riverstone and Marsden Park in the Blacktown Local Government Area.

Comment – As this issue does not arise in the Blue Mountains no additional commentary is made. The proposals put forward in the Discussion Paper however are reasonable and no objection is raised to them. Blacktown City Council may well hold concerns regarding the mechanics of this proposal and also the practicalities of servicing such areas. Whilst the Blue Mountains contain areas that are unsewered this is considered a separate issue to paper subdivisions.

Recommendation:

27. The Land & Environment Court rules be amended to prevent applicants from making significant or substantial amendments to a development proposal during the appeal process, or from submitting additional documentation that was requested by, but not provided to, the consent authority during the initial assessment process.

8. Miscellaneous Reforms

8.1 Standard instruments

Conversion into standard LEPs: In order to facilitate the conversion of existing LEPs into a standard LEP it is proposed to provide powers to allow automatic conversion into the new instrument without the need for the existing processes for the making of the LEP. This could occur where there are minor policy changes or minor changes to development controls. Conversion would be possible where the strategic underpinning of an LEP remained sound and did not have to be subject to a major review. Facilitating the conversion of those LEPs into standard instruments would mean the possible amendment of the EP&A Act.

Comment – This change is considered advantageous in the case of converting LEP 2005 into the standard instrument as required by the State Government. Where policy decisions have been made relatively recently under LEP 2005 there is no need to revisit those decisions if they are still desired policy directions. Usually it is desirable to maintain high levels of community consultation however in the case of LEP 2005 large volumes of work occurred to ensure that this was achieved. This work does not need to be repeated or ‘reopened’ where there has been clear and tightly held policy directions established by LEP 2005. The proposed changes aim to allow for the smooth transition into the standard instrument where land uses do not materially change.

8.2 Amendment of proposals in the Land & Environment Court

Consideration is to be given to limiting the ability of an applicant to make significant or substantial amendments to applications that are subject to an appeal to the Land & Environment Court.

Comment – The present system provides a disincentive for applicants to properly develop proposals up front by allowing applications for ‘ambit’ proposals to be substantially amended during the appeal process to address issues that would have more appropriate had they been addressed initially. The proposal to review this process is strongly supported.

There are a number of other proposed reforms that are aimed at addressing more minor miscellaneous and operational issues associated with the planning system. However they are relatively minor and do not materially impact on the Council.

Conclusion

There is a clear and overwhelming case for reforms to be made to the planning system to remove complexity for the community and practitioners alike. However, a number of the proposed reforms outlined in the Department of Planning Discussion Paper titled “*Improving the NSW Planning System*” based on the level of detail provided to date have the potential to:

- a) Overly simplify development standards at the individual lot level that accumulatively may contribute to unacceptable outcomes for the Blue Mountains environment, both natural and built;
- b) Weaken the outcomes sought by the Council’s Local Environmental Plan (LEP) 2005;
- c) Reduce decision making at a local level and empower private certifiers employed by the applicant to make discretionary decisions affecting neighbours, the local community and the environment which will not necessarily be in the community interest;
- d) Weaken local government’s ability to attract and retain skilled staff; and
- e) Further shift responsibility and costs onto local government;

and therefore require a considered response.

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ITEM NO: 9

SUBJECT: MAJOR PROJECTS PROGRESS REPORT JANUARY 2008

FILE NO: F03616

Recommendation:

That the Council receives and notes the Progress report Major Projects for January 2008.

Report by Acting Group Manager, Community & Corporate

Background

This report is submitted to provide an update to the Council on the progress of the Major Projects managed by the Major Projects Branch, including the Lawson Town Centre Redevelopment, Blue Mountains Cultural Centre and ancillary projects.

Lawson Town Centre

Development Application

As reported to the Council on 30 October 2007, the refinements and changes to the design have resulted in the re-exhibition of the design. An amendment to the Development Application was prepared for exhibition. The amendment was advertised on 14 November 2007 and has been on public exhibition between 14 November and 14 December. The submissions that have been received are currently being assessed by the independent assessor.

