MINUTE BY MAYOR

Ordinary Meeting, 13/12/05

ITEM NO:   1

SUBJECT:   DELEGATION OF AUTHORITY DURING THE CHRISTMAS AND NEW YEAR RECESS

FILE NO:   C01055

Recommendations:

1. That Council appoint a Committee comprising the Mayor and General Manager (or in his absence the person acting as General Manager) to deal with and determine urgent matters arising during the recess of Council between 14 December 2005 and 30 January 2006, in such cases applying Council’s codes and policies, or where no such policies exist, discretion is exercised.

2. That the Committee only determine matters specifically relating to a Ward of Council after consulting with the relevant Ward Councillors.

Minute by Mayor:

Council will be in recess from 14 December 2005 to 30 January 2006, it’s next scheduled meeting being 31 January 2006.

It has been normal to provide delegate authority to a Committee comprising the Mayor and General Manager to deal with urgent matters over the Christmas recess due to the length of time between Council meetings. In unforeseen circumstance where such a matter may arise, the Committee applies Council’s codes and policies, and where no policy or code exists, the Committee exercises due caution in dealing with the matter. The proposed delegations do not override the restrictions imposed by the Local Government Act.

In addition, it is also considered appropriate that in cases where the urgent matter is specific to a particular Ward the Committee prior to making its determination will consult the relevant Ward Councillors.

In the unlikely event that the Committee needs to exercise the proposed delegation and determine an urgent matter, all Councillors will be notified of the determinations in the Councillor Bulletin that issues after the decision is made.
PLANNING FOR A SUSTAINABLE FUTURE

Ordinary Meeting, 13/12/05

ITEM NO: 2

SUBJECT: DRAFT AMENDMENT TO LEP 2005 FOR KATOOMBA CIVIC CENTRE (TOWN CENTRE ARCADE) AND OTHER LAND ADJOINING THE KATOOMBA CULTURAL PRECINCT

FILE NO: Z08/050

Recommendations:

1. That Council, pursuant to s.54 of the Environmental Planning and Assessment Act 1979, resolve to prepare a draft amendment to Blue Mountains Local Environmental Plan 2005 (“LEP 2005”), which applies to the land shown in Attachment 1 and amends LEP 2005 by:
   (a) reclassifying the site of the Civic Centre (Town Centre Arcade), 81-83 Katoomba Street, Katoomba (Pt Lot 1 DP 921490 and Pt Lot 3 DP 547229) and land within College Lane (being Pt Lot 18 Sec 2 DP 692 and Pt Lot 20 Sec 2 DP 692) to operational land pursuant to s. 27 of the Local Government Act 1993, with provision made in the draft LEP to discharge the land of any trusts, estates, interests, dedications, conditions, restrictions and the like that may affect the land pursuant to s.30 of the Act, and
   (b) removing the Village-Town Centre zone from land within College and Froma Lanes (Pt Lot 18 Sec 2 DP 692, Pt Lot 20 Sec 2 DP 692 and Pt Lot 23 Sec 2 DP 692) and showing the land as an “uncoloured road” on the Map to LEP 2005, and
   (c) including certain land in the vicinity of Pioneer Place, Katoomba (Lot 2 DP 566097, Pt Lot 24 Sec. 2 DP 692, Lot 26 Sec 2 DP 692, Lot A DP 388574, Lot B DP 388574 and Part Lot C DP 388574) within LEP 2005 and zoning that land Village - Town Centre with appropriate precinct provisions.

2. That in relation to Recommendation 1(a) to reclassify land, Council:
   (a) note its former resolution of 21 June 1994 to classify as operational land “Lot 3 DP 547229 – Town Centre Arcade” and “DP 921490 – Town Centre Arcade” pursuant to cl. 6 (3) of Schedule 7 of the Local Government Act 1993 and the need to confirm an operational land classification for the reasons outlined in this report, and
   (b) review the classification of land associated within the Civic Centre (Town Centre Arcade) upon the completion of modifications to the site in association with the adjoining Blue Mountains Cultural Centre, with a view to determining whether any parts of the site set aside for public purposes should be classified as community land.

3. That in submitting its report to the Director-General pursuant to s.54(4) of the Act, and subject to further liaison with the Department of Planning, that Council notify its intention to:
   a) use its delegations in relation to s. 65 of the Act to enable the public exhibition of the draft LEP, subject to 4 below, and
   b) not prepare an environmental study for the purposes of s.57 of Act.
PLANNING FOR A SUSTAINABLE FUTURE

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4. That the draft LEP be exhibited in accordance with the Best Practice Guideline published by the Department of Urban Affairs and Planning in January 1997 titled “LEPs and Council Land – Guideline for Council using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council”.

Report by Group Manager, Community and Corporate:

Introduction

At its Ordinary Meeting of 9 March 2004, Council considered two interrelated projects that underpin the revitalisation of the Katoomba town centre:
1) the Blue Mountains Cultural Centre (Item 6), and
2) the Katoomba Library and Civic Centre (Item 7).

Both of these projects rely on amendments to Local Environmental Plan 2005 (“LEP 2005”). In considering the nature of these projects and the differing timeframes for the associated development assessment processes and construction phases, a two-stage process has been adopted to finalise the LEP amendments in an integrated manner that enables these projects to be delivered in parallel.

In terms of the first stage, the Draft Amendment 2 (Katoomba Cultural Precinct) to LEP 2005 was prepared as a priority following a resolution of Council on 20 July 2004. It provided for detailed zoning and design controls to facilitate the development of the Blue Mountains Cultural Centre, retail facilities and associated parking, as well as the reclassification of Council community land. Council finalised its review process for Draft Amendment 2 at its meeting of 28 July 2005. The draft plan was subsequently forwarded to the Parliamentary Counsel’s Office (PCO) on 5 July 2005 and the Department for finalisation on 12 August 2005. Council’s planning staff understands that the PCO has provided its opinion that the draft plan may legally be made. It is expected that the Minister will make Amendment 2 (Katoomba Cultural Precinct) in the short term.

As the gazettal of Amendment 2 to LEP 2005 is imminent, and the negotiations in relation to the development of the Blue Mountains Cultural Centre and retail facility are in the final phase, it would be prudent for Council to commence the second stage of LEP amendments. The proposed LEP amendment subject to this report relates primarily to the reclassification of the site of the Civic Centre (which is also known as the “Town Centre Arcade”) as initially considered by Council at its meeting of 9 March 2004. In addition, the report will recommend that the process for finalising the zoning and other planning provisions of land adjoining, or in the vicinity of, the Katoomba Cultural Precinct be completed concurrently with the reclassification. Each of the three aspects of the proposed draft amendment will be considered in turn.
1. Reclassification of the Civic Centre and linkages to the Cultural Centre

As indicated above, Council considered a proposal to relocate the Katoomba Library and modify the Civic Centre in parallel with the development of the Blue Mountains Cultural Centre at its meeting of 9 March 2004. That report relevantly provided:

The Master Plan for the Cultural Centre has included a strong pedestrian connection through the Civic Centre to Katoomba Street. The need for a connection between Parke Street and Katoomba Street at this location was identified as a key objective in the Katoomba Charrette and this has been incorporated into the design for the Cultural Centre.

The creation of this connection through the Civic Centre along its northern edge would have the effect of reducing the size of the existing community hall significantly. In addition it is seen as critical that the pedestrian connection is active and attractive to users, and that this is best achieved by the establishment of retail shops [on the upper level of the Civic Centre] fronting the pedestrian connection.

Consideration of options that would allow the community hall to be retained and the pedestrian connection achieved, including the construction of a new library on the Cultural Centre site to coincide with the construction of the mixed-use cultural and commercial development on the TAFE East and RTA sites. This approach would allow the community hall to be relocated (and the current size of the hall to be retained) in the building vacated by the current library [with the residual floor space converted to retail uses].

(Ordinary Meeting, 9 March 2004, Business Paper, pages 73-74)

In considering a number of options, Council settled on a proposal to move the library to the Blue Mountains Cultural Centre and relocate the community hall, thus enabling the provision of increased retail space in the upper part of the Civic Centre and an enhanced pedestrian connection between Katoomba Street and the proposed cultural centre. Council resolved (in part):

“1. That providing the Council has agreed to proceed with the Blue Mountains Cultural Centre as proposed under Item 6 of the Business Paper agenda, it further agrees that the construction of a new Katoomba Library, relocation of the Community Hall, establishment of a new pedestrian connection and provision of new retail space in the Civic Centre be included in the Cultural Centre proposal, subject to land reclassification, zoning and development approval processes.

[...]

10. That reclassification of some of the Civic Centre land be undertaken in concert with the rezoning and development approval process for the Cultural Centre land to allow additional Civic Centre retail development.”

(extract from Minute No. 89, Ordinary Meeting, 9 March 2004)
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It is expected the proposal for the Civic Centre could be undertaken within the existing planning framework of LEP 2005, in terms of zoning and associated planning controls. The proposal would contribute to the following planning outcomes sought in the Katoomba Charrette, as reflected in the “Katoomba Street and Bathurst Road Shopping Strip Precinct” of LEP 2005:

- ‘the precinct will function as the most active and vibrant part of the Katoomba Village’, exhibiting high levels of pedestrian amenity, convenience and safety, and
- developing a ‘significantly enhanced public domain’ and
- provision of ‘public places and plazas’.

(LEP 2005, Part 4, Division 1, Katoomba Precinct VTC-KA01)

As the proposed development is consistent with existing zoning under LEP 2005, the key aspect of the resolution is the need to resolve the land classification of the Civic Centre/Town Centre Arcade under the Local Government Act 1993 (the “LG Act 1993”).

Classification of the Centre/Town Centre Arcade

The site of the Centre/Town Centre Arcade is owned by Council, making it “public land” for the purpose of the LG Act 1993. The proposed modifications to the Civic Centre/Town Centre Arcade could be undertaken following the development approval process, on the proviso that the site is classified as “operational land” under the LG Act 1993.

In this respect, Council is advised that a resolution was passed on 21 June 1994 seeking to classify 631 parcels of public land as operational land in accordance with clause 6(3) of Schedule 7 of the LG Act 1993. That resolution applied to the “Town Centre Arcade” in Katoomba, including “Lot 3 DP 547229” and “DP 921490”. At face value, the resolution had the effect of classifying the Civic Centre/Town Centre Arcade as operational land.

Notwithstanding this resolution, however, should the land be found to be subject to a “trust for a public purpose” or other qualification within clause 6(2) of Schedule 7, that land is taken to have been classified as community land upon the commencement of the LG Act 1993. A review by Council’s solicitor suggests that the Civic Centre/Town Centre Arcade may be subject to trust for a public purpose and may therefore be community land. The legislative framework for the management of community land (including the preparation and adoption of a plan of management and the limits on leases and licences for commercial purposes) would significantly impede the proposed modification and ongoing management of the retail uses within the Civic Centre/Town Centre Arcade. In facilitating any modification to this public land asset, it is therefore necessary for Council to confirm an operational land classification via an LEP amendment.

In preparing the draft LEP, in relation to the reclassification, it is recommended that Council seek to have the land discharged of any trusts, estates, interests, dedications, conditions, restrictions and the like affecting the land. Should such trusts, estates etc be in place on the subject land that may hinder the proposed development on the site, it is necessary that Council resolve its intention to remove these incumbrances at this stage of the plan making process.
In making such a recommendation, however, it is recognised that the Civic Centre/Town Centre Arcade is a significant and highly valued community asset. On this basis it is proposed that upon finalising the modifications of the Civic Centre that Council review the classification of those parts of the site held for public or community purposes, as distinct from commercial or retail facilities. Such a review would be directed to ascertaining which parts of the site should be appropriately managed as community land in accordance with the LG Act 1993.

**Linkages between the Civic Centre and Blue Mountains Cultural Centre**

College Lane, a constructed carriageway, separates the Civic Centre and the site of the Blue Mountains Cultural Centre and retail complex. However, there are two parcels of land (Pt Lot 18 Sec 2 DP 692 and Pt Lot 20 Sec 2 DP 692) which are located within College Lane and that do not form part of a gazetted road as shown in Attachment 1. Ordinarily a public road is not ‘public land’ for the purpose of the LG Act 1993. In ensuring that there are no impediments to the two parcels being gazetted as a public road in the future it is proposed that this land should also be classified as operational land as part of the draft amendment. This will ensure that the parcels are not deemed community land or subject to trusts, estates, interests or the like.

In accordance with the provisions of the LG Act 1993, a public hearing will be held into the proposed reclassification of the land associated with the Civic Centre and College Lane.

**2. Removal of Village - Town Centre zone from College and Froma Lanes**

As noted above, there are two parcels within College Lane that do not form part of a gazetted road. Similarly, Froma Lane is not a gazetted road, but is a discreet parcel of land (Pt Lot 23 Sec 2 in DP 692). For this reason, the land was zoned Village - Town Centre under LEP 2005, rather than depicted as an “uncoloured road”, which is the usual treatment of roads under LEP 2005 and its predecessor, LEP 4.

For the most part such anomalies are of limited significance, but would be rectified as part of an administrative review of planning instruments. In this case, however, the land in College Lane will form part of the Cultural Centre redevelopment as it is proposed to provide for an extension of basement parking and the supermarket facility below the College Lane carriageway. Such a development would ordinarily be permitted with consent within land shown as “uncoloured road” by clause 102 of LEP 2005. As the land is in the vicinity of the Civic Centre, and should properly be depicted as a road, it is proposed to make this mapping amendment as part of the draft amendment.

**3. Incorporation of Pioneer Place and other land within LEP 2005**

As Council will recall in relation to preparing and finalising Draft Amendment 2 (Katoomba Cultural Precinct), the Cultural Centre site was not included under Draft LEP 2002 pending the outcome of the master planning process and consequently remains subject to LEP 4. For the same reason, a number of parcels to the south of the Cultural Centre site, including the site of the present Civic Video and RetraVision retail complex (Lot 2 DP 566097) and the Council owned Pioneer Place, were not included in Draft LEP 2002.
The preparation of the draft amendment provides an opportunity to incorporate this land into the LEP 2005 planning framework. Consistent with adjoining land it is proposed that this land should be zoned Village – Town Centre zone and subject to precinct controls consisting of a statement of desired future character, building envelope controls and site-specific design considerations. In this last respect, the precinct provisions prepared for this land are to ensure that future development of the land does not compromise or have an adverse impact on the Cultural Centre redevelopment. The height of any development on the land is to not impede views from the courtyards on the podium level of the proposed Cultural Centre. In providing for reasonable levels of development, the land is to provide a transition between the Cultural Centre redevelopment and the supermarket facilities at the corner of Parke and Waratah Streets.

Procedural matters in preparing the draft amendment to LEP 2005

At this stage it is envisaged that the draft amendment will be prepared as a single amendment to LEP 2005, enabling the public to consider the proposal as part of a coordinated exhibition process. In expediting the exhibition of the draft LEP, it will be recommended that Council use its delegations from the Director-General to issue a Certificate pursuant to s.65 of the Act to enable public exhibition.

However, in using its delegations Council is required to comply with the conditions of the Director-General’s ‘Instrument of Delegation’ of 1997. As the rezoning applies to land in Council’s ownership, these delegations can only be used if Council has resolved at this stage to undertake the exhibition in accordance with the Best Practice Guidelines issued by the Department. Accordingly, Council is advised to resolve to undertake the exhibition in accordance with those guidelines. In view of the detailed studies undertaken in relation to LEP 2005, Council is also advised to state its intention to not prepare a separate environmental study for the site.

Council is aware of the Director – General’s request of April 2005 to limit the preparation of future amendments to planning instruments, while the Department directs resources to reforming the NSW planning system. In making a case for undertaking the proposed draft amendment to LEP 2005 at this stage, reference will be made to:

- the importance of the draft amendment in finalising the physical connections to the Cultural Centre redevelopment, which is a significant project of both the State Government and Council, and an integral part of the revitalisation of Katoomba,
- the need to include previously deferred land within LEP 2005, and
- the coordinated approach taken to the draft amendment, both in its relation to the Katoomba Cultural Precinct LEP and its rationalisation of a range of planning issues and sites into a single draft LEP amendment.

Once the draft plan has been prepared and publicly exhibited, and a public hearing held in accordance with the LG Act 1993, any public submissions will be reported to Council for consideration as part of finalising the review process for the draft amendment.
Conclusion

The proposed draft amendment to LEP 2005 is the final component of a two-stage process to provide a planning framework to enable the development of the Katoomba Cultural Precinct and its integration with key community facilities and public infrastructure within the Katoomba town centre. The preparation of the proposed draft amendment will facilitate the modifications to the Civic Centre as resolved by Council on 9 March 2004, in a manner that is integrated with the rezoning and development processes associated with the Blue Mountains Cultural Centre. In addition, the draft amendment will enable a coordinated approach to be taken to finalising various aspects of the planning framework applying to land adjoining the Katoomba Cultural Precinct.
Attachment 1

PLANNING FOR A SUSTAINABLE FUTURE

Item 2 - Ordinary Meeting, 13/12/05

Subject Land

Scale: 1:1500

Locality: Katoomba
Recommendations:

1. **That the overview of the issues raised in Council’s technical submissions on the Reviews of Environmental Factors for the Upper Blue Mountains Sewerage Scheme (Sewerage Transfer Proposal) and Upper Blue Mountains Sewerage Scheme (Sewerage Reticulation Proposal) outlined in this report be received and noted.**

2. **That copies of technical submissions be made available to councillors on request.**

Report by Group Manager, Community and Corporate:

**Introduction**

The Review of Environmental Factors (REF) for the Upper Blue Mountains Sewerage Scheme – Sewerage Transfer Proposal and Sewerage Reticulation Proposal were placed on public exhibition between 7 October and 4 November 2005. The REF assesses the environmental impacts of the proposed reticulated sewerage system and sewerage transfer system.

The environmental assessment and determination of the Upper Blue Mountains Sewerage Scheme will be undertaken in accordance with Part 5 of the *Environmental Planning and Assessment Act, 1979* (EP&A Act). Under Part 5, Sydney Water is both the proponent and determining authority.

At the close of the REF exhibition a Decision Report will be prepared by Sydney Water to:

- consider issues raised in the submissions;
- identify and assess the impact of changes to the proposal since the REFs were displayed, including those made in response to submissions; and
- recommend whether Sydney Water should proceed with the proposal and develop conditions of approval should the proposal proceed.

Once Sydney Water has determined to proceed with the proposal a number of activities would happen prior to the commencement of construction including:

- final cost estimate presented to the board for approval;
- detailed design of the scheme
- preparation of the Construction Environmental Management Plan; and
The timing and commencement of the Scheme is dependant on the activities detailed above. Construction itself would take approximately 24 months and be completed by late 2008.

The close of submissions to the REFs occurred on 11 November 2005. The relatively short timeframe restricted this report going before Council prior to the close of submissions. The purpose of this report is therefore to provide Council with an overview of the technical submission made to Sydney Water on the sewerage transfer and sewerage reticulation REFs.

Sewerage Reticulation Proposal REF

The Sewerage Reticulation Proposal REF involves the provision of reticulated sewerage services to the existing unsewered areas in Blackheath and Medlow Bath and is dependant on the Sewerage Transfer Proposal being commissioned. Specifically, the project would entail construction activities as follows:

- three new sewerage pumping stations to pump flows to the proposed UBMSS sewerage transfer borehole;
- the decommissioning of six sewerage pumping stations;
- the provision of a number of new sewer mains;
- the provision of gravity reticulation system in Blackheath Service Areas 767, 770 and 800;
- the provision of low pressure sewerage system in Blackheath Service Areas 765, 768, 769 and 785;
- the provision of a hybrid system, including areas of gravity and low pressure reticulation, in Medlow Bath;
- the amplification of some existing sewers to a number of properties in Blackheath.

The technical review of the REF by Council staff identified a number of key issues that were conveyed to Sydney Water, these were:

Subsidised connection areas

The REF proposes to service “any property contiguous to a backlog area zoned as Residential Bushland Conservation (Res-BC), less than 4,000 square metres in size” as falling into those areas that receive subsidised connection.

The REF however does not clarify the meaning of “contiguous” nor provide any additional criteria as to how the assessment of “contiguous” was made. Consequently, it appears that some lots that are contiguous have been given a subsidised connection whilst others have not.

The Council submission to Sydney Water requested consistency in the application of “contiguous” criteria across Mount Victoria, Blackheath and Medlow Bath.
Population areas and future growth
In 2004 Council staff provided Sydney Water with future growth projections for the townships of Mount Victoria, Blackheath and Medlow Bath. The REF utilised these projections, along with other data, to determine the ultimate equivalent population estimate for the Blackheath and Medlow Bath and to inform the capacity requirements for the pipelines and sewerage pumping stations.

As detailed in the REF, those areas not eligible for a subsidised connection but still wishing to connect may be eligible once they meet a number of criteria, one of which is the system’s capacity to take additional flows. The REF then states that the capacity of the scheme to accommodate additional properties will not be determined until the scheme is commissioned.

The Council submission to Sydney Water sought confirmation that the detailed designs for the reticulation system is capable of meeting future growth projections, as provided by Council, over the next 20 years.

Selection of the preferred servicing option
Selection of the preferred servicing option for each township was based on impacts associated with the construction of the reticulation proposal. The REF did not detail the likely long-term risks and impacts associated with the ongoing operation (post construction) of the preferred servicing option.

As such Council Officers were unable to evaluate the level of risk and impact associated with the ongoing operation of the low-pressure sewerage servicing option over the gravity option.

The submission requested that:
- Sydney Water to address and make public the risks associated with operation of low pressure systems;
- overflows from low pressure systems be considered as a breach of the Department of Environment and Conservation sewerage system license requirements; and
- the term “overflow management” is extended to included overflows from the areas serviced by low pressure systems.

Further the submission requested a number of practical measures to mitigate the effects of overflows from low-pressure systems in the event of a major power outage.

Sewerage Transfer Proposal ReEF
The Sewerage Transfer Proposal REF involves the transfer of sewerage from Mount Victoria, Blackheath and Medlow Bath to the existing Blue Mountains Sewerage Tunnel (tunnel between Katoomba and Winmalee Sewerage Treatment Plant) via transfer sewerage pumping stations and pressure pipelines. Specifically, the project would entail construction of a raw sewerage transfer scheme as follows:
- a transfer pipeline from Mount Victoria to the existing Blue Mountains Sewerage Tunnel to transfer sewerage from Mount Victoria, Blackheath and Medlow Bath to the Winmalee Sewerage Treatment Plant;
two sewerage pumping stations (SPS 773 located in Mount Victoria and SPS 770 located at Blackheath) to transfer all sewerage flows via the transfer pipeline;

- gravity drainage of sewerage from Mount Victoria, Blackheath and Medlow Bath via boreholes drilled through and under the Katoomba Catchment and Blue Mountains National Park to meet the existing Blue Mountains Sewerage Tunnel at North Katoomba;

- treatment of sewerage from the transfer at the existing Winmalee Sewerage Treatment Plant and the effluent discharged to the Hawkesbury–Nepean River via the existing route; and

- decommissioning of Mount Victoria and Blackheath Sewerage Treatment Plants;

The technical review of the REF by Council staff identified the key issues that were conveyed to Sydney Water these were:

**Groundwater**

The transfer pipeline is proposed to cross Katoomba Catchment as a directionally drilled borehole. The borehole would be constructed from the bottom of the Upper Cascade Dam to the existing Blue Mountains Sewerage Tunnel at North Street, North Katoomba while another borehole would be drilled from the bottom of the Upper Cascade Dam to Medlow Lane in an uphill direction to connect to the new sewerage transfer pipeline.

The REF acknowledges the potential for an altered groundwater regime as a result of the directionally drilled borehole yet does not detail groundwater protection measures to be undertaken.

It is imperative that groundwater levels recover to their pre-construction readings given that the Endangered Ecological Blue Mountains Swamp Communities (listed under the *Environmental Protection and Biodiversity Conservation Act*) are dependent on the natural groundwater recharge rates and are highly vulnerable to any changes in groundwater levels.

Council, in its submission to Sydney Water recommended that the Katoomba Catchment borehole be fully grouted along the whole length to ensure groundwater returns to pre-construction levels. Given this Council’s position within a World Heritage-listed National Park and the associated unknown impacts on the Blue Mountains Swamps the additional cost is considered to be justified.

**Flora and Fauna Assessment**

The assessment of flora and fauna in the REF appeared to be adequate. However there were two issues left unaddressed. Firstly, the area above the Katoomba Catchment borehole was not assessed as Sydney Water inferred there would be no impact on flora and fauna. It is necessary that an adequate assessment of flora and fauna occur in this area given the potential for altered groundwater hydrology to affect overlying vegetation such as the Blue Mountains Swamp complex.
Secondly, the impact of recent bushfires has not been considered. High intensity fire occurred in 2002 and 2003 across parts of the study area. The bulk of the flora and fauna assessment was conducted in 2001, with a limited supplementary survey being undertaken in 2005. This level of assessment is inadequate to consider changes resulting from the bushfire.

In light of the above issues, Council in its submission to Sydney Water requested a:
- flora and fauna assessment of area above the Katoomba Catchment borehole; and
- flora and fauna assessment to consider changes resulting from the bushfire, and any fire ephemeral species that may be present as a result of the fire.

### Decommissioning Sewerage Treatment Plants

The timing and assessment of decommissioning the Mt Victoria and Blackheath sewerage treatment plants is contradicted in the REF.

Should the REF be assessing the decommissioning of sewerage treatment plants it has not addressed:
- the rehabilitation of the site's downstream riparian zones;
- future uses of the site;
- infrastructure management;
- mitigation measures; and
- de-contamination in terms of any chemicals and other pollutants within the soil and site audit report requirements.

Council’s submission to Sydney Water requested the above issues be addressed in any decommissioning assessment of sewerage treatment plants.

### Conclusion

Sydney Water considers that the overall justification for the implementation of the Upper Blue Mountains Sewerage Scheme is that it satisfies its objectives and can be implemented without any significant environmental impacts. Therefore Sydney Water deems that an Environmental Impact Statement is not required and that the proposal should proceed to achieve its anticipated environmental and social benefits.

The proposed Upper Blue Mountains Sewerage Scheme should proceed however the practical measures identified in Council’s submission to the REF and outlined in this report should be implemented to mitigate the identified effects of the proposal.
ITEM NO: 4

SUBJECT: WESTERN SYDNEY ALLIANCE – BADGERY’S CREEK AIRPORT

FILE NO: H00114

Recommendations:

1. That Council strongly reaffirms its opposition to the construction of an Airport at Badgery’s Creek or anywhere in the Sydney Basin due to the unacceptable impacts it would place on the City and the Greater Blue Mountains World Heritage Area.

2. That Council write to the Western Sydney Alliance to:
   a) Thank the Alliance and its member councils for their achievements to date.
   b) Outline Council’s position that it is withdrawing from the Alliance commencing on 1 February 2006 given that the Badgery’s Creek Airport proposal is no longer a pressing issue.
   c) Recommend that the Alliance re-examine its role and function, and consider disbanding while the issue of Badgery’s Creek Airport is in abeyance, reforming if required in the future.
   d) Recommend that WSROC and MACROC jointly take on the role of maintaining a watching brief in relation to the proposed Badgery’s Creek airport, to ensure member Councils are promptly made aware of any changes in Commonwealth and State governments’ policies and commitments in relation to the proposed Airport.

3. That Council write to WSROC outlining its position in relation to the Western Sydney Alliance and requesting that it consider taking on the role of monitoring the proposed Airport at Badgery’s Creek, if the Alliance disbands.

4. That Council thank, and recognise the work of, Councillor Terri Hamilton as Council's representative on the Alliance.

Report by Group Manager, Community and Corporate:

Background

The Western Sydney Alliance comprises of the mayors and councillors of key Councils potentially impacted by the proposed airport at Badgery’s Creek. It formed eight years ago to campaign against the construction of the Badgery’s Creek airport, and against the construction of a second airport anywhere in the Sydney Basin. The Alliance has enjoyed some considerable success in its core objective of preventing the construction of an airport at Badgery’s Creek.
Council has been an active participant in the Alliance and the campaign against the proposed Badgery’s Creek Airport, with Council appointing Cllr Terri Hamilton as its Alliance delegate. Council has made yearly contributions to the operation of the Alliance. The contribution for 2004/2005 is $3251, which is yet to be invoiced and therefore paid by Council. Questions have been recently raised regarding the continuing role and function of the Alliance, and Blue Mountains City Councils continuing membership of the Alliance.

On Tuesday 8 November Councillors were briefed on the Alliance by Mr. Noel Child, a consultant who is employed by the Alliance. Mr Child provided an update to Councillors on the current situation regarding the Badgery’s Creek Airport proposal, the work of the Alliance in 2005 and plans for the future. Copies of Mr Child’s presentation have been distributed to all Councillors. The aim of the briefing was to ensure Councillors were fully informed of the current issues relating to Badgery’s Creek, in order for Councillors to consider the future membership and involvement of Council in the Alliance.

Current situation

Blue Mountains City Council remains opposed to an airport at Badgery’s Creek due to its potentially unacceptable impacts on the environment and residents of Western Sydney and the Blue Mountains. These impacts include increases in air pollution, noise impacts, risks to Sydney’s water catchments and drinking water supply, impacts on scenic values and residential amenity and the risk of compromising the integrity of the Greater Blue Mountains World Heritage Area (GBMWHA).

However, the issue of whether an airport will be built at Badgery’s Creek or not is largely in abeyance, as the Commonwealth government has publicly put the issue “on hold”. The current situation in relation to the proposed airport at Badgery’s Creek can be summarised as follows:

- In December 2003 the Commonwealth Government issued a press release indicating that the Commonwealth had no plans to build a second Sydney airport, and that this decision provided security for residents of Western Sydney. During the 2004 election, this policy position was re-affirmed.
- Despite this statement, the Commonwealth continues to hold the Badgery’s Creek site reserved for future airport use, which means the prospect of an airport at the site remains. There is also considerable uncertainty regarding future planning and development in and around Badgery’s Creek.
- The Commonwealth committed to undertake a review of Sydney’s future airport needs in 2005, including the future of the Badgery’s Creek site, but this review has not commenced and the Commonwealth Government has not provided details of the timing of the review or its format, nor its intentions with regard to the Badgery’s Creek site.
- The NSW Government is opposed to the construction of a second Sydney Airport at Badgery’s Creek but the decision to build a second airport and the site of the airport is a Commonwealth decision, largely beyond the mandate of State Government.
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- The Commonwealth Government policy position was based on the fact that Kingsford Smith Airport (KSA) could meet Sydney’s airport and aviation needs to the year 2023 and beyond. This was based on estimates of demand growth of between 3 and 4 per cent over the next twenty years, as outlined in KSA Master Plan. Demand growth has in fact been higher, with 2004 aviation activity being 10% higher than 2003, as reported in Sydney Airport’s 2004 Annual Report.

- Growth and expansion at KSA will be limited by social and environmental considerations, as well as physical and engineering constraints. Many inner city councils are actively opposed to any major expansion of operations at KSA.

- The Bankstown Airport Master Plan approved in March 2005 ruled out the introduction of regional or other jet services at Bankstown.

- If an airport is developed at Badgery’s Creek, the Alliance envisages one of two options could occur. Scenario 1 could see the development of a fully functioning international airport serviced by road and rail infrastructure which would compete for domestic and international passengers with KSA. This option would at least bring economic and infrastructure benefits to the region. Scenario 2, the “worst case”, is that a low cost overflow airport is developed at Badgery’s Creek servicing regional domestic routes, and with little accompanying road and rail infrastructure. This option would result in the considerable environmental impacts, but very little economic or infrastructure gains for the region.

The Western Sydney Alliance has been active in 2005 organising a delegation to Canberra to meet with Government and Opposition MPs and Ministers. In response those meetings the Commonwealth indicated that there is no change to its current policy position, but it is not likely to remove the reservation of the Badgery’s Creek site in the near future. There were also signs the so-called “2005 Airport Review” by the Commonwealth may not proceed. In late 2005/early 2006, the Western Sydney Alliance is proposing to organise a follow up delegation to Commonwealth MPs whose electorates are within or adjacent to the Badgery’s Creek site, as well as hold a Badgery’s Creek Roundtable involving Alliance Mayors and Councillors and relevant Commonwealth MPs.

Conclusion

In summary, while the possibility of an airport at Badgery’s Creek remains real as the site remains reserved for airport use and the Commonwealth refuses to formally revoke it, the issue is largely in abeyance. During the recent meetings with Commonwealth MPs, they reaffirmed the Commonwealth’s position that, based on the KSA Master Plan, no second airport in Sydney is required for the next twenty years, and that the Badgery’s Creek Airport issue is “off the agenda”.

In light of the above, it is recommended that Blue Mountains City Council pay all of its outstanding contributions to the Alliance for 2005 (estimated to be $3,251), and then withdraw from the Western Sydney Alliance effective 1st February 2006. It is understood Baulkham Hills City Council have also taken a similar position and recently withdrawn from the Alliance. In light of the withdrawal of two Councils from the Alliance, it appears to be an opportune time for the Alliance to review its function and role and consider disbanding, re-forming at a future date if, or when, the issue of an airport at Badgery’s Creek arises again.
However, there is a need for councils in Western Sydney to maintain a watching brief over the issue, to ensure councils are well informed of any shifts in Commonwealth policy, and if the proposed airport review proceeds. It is therefore recommended that BMCC advocate that WSROC and MACROC take over this role if the Alliance disbands. This also provides an avenue for advocacy and discussion of the Badgery’s Creek Airport issue as part of the broader agenda of improved transport infrastructure and co-ordination in Western Sydney. It is therefore recommended that Council write to the Western Sydney Alliance to:

- Thank the Alliance and its member councils for their achievements to date.
- Outline Council’s position that it is withdrawing from the Alliance commencing on 1 February 2006 given that the Badgery’s Creek Airport proposal is no longer a pressing issue.
- Recommend that the Alliance re-examine its role and function, and consider disbanding while the issue of Badgery’s Creek Airport is in abeyance, reforming if required in the future.
- Recommend that WSROC and MACROC jointly take on the role of maintaining a watching brief in relation to the proposed Badgery’s Creek airport, to ensure member councils are promptly made aware of any changes in Commonwealth and State Government’s policies and commitments in relation to the proposed Airport.

It is also recommended Council write to WSROC outlining its position in relation to the Western Sydney Alliance and requesting that it consider taking on the role of monitoring the proposed Airport at Badgery’s Creek, if the Alliance disbands.
ITEM NO:  5

SUBJECT: REVIEW OF COMMUNITY CONSULTATION POLICY

Recommendation:

That Council note the report.

Report by Executive Officer:

Background

In December 2004 Council adopted a community consultation policy, which included a consultation matrix and toolkit for staff. The matrix and toolkit were trialled during 2004 before being adopted by Council.

The Policy, matrix and toolkit were distributed to staff and can be found on Council’s intranet and website.

Progress to Date

During 2004-5 Council undertook community consultation for 82 projects. This ranged from intensive workshops and public meetings, through to notification of works to be undertaken.

These consultations helped guide council decisions and resulted, on the whole, on better outcomes for the community.

As staff have used the toolkit, they have suggested refinements and contributed more information, such as the meeting checklist, material for the Council resource kit and templates for consultation feedback, which has proved useful to other staff members undertaking consultation.

A complete list of the consultation undertaken by Council is available on Council’s website and is now included in Council’s Annual Report. The list outlines the project, type of consultation undertaken and responses to and outcomes of the consultation.

During 2004-2005 Council released 131 media statements and there were over 540 articles relating to Council in the local papers. Council also continued with its weekly information page(s) in the Blue Mountains Gazette. In the last year this page has also included a listing of Council decisions following Council meetings.

As well Council publishes a quarterly newsletter for inclusion in the rates notices. This newsletter is also available at Council Offices, Libraries and on Council’s website.
PROVIDE GOOD GOVERNMENT

Item 5 - Ordinary Meeting, 13/12/05

Council has during the year, continued to consult with the community on particular projects through formal committees, such as the World Heritage Committee, the Katoomba Echo point Task Force, the Blackheath Pool Advisory Group, the Lawson Town Centre Advisory Group; the Lapstone Advisory Group as well as the Sports Council and the Youth Council.

Council has also established the School Environment Network, which is open to all private and public schools; holding meetings each term and producing a quarterly educational newsletter for teachers and students.

Consultation related training is being included as part of the Human Resource Strategy. The focus will be not just on community consultation training, but on ongoing and annual training in related areas such as “How to hold a public meeting”, “Public Speaking”, “Presentation skills”. During the year 15 Staff from City Solutions undertook training in “Presenting at Public Forums”.

Next Steps

The results to date have not raised significant issues that would warrant the Policy to be amended at this stage. However having regard to best practice, it is considered that Council should have some form of objective indicator to enable an assessment as to whether the community is satisfied with their ability to input into Council decisions.

The Community Survey has been an effective tool in assessing the response to Council’s consultation and the Policy will be reviewed in light of the next Community Survey results.
ITEM NO: 6

SUBJECT: SUBMISSION FROM BLUE MOUNTAINS CITY COUNCIL TO INDEPENDENT INQUIRY INTO THE FINANCIAL SUSTAINABILITY OF NSW LOCAL GOVERNMENT

FILE NO: C00433 Part 2

Recommendation:

That the proposed Submission from Blue Mountains City Council to Independent Inquiry into the Financial Sustainability of NSW Local Government be endorsed and forwarded to the Inquiry Panel by 14 December 2005.

Report by Group Manager, Community and Corporate:

Introduction

As a result of widespread concern regarding the financial sustainability of local governments in New South Wales, the Local Government and Shires Association have commissioned an independent inquiry to address this matter. Submissions are being sought from key stakeholders including local governments. The final report of the Inquiry is to be completed by the 1st of May 2005.

This report provides an overview of the Terms of Reference and focus of the inquiry and presents Council’s proposed initial response to it (see Enclosure 1 - Draft Submission).

Terms of Reference of the Inquiry

The inquiry will provide a comprehensive and objective arms length assessment of the financial position of Local Government and its capacity to meet current and future needs of communities. Terms of Reference include:

- To assess the current financial position and performance of the NSW local government sector;

- To assess the adequacy of existing NSW local government physical infrastructure and service delivery in terms of (i) its statutory obligations, (ii) community and state government expectations of its role and functions, and (iii) challenges posed by changing demographic, economic, social, environmental, technical and governance trends;

- To assess the financial capacity of local government to meet its statutory obligations, expected functions and emerging challenges; and

- To identify possible financial (including alternative financing mechanisms), administrative, governance and intergovernmental reforms that could address any shortcomings and gaps uncovered by the above research.
Specific local government issues that should be addressed as part of the Inquiry are:

- The condition of local government infrastructure
- Responsibility and cost shifting from other tiers of government
- Impact of rate pegging and rate exemptions compared with other jurisdictions
- Implications of the Sydney metropolitan and other urban planning strategies
- The House of Representatives ‘Hawker Committee’ recommendations
- The accountability, effectiveness and efficiency of local government
- Appropriate fiscal and other performance benchmarks for local government
- Intergovernmental fiscal, legal and administrative arrangements, including a comparison with other states and
- Regional cooperation and partnerships between individual councils.

The Inquiry is also to specifically report on the provision of the following infrastructure, services and activities:

- Roads and transport infrastructure
- Stormwater and drainage
- Libraries and library services
- Aged care facilities and services
- Childcare facilities and services
- Recreational facilities and services
- Environmental management and services
- Planning
- Water and sewerage
- Natural resource management
- Fire services, and
- Telecommunications

**Inquiry Report Outputs**

The Inquiry will result in three public reports:

- A *Background and Issues Paper* (22 October 2005 – see Enclosure 2)
- An *Interim Findings and Options Report* (24 February 2006), and
- A *Final Report* with recommendations (1 May 2006)

**Opportunities for Council to have Input**

The Inquiry’s *Interim* and *Final Reports* will be based on primary research, including surveys regarding ratepayers’ and residents’ view on Local Government, administrative capacity, benchmarking of councils, infrastructure condition and management assessment, as well as secondary ‘desktop’ research and analysis of available statistical data, general information and public reports from councils, State and Commonwealth Governments and other sources. The Inquiry will also rely on state-wide consultation and workshops with, and written submissions from key stakeholders and other interested parties, as well as any other inquiry methods chosen by the Independent Panel.
There are a number of opportunities to input into the Inquiry:

- Written submission responding to the *Background and Issues Paper* – submissions need to be made by 14 December 2005 and;
- Written submission on the *Findings and Options Report* - feedback to be provided to the Inquiry in written form by no later than 24 March 2006.

**Overview of Proposed Council Submission**

The submission (refer to Enclosure 1) to the Inquiry addresses the *Background and Issues Paper* put out by the Inquiry (as requested) as well as raising a number of issues of particular significance to Council. In compiling the submission, significant reference was made to:

- *Council’s Long Term Financial Strategy* (to be included when the submission is sent as Appendix 1)
- *The Background and Issues Paper* put out by the Inquiry (Refer to Enclosure 2 - for the information of Councillors)
- *Council’s adopted Infrastructure Strategy*
- *Council’s Sustainable Asset Management Project*
- *The previous Blue Mountains City Council Submission to the Inquiry into Cost Shifting*

The submission addresses the following areas in particular:

1. Introduction
2. The City of Blue Mountains
3. The current financial position of Blue Mountains City Council
4. The adequacy of existing Blue Mountains City Councils physical assets and infrastructure
5. The adequacy of Blue Mountains City Council service delivery
6. The financial capacity of Blue Mountains City Council
7. The administrative capacity of Blue Mountains City Council
8. Additional reform measures recommended.

**Conclusion**

This report recommends that Council considers the draft submission (refer to Enclosure 1) and endorses it for forwarding to the Inquiry into Local Government Financial Sustainability by 14th December 2005.
QUALITY LOCAL GOVERNMENT

Ordinary Meeting, 13/12/05

ITEM NO: 7

SUBJECT: SALE OF LAND AT 26 RAILWAY AVENUE AND 31 PARKES CRESCENT, FAULCONBRIDGE

FILE NO: C00851

Recommendations:

1. That the sales on 26 Railway Avenue, Faulconbridge, being Lot 72 in DP 8210 and 31 Parkes Crescent Faulconbridge, being Lot 27 in DP 8210 proceed as set out in this report.

2. That the common Seal of Council be attached to the necessary documents.

Report by Group Manager, Community and Corporate:

This report informs Council of changes that have taken place in the negotiations of the sale of land at 26 Railway Avenue, Faulconbridge, being Lot 72 in DP 8210 and 31 Parkes Crescent Faulconbridge, being Lot 27 in DP 8210.

Background

At its meeting on 8 June 2004 Council considered a report dealing with the funding of land for a public park at South Warrimoo. In part the Council resolved:

“3. That the necessary arrangements be made for sale by public auction of 26 Railway Avenue, Faulconbridge, being Lot 72 in DP 8210 and 31 Parkes Crescent Faulconbridge, being Lot 27 in DP 8210.”

A further report in January 2005 informed Council that the auction of the land had not been successful in selling the properties but that negotiation post auction had resulted in purchasers being found for both properties. The report also informed Council of the zoning problems with the land at that time. Under Local Environmental Plan No 4 (LEP 4), both properties were zoned “Local Road Proposed”, however under the then Draft Local Environmental Plan 2005 both properties were proposed to be zoned as “Living Bushland Conservation” which would allow a residential dwelling on each site.

At that time of the report to council in January 2005 the sale on 26 Railway Avenue was proceeding but the negotiations on 31 Parkes Crescent depended on an option being placed on the land to ensure that the sale would proceed once the land was rezoned. Having regard to features and difficulties associated with the property it was considered that the request for an option was reasonable.
QUALITY LOCAL GOVERNMENT

Item 7 - Ordinary Meeting, 13/12/05

The Council resolved:

1. That the information contained in this report be received and noted.

2. That Council grant an option to purchase Lot 27 DP 8210 being 31 Parkes Crescent, Faulconbridge for a non-refundable fee of $5,000 for a six-month period at the sale price of $100,000.

3. That Council’s Common Seal be affixed to the necessary documents relating to this matter."

The sale of 26 Railway Ave, Faulconbridge did not proceed. Legal advice was that Council should not enter into the proposed option on 31 Parkes Crescent, Faulconbridge.

Local Real Estate agents continued to market the properties and another purchaser was found for 26 Railway Ave, Faulconbridge at the same sale price of $200,000. The original purchaser for 31 Parkes Crescent, Faulconbridge was still willing to proceed at a purchase price of $100,000.

Report

The recent Gazettal of Local Environmental Plan 2005 means that the sale of these two properties can now proceed, with the funds being set aside for the acquisition of the Anglican Church land at Warrimoo. These funds will not fully fund the acquisition, however Council has identified another block of land on the Great Western Highway at Warrimoo that is the subject of reclassification and rezoning to allow it to be sold for the shortfall. This project is proceeding.

Conclusion

Gazettal of LEP 2005 now negates the need for an option on 31 Parkes Crescent Faulconbridge. The sale of 26 Railway Avenue Faulconbridge can now proceed also. Considering the problems of these two sites and the fact that they have been on the market since June 2004 it is considered that the offers of $200,000 for 26 Railway Ave, Faulconbridge and $100,000 for 31 Parkes Crescent, Faulconbridge are reasonable and it is recommended that Council proceed with the sales.
QUALITY LOCAL GOVERNMENT

Attachment

SITE PLAN

Subject Land

RAILWAY AVE

PARRIES CRES
ITEM NO:  8

SUBJECT:  PROPOSED SALE OF LAND - REDFERN STREET, WENTWORTH FALLS

FILE NO:  A77943.  C03055

Recommendations:

1.  That Council sell Lots 81-83 in Deposited Plan 31895 Redfern Street, Wentworth Falls to the owner of Lots 101& 102 Clarendon Street, for $120,000.

2.  That the income from this sale be deposited to the proposed Property Investment Fund.

3.  That the Common Seal of Council be affixed to the documents relating to this matter as required.

Report by Group Manager, Community and Corporate:

This report seeks Council approval to sell three blocks of land at Wentworth Falls.

Background

Lots 81,82 and 83 in Deposited Plan 31895 in Redfern Street, Wentworth Falls are zoned Residential Bushland Conservation (2000) under Local Environmental Plan 1991 (LEP 1991). The land was acquired over the last two decades for unpaid rates. Council holds land zoned in this way to facilitate consolidation with adjoining land to obtain the required developable area.

Report

Residential Bushland Conservation (2000) zone requires two thousand square metres for development. However this area is also not sewered and under the Development Control Plan 13 (DCP 13) four thousand square metres are required for onsite disposal of sewerage.

Council has traditionally held this land to facilitate other owners in the area being able to consolidate a property that can be developed.

The owners of Lots 101 and 102 in Deposited Plan 31895 in Clarendon Street, Wentworth Falls have asked Council to sell to them the three blocks of land facing Redfern Street that adjoin their property.

As set out in Council Property Policy adjoining owners have been contacted to ascertain if there was any other interest in the land proposed to be sold. Initially one owner was interested in one of the blocks of land but has since decided not to proceed.
Investigations of the site have taken place and no objections by other Groups within Council were raised to the sale of the property. The investigation identified the presence of the vulnerable species Persoonia acerosa listed under the Threatened Species Conservation Act. A Flora and Fauna Assessment has been submitted by the proposed purchaser. A management plan will need to be prepared as part of the Land Use Application.

The proposed purchasers have also obtained a preliminary site meeting and advice from Environmental and Customer Services.

Two valuations have been prepared and negotiations have taken place over a prolonged period of time. The proposed sale price of $120,000 is confirmed by valuation.