RTA Funding negotiations

A meeting was held with the Roads and Traffic Authority (RTA) on 29 October 2007 about the funding and land acquisition paper that proposed the way forward in relation to the funding of the Lawson Town Centre Redevelopment and land acquisition. Following the meeting, the paper was further developed and refined to comply with RTA policies and procedures. This revised paper was issued to the RTA in draft form and a meeting was held on 5 December 2007.

Following further discussions, a series of meetings between the RTA's General Manager, Development Program Branch of the Major Infrastructure Directorate and the Council's General Manager, were held to discuss funding arrangements to reach a mutually acceptable position.

Whilst significant progress has been made the discussions have not as yet resulted in an in-principle agreement with the RTA. A detailed report will be brought back to the Council after the negotiations for funding of the Lawson Town Centre Redevelopment with the RTA have proceeded to an in-principle agreement stage.

Stormwater and drainage

The RTA has submitted stormwater drainage investigation reports for the total Lawson section of the Great Western Highway, which includes the Lawson Town Centre, for the Council's review. The reports have been reviewed and a separate report in relation to this matter will be presented to the Council in February 2008.

Financials

All Lawson Project Expenditure up to 31 December 2007

Description	Current Expenditure
Previous expenditure	\$2,243,081.78
2007/2008 expenditure	\$254,384.54
Reimbursed by the RTA	-\$1,118,479.17
Invoiced to the RTA	-\$691,243.47
Total cost to the Council	\$687,743.14

When the construction contracts have been let expenditure will be reported for each individual contract.

Blue Mountains Cultural Centre and Ancillary Projects

Blue Mountains Cultural Centre

The Development Application submitted by Coles was placed on public exhibition from 14 November until 14 December 2007. Submissions are currently being assessed. There was no monthly Project Control Group meeting scheduled in January 2008.

Civic Centre and Laneway Connections

A request for tender document for design and documentation for this project is currently being finalised. It is expected that the tender for design and documentation services will be advertised in early March 2008 and that a report will be presented to the Council in May 2008.

Library and Cultural Centre Fit Out

The scope for these projects is currently being defined and the best method for the design and documentation of the fit out for both the Library and the Cultural Centre is being considered.

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ITEM NO: 10

SUBJECT: SEALING OF JENNINGS & GROSE ROADS, FAULCONBRIDGE

FILE NO: F01905

Recommendation:

That Grose and Jennings Roads, Faulconbridge remain as unsealed roads.

Report by Acting Group Manager, Community and Corporate:

Introduction

The purpose of this report is to provide information on the costs associated with sealing Grose and Jennings Roads, Faulconbridge.

At the Council Meeting of 26 June 2007, the Council requested a report on the cost of sealing Jennings & Grose Roads, Faulconbridge.

At the Council meeting of 30 October 2007, after considering the report prepared by staff, the Council resolved to:

“defer the decision that Grose and Jennings Road, Faulconbridge remain as an unsealed road and that the minor works identified during the road safety audit be implemented, until a site inspection by Councillors is conducted”.

(Minute No. 310, 30/10/07)

Background

A meeting was arranged and conducted, on-site, on 4 December 2007 at 4pm. The minor works identified during the Road Safety Audit have been scheduled.

The Council resolved in 2003 to develop works programs based on preserving current asset functionality, and restricting new works. This resulted in no further sealing of significant sections of un-sealed road and this approach has remained a significant aspect of the Council Asset Management philosophy.