Conclusion

The proposed purchasers of this site are very aware of the constraints of the site and are prepared to proceed. The sale price of $120,000 is considered to be fair and reasonable and is supported by valuations and recent sales it is therefore recommended that Council sell the subject land.
Attachment

SITE PLAN

Council Owned Land

Proposed Purchaser
QUALITY LOCAL GOVERNMENT

ITEM NO: 9

SUBJECT: SALE OF COUNCIL LAND - REDFERN AND WALKER STREETS, WENTWORTH FALLS

FILE NO: A48537. C02864

Recommendations:

1. That Council sell to the owner of Lot 88 in Deposited Plan 31895 Redfern Street, Wentworth Falls Lots 1, 2 and 61 in Deposited Plan 31895 on the Corner of Somme and Walker, Lots 86 & 87 and Lots 92-97 in Deposited Plan 31895 Redfern and Clarendon Streets under the terms and conditions set out in this report.

2. That the income from this sale be deposited in the Proposed Property Investment Fund.

3. That the Common Seal of Council be affixed to any documents relating to this matter.

Report by Group Manager, Community and Corporate:

This report deals with a request from a property owner in Redfern Street, Wentworth Falls who wants to acquire Council property for future development.

Background

The land in the area of Redfern, Clarendon and Walker Streets Wentworth Falls is zoned Residential Bushland Conservation (2000) zone and requires two thousand square metres for development. However this area is also not sewered and under the Development Control Plan 13 (DCP 13) four thousand square metres are required for onsite disposal of sewerage.

Council has traditionally held this land to facilitate other owners in the area being able to consolidate a property that can be developed. At the present time the lack of available vacant land in the mountains has seen a rise in interest in this area.

The owner of Lot 88 in Deposited Plan 31895 being 27 Redfern Street, Wentworth Falls has purchased the land recently and has requested that Council sell ten adjoining properties to her plus three blocks of land on the corner of Walker and Somme Avenue, Wentworth Falls.

Report

The land in which the owner has indicated an interest is Lots 84 to 87 Redfern Street, Lots 92-94 Walker Street Lots 95-97 Clarendon Street which all adjoin each other, and Lots 1 and 2 and 61 on the other side of Walker Street, Wentworth Falls.
QUALITY LOCAL GOVERNMENT

The proposed purchaser has been informed that a number issues must be considered if Council was to sell the land. There are portions of the land that are subject to heavy water flows and there is an easement that runs across the land that is 10 feet wide. It is unlikely building will be allowed over this easement and Council does not currently have any intention of piping the easement.

In addition, Lots 1-2 and 61 in Deposited Plan 31895 on the corner of Somme Avenue and Walker Streets, when consolidated is less than the 4,000m² area required for development.

The following terms and conditions of sale must be agreed in writing before the matter can proceed.

- Price is determined by an independent Registered Valuer appointed by both parties with each party paying a 50% share of the cost.
- A condition of the sale is that the land be consolidated into one parcel.
- That Council will not pipe the easement.
- That it is agreed by the purchaser that the sale of the land is not conditional upon development consent.
- That the purchaser is not to assume that development consent or future closure of adjacent sections of Lesson Road will be given.
- That the matter be settled within 8 weeks of a decision to sell made at a duly convened meeting of the Council.
- That the purchaser understands that a minimum of 4,000 square meters is required for development.

Conclusion

It is at the request of the proposed purchaser that this report comes to Council. Lots 1-2 and 61 in Deposited Plan 31895 cannot be consolidated to obtain the required 4000 square metres required for development. The purchaser has been informed of this and has given assurance in writing that they are not asking for a conditional contract, but "may at a future date apply for the closure and purchase of land at the rear of these blocks currently assigned as Lesson Road to augment the land area required under DCP 13".

The ownership pattern of the land in Redfern and Clarendon Street shows that if Lots 84 and 85 in Deposited Plan 31895 were sold to consolidate with the proponents land the owner of Lots 98, 99 & 100 would not be able to consolidate a parcel for development under DCP 13. It is therefore recommended that Council only consider the sale of eleven blocks - Lots 1,2 and 61 in Deposited Plan 31895 on the Corner of Somme and Walker, Lots 86 & 87 and Lots 92-97 in Deposited Plan 31895 Redfern and Clarendon Streets and only if the proposed purchaser agrees the above terms and conditions in writing.
Border shows land to be sold
QUALITY LOCAL GOVERNMENT

Ordinary Meeting, 13/12/05

ITEM NO: 10

SUBJECT: FINANCIAL REPORTS FOR THE YEAR ENDED 30 JUNE 2005

FILE NO: C00738

Recommendations:

1. That Mr Dennis Banicevic, of Council’s Auditor, PriceWaterhouseCoopers, be invited to address the meeting in respect to the Financial Reports.

2. That the Financial Reports be presented and this report be received and noted.

Report by Group Manager, Community and Corporate:

In accordance with Section 419 of the Local Government Act the 2004/2005 Annual Financial Reports and Special Purpose Financial Reports, together with the Auditor’s Reports, are hereby presented. Copies of the documents have been provided separately to Councillors with this Business Paper and have been available at Council’s offices since Wednesday 16th November 2005. Further copies will be available at the meeting and are readily available to any person who seeks a copy.

Mr Dennis Banicevic, Council’s Auditor from PriceWaterhouseCoopers, will be present to address the meeting in respect to the key financial indicators contained in the Financial Statements.

Pursuant to Section 420 of the Local Government Act 1993 public notice has been given of the meeting at which the Financial Reports will be presented, inviting submissions on the reports from members of the public. Submissions are required to be lodged with Council in writing by 4:00 pm on Tuesday, 20th December 2005. If any submissions are received, a further report on the submissions, together with officer comment, will be presented to Council.
ITEM NO: 11

SUBJECT: LOCAL ENVIRONMENTAL PLAN ACQUISITIONS

FILE NO: C07468

Recommendations:


2. That a float of $30,000 be deposited in the appointed solicitors Trust Account for the settlement of these properties and additional funds as required.

3. That the Common Seal of Council be attached to the documents relating to these purchases as required.

Report by Group Manager, Community and Corporate:

This report considers the method for purchase of the land that is zoned for acquisition under Local Environmental Plan 2005 (LEP 2005).

Background

LEP 2005 identified 266 parcels of land for acquisition for environmental purposes. Council must acquire the land under the Land Acquisition (Just Terms Compensation) Act 1991 Section 21 (b) that states:

"(b) the land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (c) of the Environmental Planning and Assessment Act 1979 and the instrument (or some other environmental planning instrument) specifies that authority as the authority required to acquire the land."

Section 23 of the Land Acquisition (Just Terms Compensation) Act 1991 states that owners who suffer hardship may require an authority of the State to acquire land designated for acquisition.

" (1) The owner of land to whom this Division applies may require an authority of the State, by notice in writing given to the authority, to acquire that land under this Act if:

(a) The land is designated for acquisition by that authority for a public purpose, and
(b) the owner considers that he or she will suffer hardship if there is any delay in the acquisition of the land under this Act."
(2) The authority of the State must (subject to this Division) acquire the land within 90 days after the owner gives that authority notice under this section (or such longer period as that authority and the owner may agree on in writing).
(3) If there is more than one owner of the land concerned, the notice under this section must be given by all the owners. It is sufficient if any one of those owners will suffer hardship."

Council is obliged to purchase 189 properties, 266 parcels zoned for Environmental Protection - Open Space (Acquisition Requirement) under LEP 2005. The method of acquisition can either be by negotiation or compulsory process. Even though the land is to be acquired under Land Acquisition (Just Terms Compensation) Act 1991 it is preferable that the land is acquired by agreement with the owners rather than by compulsory process, as this requires arbitration by the Land and Environment Court and will add to Council's costs.

Report

Because the acquisition of these properties will be administratively time consuming it is considered that reporting to Council on an individual basis would not be efficient. Therefore it is recommended that the matters be reported on a three or four monthly basis to Council as required (by the owners giving notice of hardship under Land Acquisition (Just Terms Compensation) Act 1991).

The costs of acquiring the land in regard to valuation and conveyance will be in the vicinity of $1,200 per parcel. The purchase price has not yet been determined and will be subject to a valuation by a registered Valuer. If the valuation is disputed the matter will then have to go to the Land and Environment Court for decision.

The legal process for those properties where agreement is reached between the Council and the owners can be shortened by not having contracts of sale but conveyance by way of a Transfer. There will also be less administration to if the solicitor has funds available for the settlement without having to ask Council for a cheque to be produced for each transaction. It is envisaged that an amount of $30,000 be deposited in the solicitors Trust Account as a "float" as appropriate.

At the present time the owners of the following addresses have indicated that they wish Council to purchase as soon as possible.

<table>
<thead>
<tr>
<th>Address</th>
<th>Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>39 Violet Road, Mount Victoria</td>
<td>013/1/955292</td>
</tr>
<tr>
<td>100 First Avenue, Katoomba</td>
<td>Multiple Parcels (2)</td>
</tr>
<tr>
<td>94A First Avenue Katoomba</td>
<td>013/10/A/5785</td>
</tr>
<tr>
<td>83 First Avenue, Katoomba</td>
<td>013/15/B/5785</td>
</tr>
<tr>
<td>26 Hill View Road, Katoomba</td>
<td>013/8/F/5786</td>
</tr>
<tr>
<td>22 Hill View Road, Katoomba</td>
<td>013/10/F/5786</td>
</tr>
<tr>
<td>18 Hill View Road Katoomba</td>
<td>013/12/F/5786</td>
</tr>
<tr>
<td>14 Hill View Road Katoomba</td>
<td>013/14/F/5786</td>
</tr>
<tr>
<td>105 Second Avenue Katoomba</td>
<td>013/3/C/5785</td>
</tr>
<tr>
<td>70 Second Avenue Katoomba</td>
<td>013/23/B/5785</td>
</tr>
<tr>
<td>76 Second Avenue Katoomba</td>
<td>013/26/B/5785</td>
</tr>
</tbody>
</table>
The land will be valued by a registered valuer who will take into consideration the compensation clauses of the Land Acquisition (Just Terms Compensation) Act 1991 and the Environmental Planning and Assessment Act 1979. It is envisaged that the land in this list will require approximately $300,000 in valuation, legal and acquisition costs.

**Funding**

Currently there is $223,860 in restricted assets for Environmental Protection land acquisitions, this money was set aside for acquisitions that were still outstanding from Local Environmental Plan No 4. The approved loan borrowing for 2005/06 includes $960,000 for EP land purchases.

**Conclusion**

The gazettal of LEP 2005 now makes it necessary for Council to acquire those properties where the owners give notice that they require Council to purchase under the hardship provisions. The method of acquiring by way of Transfer is efficient and cost affective for Council. It is recommended that Council acquire the above properties and that reports regarding acquisition of LEP 2005 properties in the future be presented to Council on a three or four monthly basis as required.

<table>
<thead>
<tr>
<th>Address</th>
<th>Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>90 Second Avenue Katoomba</td>
<td>013/33/B/5785</td>
</tr>
<tr>
<td>92 Second Avenue Katoomba</td>
<td>013/35/B/5785</td>
</tr>
<tr>
<td>94 Second Avenue Katoomba</td>
<td>013/36/B/5785</td>
</tr>
<tr>
<td>96 Second Avenue Katoomba</td>
<td>013/37/B/5785</td>
</tr>
<tr>
<td>85 Third Avenue Katoomba</td>
<td>013/12/D/5785</td>
</tr>
<tr>
<td>54 Clydebank Road, Katoomba</td>
<td>013/37/J/5869</td>
</tr>
<tr>
<td>47 Clydebank Road, Leura</td>
<td>013/37/A/5869</td>
</tr>
<tr>
<td>45 Clydebank Road Leura</td>
<td>013/36/A/5869</td>
</tr>
<tr>
<td>35-37 Eighth Avenue Leura</td>
<td>Multiple Parcels (2)</td>
</tr>
<tr>
<td>58-60 Eighth Avenue Leura</td>
<td>Multiple Parcels (2)</td>
</tr>
<tr>
<td>15 Eleventh Avenue Leura</td>
<td>013/30/O/5870</td>
</tr>
<tr>
<td>22 Fernlea Road Leura</td>
<td>013/29/R/5862</td>
</tr>
<tr>
<td>25 Fernlea Road Leura</td>
<td>013/32/S/5862</td>
</tr>
<tr>
<td>11 Ninth Avenue Leura</td>
<td>Multiple Parcels (2)</td>
</tr>
<tr>
<td>65-67 The Crescent Leura</td>
<td>Multiple Parcels (2)</td>
</tr>
<tr>
<td>33 The Crescent Leura</td>
<td>013/81/C/5869</td>
</tr>
<tr>
<td>22 Clydebank Road Leura</td>
<td>013/63/C/5869</td>
</tr>
<tr>
<td>4 Alpine Avenue, Lawson</td>
<td>013/28/28628</td>
</tr>
<tr>
<td>102 Queens Road, Lawson</td>
<td>013/33/28628</td>
</tr>
<tr>
<td>104 Queens Road Lawson</td>
<td>013/34/28628</td>
</tr>
<tr>
<td>161 Queens Road Lawson</td>
<td>013/84/29555</td>
</tr>
<tr>
<td>133 Queens Road Lawson</td>
<td>Multiple Parcels (2)</td>
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</table>
QUALITY LOCAL GOVERNMENT

ITEM NO: 12

SUBJECT: ROAD CLOSING APPLICATION - NEW STREET, LAWSON

FILE NO: R10/0131

Recommendations:

1. That Council support an application to the Department of Lands for the closure of the western portion of New Street, Lawson, as shown on the attached plan.

2. That on gazettal of the road closure the land be classified as Operational Land.

3. That the required area for the new position of New Street be dedicated as road.

4. That Council's Common Seal be affixed as necessary to documents relating to this matter.

Report by Group Manager, Community and Corporate:

This report deals with the proposed Lawson Town Centre redevelopment.

Background

The Master Plan for the redevelopment of Lawson indicates that it will be necessary to close a portion of the present New Street, Lawson and dedicate land further to the east for the new location of the road.

Report

The Master Plan for the redevelopment of the Lawson town centre requires moving New Street, Lawson to the east to allow for improved traffic flow. This necessitates the closure of New Street in its present position and the dedication of the land that is now occupied by the funeral parlour and part of the car park area owned by Council as road. The plan for the redevelopment shows a new shop (shop three) is to be built over the road. This will necessitate Council selling the portion of road to be built upon to the company who will eventually build shop three. At the present time the RTA owns the funeral parlour at 291 Great Western Highway, Lawson and will be involved in the process of transferring the land to Council. A further report will come to Council when negotiations on these matters are completed.

Conclusion

The closing of New Street, Lawson as indicated in the Master Plan for Lawson requires the closing of the road in the present position and dedication of the road in the new position. It is necessary to apply to the Department of Lands to carry out this work now as it does require an extensive period (12 months) to finalise.
The Department of Lands will co-operate with Council to ensure a smooth transition of the liabilities with regard to the closing and opening of the road. It is recommended that Council support the application for the road closure, resolve to dedicate the proposed area of land as road when required and classify the closed portion of road as operational to allow its eventual consolidation with adjoining land for development of shop three.
New Position of New Street, Lawson to be Dedicated
PROTECTION OF THE NATURAL ENVIRONMENT

Ordinary Meeting, 13/12/05

ITEM NO:  13

SUBJECT:  GROUNDWATER MANAGEMENT IN THE BLUE MOUNTAINS

FILE NO:  C01230

Recommendation:

That Councillors note the progress on groundwater management issues and the proposed Groundwater Community forum scheduled in early 2006.

Report by Group Manager, Community and Corporate:

Background

The extraction and management of groundwater in the Blue Mountains is increasingly becoming an issue to both the Blue Mountains community and Blue Mountains City Council. Council have passed two resolutions in 2005 in regard to groundwater extraction in the Blue Mountains and its impacts on groundwater dependant communities, such as swamps, as well as a number of threatened species.

The first decision, on 19 April 2005, was:

“That Blue Mountains City Council initiate discussions with the Dept of Infrastructure, Planning and Natural Resources, Dept of Environment and Conservation, Hawkesbury-Nepean Catchment Management Authority, Sydney Water, other relevant government agencies and community environment organisations, about existing groundwater situation in the Blue Mountains, with the purpose of these discussions being to work together to ensure the long terms protection of the groundwater dependent Blue Mountains swamps, and the protection of the threatened species which live in them.”

The second decision, on 10 May 2005, resolved that Council:

‘Pursue dialogue with the State Government regarding:

• Councils’ concern on groundwater use and its impacts on the environment and the World Heritage status of the national park through local members Bob Debus and Karyn Paluzzano; and

• The potential for council to assume an approval or concurrence role for licences to extract groundwater within the Blue Mountains Local Government Area.”

Environmental Management and City Planning Branches have been working towards fulfilling these Council resolutions. This Council Report is intended to update Councillors on work to date.
PROTECTION OF THE NATURAL ENVIRONMENT

Item 13 - Ordinary Meeting, 13/12/05

Current Situation

Consistent with the Council resolutions, Council staff invited key government agencies to attend a Blue Mountains Groundwater Roundtable in September 2005, in order for Council and key agencies to better understand the groundwater resources that exist in the Blue Mountains, the current pattern and rate of extraction, the environmental, economic and social values of groundwater and how current and potential future extraction of the resource will impact on those values. The following agencies participated in the Groundwater Roundtable: Dept of Natural Resources, Sydney Catchment Authority, Sydney Water, Commonwealth Dept of Environment and Heritage, Hawkesbury Nepean Catchment Authority and Hawkesbury City Council. The Dept of Environment and Conservation were invited but did not send a representative.

A number of positive outcomes for all participants arose out of the Roundtable including:

- a clear understanding of Council’s concerns regarding groundwater, and Council’s commitment to see environmentally sustainable management of groundwater in the Blue Mountains;
- a better appreciation of the extent of groundwater extraction and existing monitoring;
- a better understanding of how groundwater licences are assessed and approved;
- a shared understanding of the environmental, social and economic issues associated with groundwater management;
- commitment to share information on groundwater from all participants;
- recognition that more data, information and research is needed to better understand groundwater in the Blue Mountains, including the relationship between groundwater and ecological communities such as swamps;
- an outline of the future intentions for better management of groundwater (see below); and
- commitment from the Roundtable participants to meet again in early 2006.

At the Groundwater Roundtable meeting, representatives from the Dept of Natural Resources indicated that the department is intending to develop for the Blue Mountains a Groundwater Macro Plan which will guide the management and extraction of groundwater in the local area. Blue Mountains City Council is very supportive of this approach, and believes many of the issues which are of concern to Council and the community in relation to groundwater could be resolved through the development of a comprehensive Macro Plan, which is developed in consultation with Council and the local community.

As a follow up to the Groundwater Roundtable, a letter has been sent to the Dept of Natural Resources from the Group Manager, Community and Corporate requesting that the development of the Groundwater Macro Plan for the Blue Mountains is given a high priority and requesting Council and community involvement in the Plan at an early stage in its development. Consistent with Council’s Resolutions, letters to local Members of Parliament requesting their support for Council’s position have also been sent under the General Manager’s signature.
PROTECTION OF THE NATURAL ENVIRONMENT

Item 13 - Ordinary Meeting, 13/12/05

It is intended that the Groundwater Roundtable meeting will now be followed up by a community forum, where the key government agencies that attended the Roundtable, as well as broader community and scientific representatives, will further discuss the issue of sustainable management of groundwater in the Blue Mountains. This forum is scheduled for early 2006. It is planned to link the Community Forum with any public consultation undertaken by the Dept of Natural Resources for the proposed Groundwater Macro Plan.

In addition to the above, Council staff have initiated discussions with both the Dept of Planning and Dept of Natural Resources in terms of the Council resolution that Council assume a concurrence role for bore licence applications. A formal letter has been sent to the Dept of Planning requesting their views on Council assuming a concurrence role, and Council planning staff are meeting with Dept of Natural Resources representatives in early December to discuss this issue and the proposed Groundwater Macro Plan.

Conclusion

Councillors note the progress on groundwater management issues and the proposed Groundwater Community forum scheduled in early 2006.
ITEM NO: 14

SUBJECT: SECTION 96(1A) APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. X04/0455 FOR ALTERATIONS AND ADDITIONS TO THE DWELLING AND A FREESTANDING CARPORT ON LOT 422 DP 607563, NO. 8 MONA ROAD, WOODFORD

FILE NO: X04/0455

Recommendations:

1. That Development Application No. X04/0455 for alterations and additions to the dwelling and a freestanding carport on Lot 422 DP 607563, No. 8 Mona Road, Woodford be modified pursuant to S.96 (1A) of the Environmental Planning and Assessment Act 1979 by amending Condition No. 1 as follows:

<table>
<thead>
<tr>
<th>Development consent</th>
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<td>Amended 13 December 2005</td>
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   1. Blue Mountains City Council issues its consent, subject to conditions stated hereunder, in accordance with Section 80A of the Environmental Planning and Assessment Act 1979. Substantial physical commencement of construction is required within 2 years from the 17 August 2004.

   To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by R & L Starr Architects numbered 0401/01A dated August 2005 and 0401/02 dated March 2004 and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.

2. That Amended Construction Certificate No X04/0455 be issued.

Report by Group Manager, Environmental and Customer Services:

Reason for report This matter is reported to Council in accordance with Council’s Resolution of 26 September 2000 (Minute No. 397), which requires that applications relating to properties owned by senior staff, and staff having delegations, be determined by Council.

Applicant/Owners Mr P and Mrs D McKendry.

Application lodged 15 September 2005.

Property address Lot 422 DP 607563, No. 8 Mona Road, Woodford.
Site description

The subject land is located on the southern side of Mona Road and is known as Lot 422 DP 607563, No. 8 Mona Road, Woodford. The site slopes to the rear of the property away from Mona Road and a single storey brick and tiled dwelling is constructed on the lower portion of the property. The site has a frontage of 19.435 metres and a depth of 76.060 metres to the western boundary and 82.330 metres to the eastern boundary with a total area of 1511m².

The site is zoned Residential Bushland Conservation (8/ha) under Local Environmental Plan (LEP) 1991. A small area adjacent to the middle section of the western boundary is designated as a Protected Area – Environmental Constraint Area under LEP 1991. The Protected Area comprises an area of 126.97m², which equates to 8.41% of the total site area.

History

The original application for the construction of additions and alterations to the dwelling, a deck and a detached carport was approved by Council at its Meeting held on 10 August 2004. As part of the original assessment, Council considered and approved a SEPP 1 objection in relation to the proposed height of the additions and a variation to the front building alignment for the proposed carport.
LAND USE MANAGEMENT

Item 14 - Ordinary Meeting, 13/12/05

Proposal

This amended application provides for minor changes to the previously approved application for additions and alterations to the dwelling. No amendments are proposed for the carport. The changes include:

- The deletion of the northern facing box dormer window serving bed 4 in the first floor area.
- The deletion/reduction of windows in the first floor area facing south.
- Changing of the external wall cladding on the southern elevation from fibrous cement to brick veneer construction.
- A reduction in the floor area of the proposed additions by relocating the new staircase within the existing external walls of the building.

Copies of the architectural plans showing the extent of the proposed additions are provided in Attachment 2 to this Report.

Development controls

Zoning – Local Environmental Plan 1991:

- Residential Bushland Conservation (8/ha) (100%)
- Environmental Constraint Area (8.41%)
- Development Control Plan – Better Living DCP

Notification

The original application was notified to adjoining property owners for a period of 14 days and no submissions were received. The amended application was not notified to the adjoining property owners as it is considered that the proposed changes have less of an impact than the original approved plans/proposal.

Discussion of Issues

1. Amended Development Application and Construction Certificate

The amended application has been assessed against the relevant provisions of the Environmental Planning and Assessment Act 1979 as amended, Planning for Bushfire Protection, Local Environmental Plan 1991 (LEP 1991) and Council’s Better Living Development Control Plan.

In assessing the modification pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979, it is considered that:

(a) the proposed modification is of minimal environmental impact; and
(b) the development to which the consent, as modified, relates remains substantially the same development as the development for which the consent was originally granted.
The proposed modifications consist of reducing the number and size of the windows, reducing the size of the additions and changing a portion of the external cladding to match the existing brickwork. The proposed development is considered to be generally in compliance with the above provisions with the exceptions of the height of the proposed first floor addition under Clause 10.6 of LEP 1991 and the carport building line encroachment under the Better Living DCP. Both these matters were considered and approved as part of the original application and are not affected by the proposed modifications.

The application also seeks the re-issue of a Construction Certificate and this has been assessed against the relevant provisions of the Building Code of Australia. The proposal complies with these requirements.

2. Report by External Consultant

The original application was referred to an independent Town Planning Consultant for external review. Mr Karl Berzins of Berzins Environmental Planning undertook this review and supported the original report to Council and the recommendation for approval. Due to the minor nature of the proposed amendments, it was considered unnecessary for the proposed modification to be reviewed by an independent consultant.

Conclusion

The proposed amended development has been considered in accordance with the relevant provisions of the Environmental Planning and Assessment Act 1979, Local Environmental Plan 1991, Planning for Bushfire Protection and Better Living DCP.

The proposed modifications are of a minor nature and it is considered that they will have minimal impact. It is therefore recommended that the application to modify the Consent be approved and the necessary consequential changes be made to condition 1 of the Consent to reference the revised plan.
Attachment 1—Conditions of development consent

1. Blue Mountains City Council issues its consent, subject to conditions stated hereunder, in accordance with Section 80A of the Environmental Planning and Assessment Act 1979. Substantial physical commencement of construction is required within 2 years from the 17 August 2004.

To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by R & L Starr Architects numbered 0401/01A dated August 2005 and 0401/02 dated March 2004 and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.

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

3. To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the construction period:
   a) 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 Council.
   b) 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.
   c) 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.
   d) 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.
4. To preserve the unique environment of the Blue Mountains and to contain soil and sediment on the property, controls in accordance with Council’s *Erosion & Sediment Control* policy are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:

   a) 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.

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

6. To control rainwater runoff, roof water shall be connected to stormwater drainage lines discharging to the bushfire rainwater tank with the overflow to the existing stormwater system.

7. To have regard of the amenity of the area, the materials and colours to be used are to match the existing building. Any outbuildings or other ancillary structures are to be finished in colours and materials of muted bushland tones and low reflective quality to blend with the surroundings.

8. a) Construction shall comply with AS3959-1999 level 3 Construction of Buildings in bushfire prone areas.

   b) Roofing shall be gutterless or have leafless guttering and valleys are to be screened to prevent the build up of flammable materials.

   c) The entire property shall be managed as an Inner Protection Zone as outlined within Section 4.2.2 in Planning for Bushfire Protection 2001.
d) Access to the rear of the property shall be provided for fire fighting purposes.

e) In recognition of the potential unreliable reticulated water supply in residential areas a 10,000 litre dedicated water supply tank shall be provided and a minimum of 3kW (5hp) petrol or diesel powered pump. A 38mm storz fitting and ball or gate valve shall be installed in the tank.

f) No trees are to overhang within 2 metres of the dwelling to prevent the accumulation of leaf litter within roof gutters and valleys.

Advice for Construction Certificate

A certificate from a registered Structural Engineer attesting to the adequacy of the structure to support the anticipated loads is to be submitted to the Principal Certifying Authority prior to construction works commencing.
ITEM NO: 15

SUBJECT: DEVELOPMENT APPLICATION NO. X05/0543 FOR THE PARTIAL DEMOLITION OF THE EXISTING BUILDINGS AND THE CONSTRUCTION OF A NEW RETAIL AND RESIDENTIAL BUILDING ON LOTS 1 AND 2 DP 514529 AND LOT 18 DP 662808, NOS. 152-160 LEURA MALL, LEURA

FILE NO: X05/0543

Recommendation:

That Development Application No. X05/0543 for the partial demolition of the existing buildings and the construction of a new retail and residential building on Lots 1 and 2 DP 514529 and Lot 18 DP 662808, Nos. 152-160 Leura Mall, Leura be determined pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 by refusing consent to the application for the following reasons:

1. The bulk and scale of the development is excessive and its massing represents an inappropriate architectural response for a prominent site within the historic streetscape of Leura Mall.

2. The height of the proposed building is unacceptable and fails to respond to the site’s setting and visual prominence as viewed from Leura Mall, other adjacent public places and prominent sites outside the immediate locality.

3. The proposed development does not have a sufficiently high standard for its architectural design and represents an unacceptable response to the Design Quality Principles of State Environmental Planning Policy No. 65 – “Design Quality of Residential Flat Development” and the Design Code, the principles of which are also reflected in the provisions of LEP 2005.

4. The proposed development has an unacceptable and adverse impact on the significant heritage/conservation values of the site, adjacent heritage items (particularly the former post office building) and the Central Leura Urban Conservation Area, assessed as being of State significance.

5. The proposed development does not make sufficient provision for on-site car parking.

6. Satisfactory provision has not been made within the site area for loading and unloading facilities nor is there safe and practicable access provided for the type of delivery and service vehicles that will be used in conjunction with the proposed development.
LAND USE MANAGEMENT

7. In its present form, the proposed permanent vehicular access to the development site over public land is unacceptable. The design of proposed access routes unreasonably impacts on the function of the existing car parking facility, limits future use of the public land asset and relies on proposed modification to the public parking facility without public planning benefit.

8. The proposed development is not in the public interest nor does it accord with the planning approach of LEP 2005, including the place-based management of development in Leura Village.

9. The development application fails to provide adequate architectural documentation.

Report by Group Manager, Environmental and Customer Services:

Reason for report Application has a value in excess of $1,000,000.

Applicant Alpall Pty Ltd

Owner Morris Petroleum Pty Ltd

Application lodged 20 May 2005

Street address 152-156 and 158-160 Leura Mall, Leura.

Property Description Lot 1 and 2 in DP 514529 and Lot 18 in DP 662808.152-156 and 158-160 Leura Mall, Leura
Site description

The site is rectangular, with a frontage to Leura Mall of 40.3 metres and a depth of approximately 80.3 metres. It has an approximate area of 3,237 m².

The site is relatively level, with a modified landform. With the exception of a small stand of conifers within the existing setbacks to Leura Mall, there is no vegetation on the site.

Existing development on the site includes various warehouse buildings providing cold storage, truck parking and manoeuvring areas in association with Colless Foods, a supermarket with a shop frontage to Leura Mall and a detached shop.

The locality

The subject site is centrally located on the eastern side of Leura Mall, a traditional and contained shopping strip comprising a near continuous row of one and two storey shop fronts of Edwardian style buildings. The heritage significance of the locality has been reflected in its listing as a heritage conservation area since the early 1980s. Leura Mall, with its landscaped median, is the central focus and organising element of the town centre, which provides a range of service and retail functions for residents and tourists.

The off-street parking facility of Leura township is located to the rear of the site. This facility is framed by one and two storey residential buildings within a landscape setting (which are generally used for professional services) and, in closer proximity to the site, generally single storey shops that address the parking facility.

Proposal

The proposal development consists of the retention of two traditional shop fronts and provision of a new building comprising:

(a) a ground floor level supermarket, loading bay, 15 retail/business suites, and pedestrian arcade, providing access from Leura Mall to the public parking facility to the rear, and
(b) a first floor level comprising 13 dwellings, with garden courtyard, and
(c) a second floor level comprising 12 dwellings, and
(d) a third level comprising 2 dwellings,
(e) a basement level car parking facility for 78 cars, with a ramp access from the adjoining public parking facility to the rear of the site.
The proposal includes the demolition of the existing supermarket, frozen food distribution warehouse and associated facilities are to be demolished, including the removal of underground fuel tanks.

Plans and elevations are provided at Attachment 1.

**Building height:** The building comprises four storeys, located above a basement level car parking facility, with a maximum building height of approximately 13 metres above finished ground level.

**Building Setbacks:** The building has a varied setback of between 0 to 5 metres to the Leura Mall frontage, except for the provision of a ground level court, which provides a setback of 30 metres. Side boundary setbacks vary from 0 to 8 metres, with a rear setback of 3 metres.

**Development density:** The building has a gross floor area of 5,194m², with a floor space ratio of 1.6:1.

**Pre-lodgement meetings**

In view of the significance of the subject development proposal, Council staff and the Applicant have met on numerous occasions since August 2004 to outline approaches and requirements for the development of the site. These meetings commenced at the earliest stages of the design formulation process. During this process, Council made available assessment staff, development engineers, asset managers and strategic planners involved in the finalisation of LEP 2005.

The aim of this process is to assist in ensuring that applicants know the requirements for development proposals; it cannot replace or pre-empt the statutory assessment process under the EP&A Act 1979. However, advice is provided on the basis of the design concepts or preliminary development proposals as presented at those stages. Consistent with the demands of design development for such a proposal, early phases of the process were concerned with the broad parameters for development in terms of the planning framework and access to the site for vehicles and proposed use of Council’s car parking facility for this purpose.

As the design was developed, aspects of the proposal were reviewed in terms of basic compliance with the requirements. As will be outlined below, Council asset engineers and planning staff had significant concerns with proposals in relation to loading, parking and vehicle movement to and within the site. These factors underpin early design development.
On that basis Council staff also prepared and made available to the Applicant concept proposals, which may satisfy access requirements, based on floor plans available at that stage.

The Applicant elected not to submit concept elevations for review, but initial comments were made on the concept proposals at a meeting in mid February 2005. Prior to the lodgement of the Application, and reiterating primary issues raised during the pre-lodgement process, written confirmation was provided by the Acting Group Manager (E&CS) to the Applicant on 22 March 2005 that the proposal was required to address:

- owner’s consent for use of public parking facility for access
- the need to confirm the status of the public land,
- requirements for vehicular access, parking (including principles and concepts in relation to the public facility)
- the need to address relevant planning instruments
- heritage issues
- bulk
- height
- potential overdevelopment
- earthworks.

That letter confirmed that as Council had not had the benefit of full details of the proposal no in principle agreement could be provided to the proposal. Further, the letter reiterated the need for all the above aspects of the development to be resolved to ensure that an appropriately detailed proposal was available for the consideration of Council.

The development application is subject to Appeal against a deemed refusal by Council pursuant to s.97 of the Act. A Statement of Issues was filed with the Land and Environment Court on 14 October 2005. It nominates the reasons for refusal listed in the Recommendation to this report (matters 1 to 9) as the Issues of the Appeal.

A case management conference for the Appeal was held before the Senior Commissioner of the Court on 16 November 2005. Council’s legal counsel advises that in considering the Statement of Issues, the Senior Commissioner noted that the main issues of the proceedings are:

1. bulk, scale and massing.
2. design of the proposed building.
3. heritage/conservation issues
4. car parking, loading and access issues
5. paucity of the architectural documentation
Council has also been advised that the Senior Commissioner has directed traffic experts representing Council and the Applicant to meet in order to find an acceptable solution to access that is consistent with the public interest. The joint report on that matter is to be completed by 2 December 2005. Should agreement be reached in relation to the appropriate use of Council’s public car park, the Court has also directed that this agreement be reported to Council for its consideration as soon as possible. These directions of the Court, which will be referred to where relevant in relation to assessment matters, guide the preparation of this assessment report.

The preparation of this report has been assisted by various experts commissioned by Council in relation to the assessment of this Application:
- Godden MacKay Logan – Heritage consultants
- Ms Gabrielle Morrish – Urban design,
- Mr Christopher Hallam – Traffic/Parking consultant.

### Environmental Planning Instruments

**Local Environmental Plan 2005 (“LEP 2005”)**

(Refer cl. 6(4) – Savings and transitional provision of LEP 2005)

- **Zone:** Village Town Centre
- **Precinct:** Leura Precinct VTC–LE01 – Leura Mall Precinct
- **Protected Area:** Water Supply Catchment
- **Heritage Conservation Area:** Central Leura Urban Conservation Area LA018

**Local Environmental Plan 4 (“LEP 4”):**
- **Zone:** Business General 3 (a)
- **Heritage Conservation Area:** Central Leura Urban Conservation Area LA018

**State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (“SEPP 65”)**

**Other instruments:**
- State Environmental Planning Policy No. 1 - Development Standards (“SEPP 1”)
- State Environmental Planning Policy No. 11 - Traffic Generating Developments (“SEPP 11”)
- State Environmental Planning Policy No. 58 - Protecting Sydney’s Water Supply (“SEPP 58”)
Development Plans  Control Better Living Development Control Plan

The DCP was adopted by the Council on 8 March 2005 and commenced upon the gazettal of LEP 2005 (7 October 2005) – refer also to Clause 6(2)(c) of LEP 2005.

Notification

The Application was notified on 29 June 2005, with an advertising period until 29 July 2005. It was advertised in the Blue Mountains Gazette and written notification was provided to adjoining and nearby properties.

32 submissions were received.

Public submissions objected to one or more of the following: size/bulk/scale/height of development, loss of privacy, inadequate parking, stormwater drainage, proposed temporary construction access, traffic impacts/management, design quality, internalised retailing, contradicting approach of Leura Mall Precinct, overdevelopment of the site, economic impact of closure of supermarket during construction, incompatibility with existing development in locality, proposed location of loading bay, impact on heritage values/fabric/character of Leura Mall and issues related to pedestrian safety.

Some public submissions raised support for the Application in its entirety or to aspects of the proposal.

Public forum: in accordance with a resolution made at Council’s Ordinary Meeting of 10 May 2005, Council notified and arranged a public forum to be held at Council Chambers on 10 August 2005. Approximately 15 members of the public participated, along with representatives of the Applicant and Council.

Issues

The Application has been assessed having regard to each of the relevant considerations specified by s.79C of the Environmental Planning and Assessment Act 1979 (“the Act”).

The following assessment issues are further detailed in the report for the consideration of the Council:

1. LEP 4
2. LEP 2005 (Desired future character for Leura Mall)
3. SEPP 65 (Design quality)
4. Building envelope: height, bulk, scale and massing
5. Heritage conservation
6. Car parking
7. Loading facilities
8. Legal access, modification and use of the public parking facility
9. Public interest
10. Inadequacy of architectural documentation

1. **LEP 4**

In accordance with s.79C(1)(a)(i) of the Act, Council is required to consider LEP 4 in determining this Application. In particular, the proposed development does not comply with the following development standards of LEP 4:

1. Clause 38 (Floor space of buildings) limits the density and bulk of development to a floor space ratio (FSR) of 1:1; the proposal has an FSR of 1.6:1.
2. Clause 39 (Height of buildings) limits building height to two storeys (not including a floor used partly or wholly for parking; the proposal has a height of four storeys.
3. Clause 19 (Parking for residential flat buildings) requires parking at the rate of 1.75 spaces for each unit; the proposal has a deficit of 19 spaces.

Should consent be granted to the proposed development, it would first be necessary for objections made pursuant to SEPP 1 (Development Standards) to be upheld or supported. A SEPP 1 objection lodged with the Application indicates that compliance with LEP 4 would be unreasonable and unnecessary on various grounds, including that:

*The proposal would be consistent with the objectives of [LEP 2005], the objectives of the proposed Village-Town Centre zone, the relevant precinct vision statement, precinct objectives, building envelope controls and design considerations applying to the site under [LEP 2005], and complies in all other respects with the relevant provisions applying to the land under [LEP 2005]*

[Max Fragar and Associates Pty Ltd, Statement of Environmental Effects, 4.3.5, p.31)

As the submission is predicated on adherence to the planning approach of LEP 2005, it would be appropriate to give limited weight to the provisions of LEP 4. This instrument has effectively been superseded by LEP 2005 and its place-based approach to managing development in the Blue Mountains villages.

As will be outlined below, and contrary to the Applicant’s statement above, it is considered that the subject development proposal does not comply, in significant respects, with the planning approach of the LEP 2005. In this instance, the level of non-compliance with LEP 4 standards in relation to density, height and car parking serves to foreshadow the development’s incompatibility with the corresponding provisions of LEP 2005. However, assessing these aspects of the development will be confined to the consideration of LEP 2005 and other applicable planning policy, rather than LEP 4.
LAND USE MANAGEMENT

Summary of Issue 1 (LEP 4):

Council is required to give consideration to the provisions of LEP 4 in assessing the proposal. In accordance with established principles, it would generally be reasonable to defer to LEP 2005 in considering the proposal’s non-compliance with density, building height and parking standards of LEP 4. In determining whether objections to the LEP 4 standards should be upheld under SEPP 1, however, the proposal’s incompatibility with the equivalent outcomes sought by LEP 2005 (as will be outlined below) suggests that these aspects of the proposal may be unsatisfactory in any event.

2. Approach to the determination report: LEP 2005

As the application was lodged prior to the gazettal of LEP 2005, Clause 6(4) - Savings and transitional provision applies to the assessment of this application. This requires the plan to be assessed having regard to LEP 4, with consideration being given to LEP 2005 as if the plan had been exhibited but not made. As the certainty and imminence of LEP 2005 is now established, its planning approach is given significant weight for the purposes of this determination.

Council has previously considered and noted the guidance provided by the Court in relation to assessing development applications in relation to Draft LEP 2002 at its Ordinary Meeting of 8 October 2002 (Minute 415). Those principles are also relevant to LEP 2005 in this instance as the Application was lodged prior to its gazettal. That report provided an overview of the relevant case law, with particular reference at that time to Architects Haywood and Bakker and the other North Sydney cases of 2000/2001. The approach taken to this determination accords with those established principles of planning law and practice, which have since been confirmed by the Court of Appeal in Terrace Tower Holdings v. Sutherland Shire Council 2003 NSWCA 289.

That guidance informs the assessment of this proposal against LEP 4 and LEP 2005 in accordance with the relevant savings and transitional provision. Furthermore, Council has been advised by its legal counsel that at a case management conference before the Senior Commissioner of the Land and Environment Court on 16 November 2005:

The applicant indicated to the Court that it wished for the application to be assessed having regard to the controls and objectives in LEP 2005. Senior Commissioner noted that the relevant LEP at the time of the lodgement of the DA was LEP 4 but noted the applicant’s submission that the proposal ought be assessed under LEP 2005.

The assessment of this Application proceeds on this basis.
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The approach to this determination seeks to build on Council’s consideration of the planning framework applying to Leura Village, and the site of this development proposal in particular at its Ordinary Meeting of 9 March 2004. Council considered a report entitled “Planning Controls for the Colless Site, Leura”, which was prepared in response to a Notice of Motion of 17 February 2004:

“That Council receives a report in this current term detailing the measures that have been put in place to ensure any redevelopment of the Colless site in Leura is appropriate to the area.”

That Business Paper report referred in some detail to the relevant planning approach and provisions of Draft LEP 2002, which has since been carried forward by LEP 2005. The plan has been developed over a number of years involving very significant levels of collaboration and consultation with the local community.

[LEP 2005] is different to most plans in that it integrates the features of zone based and “place based” planning techniques. In this regard, zoning of land is used to set key land use structure and strategic objectives for the City, to manage the permissibility of land uses and to act as the organising tool for other elements of the plan. However, within the zoning framework, [LEP 2005] also adopts locality management, or place based planning as the means of recognising and protecting the unique role, character and function of the different villages and precincts within villages across the City.

(Business Paper, Ordinary Meeting, 9 March 2004, Item 2, p. 4&5)

The assessment of any proposal for the future redevelopment of the site will be governed by the relevant set of provisions within LEP 2005. Consistent with that earlier report, and for the purposes of this assessment, the key provisions within LEP 2005 applying to the development are highlighted below:

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Each Part of the LEP contributes to an integrated set of provisions to guide development. However, the place-based approach results in a tailored provisions that both guide development and outline the expectations for future proposals in the Leura Mall Precinct.

As nominated previously the Application fails to comply in significant respects to the provisions of LEP 2005.

In parallel with Council’s development of Draft LEP 2002, the State Government prepared SEPP 65. This State Policy, which was gazetted in July 2002, establishes a set of design quality principles that must be considered in assessing the subject application. The Government’s Urban Design Advisory Service was responsible for the gazettal of SEPP 65 and the preparation of the Residential Flat Design Code (the “Design Code”) which outlines ten (10) principles that direct the design process.

The approach of SEPP 65 dovetails with the locality planning of LEP 2005. This is reflected in the aims of the State Policy, which are to provide:

(a) a consistency of policy and mechanisms across the State, and
(b) a framework for local and regional planning to achieve identified outcomes for specific places.

(cl. 2(4), SEPP 65)

As this development proposal is required to be formulated having due regard to the LEP 2005 framework and the approach of SEPP 65, an opportunity presents to provide a review and future guidance to the allied approaches to managing design outcomes through these two instruments. At one level, this is important as the determination of this application is likely to set a benchmark and precedent for the use of these provisions in land use management in the City.

More importantly, however, it is anticipated that the assessment of this proposal, which also identifies the planning and design principles that underpin the relevant provisions, can only contribute to achieving a suitable development outcome on this site. This approach accords with the outcomes considered by Council in March 2004:

There is no doubt that this site is an important development site in the centre of one of the Blue Mountains’ premier villages. As such, the ultimate outcome of redevelopment of the site is vitally important in conserving and enhancing the character of Leura...  

It is therefore important to ensure that ...the opportunities on the site are optimised in a way that reinforces and celebrates the character of Leura as one of our premier tourism villages.

(Business Paper, Ordinary Meeting, 9 March 2004, Item 2, p. 4&5)

The assessment will first consider the proposal in relation to SEPP 65 at Issue 3 below. This will provide a context for the consideration of key aspects of the proposal in accordance with the relevant provisions of the Leura Mall Precinct of LEP 2005.
Summary of Issue 2 (Approach to determination: LEP 2005): In March 2004, Council considered the planning framework applying to the development site, and specifically the measures put in place by LEP 2005 to ensure appropriate future development. The product of an exhaustive and collaborative planning process, the provisions of LEP 2005 require future development to comply with the stated desired future character of this locality, and other relevant provisions. This dovetails with the approach of SEPP 65, which also sets a benchmark for design quality in relation to this development. On this basis, the report has been prepared with the view to providing an integrated assessment of the proposal in accordance with approach of LEP 2005 and SEPP 65.

3. Design quality principles

In accordance with SEPP No. 65, it is necessary for a design verification statement to be prepared by the architect who undertook or directed the design of the proposal. Following a review of the proposal and the submitted statement, Council’s planning staff were of the view that the proposal failed to satisfy, to a significant degree, numerous design quality principles of SEPP 65. This assessment was informed by an assessment of the impacts of the proposal on heritage values undertaken by Godden MacKay Logan – Heritage Consultants, which was commissioned by Council.

Ms Gabrielle Morrish of GMU Design was subsequently commissioned by Council to undertake an independent review of this proposal to assist in assessing this aspect of the application. As the former Director of UDAS and director in charge of the gazettal of SEPP 65 and the production of the Design Code, and a recognised expert in urban design, Ms Morrish considers that “the design of this proposal does not achieve a high quality outcome for the local context nor does it achieve a sufficiently high standard for its architectural design”.