Investigation and analysis

The Council Investigation & Traffic Engineer conducted a road safety onsite condition audit of Grose and Jennings Roads and noted the following points:

- The unsealed section of Grose Road is an unlit local access road which leads to the gate of the National Park;
- Jennings Road branches off Grose Road for a further 300 metres leading to two houses at the end of the road;
- There are low volumes of traffic and pedestrians along the road;

- The roadway is about 6 metres wide with encroachments of shrubs and bushland along sides;
- The road surface is in good order, well graded, well-drained with no significant ruts or pot holes. There are sections of loose gravel on the road which may affect vehicle handling at higher speeds on bends;
- The shrubs encroaching along the road shoulders tend to restrict road widths and sight lines around bends;
- The road environment of unsealed curving road through bushland indicates that prudent drivers would travel at speeds of less than 40 kph to allow control of vehicle on the surface and have appropriate slowing distance along sight lines to any obstacles or pedestrians on the road or approaching vehicles;
- There are no features, crests or severe curves that warrant special warning signs, guide posts or hazard signage;
- Advice from local residents is that there have been accidents with vehicles leaving the road that have not been reported to the Police. This may suggest that these crashes involve reckless drivers travelling too fast for the conditions; and
- The unsealed surface may have the affect of slowing drivers down as opposed to a seal surface which can increase traffic speeds.

Way forward

The Council’s Investigation & Traffic Engineer advises that the road alignment and surface are satisfactory for this low speed, traffic and pedestrian use of a local access road. However, the following works have been scheduled in 2007/08:

- Trimming of shrubs to improve road width to pass oncoming vehicles and improve sight lines around bends;
- Grading and rolling of the road surface to reduce loose gravel; and
- The installation of a 'Gravel Road sign' approximately 50 metres before the unsealed section.

Sustainability Assessment (Triple Bottom Line Reporting):

This assessment is based on sealing of Grose and Jennings Roads, Faulconbridge

Effects	Positive	Negative
<u>Environmental</u>	Less impacts from dust Reduce sediment run-off	Increased water velocity run-off from the road surface Increase in down stream erosion
<u>Social</u>	Safer driving surface	Drivers may travel at faster speeds Increase in traffic volume
<u>Economic</u>	This section is currently graded twice annually at a cost of \$10,703. By sealing this section, the Council may have a reduction in on-going grading costs.	The sealing of this road would require substantial funding which would take a number of years to off-set the grading cost.

Financial implications for the Council

This section of un-sealed road is estimated at \$287,000 to seal. These roads would need a detailed design which would cost an additional \$10,000.

Should the Council resolve to re-allocate resources to developing new assets (sealing un-sealed roads) then Grose and Jennings Roads will need to be assessed and prioritised with other requests for sealing of un-sealed roads. The Council will also need to consider this in terms of the Asset Management philosophy and long term financial strategy.

Legal and risk management issues for the Council

Nil.

External consultation

Nil.

Conclusion

It is recommended that Grose and Jennings Roads, Faulconbridge remain as unsealed roads and that the minor works identified during the road safety audit be implemented.

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ITEM NO: 11

SUBJECT: RENEWAL OF THE BLACKHEATH COMMUNITY GARDENS LICENCE

FILE NO: F03180

Recommendations:

1. *That the Council, in response to advice from the Department of Lands, direct the Blackheath Area Neighbourhood Centre (BANC) to cease development of community gardens in Whitely Park .*
 2. *That, after liaison with BANC, the Council receives a further report outlining the options for alternatives for the community gardens.*
-

Report by Acting Group Manager, Community and Corporate

Introduction

At the Council Meeting of 20 November 2007 the Council considered a report on the Blackheath Community Gardens. This report summarised the location, background and issues associated with the gardens and proposed next steps. At that meeting the Council resolved:

“that the Council defer this matter to seek legal advice on related insurance matters and the ability to hold over the Lease”.

(Minute No. 331, 20/11/2007)

This report refers to the 20 November 2007 report, addresses the above questions and recommends the next steps to the Council. Councillors should note that the 20 November 2007 report erroneously referred to a lease, whereas it is a licence.

Legal Advice relating to Insurance

The Department of Lands and the Council’s Risk Management Officer have been consulted to seek advice. The Council carries the risk for any accident to the general public that should occur in the gardens. The level of risk is considered to be relatively minor and it is considered acceptable that the Council wears the risk. As the gardens are under the auspices of the Blackheath Area Neighbourhood Centre (BANC), they are responsible for the risk to volunteers (as opposed to the general public) in the gardens.