The report is comprehensive in its assessment of the design of the proposal, which necessarily derives from an understanding of the site’s context and its relationship to the identified and/or inherent values of a place. Each of the ten (10) principles are outlined in the SEPP 65 Report with reference to the proposal and its context, with conclusions made in relation to each aspect of the design quality of the proposal. While the SEPP 65 report considers each of the principles, only the principal concerns or adverse impacts of the proposal in relation to the design quality principles are outlined below. The principles identified align with or confirm the principles identified within the Statement of Issues before the Land and Environment Court.
Principle (1) - Context

Ms Morrish details her own assessment of the context for the development on this site, before considering the planning framework of LEP 2005 and its Desired Future Character provisions for Leura (2005: 6-15). Her review of context aligns with the Desired Future Character provisions of LEP 2005, drawing this observation in relation to the principle of context:

_This principle is particularly relevant in this situation due to the care and effort that Council and the local community have expended on identifying the context of Leura and its key characteristics as part of their LEP controls. The approach is consistent and appropriate with both SEPP 65 and the Design Code, both of which advocate developing an understanding of contextual issues as part of developing a comprehensive instrument._

(Morrish, 2005: 16)

Following a review of the contextual indicators that should inform the design of a proposal on this particular site, the proposal is assessed for its suitability, taking into account each of the design principles of SEPP 65:

_As an overview the proposal presents a very poor response to the surrounding context. The staggered massing both vertically and in plan erodes the strength of the existing street alignments. The massing is awkwardly resolved relative to the street._

Following a consideration of specific elements of the proposal in relation to its context, the report concludes that in the opinion of Ms Morrish:

_The proposal does not satisfy the Principle: Context and requires major redesign to achieve an appropriate and high quality outcome._

(2005: 17-18)

Principle (2) - Scale

In terms of the desired future character for the Precinct, the scale of Leura Mall is to continue to be defined by well-modulated one and two storey buildings that are the product of typically narrow allotments. This context provides directions for determining appropriate scale. As Ms Morrish indicates “infill development in this street should be just that – an infill building that continues the scale relationships and alignments that predominate within the street” (2005: 18). The proposal’s non-compliance with the building envelope controls of the Leura Precinct provisions of LEP 2005 (which are considered in Issue 4 below) results in a building of inappropriate scale. Some of the adverse impacts derived from the report include:

- eroding the strong street alignment of the building form over the majority of the street;
- creating a form that is counter to the slope of Leura Mall, by cutting down into the site, rather than stepping the shops, massing and frontage down the slope;
- creating a top heavy, dominant four storey massing to the north of the site that is highly visible and out of character with the street;
• providing a three storey form to the rear of the site that is also out of character with the 2 storey building forms that edge the car park. These buildings give a sense of human scale to the public car park that provides a high quality amenity, unusual for such a location;
• The new building continues the visual and physical dominance of the existing warehouse buildings on this site, rather than using the opportunity to set the massing back behind the first 2 floors to create a more sympathetic scale.

Applicant’s depiction of the proposal from Leura Carpark.

The report concludes that the proposal does not satisfy the principle of scale (Morrish, 2005: 19-20).

**Principle (3) – Built form**

In terms of the requirement for development to achieve an appropriate built form for its site, and one reflecting its function but also contributing to the public domain and the character of the streetscape, the following conclusions are drawn:

*The result does not achieve a well mannered infill development in the Leura Mall. Whilst the retention of the existing shops is supported, the location of additional massing behind them, visible from the public domain is a poor outcome. The fragmented and overly busy built form creates a discordant form in the street that dominates the Post Office and the other simpler buildings in the street.*

*The new building does not respond to the grain of existing shops or respect the architectural detailing in the other buildings. The upper levels introduce new proportions that sit uncomfortably in the street.*

*The ‘add-on’ architectural elements do not relate to lot widths or any other rhythm in the street but appear to be randomly attached to try and break up building bulk and add some level of interest. They are not successful. The constantly varying roof elements also do little to disguise what is essentially a flat roofed development, with large extents of walls and little real articulation and architectural interest.*
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The lowering of the ground floor with its increased setback should be discouraged. It erodes the strong alignment of the street edge in a similar manner as the existing development on the site...

The upper level apartments are highly visible and create a bulky continuous form that does not respond to the development pattern in the remainder of the area. Rather it follows the monolithic form of the existing buildings on the site. The lack of a two storey form along the street exposes the higher and unrelieved massing to an unacceptable degree. Therefore this development does not satisfy the principle of Built form.

(Morrish, 2005: 20-21)

Principle (4) – Density

The issue of appropriate density for this site is considered in more detail at Issue 4. However, it is relevant to note the Ms Morrish considers that “a density which results in such adverse impacts cannot be considered to be appropriate for the locality” (2005: 21). In noting that the proposal almost complies with the nominal building envelope requirements, this is achieved by ignoring “many of the critical relationships that create the character and delight of the Leura Streetscape” (2005: 21).

Traditionally, it has been a matter of supposition and the specialist skills of design professionals to ascertain the context and parameters for the design of new development, with guidance gleaned from generic floor space ratio controls (as per LEP 4 and in other localities under LEP 2005). In this instance, these relationships are explicitly identified in the Desired Future Character provisions of LEP 2005. As noted in the SEPP 65 Report:

Building envelopes with strategic objectives and future character guidelines (in the hands of a skilled designer who considers contextual clues) can provide an approach that is more tailored to the specific characteristics of an area. If taken seriously as a starting point for the design of the development it should achieve a better outcome than [numerical density controls] alone.

(Morrish, 2005: 21)

The density of the proposal, which will be considered further at Issue 4 below, is excessive and does not satisfy this design quality principle.

Principle (6) - Landscape

The landscaping provided as part of the proposal is inappropriate relative to the character of Leura Mall. Ms Morrish identifies the landscaped laneways as place making elements for the eastern side of the Leura Mall, which should be respected and continued in this development site. Particular concern is held with the enclosed pedestrian mall that provides the primary pedestrian route through the site, and which is recessed relative to the footpath.
Landscaping should be undertaken to the rear of the site, adjoining the car parking facility, enhancing the interchange between the public and private domains and reducing impacts of the building at this elevation. Such an approach would have contributed to and reinforced the existing amenity derived from rear gardens of the private properties backing onto the parking facility, as well as the planting islands provided within the parking facility.

The resolution of the landscaping of the proposal should re-evaluate the proposed roof garden, which Godden MacKay Logan considers is not appropriate for a low-scale traditional village context.

The application is required to be amended to improve its response to the principle of landscaping.

**Principle (7) – Amenity**

The development achieves a reasonable standard of internal amenity, however, the proposal does not provide an appropriate public domain amenity and sense of address. The SEPP 65 report nominates that the development compromises the development potential and amenity of adjoining sites and/or fails to respond to the constraints imposed by development on adjoining allotments, including the Leura Telephone Exchange, which provides a poor outlook for units.

**Principle (9) – Social dimensions**

The SEPP 65 Report identifies that the proposal, with its 8 x 2 bedroom units and 19 x 3 bedroom units, does not provide adequate diversity or mix of housing types to meet the needs of a changing society.

Clause 110 (Housing Choice) of LEP 2005 requires that the proposal is to contribute to housing choice in the locality, and that housing “incorporates a range of dwelling sizes, particularly contributing to the increased provision of single and two bedroom dwelling stock”. No single bedroom units are proposed.

**Principle (10) – Aesthetics**

Achieving a suitable aesthetic requires a response to the context, particularly in relation to the desirable elements of the existing streetscape. Godden MacKay Logan identified that the proposal is neither a sympathetic interpretation of traditional elements nor a well-designed modern structure. This is elaborated on by Morrish in the SEPP 65 Report:

> The building form does not continue the rhythm or proportions of the surrounding development. It adds disparate elements in a random pattern to try and reduce the building bulk but does not provide a pleasing appearance to the building. This disparate set of elements without relationship to the building function or structure, jars the eye in comparison with the simpler existing building forms and creates a ‘cacophony’ in a simple and regular streetscape.

> The architectural language is confused in its resolution and lacks skill in its execution. It is neither an honest, well-mannered contemporary solution nor a sensitive interpretive response to its surroundings. Rather it achieves an unbalanced marriage of numerous styles and architectural elements reminiscent of the early 80’s in its overall look. This is not an appropriate design resolution.
It does not provide a high quality outcome as required by both Councils controls, SEPP 65 and the RFDC. It detracts from the architectural quality of the existing street. Therefore this proposal does not achieve a high quality aesthetic or contribute to the desired future character and therefore does not satisfy this principle.

(2005: 27)

Conclusions and recommendations on design quality

The deficiencies identified above, inform a conclusion that the proposal does not adhere to the principles of sound urban design. Whether assessed against the requirements for new development under LEP 2005 or SEPP 65, the proposal is unacceptable. It is not of sufficient design quality and it does not respect the existing character context:

It is clear from [the analysis of the design quality of the proposed development] that the proposal falls short in numerous areas. It does not achieve an appropriate design standard for such an important and beautiful location. Its massing, built form and architecture are awkwardly resolved and overly dominant in the heritage streetscape and compromise the context.

(Morrish, Nov. 05, page 28)

Beyond this, however, and taking account of the substantial public planning benefits that may arise from the appropriate redevelopment of this site, it is necessary to determine whether these deficiencies may reasonably be remedied as part of the assessment process for this application. Ms Morrish concludes that:

The proposal in my opinion requires substantial redesign. Such amendments could not be subject of conditions as the end result would be a different building design and appearance. Therefore I would recommend that council refuses the proposal.

(2005: 28)

Summary of Issue 3 (Design quality): An independent review of the proposal in accordance with the design quality principles of SEPP 65 concludes that the proposal represents a poor outcome for this locality and is of insufficient design quality. The proposal has been assessed by a recognised expert in urban design, and has been found to not satisfy the design quality principles of ‘context’, ‘scale’, ‘built form’, ‘density’, ‘landscape’, ‘amenity’ and ‘aesthetics’. The proposal requires substantial redesign to satisfactorily addresses these principles and it is recommended that the Application be refused in relation to its design quality.

4. Response to the Leura Mall Precinct: LEP 2005

While each Part of LEP 2005 contributes to an integrated set of provisions to guide development, the LEP has been developed to provide a single specific set of provisions that guide development in this locality. Central to this place-based planning approach, has been the development of a statement outlining the expectations for future proposals within the Leura Mall Precinct:
2. DESIRED FUTURE CHARACTER

(1) Precinct vision statement

This precinct continues to operate as a traditional shopping strip for Leura residents as well as the central focus for tourists to Leura. The mall will increasingly become a community focus area and gathering place.

Presenting a village scale and character, the streetscape is dominated by the near continuous row of one and two-storey shop fronts of early twentieth century “Edwardian” style buildings. New development is of the highest design quality and respects the existing character.

The precinct experiences a gradual increase in the range of local services and facilities and the reuse and development of upper floor areas for commercial and residential uses.

The precinct remains a pedestrian-friendly environment with the large central median island representing a safe haven for pedestrians and the adjacent footpaths providing important areas of character and interest.

(2) Precinct objectives

(a) To promote a diversity of retailing, other commercial, community, cultural and residential uses that serve the community, business and tourists.

(b) To promote a built form and scale that is consistent with that of the existing and adjacent streetscape.

(c) To conserve buildings with heritage significance and protect the identified heritage value and character of other buildings in the precinct.

(d) To promote active street frontages to all roads, lanes, footpaths and public areas.

(e) To promote Leura’s role as a tourist destination.

(f) To enhance pedestrian linkages within Leura Village.

(LEP 2005, Leura Mall Precinct (VTC-LE01), cl. 2 – Desired Future Character)

These provisions were developed by urban design consultants and planning staff in response to a vision workshop for Leura attended by 120 members of the local community in May 2001. Prior to granting consent to development, it is necessary for a consent authority to determine whether the proposal complies with these “Precinct objectives” in achieving the “Precinct vision statement” for the Leura Mall Precinct.

In considering the development proposal, it is important to acknowledge that there are aspects that are compatible with, and work towards, this desired outcome. Principally, the proposed uses – a convenience supermarket, specialty retail outlets and “shop-top” residential units – are permissible within the Village Town Centre zone (cl. 32). Such uses are, in turn, consistent with the outcomes reflected in the first precinct objective and provide a mix of uses that satisfy the relevant zone objectives.
Further, the significant attributes of the site itself and the proposed removal of the outmoded existing uses - which are incompatible with the form and function of Leura Mall - have the potential to contribute significantly to the stated desired outcome. This has previously been considered by Council in March 2004:

Future redevelopment of the site has the potential to make a significant contribution to Leura in terms of:

- satisfying local and tourist demand for retail and commercial floorspace into the future;
- further enhancing the vitality of the centre; and
- replacing the less attractive buildings with new elements that are more appropriate to the heritage character and urban design of the centre.

(Business Paper, Ordinary Meeting, 9 March 2004, Item 2, p. 4)

Beyond these first principles, however, the formulation and design of this development proposal diverges significantly from the outcomes sought for this precinct. The proposed development has a bulk, scale and height that are incompatible with the traditional village scale and heritage values of Leura Mall.

With reference to assessments of recognised experts in urban design and heritage conservation, it will be established that this proposal is not of sufficient design quality. In place of the predominant one and two storey buildings, this development would serve to redefine and dominate the existing streetscape. It cannot reasonably be said to comply with the statement of desired future character for this locality.

Each of these deficiencies arise from failures to comply with the specific directions and planning approaches of LEP 2005 and SEPP 65 in relation to building height, setbacks, massing, design guidelines and the principles of heritage conservation, each of which will be outlined in this assessment.

However, it is the non-compliance of this proposal with the stated desired future character outcomes identified for Leura Mall by LEP 2005, which encapsulates and directs the assessment of this application. With the exception of car parking and access (dealt with separately in the Leura Mall Precinct provisions), an assessment against this statement highlights each of the areas of incompatibility of this proposal with the planning outcomes sought for this locality.
In conjunction with a statement of desired future character, the Leura Mall Precinct also provides a “building envelope” and “design considerations”. Collectively, these provisions provide an integrated framework for determining the baseline parameters for development, while guiding the design resolution of future buildings to satisfy stated outcomes.

The Applicant contends that the proposal complies with the building envelope provisions. As will be demonstrated below, this is not the case in significant respects. As a guiding principle, however, a building that merely adheres with limits set by an envelope does not in itself justify development that is demonstrably inconsistent with established design principles.

In corroborating this fundamental principle, the guidance provided in a speech by the Senior Commissioner of the Land and Environment Court, Dr John Roseth in July 2005 is relevant:

> There is more to the assessment of impacts than applying quantitative criteria and then ticking off every issue...I would argue that the existence of quantitative criteria, while necessary, is often a negative influence on the quality of development proposals, and therefore on the creation of new or changing urban environments. Development standards tend to encourage designers to be satisfied with the mediocre. The preoccupation with meeting development standards is inimical to the desire to achieve the best possible design solution. This is because, as soon as the standard is met, the designer thinks that he/she does not need to make an effort to achieve a better result.

The approach of place-based planning was developed to require a consideration of stated outcomes, rather than mere compliance with numerical standards. The assessment in relation to the Desired Future Character provisions considered above, coupled with the assessment in relation to SEPP 65, demonstrates this approach. Council’s urban design expert, drew the following guidance from her review of the desired future character provisions for Leura Mall:

> This vision statement gives a clear direction for Leura Village. The desired future character is to retain and enhance its small scale and its heritage and village atmosphere. Development should also enhance the public domain with active street frontages and continue pedestrian linkages. New development should be subservient to the existing buildings and should follow a similar grain, massing and development pattern to that which is existing.

(2005, p. 13)

In complementing the achievement of this outcome statement, the building envelope for the Leura Mall Precinct comprises three components:

1. **Building Height**: this prescribes a maximum building height of 12 metres for a building and, in this case, confines the height of external walls fronting a public place within a prescribed envelope.

2. **Building Setback**: this prescribes that a building at the primary street frontage, being Leura Mall, shall have no setback from the property boundary and shall have no setback to side boundaries, unless the side boundary adjoins a public place.

3. **Site Coverage**: development on this site may have up to 100 per cent site cover.
It is important to reiterate that the “building envelope is not a building” as outlined in the UDAS (SEPP 65) Design Code, but “a three dimensional zone that limits the extent of a building in any direction”. Simply ‘filling’ the envelope is seldom an appropriate design response. With consideration of contextual factors identified below, “building envelopes should be at least 20-25 percent greater than their achievable floor area to allow for building articulation” (Design Code, September 2002, Part 1 – Local Context).

The building height provisions illustrate this point. The provisions set a maximum limit. The ‘outcomes’ required to be accommodated in prescribing a maximum building height for Leura, include the following factors derived from stated Desired Future Character:

- to enable the architectural conventions of Leura Mall to be carried forward in future development, including provision of parapets,
- to account for the topography of the western side of the Mall,
- to provide scope to accommodate building articulation and the other design requirements for distributing floor space,
- to require buildings to present a two storey appearance to public places, including Leura Mall and the car park, consistent with prevailing character,
- to enable a reasonable or gradual increase in upper level floor space to meet residential, commercial and community needs,
- to accommodate the capping of separate buildings or wings by gently a pitched roof, as required in relation to development on large sites.

A corresponding development would only approach or attain that limit where it achieves the appropriate ‘outcomes’ as determined having due regard to the terms of the building height provisions, design principles and the tailored or integrated considerations applying to the Leura Mall Precinct.

The building massing of the proposal (a product of height, setbacks and density) does not fit within the prescribed envelope nor follow the guidance providing by desired future character statements in applying those provisions. This development not only ‘fills’ but ‘exceeds’ the envelope. As a consequence, the proposal would not contribute to a “gradual increase” in the upper floor areas to satisfy residential and retail needs in accordance with the vision for Leura Mall. Instead, it would result is the imposition of a substantial and visually prominent increase of upper floor massing upon the townscape.

In determining the ‘achievable floor area’ as referred to in the Design Code, floor space ratios (FSRs) have traditionally been used, and continue to be used in some precincts within LEP 2005. In the case of Leura Mall, however, a generic FSR would not result in an appropriate density (either by permitting excessive density, preventing increased floor area where it would provide good outcomes or requiring departure from development standards). Such an approach would not account for the very different design responses in terms of density required for the typical narrow allotment shopfronts of the Mall, as distinct from a large site, with dual frontages and high visual prominence.
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As noted by Ms Gabrielle Morrish in her consideration of density in her SEPP 65 Review of the development proposal:

*The Blue Mountains LEP 2005 does not provide minimum or maximum FSR. Rather it relies on the building envelope and the urban design controls to achieve an appropriate scale and streetscape relationship. A maximum FSR can be useful as an economic tool and as a limiting device for the site. But if it is used generically it can result in over development of some sites. For instance, prescribing an FSR of 1.6:1 (the FSR of this proposal) can deliver two results – the first is the application in question, the second could be a two-storey form over the whole site in which case density would not be an issue.*

(2005: 21)

Beyond failing to comply with the guidance provided by the precinct vision statement and objectives and design quality principles, the problems of the proposal in terms of height, bulk and massing are attributable to non-compliance with the prescribed terms and intent of the building envelope provisions:

**Building height**

The maximum height set for development is 12.0 metres, which is defined as the vertical distance between the “highest point of the roof to the finished ground level immediately below that point”. The Applicant’s submitted plans indicate that the building exceeds the maximum limit by 1.0 to 1.5 metres. Further, as noted in the SEPP 65 report:

*In addition it squeezes a fourth storey into the envelope by sinking the building into the ground below the street level on either frontage. This approach and form does not respect the existing street relationship in the village nor the intent of the height control. This upper floor is not expressed as a ‘room in a roof’ but as a full floor with a flat parapet roofline.*

(Morrish, 2005: 19)

The non-compliance with the maximum building height results in an additional floor of development. The mass of this flat roofed component is on the northern side of the site, which is a visually prominent location and adjoining a heritage item. It does not follow that lowering the building (either relative to the street or the pre-development ground level) would permit an additional storey. Not only has this been accounted for in the relevant building height definition, it is an inappropriate design response. In this respect the depiction of the ‘envelope’ in the submitted plans is misleading and incorrect.

**Setback provisions**

These building height provisions work in conjunction with the setback provisions. In proposing the landscaped court, which increases the setbacks relative to the heritage item and facilitates increased shop frontages, the proposal does not comply with the setback provisions. Rather than comply with the front setback requirement of having no setback, the northern portion of the building is proposed to be setback approximately 30 metres from the front boundary, with the remainder of the building employing varying front setbacks of 0 to 5 metres.
This is coupled with a corresponding side setback of approximately 8 metres from the northern boundary adjoining Leura Mall. This is contrary to the provisions, which specifically limits such side setbacks to 0 metres, except in certain circumstances. These provisions work in conjunction with height controls to achieve a targeted planning purpose, which is considered in the SEPP 65 Report:

*The council controls allow a 12m height on the site. They also suggest a building envelope that effectively creates a 2 storey scale with no setback at the street front and then forces a setback to the upper building above this 7.5m height.*

*In my opinion the Council massing was intended to create a two storey form on the street boundary that continued the existing building form with any additional floors set back so as not to be visible from any place within the Mall. The zero setbacks to the side boundaries also create a two storey form along any visible boundaries, again with any higher form set well back behind the parapet line. The proposal does not achieve these outcomes.*

(Morrish, 2005: 19)

The proposed landscaped courtyard, in the form proposed, contributes to unacceptable impacts of bulk and height. Beyond not complying with the provision, it is a questionable response to the landscape cues and patterns of building in the village, which derive from the “near continuous row of one and two shop fronts” as per the desired future character statement. Presently buildings address the median of Leura Mall, a signature landscape element of the town. Designing in such a context, would not usually give rise to a proposed recessed landscaped court at the Leura Mall street frontage.

Setting other merits of this aspect of the proposal to one side, the proposed court - in not complying with the directions of a zero setback to the front – gives rise to buildings that have an unacceptable visual prominence. The discretion to vary the setback requirements are highly targeted to achieve a specific planning purpose and do not apply in this case. Should more than a zero setback be permitted at the discretion of the consent authority, this would be on the expectation of an appropriate design response. This would include that any proposed buildings would comply with the conventions or underlying principle of the building envelope as outlined by Ms Morrish above. The consequences of not adhering to this aspect of the building envelope provisions has been outlined in 3 above, with reference to the SEPP 65 report.

**Massing of development on a large and visually prominent site**

The subject site is the largest development site in the Leura town centre. There are specific provisions for the Leura Mall Precinct applying to such sites including that “floor space should be distributed into well-articulated structures that are composed of separate wings or interconnected buildings”. The proposed building does not satisfy this requirement. Instead of distributing floor space into well-articulated structures, it mirrors the second and third levels of residential units resulting in a blockish or monolithic structure. This has an inherent impact upon the Leura Mall streetscape that cannot be adequately ameliorated through architectural detailing.
Godden MacKay Logan in their assessment of heritage impacts particularly identify the impacts arising from the inappropriate massing of residential units and upper storey setbacks of the car park (eastern) façade as problematic. This, combined with the limited detailing of the exposed side elevations (particularly on the northern elevation), exacerbates the apparent height of the development as viewed from public places.

The height, bulk and scale of this proposal are excessive. As noted previously, it is not of a village scale nor consistent with the prevailing character. It does not represent an appropriate response to the building envelope and fails to comply with key provisions.

**Summary of Issue 4 (Response to the Leura Mall Precinct):** The development does not comply in key respects with the outcomes sought by the desired future character provisions for the Leura Mall Precinct. Further, it does not comply with requirements and planning intent of the LEP 2005 building envelope applying to the Leura Mall Precinct. Specifically, non-compliance is in relation to overall building height and the relationship of building height to public places, which arises from not adhering to setback requirements. The proposal is inconsistent with design considerations in relation to distribution of floor space into well-articulated structures on large allotments. The inappropriate response to the building envelope contributes to a building that is of excessive bulk and scale, with an inappropriate massing for its context.

### 5. Heritage Conservation

The site of the proposed development site is within the Central Leura Urban Conservation Area (UCA). The listing of the UCA under LEP 2005 is supported by State Heritage Inventory No. 1170519, which provides an assessment by Dr R. Ian Jack completed in July 2001. That assessment recommends the listing of the Central Leura UCA on the State Heritage Register. Although its extent has subsequently been modified, the Urban Conservation Area has been recognised on the local heritage register since the early 1980s.

In conjunction with the Central Leura UCA, the northern boundary of the site adjoins the site of the former Leura Post Office, which is an item of heritage significance. The guiding principle of conserving buildings with heritage significance and the protecting the identified heritage value of other buildings in the Central Leura UCA necessarily informs the assessment of this proposal.

In accordance with cl. 68 of LEP 2005, consent cannot be granted to development within a heritage conservation area, an archaeological site or within the curtilage of a heritage item unless Council is satisfied that development complies with the relevant heritage conservation objectives and provisions of Division 4 (Heritage Conservation) of Part 3, LEP 2005.
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As noted above Council engaged Godden MacKay Logan – Heritage Consultants to provide an assessment of the proposal in terms of its potential impacts on the heritage values of the site. That assessment recommends that the development be refused on heritage grounds because of:

- its numerous adverse heritage impacts on the significant values of the site, adjacent heritage items (particularly the former Post Office) and the Central Leura UCA as a whole, and
- the inadequacy of its supporting analysis and documentation.

(GML, 2005: 13)

**Impacts arising from the building’s design**

Significant adverse heritage impacts are identified in relation to the inappropriate form, massing, siting (including alignment and set down from the footpath), and architectural detailing of the proposed buildings to all frontages.

Consideration of the proposal in the context of the Central Leura UCA, necessarily brings into a sharper relief the deficiencies of the proposal identified within this report at 3 and 4. Godden MacKay Logan completed the heritage assessment prior to the SEPP 65 Review commissioned by Council. As noted previously, the detailed analysis by Godden MacKay Logan initially confirmed the problems with the design quality of this proposal. The heritage consultants have subsequently reviewed the Morrish SEPP 65 Review and concur with the opinions formed in relation to the documented inadequacies of the design response for this locality.

Consistent with design guidance provided by the Leura Mall Precinct provisions, the heritage consultant notes:

> While the size and location of the site allow it to accommodate a significant level of development, this should be broken up visually and/or physically into building elements which are arranged, scaled and detailed to sympathetically relate to a context of adjoining, much smaller buildings. While this is not meant to preclude the provision of a small supermarket, mall and/or apartments, this needs to be accommodated in a more appropriately scaled and designed building.

(GML, 2005: 9)

Equally, and as required by the design considerations applying to this Precinct, Godden MacKay Logan considers the proposal does not respond to the significant development pattern of Leura Mall, with its characteristic layout of long narrow lots and single buildings.

Future development of this site is required to protect the “identified heritage value” and “character” of other buildings in this locality. The failure to account for the necessary distinction between ‘heritage conservation’ and ‘retention of streetscape character’ is a shortcoming identified by Godden MacKay Logan in relation to the Application. This is an important general principle, which has the following consequences:

- inadequate identification of the full range of heritage issues relevant to the site and its proposed development,
• concentration on a few architectural aspects of the proposed development relative to The Mall, rather than the proposed building’s relationship to the specific historic siting/setback, massing and detailing conventions of adjacent heritage buildings; and 
• a lack of adequate attention to essential conservation, adaptive reuse and heritage infill design issues arising from the proposed changes to the site.

In the view of Godden MacKay Logan, acceptable development would be:
• of a more modest scale and massing overall so as to relate to the significant setting of the Central Leura UCA; 
• of a high quality design which is sympathetic to its context without mimicking historic detailing, 
• based on a rigorous and structured analysis of the significant attributes of the existing Conservation Area and the Mall in particular; and 
• accompanied by appropriate heritage assessment and specialist input..

As established previously in 3 and 4 above, the proposal represents an inadequate or inappropriate response to the character attributes and context of Leura Mall. However, development of such a scale and visual prominence within the Central Leura UCA demands a more robust understanding and design response to identified heritage values.

Heritage analysis and impact statement
Godden MacKay Logan consider that the submitted heritage impact statement (HIS):
...generally lacks the required assessment of the nature and degree of heritage impacts of the proposed development on all significant attributes, components and fabric of the place...

Greater objectivity is required for both the assessment of the significance of the features and fabric of the site and assessment of heritage impacts.

(Godden MacKay Logan, 2005: 13)

In the opinion of Council’s heritage consultant, the supporting heritage analysis and impact statement is inadequate in:
1. detailing the proposed works, 
2. assessing existing site features, fabric and significance, 
3. identifying and assessing the site’s potential archaeological significance, and 
4. providing an adequate and objective assessment of the impacts of the development on the site and its setting.

Potential archaeological impacts
In relation to (3) above, Godden MacKay Logan indicate that the treatment of archaeological heritage issues in the HIS is inadequate in both its assessment and recommendations. Particularly, the assessment does not adequately consider the ‘technical significance’ of the site, which may be associated with archaeological relics which are known to be, or may be reasonably likely to be, on the site. As the proposal provides for significant site excavation in the provision of basement parking, the potential impacts on the identified archaeological significance of the site is required to be determined on the basis of specialist advice from a professional archaeologist.
Godden MacKay Logan consider there is a need for specialist expertise on potential archaeological issues to be an essential component for a DA in relation to this site. In accordance with cl. 75 of LEP 2005, and considering the deficiencies in this aspect of the HIS, it is recommended that consent not be granted for the development on this basis. This is informed by:

- the statutory requirements for the assessment of such impacts and the necessary and/or appropriate mitigative measures required to be in place, and
- the applicable controls within Division 4 – Heritage Conservation of LEP 2005,
- the context of the site’s history, current physical character and the high archaeological potential of the site.

**Impacts on retained heritage components and fabric**

Heritage impacts arise from inappropriate treatment of retained structures and there is the potential for heritage impacts arising from the proposed site excavation on the structure of the two retained shops and adjacent heritage item.

Poor architectural documentation impedes assessment of impacts on the retained shop. However, potential adverse impacts are identified in relation to the removal, relocation and replacement of existing shop entrances. The proposed access for people with limited mobility, presently located between the retained structures, is physically and visually inappropriate for this location, Leura Mall’s heritage values and in relation to modifications to fabric and significance of the side elevations of these structures. Given the scale of the development there are suitable alternatives to this aspect of the proposal.

As well as modifications to the side elevations of these structures, the proposed bulk and massing of the building proposed to the rear of these shop fronts is a large scale structure which, in the opinion of Godden Mackay, will “significantly impact on the character, fabric and integrity of the retained early shops.” (2005, 8)

The heritage consultants nominate that the proposed excavation of the site to the extent proposed has the potential to adversely impact on the fabric and structural stability and/or integrity of the footings of the retained buildings. This issue is not adequately assessed as part of the HIS. Godden MacKay Logan suggests that a specialist heritage engineer should have been commissioned to provide initial site layout and planning. Prior to granting consent, it would also be necessary for Council to be satisfied that potential impacts from the proposed excavation on the existing heritage listed post office and other buildings are assessed to ensure they are protected from damage.
Summary of Issue 5 (Heritage Conservation): The proposed development has numerous adverse impacts on the significant values of the site, adjacent heritage items (particularly the former post office) and the Central Leura Urban Conservation Area. The most significant impacts identified by Godden MacKay Logan are related to:

- the bulk, form massing, siting and architectural character of the proposed development
- inappropriate treatment of retained shop buildings
- lack of identification and assessment of the site’s potential archaeological significance
- potential impacts on the structure of retained shops and adjoining buildings arising from the proposed excavation

The Heritage Impact Statement has been assessed as being deficient, both in respect to the above impacts and other matters.

The application is recommended for refusal on the basis of significant heritage impact.

6. Car Parking

The framework for the provision and design for car parking is provided by clauses 99 (Car Parking) and 100 (Design for car parking) of LEP 2005. Potential problems with parking provision was a principal issue in the pre-lodgement processes between the Applicant and Council.

There is a clear expectation, both in terms of Council policy and the role of this site within Leura’s commercial core, that any future redevelopment of this site is to provide adequate car parking. Based on reasonable levels of development, and matters outlined below, this can be achieved in the circumstances of this proposal.

An assessment of the proposal, based on calculations provided in the Applicant’s traffic study, nominates that the development would require provision of 121 on-site car parking spaces to comply with the stated parking requirements of the Respondent’s Better Living DCP. In accordance with cl. 99 of LEP 2005, off-street car parking is to be provided in accordance with that DCP.

The development proposes 78 car parking spaces in a basement facility, giving rise to an apparent deficit of 43 car parking spaces. Nonetheless, the Applicant considers that the proposal complies with the relevant standards, on the basis of number of arguments based on ‘parking credits’ for deficits of parking associated with previous/existing use of the site.

Determinations in relation to providing credits for parking associated with abandoned or existing uses require a proper consideration of the circumstances of the case. These include, but are not limited to:

- the capacity of a site to provide adequate car parking and alternative or innovative approaches to car park provision,
- the proposed level of development and whether deficits arise from overdevelopment (in which case reduction in floor space would be considered);
- the context of the site and development within a retail structure;
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- the reasonableness of impacts that arise for a locality from entrenching (and/or exacerbating) present deficiencies of parking associated with a site, with particular regard to the capacity of public and on-street parking provision;
- differentiating between the full redevelopment of a site and situation where a proposal relates to:
  - additions to existing development,
  - changes of uses that do not involve an increase in floor space,
  - incentives for revitalisation in relation to abandoned floor space (as per Katoomba Precinct VTC-KA01)
  - sites with no or limited capacity for car parking provision.

This is necessarily balanced against objectives of promoting the orderly and economic use of land in accordance with the statutory planning framework. It is considered that the case provided by the Applicant is insufficient to justify the proposed quantum of ‘parking credits’.

As the development is within the Accessible Housing Area of LEP 2005, Clause 99 (2) applies to the residential component of the development. It permits a lesser number of car parking spaces in certain circumstances, which may reasonably apply to the development proposal. In satisfying the requirements for housing choice and changing housing needs in the community (cl. 110), the Applicant would be encouraged to provide some single bedroom units in place of two bedroom units. It would be reasonable in the circumstances to not require corresponding car parking provision.

However, it is not necessary at this stage to detail or further examine the veracity of the case made in terms of justifying parking provision or nominating an acceptable number of deficits in relation to the proposals. These factors are likely to be determined at the joint conference on this issue, as directed by the Court.

However, there are two policy issues to be noted by Council, which may arise in relation to the determination of this Application or the future development of the land. Subject to the Appeal processes, these matters would ordinarily be subject to further reports to be brought before Council. At this stage, these issues are raised are for the information of councillors as they relate to the use and management of public land assets.

Proposed modification of the Council car park:

The Applicant proposes to reconfigure the public car parking spaces and access aisles of the Leura town centre parking facility, between Megalong Street and the site as shown in the attachment. This includes removal of existing soft landscaping within the car park that contributes to the amenity of the primary entrance to the Leura car park. Such a proposal is partially directed to increasing parking capacity in the public facility. In turn this directed to off-setting deficiencies in car parking for the development site. Such an approach, at the expense of existing traffic function and pedestrian safety and convenience, is unacceptable.
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The design of the current car park is the product of a planning process that commenced in the 1970s with the targeted acquisition of land and the public consideration of exhibited design options in the early 1990s. The provision of the car park necessitated the preparation and gazettal of LEP 108 on 29 July 1994 and included a DA consent (D96/0046) of 15 May 1996 for Stage 2 of the car park (the parking facility to the east of the Colless site).

The car park is the product of a deliberate and considered design in terms of the facility’s function, aesthetics and landscaping. In terms of pedestrian movement patterns, it is well integrated with the township, and reflects an understanding of ‘desire lines’. This principle of landscape design refers to people’s tendency to develop their own paths to destinations where no path exists (or in spite of formal pathways). The principle also translates to the vehicle movements. An assessment of the proposal supports a conclusion that the Applicant has not assessed the existing circulation patterns within this car park, which is likely to result in vehicles not adhering to the proposed access aisles, unless the number of parked vehicles forces them to do so. The proposal does not demonstrate that sufficient regard has been given to the safe and convenient movement to pedestrians.

This aspect of the proposal is not considered reasonable, either in the outcomes its proposes nor the manner in which it has been advanced. As will be outlined in relation to loading, this has been proposed without agreement from the Council or in a manner conforming to recommendations of Council’s staff.

Planning agreements for alternative approaches to parking provision

Council has previously considered the documented constraints (both physical and financial) in providing future public car parking within the Leura town centre. It has been suggested that alternative measures, by way of planning agreements, may provide scope for alternative solutions to car parking provision in Leura.

As a possible way forward in initial negotiations with the Applicant for the provision of parking for a reasonable level of development, consideration was given to alternative approaches to be undertaken in consultation with Council. For instance, the concept of extending the basement parking facility proposed for the development site onto Council land, but below the present at grade parking facility, may be considered. This would be on the proviso that the existing at grade public parking facility is fully restored and that all the works are at the Applicant's expense. Consideration would be given to not requiring any compensation in relation to the use of the land for this purpose. However, this would be on the basis that the proposal was undertaken in a manner that does not unduly restrict the long term use or re-use of this land and which was in accordance with the applicable statutory framework.

It is important to stress that such an approach could only be achieved in relation to a development for which consent may otherwise be granted under the Act. In accordance with the framework provided by the Act, such an approach cannot be used to facilitate a proposal that is otherwise unacceptable or would facilitate the inappropriate overdevelopment of the site.
Such a process can only be entered into in accordance with s.93F of the Act, and requires public notification and consideration. In relation to this Application, this approach has not been pursued by the developer.

**Summary of Issue 6 (Car parking):** Inadequate car parking is proposed to service the proposed level of development. While some aspects of the case for justifying reductions in car parking may have merit, the proposed quantum of deficit has not been adequately assessed in the circumstances of the case. A range of alternative measures for parking is likely to be needed in providing a satisfactory development outcome for both the site and Leura village. However, such measures should not include the proposed modification to the public car parking facility, which is not considered to be an acceptable solution.

7. **Loading and unloading of vehicles**

Consent may not be granted to development on land zoned for commercial purposes unless satisfactory provision is made within the site area for loading and unloading facilities, subject to a range of considerations related to the circumstances of any given case (cl. 101, LEP 2005).

Vehicular access to this property via Council's car park, and the proposed arrangements for loading and unloading, had been the subject of each of the pre-lodgment meetings in relation to this development proposal.

Throughout the process, Council assessment staff had significant concerns with the loading arrangements proposed to service the subject site. In the absence of the Applicant developing an appropriate proposal, Council staff outlined a set of principles to be addressed by the Applicant in proposing access. Council staff provided advice to the Applicant on 18 February 2005, that Council's Assets Management branch agreed in principle that vehicular access may reasonably be provided via the public (Council) car park provided that such access:

1) reflects sound traffic management principles, and
2) is consistent with Council's obligations in managing the public asset, and
3) is legally constituted and consented to by the landowner.

The first of these is dealt with below, with other considerations considered at Issue 8 below.

Notwithstanding the advice provided, no change has been made to the proposal that resolves the identified concerns of Council staff. In fact, the only response to the issues was the proposed modification to the parking and vehicle aisles within the public car park (refer to Issue 6 above), which formed part of the lodged Application. The Applicant has sought to have the Application determined on the basis that:

1. truck access is provided to the southern side of the site, involving the reversing of 12 metre rigid trucks within the car park at a primary traffic and pedestrian node, and
2. requires the modification of the access aisles, parking spaces and planting beds within the public car park.
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In its letter of 22 March 2005, the Acting Group Manager (E&CS) provided a set of considerations to the Applicant in relation to “Traffic management principles” to assist or guide the resolution of parking access. Extracts relevant to the assessment of the Application follow:

At the broadest level, it is necessary that the proposal responds to the existing circulation pattern of the car park and its access to the local road system or provides for workable alternatives. It is expected that a design would be consistent with, or otherwise respond, to the notional circulation pattern as provided in a plan prepared by Council and forwarded to the Applicant. Such a circulation pattern:

1. provides car and service vehicles access to, and egress from, the site in a forward direction;
2. does not rely on reversing service vehicles through intersections;
3. removes conflict points between reversing trucks and a key pedestrian node between Leura Mall and the car park, in proximity to pedestrian access to various shop fronts and an amenities block;
4. is straightforward, minimises travel distances within the car park, limits two way flows of traffic and/or potential vehicle conflict points at intersections.

(Council, 22 March 2005)

In relation to (2) above, the proposal at that time involved reversing and turning through an (off-set) intersection at the primary entrance to the car park, potentially against the flow of entering traffic. Instead of altering the loading facilities to respond to this circulation suggestion or otherwise modify the proposal the Application proposes to alter the circulation pattern of Council’s car park. In so doing, it continues to require the reversing of service vehicles onto the site.

In accordance with the provisions of SEPP 11 (Traffic Generating Development), Council is required to consider a referral made by the Roads and Traffic Authority (RTA) in determining this Application. Having regard to (1) above, the RTA’s included the following advisory comments to Council:

1. ... 
2. All vehicles must enter and exit the site in a forward direction.
3. Adequate provision must be made to ensure all delivery vehicles have adequate turning area within the site.

(Operations and Services Directorate, RTA, 12 November 2005)

The development application fails to adhere to either of these requirements.

The design capacity of proposed loading and unloading facilities (including access) is limited to a 12.0 metre rigid vehicle. The Applicant has not provided sufficient evidence to demonstrate that the proposal can reasonably be serviced by such a vehicle, having regard to (1) existing servicing of the supermarket by 15.0 metre articulated vehicles and (2) the delivery vehicles associated with similar facilities within the Blue Mountains.
Finally, the proposed blind or dead end loading bay is located at the termination of the primary vehicular entry aisle into the town centre’s off-street parking facility, in place of existing landscaping. The provision of the ‘back of house’ servicing facility in such a visually prominent location is not supported, as alternatives are available. Should such access be provided, it should ensure that it is off-set by planting within the site or via other design treatments.

**Summary of Issue 7 (Loading):** satisfactory provision has not been made within the site area for loading and unloading facilities nor is there safe and practicable access provided for the type of delivery and service vehicles that will be used in conjunction with the proposed development. The proposal relies on:

1) the reversing of vehicles into loading facilities when alternatives are available, and
2) the Applicant’s proposed reconfiguration of public vehicle aisles and parking spaces.

Both of these factors make the loading arrangements, in their present form, unsatisfactory.

8. **Legal access, permanent use and modification of the public car park**

Vehicular access to this property via Council’s car park has been the subject of each of the pre-lodgment meetings in relation to this development proposal since August 2004. This is reflective of the importance of providing safe and workable access to the property, and its primacy in achieving a successful design solution. It also reflects significant problems in achieving a negotiated outcome acceptable to Council and the developer.

In this case, the proposed access to the site is proposed to be via public land. As such, Council has dual obligations in terms of its planning and property roles. This requires not only the consideration of development issues, but also the long-term management of this public resource. The significance of this development for Leura, together with the pivotal role of the car park in the function and economic viability of this commercial precinct, has directed Council's attempts to facilitate the resolution of this aspect of the development.

Currently there is no vehicular access from the Colless site to the public car park facility. However, throughout the discussions with the Applicant, Council staff have confirmed the principle that the redevelopment of the Colless site should not retain a direct vehicular access to Leura Mall. This accords with the relevant precinct controls of LEP 2005, which indicate:

*On site parking areas:*

1) *shall be accessed only from the rear and side of buildings via existing public car parks, laneways or secondary streets, and*
2) *should be partially concealed behind retail or other business floorplace.*
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The primary issue has been the form of the proposed access and its unacceptable impacts on the public domain. As well as outlining principles to be achieved in addressing access, Council was particularly concerned to ensure a workable and achievable outcome for the development in its interface with the public carpark. Council also developed and forwarded a concept proposal to the Applicant on 22 March 2005, prefaced in the following terms:

As you are aware is not the role of Council to resolve the design of access arrangements. However, and in view of the proposed access, an option or concept is provided at Attachment 2 illustrating how these principles may be addressed. This alternative has been developed to limit fundamental alterations to the proposed design, and suggests that workable solutions beyond those proposed on 16 February are available.

(Council, 22 March 2005)

Council also provided advice to the Applicant, on 22 March 2005, in relation to its roles and statutory responsibilities in “managing the public asset” and “providing legally constituted access” as outlined below:

Although access to the site through the car park is required, this needs to be balanced against Council's statutory obligations as a public asset owner. This involves two components:

1) public land management under the Local Government Act 1993 (LG Act 1993)
2) long-term redevelopment options of the car park.

Public land management

The car park is 'public land' as defined under the LG Act 1993 and is to be managed in accordance with Chapter 6, Part 2 (Public Land) of that Act. The land was classified by Council as 'operational land' on 21 June 1994. As outlined in relation to the other report in this Business Paper, relating to the preparation of an LEP applying to the Katoomba Town Centre Arcade, such a classification does not overcome a deemed classification arising from cl. 6(2) of Sch. 7 of the LG Act 1993.

Having regard to previous guidance provided by the Court, and considering Council's actions in purchasing the land for the express purpose of providing a public car park and its subsequent development, there was considered to be a reasonable likelihood that the land may be deemed 'community land' for the purpose of the LG Act 1993. That is, the land is subject to a ‘trust for a public purpose’ or other designation nominated in cl. 6(2) of the relevant schedule to the Act.

Council sought legal advice on the status of the land, having regard to the specific situation of the Leura car park facility. This confirms a view that the land is properly regarded as community land. In this case the use and nature of the land must not be changed without the preparation of a plan of management (s.44 of the LG Act 1993).
Subject to directions of the Court, the reclassification of the land via an LEP process may be required or the preparation of a plan of management. The outcomes of these statutory processes cannot be pre-empted, as they both rely on community consultation and the discretion of the Council and/or the Minister.

On this understanding, Council staff advised the Applicant on 22 March 2005 that in lieu of enabling provisions under the LG Act to permit permanent private access over the site, it was considered that the creation of an easement over the Council car park would be required pursuant to s.88K of the *Conveyancing Act 1919*. This may only be granted by the Court, having regard to the public interest as prescribed by the relevant legislation.

**Long term management of the car park**

In addition to ensuring that the proposed modification and use of the public does not compromise the current operation of the car park, the proposed use of this asset for access should not unreasonably restrict future management options. Should a consent authority provide for vehicular access onto this site, there would be a valid expectation that such an access would be provided in perpetuity. Alternatively, Council as the land manager may be required to pay compensation for the future removal or modification of such an access. In such situations, Council’s property management functions are entitled to considerable weight in determining suitable access arrangements.

Both LEP 108 and LEP 2005 provide for commercial/residential zones over the car park, rather than a single purpose or special use zone for parking. This reflects the express intention of permitting a range of re-development options to increase the capacity of the existing car parking facility and/or to consider alternative development in the medium to long term. Under LEP 2005, the land to the east and south of the site has been zoned Village-Town Centre. As outlined to the Applicant, it is recognised that additional land for the lateral expansion of the car park is not available in Leura. Therefore maintaining such development options is consistent with sound strategic planning principles.

The access arrangements to the property as proposed by the Applicant on 16 February 2005 effectively prevent or restrict these redevelopment options. Redevelopment could not be undertaken while retaining vehicular access to the site in the manner proposed.

Such a limitation imposed on the use of a public asset by a private development is not considered reasonable in these circumstances. In addressing this issue Council requested on in its letter of 22 March 2005 that access arrangements to the basement car park were to enable the development to be readily modified to allow car access to the property to be via either the southern or eastern elevations. Such an approach would permit a staged redevelopment of the Council land, should this occur in the future, while enabling either a temporary or permanent alternative access to the site to be available. The proposal developed by Council reflected how this outcome may be achieved; this is not accounted for in the Applicant’s proposal.

The proposed permanent vehicular access to the development site should not be provided over public land in its present form. The design of proposed access routes unreasonably limits future development of the public land asset, and relies on the proposed modification to the public parking facility that is not in response to the public interest.
Summary of Issue 8 (Legal access, modification of Council land asset): the proposal seeks the permanent use and modification of Council’s public car parking facility. This facility has a pivotal role in the function and economic viability of this commercial precinct. Equally, this is balanced against the desirable planning outcome of removing vehicular access from Leura Mall.

In its present form, however, and with reference to matters considered at 6, 7 and 8 above, the present proposal is unacceptable and not in the public interest. At a Case Management Conference on 16 November 2005, Council sought leave to have any proposal involving the use of Council land, ratified by the elected Council. The Senior Commissioner provided a direction that enables Council to assess and ratify any proposal for the use of its public land in relation to this development. A report will be brought before Council as soon as possible, should a proposal be developed that is acceptable to both parties.

9. Architectural documentation

The development application fails to provide adequate architectural documentation. The architectural documentation provided is inadequate to enable proper assessment of the design quality of the development and to review heritage impacts:

(a) The application fails to provide a complete drawing of every elevation of the proposed new building.