Legal Advice relating to the Licence

Whitely Park is Crown Land. For the community gardens to occur within the park a licence and development consent are needed. As outlined in the 20 November 2007 report, the Blackheath Community Gardens license and development consent have both expired and they are operating without a licence or a development consent from the Council. The previously issued licence has expired and cannot be carried forward.

A representative of the Department of Lands has visited the site and reviewed the use for a community garden. They have provided direction that the community gardens are not an appropriate use for a Crown Reserve for public recreation. Community gardens are considered a “community facility” not recreation. As such, as demonstrated in recent case law, they are not acceptable in Whitely Park. The case law has clarified a situation that was previously unclear.

The Department of Lands is required to sign consent, as owner, to a development application for Community Gardens. They have indicated that it will not be signed. This is new information since the report of 20th November.

Next Steps

Given the lack of development consent and licence, no further development of the community gardens should occur. It is proposed that BANC be allowed to continue on site to the extent that this season’s crop of annuals can be harvested: until the 31st May 2008.

It is recommended that Council work with BANC to explore alternative sites, and alternative mechanisms for providing community gardening opportunities, and that the Council receive a further report outlining the outcome of the research.

Sustainability Assessment (Triple Bottom Line Reporting):

Below is an assessment of having the community gardens relocated from Whitely Park Blackheath.

Effects	Positive	Negative
<u>Environmental</u>	Visually improved entrance to Blackheath.	Loss, possibly only temporary, of educational opportunity.
<u>Social</u>	A more suitable site can provide better results which can in turn provide better education and inspiration opportunities. A site that does not impact on the entrance to Blackheath will receive more community support than the current site.	Loss of impetus and work undertaken so far by the community group. Loss, possibly only temporary, of social networking opportunity.
<u>Economic</u>	Nil	Nil

Financial implications for the Council

If the current location for the gardens is no longer to be used, there will be a requirement to relocate or remove the existing infrastructure, which includes a shed, garden beds and fencing. The Blackheath Community Gardens Sub-Committee may wish to remove and store some of these for future use. Restoration of the site after the closure of the gardens would require Council staff time and resources of around \$3,000. As a one-off payment this can be accommodated within the existing parks budget.

Legal and risk management issues for the Council

As previously outlined, the level of risk to the public from the Community Gardens is relatively minor and it is considered acceptable that the Council wears the risk.

External consultation

During the time since the licence has expired, Council staff have spoken with the Blackheath Community Gardens Sub-Committee. They are keen to remain on-site and have presented the Council with a Vision statement which requires a large investment of community energy and the accumulation of more infrastructure made from donated and recycled materials.

Since September 2007, when the community became aware that the future of the community gardens in Whitely Park was being discussed, Council has received fifteen (15) letters regarding the renewal of the licence. Of these, three (3) were supporting community gardens in general, six (6) were supporting the community gardens at Whitely Park and six (6) were opposing the renewal of the licence.

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ITEM NO: 12

SUBJECT: DOG OFF-LEASH AREA FOR THE BLACKHEATH COMMUNITY

FILE NO: F02200

Recommendations:

1. *That the Council establish a dog off-leash area in the grassed lower portion of Whitely Park, Blackheath for a three (3) month trial period;*
 2. *That a report come back to the Council detailing the outcomes of the three (3) month trial period and provide recommendations for the future of the site.*
 3. *That the Council permit an advance draw down on the contracted income to be received from Sydney Water's use of the dog off-leash area at the old aerodrome, Hat Hill Road Blackheath, to implement the dog off-leash area at Whitely Park.*
-

Report by Acting Group Manager, Community & Corporate

Reason for report

This report responds to a Notice of Motion for a dog off-leash area to be established and trialled on the lower portion of Whitely Park, Blackheath.

At the Council meeting of 11 December 2007, the Council resolved:

- “1. *That Council notes the petition signed by 45 residents requesting the provision of a user-friendly dog off-leash area within walking distance of Blackheath village.*
2. *That a report comes to the first Council Meeting in 2008 concerning the possibility of establishing a user-friendly dog off-leash area at the bottom of Whitley Park on the corner of Prince Edward and Wentworth Streets, Blackheath, as a pilot scheme.*
3. *That, if Council agrees to the pilot scheme, Council agrees to an advance draw down on contracted income to be received from Sydney Water's use of the old Aerodrome, Hat Hill Road, Blackheath, to fund the implementation of the user-friendly dog off leash area at Whitley Park.*
4. *That the pilot be trialled for three months and, if successful, it becomes a permanent facility and the results be used to develop a model for the provision of other user friendly dog off-leash areas in the Blue Mountains.*
5. *That the Community and Facilities Working Party continues to be involved in the assessment and development of user-friendly dog off-leash areas for the community and regular reports come to Council.”*

(Minute No. 363, 11/12/07)

This report outlines the outcomes of the assessment carried out to determine the potential of establishing a dog off-leash area at Whitely Park in Blackheath. It should also be noted that in the near future a further report will be presented regarding the trial of dog off-leash areas at an additional eight (8) locations across the Blue Mountains.

Background

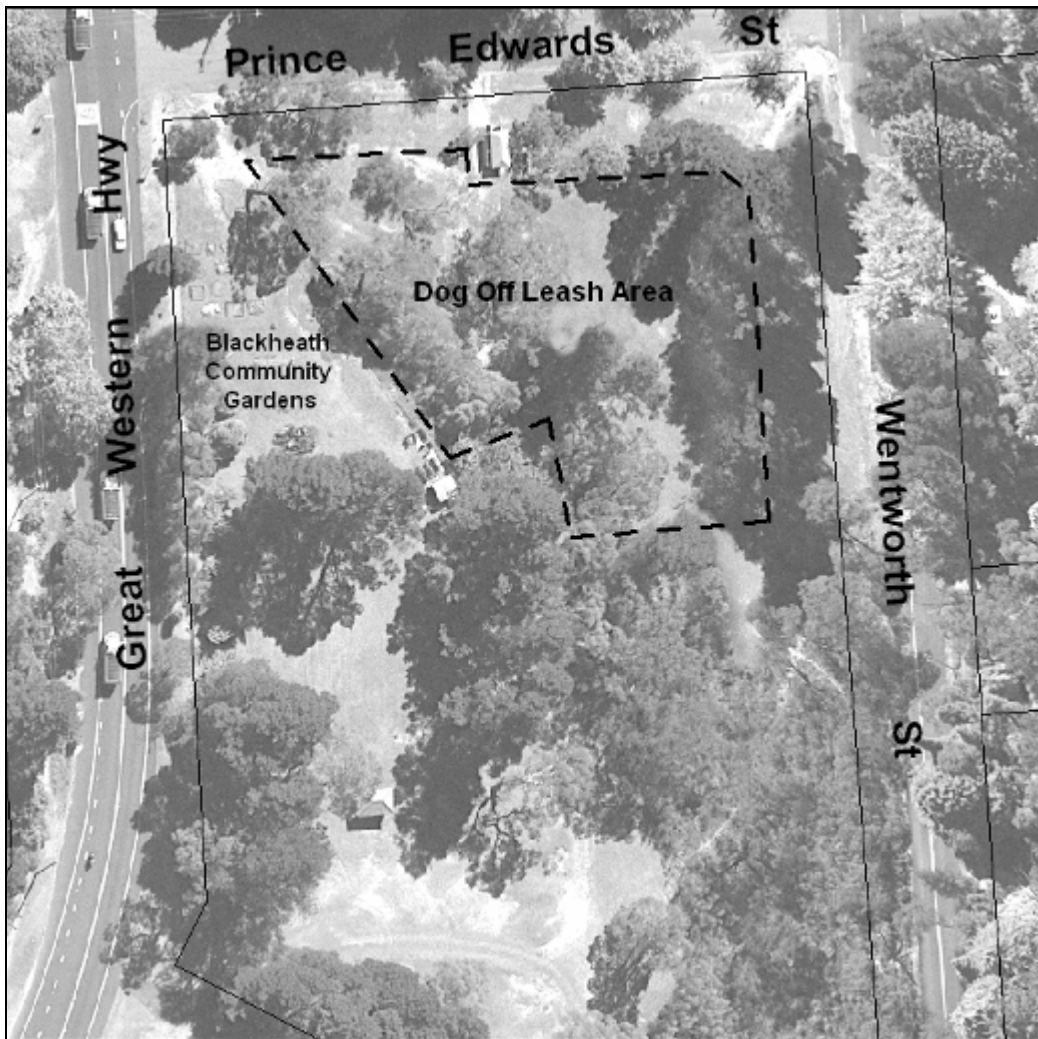
The creation of dog off-leash areas is permitted under Section 13 (6) of the *Companion Animals Act 1998* which states:

“A local authority can by order declare a public place to be an off-leash area. Such a declaration can be limited so as to apply during a particular period or periods of the day or to different periods of different days.”

The Council currently has six (6) dog off-leash areas. The need for additional off-leash areas across the Mountains has been the subject of increasing correspondence and a number of petitions over the last two years. The demand for dog friendly open spaces is becoming more important and the high rates of dog ownership prove the need for the establishment of additional dog off-leash areas more centrally located to towns and villages. A further report on this issue will be submitted to the Council.

Whitely Park (corner of Prince Edward and Wentworth Streets, Blackheath) has been assessed as a dog off-leash area. The open grassed lower portion of the park is suitable as a pilot site as it has the following attributes (refer Map):

- **Location:** central location within Blackheath village, street parking available, away from sporting facilities and major roads, no direct neighbours.
- **Physically suitable:** grassed area, large enough for all sized dogs to run, level ground, easy access for people of all ages.
- **Good existing Facilities:** some shade from trees, bin, shelter and bench, water tap, public toilets.
- **Current usage:** the lower area of Whitely Park currently attracts low levels of use. There is no play equipment at Whitely Park and there are two alternative parks nearby – Neate Park and Jubilee Park – that provide play equipment, grassy areas and picnic facilities.



Map 1. Proposed Whitely Park Dog Off Leash Area

Fencing will be needed to separate the upper picnic area of the park and the public toilet from the dog off-leash area.

Funding

A preliminary cost estimate to provide fencing, signs and gates is \$15,000. At the Council meeting of 7 November 2006 it was resolved:

- "1. That the Council acknowledge that Sydney Water Corporation will enter the Council owned, land Part Lot 25 Deposited Plan 663856, Part Lot 3 DP 116033, Part Lot 2, DP 166578, Blackheath for the purpose of establishing a compound/site office.
2. That the Council notes that Sydney Water will pay an ex gratia payment of \$1215 per month for the period of occupation.
3. That Sydney Water be advised that there is a need to minimise the impacts of noise and speed from extra traffic movement on the residents of Hat Hill Road, Blackheath.

4. *That funds received from the occupation be used to assist in the provision of community facilities in the Blackheath Memorial Park and Garden and/or Pool."*

(Minute No. 790, 7/11/06)

It is proposed that this money is used to pay for the dog off-leash facility development at Whitely Park. This expenditure is in lieu of the projects that were identified, but are yet to be implemented, in Blackheath Memorial Park.

Timing

It is planned to install the requisite fencing, signs and gates, subject to contractor availability, by the end of February 2008. The dog off-leash area will come into effect when the signs and fencing are in place. It will remain in place unless revoked by the Council after the results of the trial have been reported to the Council.

The trial will be assessed from the results of monitoring by Council Park staff and Rangers and through community feedback.

Sustainability Assessment

The below table provides a summary of the Environmental, Social and Economic factors relating to the establishment of a dog off-leash area at Whitely Park.