(b) Elevations do not follow standard drafting conventions or adopt a suitable scale, and are obscured by shadows, neighbouring buildings, vegetation and the like and do not adequately or completely detail façade treatments or show elevations below ground level.

(c) Sections do not incorporate necessary elevation components.

(d) Accurate plans and elevations of retained shops, including any modifications to the proposed shops should be shown on plans.

(e) The proposed plans do not adequately depict adjoining buildings, including relative heights, alignment, massing, articulation and materials as required by clause 43 (Contents of site analysis plan) of LEP 2005.

Conclusion: Public interest and the planning approach of LEP 2005

The proposed development is not considered to be in the public interest. As noted above, submissions were received that objected to various aspects of the proposal. The issues identified have been considered in the assessment of this report. The concerns raised are considered to be valid in the circumstances of the case. They accord with the results of this assessment process and the corresponding Recommendations to this report.
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A number of submissions have been received in support of the proposal. An important underlying theme is reflected in those submissions. That is, a view that the proposed development is an improvement on the existing use of the site as a warehouse and other developments, including The Spires development. Concerns are raised that if this application is not approved, these uses will continue in perpetuity.

The intrinsic economic value of this site, its attributes and the potential to contribute significantly to the Leura Town Centre are such that there is a reasonable certainty that the site will be appropriately redeveloped in the future. It would not be in the public interest to accept a proposal with such fundamental problems in relation to its design quality, impacts on heritage values, unacceptable loading arrangements and inadequate parking as outlined above.

The proposal does not comply with the planning approach of LEP 2005 in relation to development in the Leura Mall Precinct. This planning approach was developed in collaboration with the local community. There is a reasonable expectation that the outcomes sought by the community, and then incorporated within the Blue Mountains planning framework, should be reflected in the future development of this site.

On the basis of the assessment of the proposal in accordance with s.79C of the Act, the Application is recommended for refusal.
Attachment 1—Plans
Attachment 1—Plans
Attachment 1—Plans
Leura Car Park and Applicant’s Proposed Modification
LAND USE MANAGEMENT

ITEM NO: 16

SUBJECT: DEVELOPMENT APPLICATION NO. X04/1801 TO PARTIALLY DEMOLISH PREVIOUS ADDITIONS AND TO RENOVATE AND EXTEND EXISTING HOTEL ON LOT 1 DP 263794, NO. 286 GREAT WESTERN HIGHWAY, LAWSON

FILE NO: X04/1801

Recommendations:

1. That Development Application No. X04/1801 to partially demolish previous additions and to renovate and extend building on Lot 1 DP 263794, No. 286 Great Western Highway, Lawson be determined pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 by the granting of ‘Deferred Commencement’ Consent subject to the conditions shown at Attachment 1 to this Report.

2. That Council accepts a monetary contribution from the applicant to the value of $15,000.00 in lieu of the provision of an additional ten (10) car parking spaces on site. Such contribution shall be used for the provision of parking spaces within the New Street Car Park proposed to the south of the site in accordance with the Lawson Village Upgrade Design Drawings and the Master Plan adopted by Council.

3. That the General Manager is given delegated authority to issue the Operational Development Consent upon resolution of the deferred matters.

Report by Group Manager, Environmental and Customer Services:

Reason for report Application has a value in excess of $1,000,000.

Applicant R & J Associates Pty Ltd

Owner Mrs J P Phillips

Application lodged 16 December 2004

Property address Lot 1 DP 263794, No. 286 Great Western Highway, Lawson
Site description

The subject land is in a prominent location on the Great Western Highway and forms the eastern entry to the Lawson Town Centre. The site is known as No. 286 Great Western Highway Lawson being Lot 1 of DP 263794 and comprises a total area of 1039m².

The site presently contains a two storey timber framed hotel built circa 1910. The hotel has been altered and added to over time with a major alteration involving the addition of a front bar which enclosed the former verandahs. These additions were undertaken in the 1940s.

The ground floor includes a public bar, two serving areas, a bistro and kitchen, a TAB, a poker machine room, office and store room, bottle shop and amenities. The first floor includes eleven (11) short term accommodation rooms, amenities, an office and access stairs to the ground floor.

The south and south east of the site contains a car parking area for six (6) vehicles and a loading bay.

The site is located across the highway from Lawson Railway Station and on the intersection of Honour Avenue and the Great Western Highway.
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Background  
A masterplan for the potential redevelopment of the Lawson Town Centre was prepared by the NSW Roads and Traffic Authority and has subsequently been endorsed by the Council. This involves the significant upgrading and widening of the Great Western Highway from two (2) to four (4) lanes at Lawson.

The widening of the highway will result in the compulsory acquisition of 95m² of the subject site. The existing site will therefore be reduced in size from 1039m² to 952m². The proposed development has been designed as a response to the widening of the highway resulting in the loss of the front part of the building.

Introduction  
Council received the subject application for works to the Blue Mountain Hotel in December 2004, and was prompted by the proposed highway widening.

The design of the proposed works seeks to reinstate the front façade of the building to the 1910 form, which is supported. However in assessing the application there have been delays in obtaining heritage impact statements and technical details from the applicant. Appropriate heritage assessment of the site is required given the significance and prominence of the building. Whilst the concept of the proposed works is supported there are some concerns with regards to the configuration and detail of the works, particularly with regards to the ground floor verandah.

Given the delays experienced, and in order to expedite matters, this report seeks to approve the proposal as a “Deferred Commencement” matter with further specific details to be provided.

Proposal  
It is proposed to demolish part of the front of the building, undertake renovations and provide additions to the hotel to restore the building to its 1910 form and provide an entry statement for the town centre when entering from the east.
The renovations would involve:

**Ground Floor:**
- Removing the existing bar, providing two new bars and an external beer garden,
- Providing a new bottle shop, and
- Upgrading the kitchen and providing a new family/ dining area and outdoor dining area in addition to general upgrades and refurbishments.
- Reinstating part of the verandah on the northern and south eastern elevations of the building.

**First Floor:**
- Restoring the first floor veranda,
- Providing a total of fifteen bedrooms on the first floor including the provision of four new bedrooms, and
- Relocation of the access stairwell southeast of the existing stairwell.

**Roof form**
The existing roof form will be largely retained, with extensions to the roof on the western and southern elevation to match with existing roof. The existing chimneys will also be retained. A spire is proposed that replicates a spire that was part of the original 1910 building. The existing 10-12 metre height of the building will generally be retained, however the spire will reach a height of 14 metres above ground level.

The proposal would result in the demolition of some parts of the front of the hotel and the extension of hotel to the southern and western elevations.

The proposal will retain the existing loading dock in place and will not result in any changes to existing landscaping on site.

**Development controls**
The application was lodged prior to the gazettal of Local Environmental Plan 2005 (LEP 2005) on 7 October 2005; Clause 6(4) Savings and Transitional provisions apply to the assessment of the application, which requires assessment of the proposal under the provisions of Local Environmental Plan No. 4 with consideration being given to LEP 2005 as if still a draft environmental planning instrument that is certain and imminent.

- The site was part zoned 3(a) Business – General and 9(a) Parking; under the provisions of Local Environmental Plan No 4
The site has been rezoned: Village Town Centre – LA01; under the provisions of Local Environmental Plan 2005

- Development Control Plan – No 29 – Car Parking
- Draft Lawson Development Control Plan
- Development Control Plan - Better Living

**Notification**

The application was advertised in the Blue Mountains Gazette and adjoining landowners were notified in accordance with Council’s Community Consultation Development Control Plan No. 35. Notification commenced on 20 July 2005 and was completed on 10 August 2005.

One (1) submission was received during the exhibition and provided support for the proposal.

The application was referred to the Roads and Traffic Authority, Sydney Water and Springwood Police for comment, with no objections having been received.

**Issues**

Assessment issues:
1. Statutory Considerations
2. Heritage Issues

**Discussion of Issues**

1. **Statutory Compliance**

i. **Local Environmental Plan No. 4**

The proposed development is permissible in the subject zone with Council consent.

Clause 38 (Floor space of buildings):
This clause prescribes a maximum floor space ratio of 1:1 at the subject site. The proposed works will result in a floor space ratio of 0.94:1 thereby complying with this requirement.

An assessment of the changes to floor is provided below:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Existing ground floor area (approx.)</td>
<td>397m²</td>
</tr>
<tr>
<td>Proposed ground floor area (approx)</td>
<td>479m²</td>
</tr>
<tr>
<td>Existing first floor (approx)</td>
<td>332m²</td>
</tr>
<tr>
<td>Proposed first floor area (approx)</td>
<td>425m²</td>
</tr>
<tr>
<td>Total floor space</td>
<td></td>
</tr>
<tr>
<td>Existing:</td>
<td>729m²</td>
</tr>
<tr>
<td>Proposed:</td>
<td>904m²</td>
</tr>
</tbody>
</table>
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The calculated floor space ratio for the site is:

Existing: 0.67:1 (using total existing site area = 1039m²)
Proposed: 0.94:1 (using total proposed site area – post road widening = 952m²)

Clause 42 (Assessment of Certain Factors):
This clause requires an assessment of the development against a number of relevant factors, which has been summarised as follows:

<table>
<thead>
<tr>
<th>Factor</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Spread of fire:</td>
<td>The proposal has been subject to an inspection and report by Council Environmental Health and Building Surveyors. The applicant proposes to relocate the internal stair from the ground floor to the first floor in order to comply with provisions of the Building Code of Australia. In addition, a new external stair case will be constructed at the southern elevation of the building. A number of matters require further details to ensure compliance with the Building Code of Australia; however it is considered that the issues are resolvable within the context of the proposed works. It will be required as a condition of consent that the relevant detail be submitted prior to the release of the Construction Certificate.</td>
</tr>
<tr>
<td>(c) Heritage:</td>
<td>This matter will be discussed at greater length in the following sections of this report. The site is not presently listed as a heritage item under the provisions of LEP No. 4 however it is considered to have historic merit as identified by Council’s current review of heritage items and its proposed listing within LEP 2005 is recommended.</td>
</tr>
<tr>
<td>(f) Access to a public road:</td>
<td>Vehicular access for car parking and loading is currently provided to the site via New Street, which is not proposed to change.</td>
</tr>
</tbody>
</table>

ii. Local Environmental Plan 2005

The site is zoned Village Town Centre and Regional Transport Corridor under the provisions LEP 2005. The ongoing use of the site as a hotel and ancillary parking areas is permissible with consent within the Village Town Centre zone. Some of the development may encroach on land zoned Regional Transport Corridor. Clause 34 (development near zone boundaries) allows for development to cross zone boundaries where there are minor encroachments of a use permitted within the zone applicable to the majority of the site, but prohibited in the adjoining zone.

Controls on building envelopes are regulated through the relevant precinct controls being VTC-LA01 and provided in Schedule 1 Part 7 of LEP 2005.
The maximum building height permitted within the precinct is twelve (12) metres with maximum height at eaves being nine (9) metres. The proposed development does not comply with this requirement. The maximum height of the general roof form will be twelve (12) metres at roof and ten (10) metres at eaves. The new spire will have a maximum height of fourteen (14) metres. The height of the spire will not have an adverse impact on the bulk to the building nor overshadow adjoining properties, being a discreet feature and is considered acceptable within the context of this proposal.

The site setbacks are prescribed as nil (0) metres for the front and side boundaries. The proposal provides nil (0) metre setbacks at the Great Western Highway frontage and variable setbacks to the side boundaries. The proposed extension of the bottle shop to the western elevation of the hotel will result in a setback of nil (0) metres to this boundary. The southern parts of the site will be utilised for parking and loading. It is proposed to extend the hotel to the southern elevation to provide dining facilities on the ground floor and additional guest rooms on the first floor.

The maximum site coverage permitted within the precinct is 100 per cent. The proposal will result in a 59% site coverage, and therefore complies with this requirement.

The proposed works are considered compatible with the precinct and zone objectives for the site in that the proposal will maximise the diversity of business related services provided to the local community. The increase in floorspace is considered to be consistent with the desired appearance and function of the Lawson Town Centre.

The renovated hotel will also provide a place that will serve as a focus of community and civic gatherings. The new presentation to the GWH will better address the street and reflect the character of the area. For these reasons, the proposed works are strongly supported. The successful renovation of the building will be a key element for the urban revitalization of Lawson and will support the recent upgrade of prominent local character buildings by the Roads and Traffic Authority on the eastern fringe of the town centre.

### iii. Development Control Plan No. 29—Car Parking

This DCP applies to the site and requires the provision of on site car parking to meet increased demand generated by additional floor space. It is noted that the proposal results in an increase of 82m² of floor space on the ground floor. This increase of floor space is generated by the proposed bottle shop and reconfiguration of the existing layout of uses resulting in the provision of refreshment rooms and office space at the southern (rear) elevation of the hotel.

The car-parking ratio applicable to the increase in ground floor area is one (1) space per 25m² of retail floor space which equates to a requirement for 3.3 spaces.

The increase in floor space on the first floor comprises of four (4) accommodation units and 24m² of office space. The car parking ratio applicable to these uses is one (1) space per unit and one (1) space per 40m² of office space. This equates to a requirement for an additional 4.5 car parking spaces.
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The site is presently deficient with regard to required car parking spaces as the hotel predates Council’s requirements for car parking. Based on a calculation of existing floor levels in relation to Council’s Car Parking DCP approximately 46 car parking spaces would be required on site. This is based on the following estimations:

- 168.25m² of floor space used as bar area @ 1 space per 5m² = 33 car parking spaces
- 80m² of floor space used for refreshment room @ 15 space per 100m² = 12 car parking spaces
- 1 space for the first floor based on its existing use as a residential premises for the proprietor.

The proposed additions in floor space and the loss of two (2) on site car parking spaces as a consequence of extensions to the southern elevation of the building will result in an increase in the existing deficiency of ten (10) spaces.

The amount of on street and public car parking available within the locality have proved sufficient to service the hotel’s car parking requirements to date. However the Lawson Village Upgrade Design Drawings prepared by Complete Urban Solutions for BMCC provide for the imminent upgrade of public car parking adjoining the Hotel to the south. It is recommended that conditions be attached to a consent requiring the applicant to contribute towards costs for the upgrading of the public car park. The contribution should provide for the sealing and line marking of 10 car parking spaces (that being the number of car parking spaces generated by this proposal) and the access areas for the loading dock of the Hotel.

The applicant argues that additional on site car parking should not be applicable to the site. The main points offered in favour of this argument are listed below:

- The subject site is located in close proximity to Lawson railway station, taxi and bus services providing good accessibility to the site via public transport; and
- The site is adjoined to the rear (south – southeast) by a public car park; and
- Peak operation times for the Hotel coincides with times when there is high car parking availability within the vicinity.

These arguments are cogent to the existing situation. However, given that the applicant benefits directly from public parking to the rear of the site it is considered appropriate and reasonable to require that the applicant make a monetary contribution to the development of the New Street Public Car Park proportionate to the shortfall of ten (10) car parking spaces that are generated by the current proposal. This matter has been discussed with the applicant, and a figure of $15,000 is recommended to be levied. This figure has been established through consultation with Council’s Manager of Major Projects and is an estimated cost of the construction of ten (10) car parking spaces.

iv. Draft Lawson Village Development Control Plan

The Draft Lawson DCP was exhibited on 31 January 2005 and this current proposal is considered to be consistent with overall objectives of that plan.
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The proposal is consistent with the aims and vision of the DCP as demonstrated below:

- The proposal forms an entry statement to the eastern end of the commercial precinct of Lawson.
- The proposal responds to the social and cultural identity of the community.
- The proposal retains and enhances existing linkages with the history of Lawson.
- The proposal provides for good economic development of Lawson and will not adversely impact on the local environment.
- The proposal maintains the relationship between shops, highway and railway.

The Lawson DCP specifically mentions the reinstatement of the heritage character (with particular reference to the reinstatement of the verandah) of the Blue Mountain Hotel as a desired character outcome.

New parking facilities are proposed in the DCP within the Lawson Town Centre. The DCP states in Section 2.6 Access and Movement that an objective of the DCP is to provide increased access and parking for future social and civic facilities. Therefore the proposed continuation of use by hotel patrons of public parking facilities within the locality appears sustainable. The loading dock of the Hotel is depicted in its current location in Figure 9 of the DCP and its access is not proposed to change. The proposal does not change the present configuration of loading facilities; therefore the proposal is consistent with the DCP with regards to loading and car parking.

Section 2.7 of the DCP – Parking and Servicing states that servicing areas will be located to the rear of buildings that front the Highway to maintain the continuous retail streetscape which the proposed development complies with.

The proposed side setback of nil (0) metres to the western boundary will result in inconsistencies with the Lawson Village Draft Development Control Plan (LVDDCP) in that a pedestrian walkway is identified along the western boundary of the site in the diagrams for Urban Structure and Access and Movement (pp19 & 23) of the DCP.

The feasibility of the proposed walkway is questionable and the proposed walkway is not in public ownership and there are no restrictions or easements providing for public access through the site. In addition the review of public submissions to the LVDDCP indicated that the proposed pedestrian routes through the grounds of the Hotel were considered problematic. As such the lack of provision for pedestrian thoroughfare within the site is regarded as acceptable. This inconsistency does not warrant refusal of the proposal as alternative means of pedestrian thoroughfare are available on the north eastern side of the site.

v. Development Control Plan - Better Living

The provisions of the Better Living DCP have been considered in relation to the subject application. The proposal is considered consistent with the relevant provisions of the plan. Part C General Principles of the DCP relate to the proposal with regards to cultural heritage, services, wastewater, vehicular access and parking, amenity, adaptability and accessibility. These issues have been considered and discussed elsewhere in this Report.
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2. Heritage Issues

The building is not currently listed as a heritage item. However the site is proposed as a heritage item of local significance within Schedule 6 of LEP 2005. The site has been previously assessed for its heritage significance within the draft Conservation Management Plan prepared by Biosis Research for Council in 2002. The document assessed the building as being of local significance due to:

- Its historic value to the development of Lawson; and
- Its former and potential high aesthetic value and prominent location; and
- Its social value being the only remaining hotel in the area; and
- Its association with the early pioneering Wilson family.

The draft heritage inventory prepared for the site notes that: “the Blue Mountain Hotel, although now compromised by additions and alterations has the ability to recover its significant form and make a major aesthetic contribution to the township of Lawson.”

The site is considered a visually significant site; providing the eastern entrance to the Lawson town centre. The development is being considered as if it had its full heritage status under Local Environmental Plan 2005.

The proposal, along with the draft Conservation Management Plan prepared for the building was referred to Council’s Heritage consultant for consideration. Their comments are summarised below:

- The site clearly has heritage significance and has high potential for regaining its original appearance and reversing previous unsympathetic alterations and extensions
- The DA proposes the removal of unsympathetic elements from the building. However there are inconsistencies in the documentation of the proposal making the details of the proposal unclear. The drawings show that the ground floor verandah is to be reinstated, but in an enclosed form, which is not a form previously associated with the original building. The construction of the verandah in an enclosed form is inherently unsatisfactory and contrary to the expressed intentions of the Heritage Impact Statement and the Statement of Environmental Effects.
- Overall the building will benefit from the reinstatement sympathetic with the original building form.

There are a number of issues that require further assessment in order to ensure the proposal is consistent with the Conservation Management Plan.

The schedule of conservation works require the restoration of the verandahs to their original configuration. Photographic evidence shows that the verandah was provided around the entirety of the façade on the ground and first floors.

The proposal does not remove the verandah infill on the ground floor at the splay corner. The applicant advises that the retention of this space as an enclosed bar area is important to the economic viability of the proposal. The applicant further states that the RTA has requested the enclosure of this part of the building due to the narrower footpath adjoining it.
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It is considered that the proposal to only partially provide verandahs on the ground floor at the north western and north eastern elevations will compromise the restoration of the Hotel. The Conservation Management Plan, the Heritage Impact Statement provided by the applicant and Council’s Heritage consultant all promote the restoration of the verandahs to their 1910 form. It is therefore recommended that the proposal be modified to ensure that the verandah is fully reinstated on the ground floor.

The applicant has provided details in relation to the proposed colour scheme for the exterior of the building. The colours are listed below:

<table>
<thead>
<tr>
<th>Walls</th>
<th>Masonry</th>
<th>Dulux match, classic cream</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Weatherboard</td>
<td>Dulux match, classic cream</td>
</tr>
<tr>
<td></td>
<td>Original cedar</td>
<td>Clear sealer</td>
</tr>
<tr>
<td>Roof</td>
<td>Main roof</td>
<td>Colorbond, manor red</td>
</tr>
<tr>
<td></td>
<td>Spire</td>
<td>Colorbond, classic cream</td>
</tr>
<tr>
<td>Verandah</td>
<td>Posts, beams, handrails</td>
<td>classic cream toned (6) shades darker</td>
</tr>
<tr>
<td></td>
<td></td>
<td>classic cream</td>
</tr>
<tr>
<td>Joinery</td>
<td>Windows</td>
<td>classic cream toned (6) shades darker</td>
</tr>
<tr>
<td></td>
<td>Doors</td>
<td>classic cream toned (6) shades darker</td>
</tr>
<tr>
<td></td>
<td>Original cedar</td>
<td>Feast Watson, clear sealer</td>
</tr>
</tbody>
</table>

The applicant’s heritage impact statement does not refer to colour schemes and it is noted that the draft Conservation Management Plan prepared for the building states that a researched colour scheme should be prepared or a conjectural colour scheme provided based on the photographs of the building. It is recommended that the applicant be required to submit full colour plans of all elevations as a condition of deferred commencement.

The proposal to paint the spire a lighter colour is considered not appropriate, given photographic evidence suggesting that the spire was a darker colour from the roof form and was possibly constructed of a different material. The proposal provides for a prefabricated metal sheeting to constitute the roof form of the tower. The elevations are scant on detail with regards to the form of the tower at the cross section with the roof form. It is recommended that further drawings of the tower be submitted to Council for approval as a deferred commencement condition.

Further recommendations made by the heritage consultant related to modifications to the roof form of the proposed bottle shop on the western side of the building as well as the impact of the single storey extension of the bottle shop to the Great Western Highway. It is considered that this proposed extension is acceptable given that it is within the prescribed building envelope stipulated by the precinct controls and will not dominate the built form. The impact on the heritage significance is considered minor given the scope of works proposed that will reinstate historic features of the building. It is proposed that conditions be placed on the proposed finishes for the roof of the bottle shop to ensure that the built form has continuity with the remainder of the building.
A fire safety assessment of the proposal identifies that the new additions to the rear of the hotel and for the bottle shop at the western elevation will be required to be constructed of masonry rather than timber framing/weatherboard. This will depart from original forms and materials, however it is considered that the safety aspects of the proposal need to take precedence in this instance. Given that the additions are not highly visible, it is deemed that the new works will not adversely impact upon the heritage significance of the building and can be designed to minimise any impact.

Conclusion

The proposal is supported subject to further details being submitted to Council as deferred commencement conditions outlined in the recommendations to this Report.

The proposal constitutes a significant application that when completed will have a considerable positive impact on the urban character of the Lawson town centre particularly as an entry statement to the town centre from the east. The deficit in car parking required for the site that will not create undue traffic impacts within the locality.

Additional information with regards to finishes and forms may be provided as deferred matters to ensure the restoration is consistent with the heritage significance of the site.