Factor	Positive	Negative
Environmental	<ul style="list-style-type: none"> • Dogs are restricted to one particular area and the presence of this off-leash area will reduce the inappropriate use of other open space areas for off leash activities. • There will be a reduced dependency on the car by dog owners who currently drive to dog off-leash areas that are not centrally located e.g. Hat Hill Road, Aerodrome. • There are no known threatened or endangered species in this immediate area to be affected by dog presence. 	<ul style="list-style-type: none"> • Irresponsible dog owners who do not pick up after their dogs may cause negative impacts on the land e.g.: faeces run off into nearby natural areas, (note: there are no water courses nearby) or faeces may attract flies to area. • Presence of dogs or their scent that remains in the ground may deter wildlife from utilising this area. • Badly behaved dogs impacting on enjoyment of park by others

Factor	Positive	Negative
Social	<ul style="list-style-type: none"> • Providing a central location for dog off-leash activities will encourage more residents to socialise/exercise their dog which provides great benefits to both the dogs and owners (health and social benefits). • It increases recreation diversity within the Mountains and achieves better utilization of existing recreational facility (Map for Action 2.1.3). 	<ul style="list-style-type: none"> • The use of the bottom area of Whitely Park for dog off-leash may exclude members of the community who may currently use the park. Use of this area of Whitely Park is considered limited and Neate Park and Jubilee Park provide nearby alternatives.
Economic	<ul style="list-style-type: none"> • The dog off-leash area will be established in an already existing recreation area. The financial outlay to establish this park is considered minimal for the benefits it will provide. 	<ul style="list-style-type: none"> • The costs of establishing this dog off-leash area will be approximately \$15,000 for fencing, signage etc. The installation of these additional assets will provide an increased burden on the parks maintenance budget. • Rangers may need to carry out additional surveillance in this area to monitor and ensure appropriate use of the park. This may only be necessary in the initial period of the parks trial period.

Legal and risk management issues for the Council

The legal and risk management issues associated with the establishment of this dog off-leash area are as follows:

Potential Risk	Response
1. Dogs running onto adjacent residential road/highway.	<ul style="list-style-type: none"> • Erect fencing to the Prince Edward St frontage. • Install signage that states “dog must be under effective control at all times”.
2. Aggressive dog behaviour (towards other dogs and humans).	<ul style="list-style-type: none"> • Educate dog owners on appropriate dog behaviour and rules that apply to a dog off-leash area – in brochure format distributed through local vets, dog clubs, RSPCA, Council etc.
3. Irresponsible dog owners who do not pick up after their dogs may lead to health / environmental concerns.	<ul style="list-style-type: none"> • Install a bin in appropriate location for the collection of dog waste. • Install signage that states “dog waste is to be disposed of in the bin provided” giving Rangers power to fine. • Provide residents who register their dog through Council with a doggy poo bag (kept on their lead), while stocks last, so they always have a plastic bag available.

Potential Legal	
<p>1. Aggressive dog behaviour (towards other dogs and humans). Note that, under the <i>Companion Animals Act 1998</i>, control of aggressive dogs is a dog owner responsibility not a Council responsibility.</p>	<ul style="list-style-type: none"> • Educate dog owners on appropriate dog behaviour and rules that apply to a dog off-leash area – in brochure format distributed through local vets, dog clubs, RSPCA, Council etc. • Install appropriate signage that states “dogs must be under effective control at all times” giving Rangers power to fine, impound dog etc. • Use of <i>Companion Animals Act 1998</i> which provide Council Rangers with powers to declare a dog “dangerous” or “restricted”.

External consultation

In developing this Council report and considering Whitely Park as a dog off-leash area, the following consultation occurred:

- Councillor working party and site assessment;
- Discussion with interested local residents (including resident who organised petition); and
- Engaging Council staff (including Council Ranger).

The level of consultation is considered sufficient to now implement the trial the off-leash area in Whitely Park.

Conclusion

The establishment of the dog off-leash area at Whitely Park is highly desirable and will assist in meeting the demand for a centrally located off-leash area in Blackheath. A pilot dog off-leash area at Whitely Park will also assist in the development of other dog off-leash areas across the Blue Mountains.

It is therefore recommended that a dog off-leash area be established in the lower portion of Whitely Park Blackheath and that it be trialled for a three (3) month period, with a further report back to the Council on the outcomes of the trial.

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