The proposal is recommended for deferred commencement approval subject to the conditions shown at Attachment 1 to this Report.
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Attachment 1—Proposed Conditions of Consent

Part One—Proposed Deferred Commencement Conditions

Amended plans and details shall be submitted to council incorporating/including the following:

<table>
<thead>
<tr>
<th>Conservation management</th>
<th>1. Amended architectural documentation and supporting information is to be prepared (by an architect with recognised credentials in heritage conservation) and submitted that achieve the following outcomes:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>a. The reinstatement of the spire to its original location and form. Documentation supporting the proposed design identifying historic references is to be submitted in conjunction with the plans. The plans are to show all elevations of the spire and colours and materials proposed.</td>
</tr>
<tr>
<td></td>
<td>b. Fully detailed colour drawings showing details of all finishes and materials proposed on all elevations are to be submitted along with a researched report on historic colour schemes used on the building.</td>
</tr>
<tr>
<td></td>
<td>c. Elevations and floor plans showing the reinstatement of the ground floor verandah to its original form, including the location of the main doorway at the splay corner of the building and doors to each area of the building.</td>
</tr>
<tr>
<td></td>
<td>The above plans must demonstrate consistency with the Draft Conservation Management Plan prepared for Council by Paul Davies and dated July 2002.</td>
</tr>
<tr>
<td>Access and facilities for persons with disabilities</td>
<td>2. Submission of amended plans incorporating the following:</td>
</tr>
<tr>
<td></td>
<td>a. Access to and within the entrance floor of the building (including Main Bar and Bottle Shop parts) is to be provided in accordance with D3.2 of the BCA and AS 1428.1. Specific details are to be submitted for Council’s approval prior to the issue of the Construction Certificate.</td>
</tr>
<tr>
<td></td>
<td>In this regard, access for persons with a disability shall be provided from both the Great Western Highway frontage and from the disabled car parking space required by Deferred Commencement Condition 2(b).</td>
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</tbody>
</table>
Attachment 1—Proposed Conditions of Consent

b. One (1) car parking space is to be provided for the exclusive use of persons with disabilities within the rear car parking area in accordance with D3.5 of the BCA and to AS 1428.1. Such space is to be connected by way of a trafficable path to the principal front entrance points (Main Bar & Bottle Shop).

Fire Safety

3. The Manager’s residence/sole occupancy unit is to comprise all of the first floor of the building other than those rooms designated as guest rooms, ensuites, laundry and associated public hallways and stairs, as shown on the plans prepared by R and J Associates Pty Ltd, amended May 05. In this regard, the entrance door to the Manager’s residence is to be located in the vicinity of the existing stairway to facilitate egress. Such door is not to be greater than 6.0 metres from the new stair.

Car parking

4. Redesign of the car parking spaces located in the south eastern corner of the site so as to minimise reversing manoeuvres and to ensure consistency with Council’s Lawson Village Centre Upgrade Design Drawings prepared by Complete Urban Solutions. At least one (1) space shall be suitable for use by persons with a disability.

Part Two—Proposed Operational Conditions

Confirmation of relevant plans

5. To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by R and J Turner P/L unnumbered, titled: site plan, elevations, sections AA and BB and roof plan and dated May 2005 except as modified in order to comply with the deferred commencement conditions and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.

Period of development consent

6. 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.
Attachment 1—Proposed Conditions of Consent

**Construction certificate (building)**

7. A construction certificate is required prior to the commencement of any site or building works. This certificate can be issued either by Council as the consent authority or by an accredited certifier.

**Building Code of Australia**

8. All works are to comply with the Building Code of Australia.

   It is noted that the plans and specifications do not demonstrate compliance with the Deemed to Satisfy provisions of the Building Code of Australia.

**Food Safety**

9.  
   - The fit out of the food business shall comply with the requirement of AS 4674.2004 and Food Safety Standard 3.2.3. Full details are to be submitted to the Principal Certifying Authority with the Construction Certificate documentation.
   - A washing sink, which satisfies the requirements of Table 4.1 of AS 4674 2004, shall be provided in the service station area of the premises.
   - To comply with AS4674 a designated garbage/recycling/waste oil storage area is to be provided with a water supply through a hose tap and paved with an impervious material and graded and drained to an approved waste disposal system.
   - That 48 hours notice is provided to Council prior to the premises being occupied, to enable a final inspection and assessment of compliance of the business with the Food Safety Standards.

**Schedule of Conservation Works**

10. All internal and external building works are to comply with the recommendations provided at Annexure C in the Heritage Impact Statement for the proposal prepared by GSA Planning and dated June 2005.

**Access and mobility statement**

11. To ensure access and facilities for disabled people are provided, a statement from the applicant or owner is required certifying that the development complies with the provisions of the *Disability Discrimination Act 1992;* the *Australian Standard AS1428* and Council’s *Access and Mobility Policy.* This statement is to form part of the construction certificate documentation.
### Stormwater management design

12. The stormwater management design is to be in accordance with *Australian Rainfall and Runoff 1987 (AR&R)*, prepared by the Institution of Engineers, Australia.

### Services

13. Arrangements must be made with Integral Energy, Sydney Water and an approved telecommunications service provider for the extension of services to and within the site. Written evidence of such arrangements are to be submitted prior to the issue of the construction certificate.

### Demolition management

14. The work is to be executed by a competent person, with due regard for safe working practices and in accordance with the requirements of the WorkCover Authority.

At all times during demolition a competent person shall directly supervise work. It is the responsibility of the person to ensure that:

a. The structure to be demolished and all its components shall be maintained in a stable and safe condition at all stages of the demolition work. Temporary bracing, guys, shoring or any combination of these, shall be added for stability where necessary.

b. Precautions are taken to ensure that the stability of all parts of the structure and the safety of persons on and outside the site are maintained particularly in the event of sudden and severe weather changes. Severe weather changes refer primarily to the localised high winds. In these circumstances loose debris can become airborne, particularly if it is in sheet form.

c. The site shall be secured at all times against the unauthorised entry of persons or vehicles.

d. Utility services within the structure not required to be maintained during the demolition work shall be properly disconnected and sealed off before any stripping or demolition commences.

### Order of demolition

15. Unless otherwise permitted by Council, structures shall be demolished in the reverse order to that of their construction. The order of demolition for building shall be progressive, having proper regard to the type of construction.
Attachment 1—Proposed Conditions of Consent

**Adjoining buildings**

16. In consideration of the proximity of the site’s adjoining buildings:
   - Safe access and egress from adjoining buildings is to be maintained at all times for the duration of the demolition work.
   - No demolition activity is to cause damage to or adversely affect the structural integrity of adjoining buildings. Consideration should be given to the use of shoring and underpinning and to changes in the soil conditions as a result of demolition and appropriate action taken.
   - The effect of vibration and concussion on adjoining buildings and their occupants is to be minimised by selection of appropriate demolition methods and equipment.

**Demolition of Buildings generally**

17. The demolition work to be supervised by a competent person with due regard to safe working practices and in accordance with the requirements of the NSW WorkCover Authority;

   Such work is to be carried out in accordance with the Occupational Health & Safety Regulations, 2001, and Australian Standard 2601 – 1991.

**Demolition of Buildings containing asbestos cement**

18. The applicant is to notify Council and adjoining residents, in writing, at least ten (10) working days prior to demolition commencing, of their intention to commence demolition works. In the case of adjoining residents, such notification is to be a clearly written note, on at least note pad size paper, giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately to the rear of the demolition site.

**Disposal of Asbestos**

19. All asbestos material, including asbestos cement, is to be disposed of to an approved waste management facility licensed to receive asbestos.

**Display of signage**

20. The developer will display appropriate asbestos/demolition signage prior to and during demolition works.
Dust control

21. The techniques adopted for stripping out and for demolition are to minimise the release of dust into the atmosphere.

- Before commencing work, any existing accumulations of dust are to be collected, placed in suitable containers and removed. Selection of appropriate collection techniques, such as vacuuming or hosing down, shall take account of the nature of the dust and the type of hazard it presents (e.g., explosive, respiratory etc).
- Dust generated during stripping or during the breaking down of the building fabric to removable sized pieces shall be kept damp until it is removed from the site or can be otherwise contained. The use of excess water for this purpose is to be avoided.

It should be borne in mind, that in certain environments and under certain stimuli, deposits of combustible dust on beams, machinery and other surfaces may be subject to flash fires, and suspensions of combustible dusts in the air can cause them to explode violently (see NFPA Handbook).

Removal of material

22. All demolished material and excess spoil from the site shall be disposed of at a location and in a manner approved of by Council. No material is to be burnt on site.

Removal of hazardous waste

23. Removal of dangerous or hazardous materials shall be carried out in accordance with the provisions of all applicable State legislation and with any relevant recommendations published by the National Occupational Health and Safety Commission (Worksafe Australia).

- Only competent persons, or competent and registered persons shall carry out removal.
- Removal of asbestos or materials containing asbestos fibres, shall be in accordance with the NOHSC code of practice.
- Precautions to be observed and procedures to be adopted during the removal of dangerous or hazardous materials other than asbestos, shall be in accordance with the relevant State regulations pertaining to those materials.
Attachment 1—Proposed Conditions of Consent

**Internal pavement**

24. Kerbs and formation paving and sealing of access driveways and car parking areas in the development site together with any necessary drainage, retaining walls and other engineering works that may be required to make the construction effective shall be provided. All driveways and sealed areas are to have a featured surface.

All internal driveway and access shall be designed in accordance with Australian Standards 2890.1/2004.

**Roads and Traffic Authority works**

25. Where the works affect Roads and Traffic Authority controlled roads, the design is to be approved by the Roads and Traffic Authority before submission to Council for approval. Furthermore, the work affecting Roads and Traffic Authority controlled roads is to be supervised by the Roads and Traffic Authority. Before the issue of the Occupation Certificate, the Council and the Roads and Traffic Authority are to certify that all the works under their control have been completed to their satisfaction.

**Bond**

26. A performance maintenance bond to the value of five (5) percent of the engineering construction or a minimum of $10,000, whichever is the greater, to guarantee the safety of the public, environmental protection performance and maintenance during construction in Council's road shall be paid to Council.

This bond shall be retained for twelve (12) months after construction is completed to the satisfaction of Council's Supervising Engineer.

The bond is to be paid prior to the issue of the Construction Certificate.

**Relocation of services**

27. The applicant shall carry out the relocation or alteration of public utilities or any existing services made necessary as a result of this development at the applicant’s expense. Satisfactory arrangements shall be made with the relevant authority concerned and a certificate of clearance shall be obtained from each relevant authority and submitted to the Principal Certifying Authority prior to release of the Construction Certificate.
Attachment 1—Proposed Conditions of Consent

**Repair of damage**

28. The applicant shall repair or reconstruct all damages caused by construction activity relating to the development as required by Council's Supervising Engineer prior to release of the Occupation Certificate.

**Restore disturbed area**

29. All disturbed earthworks and/or batters are to be restored, stabilised, topsoiled and turfed/revegetated to Council's satisfaction prior to release of the Occupation Certificate.

**Driveway crossings**

30. For the driveway required across the New Street Car Park footpath, new heavy duty concrete layback and apron crossings are to be constructed. The surface is to be a featured surface. This construction is to include any necessary alteration to existing infrastructures, drainage, signage, line markings etc. to make the construction effective including transition of the footpath and internal driveway, the adjustment of public utilities and regrading the driveway across the footpath to facilitate quick entry/exit movements and prevent scraping of vehicles.

A “Standard Gutter Crossing Application” must be lodged with Council prior to the construction of the driveway crossings. The applicant shall make arrangement with Council’s Development Engineer for inspection prior to placement of concrete.

**Footpaths**

31. Footpaths (in keeping with the character of the area/coloured and textured concrete/paves) are to be constructed for the Great Western Highway and New Street frontage of the site.

**Compliance with standards**

32. All internal and external engineering works required by this development are to be in accordance with Council's Specification for Engineering Work for Subdivisions and Development, Part 1—Design and Part 2—Construction (Development Control Plan No. 31), Australian Rainfall and Runoff 1987 and other relevant Australian Standards. The design and construction is to include any additional works to make the construction effective.
Attachment 1—Proposed Conditions of Consent

Where the works affect Roads and Traffic Authority controlled roads, the design and construction is to be in accordance with Roads and Traffic Authority requirements.

A qualified civil/structural engineer shall supervise all internal works and prior to issue of the Occupation Certificate, certification shall be obtained from a chartered civil/structural engineer with NPER registration and submitted to the Principal Certifying Authority confirming all works have been constructed in accordance with the approved plans and specifications.

**Structural works**

33. The design of all structural works shall be certified by a chartered structural engineer (NPER–3 Structural registered) as conforming to the relevant standards and load capacities.

**Certification of structural works**

34. The construction of all structural works shall be certified by a chartered structural engineer (NPER–3 Structural registered) as conforming to the relevant standards and load capacities.

**Supervision of internal engineering works**

35. All internal engineering works shall be supervised by a chartered civil/structural engineer with NPER registration. Certification from the supervising engineer shall be submitted to the Principal Certifying Authority to verify that all works have been constructed in accordance with approved plans prior to the release of the Occupation Certificate.

**Works as executed plans**

36. Prior to the issue of an Occupation Certificate, a Works as Executed Plan of all external engineering works together with an engineer’s certification confirming that all works have been constructed in accordance with the approved plans shall be submitted to Council for approval.
In accordance with Clause 94 of the Environmental Planning and Assessment Act Regulations, the fire safety provisions for the buildings hall be upgraded to incorporate the following:

a. The main electrical meter board is to be enclosed in a non-combustible smoke-proof enclosure.

b. The enclosure beneath the stair is to be permanently sealed off and not used for any other purpose or, alternatively, it is to be fire separated to achieve a 60/60/60 fire resistance level. If the area is to be fire separated, the door to the enclosure is to be self closing and tight fitting - /60/30 fire door on a 60/60/60 fire rated frame.

c. Fit self-closing tight-fitting solid core doors having a minimum thickness of 35 mm to the entrance doorways of all sole occupancy units and rooms not within sole occupancy units discharging to a public corridor. Transom openings are to be protected through the installation of 6mm thick wired glass or one-layer of 16 mm fire-grade plasterboard from the room side of the doorway opening.

d. Submit a certificate from a licensed electrician attesting that the electrical wiring installed throughout the building is safe and fit for purpose in accordance with the relevant Australian Standard.

e. Submit a certificate from a licensed gas-fitter attesting that gas equipment installed on the premises has been tested and is safe and fit for purpose.

f. Develop and implement an evacuation plan in accordance with Australian Standard No 3745 – Emergency Control Organisation and Procedures for Buildings, Structures and Workplaces. A copy is to be submitted to Council prior to occupation of the building.

g. Provide accredited first-aid fire fighting and fire safety awareness training to staff. Documentary evidence to be furnished prior to occupation of the building.
Attachment 1—Proposed Conditions of Consent

h. Install an automatic fire detection and alarm system throughout the building in accordance with E2.2 of the BCA and AS 1670. The system is to be connected by way of a direct data link in accordance with the relevant Australian Standard. The communication link is to be connected to a NSW Fire Brigades accredited monitoring services provider.

i. Provide a system of fire hose reels throughout the building in accordance with AS 2441 and E1.4 of the BCA.

j. Provide an external hydrant in accordance with AS 2419.1 and E1.3 of the BCA.

k. Upgrade emergency lighting and illuminated exit signs throughout the building in accordance with AS 2293.1 and E4.2 of the BCA.

l. All latching devices fitted to doors in a path of travel to an exit or forming part of an exit are to be upgraded to conform to the provisions of D2.21 of the BCA.

Amended plans and specifications addressing the above requirements are to be submitted to the certifying authority prior to the issue of the Construction Certificate.

Access and facilities for persons with disabilities

38. a. All means of access and facilities for use by persons with disabilities shall comply with D3.2 of the BCA and AS 1428.1 (or the relevant performance provisions).

b. An additional handrail is to be fitted to the existing (relocated) internal stair in accordance with D3.3(ii) of the BCA.

Amended plans and specifications addressing the above requirements are to be submitted to the certifying authority prior to the issue of the Construction Certificate.
Attachment 1—Proposed Conditions of Consent

<table>
<thead>
<tr>
<th>Final fire safety certificate (Prior to occupation)</th>
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<tbody>
<tr>
<td>39. The essential fire safety measures referred to in this Schedule, excluding any existing measures, are to be installed within the building.</td>
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</table>

<table>
<thead>
<tr>
<th>Current / proposed and required essential fire safety measures</th>
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<tbody>
<tr>
<td>A final fire safety certificate, in or to the effect of Form 15 (copy attached) is to be furnished by the owner of the building to the Principal Certifying Authority (PCA) prior to the issue of a final occupation certificate, in respect of all essential fire safety measures specified in the above Schedule.</td>
</tr>
</tbody>
</table>

The certificate should state that each specified essential fire safety measure has been assessed by a properly qualified person (chosen by the owner), and was found to be capable of performing to a standard not less than that specified in the Schedule.

Advice
A person who carries out the assessment must inspect and verify the performance of each specified fire safety measure and must test the operation of each new item of equipment installed in accordance with the Schedule.

<table>
<thead>
<tr>
<th>Annual fire safety statement</th>
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<tr>
<td>40. Each year, within 12 months of the previous statement or after a certificate of installation has been issued for the building (whichever is applicable), the owner of the building must ensure the Council receives a fire safety statement. This is to be in the format of Form 15A (copy attached) and must deal with each essential fire safety measure in the building.</td>
</tr>
</tbody>
</table>

As soon as practicable after the statement is issued, a copy of the statement (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy is to be prominently displayed in the building.
Attachment 1—Proposed Conditions of Consent

Advises

- To comply with Clause 4 of Food Safety Standard 3.2.2, the NSW Food Authority should be notified of details of the food business. This may be completed over the internet on [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

- To comply with Clause 3 of Food Safety Standard 3.2.2, a food business must ensure that persons undertaking of supervising food handling operations have appropriate skill and knowledge of food hygiene and safety matters.

- Information relating to food businesses may be obtained on Council website [www.bmcc.nsw.gov.au](http://www.bmcc.nsw.gov.au)
Attachment 2—Site Plan, Floor Plans, Sections and Elevations
Attachment 2—Site Plan, Floor Plans, Sections and Elevations
ITEM NO:  17

SUBJECT:  DEVELOPMENT APPLICATION NO. X05/0839 FOR THE DEVELOPMENT OF A LEACHATE INTERCEPTION SYSTEM ASSOCIATED WITH THE EXTENSION OF THE BLAXLAND WASTE MANAGEMENT FACILITY ON LOT 303 DP 751662 AND LOT 376 DP 823999, NOS. 30 AND 35 ATTUNGA ROAD, BLAXLAND

FILE NO:  X05/0839

 Recommendation:

That Development Application No. X05/0839 for the development of a leachate interception system associated with the extension of the Blaxland Waste Management Facility on Lot 303 DP 751662 and Lot 376 DP 823999, Nos. 30 and 35 Attunga Road, Blaxland be determined pursuant to Section 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  The application is referred to Council for determination as Council is the applicant and the proposal is of significant public interest.

Applicant  Blue Mountains City Council

Owner  Crown land under the care, control and management of Blue Mountains City Council.

Application lodged  3 August 2005

Property address  Lot 303 DP 751662 and Lot 376 DP 823999, Nos. 30 and 35 Attunga Road, Blaxland
Background

On 28 June 2005, Council approved an extension of the existing Blaxland Waste Management Facility (WMF) to accommodate the future waste disposal needs of the Blue Mountains region. The approved development included an extension of the existing landfill area as well as improved recycling/recovery practices and additional waste diversion/management processes. It also included the re-diversion of Cripple Creek, which runs west-east across the site.

The Blaxland WMF is located within a valley through which Cripple Creek originally ran. The creek was diverted into a stormwater pipe beneath the landfill, sometime during the 1980s. The pipe was designed for shallow burial (approximately 12 metres) however it is currently approximately 25 metres deep. Testing of the downstream portion of Cripple Creek suggests that leachate (contaminated water) is currently entering the pipe due to cracks and failures in joints.

The above issue was addressed by the approved re-diversion of Cripple Creek, whilst the current application provides the ongoing management system to ensure the appropriate interception and treatment of leachates generated by landfill.
Site Description
The subject site covers a total area of approximately 31ha with the existing landfill facility being 7ha in area and located generally to the centre of the site.

Bushland is located to the north, east and west of the site, with the main entrance being along the southern boundary of the site and through the adjoining industrial area. The nearest residential property is located approximately 300 metres to the north of the site itself and 700 metres from the leachate interception system. The majority of operational structures associated with the WMF are located to the south portion of the site, including the entry weighbridge, amenities building, parking and wash bay area.

Proposal
The proposed leachate interception system is summarised as follows:

- Construct a cut-off wall to intercept groundwater and leachate flows.
- Construct an upstream well and pump system to remove leachates and to maintain appropriate up stream and down stream flow rates.
- Construct wall as part of the re-diversion of Cripple Creek.
- Commence leachate quality and quantity monitoring and management procedures.

The extent of development associated with the leachate interception system is shown as Attachment 2 to this Report.

Development Controls
The subject site is zoned under the provisions of Local Environmental Plan 1991 as follows:

- Partially Recreation (Garbage Disposal and Quarry).
- Partially Environmental Protection.

The existing and extended landfill area, as well as the proposed leachate interception system is located within the area zoned Recreation.

Resident issues
The proposed development was notified to 370 nearby properties and other interested parties, including those who made a submission on the recently approved extension of the Blaxland WMF. The proposal was also advertised in the Blue Mountains Gazette with notification being for 30 days from 24 August 2005.
One (1) submission was received in relation to proposed development, with the issues raised summarised as follows:

- Limitations of re-injection and spray irrigation as management strategies.
- Potential for obnoxious odours from on-site treatment.
- Limits on permit for disposal of leachate matter to sewer.

The issues raised above have been addressed in the body of this Report.

Assessment issues

1. Statutory considerations.

Discussion of Issues

1. Statutory Considerations

The original application for the extension of the landfill associated with the Blaxland WMF was referred to a number of State Departments in accordance with the requirements of the Environmental Planning and Assessment Act. Details of the current proposal were further referred to those Departments that had previously provided comments or General Terms of Approval on the extension of the landfill area.

The Department of Primary Industry requested that a Permit under Section 200 of the Fisheries Management Act 1994 be obtained, specifically in relation to the culvert outlet. This requirement has been included in the conditions of consent.

Sydney Water have also advised that they have no objection to the construction of the leachate cut-off wall but request that it be included as a condition of consent that a Section 73 certificate and a Trade Waste agreement be obtained prior to the commencement of any pumping to the Sewer. This requirement has been included in the conditions of consent.

i. State Environmental Planning Policy 33—Hazardous and Offensive Development

The current use of the site as a WMF is defined as a “Potentially Offensive Industry” in accordance with the provisions of SEPP 33. This was considered when assessing the approved extension of landfill area, with all matters identified in the relevant guidelines addressed by the submitted Environmental Impact Statement. The previously approved extension of the landfill area complies with all the relevant Department of Planning guidelines relating to offensive development.

Land in the vicinity of the proposed development is zoned such that it would only allow garbage disposal or quarrying, with the proposed development considered consistent with the likely future uses in the surrounding area. This proposal is part of the progressive rehabilitation of the site to ensure its long term impacts are appropriately addressed and mitigated.
ii. State Environmental Planning Policy 55—Remediation of Land

Existing contamination of the site and the surrounding area had previously resulted from the existing diversion of Cripple Creek, which was in a dilapidated state that allowed the infiltration of leachate into the diversion system. The previously approved re-diversion of Cripple Creek, and the current application for a leachate interception system work in conjunction to address an existing contamination issue. The proposed development will significantly increase water quality both on the site and in the downstream creek, in accordance with the provisions of this SEPP.

iii. Sydney Regional Environmental Plan 20—Hawkesbury Nepean River

This policy applies to the site and contains a number of provisions aimed at protecting the environment of the Hawkesbury River. Clauses 5 and 6 of SREP 20 contain general and specific planning policies that must be considered by Council when determining a development application, particularly water quality and water quantity strategies.

In this regard, development must not prejudice primary use of the river in terms of aquatic ecosystem protection. The current water quality must be maintained, or improved, so as not to jeopardise this goal. Also aquatic ecosystems must not be adversely affected by development that changes the flow characteristics of surface or groundwater in the catchment.

The proposed development will remove the existing situation where leachates are infiltrating into the diversion of Cripple Creek and flow downstream from the site. This is achieved by the re-diversion of the Creek and the interception of leachates.

Until the re-diversion is completed, low water flows will be completely contained by the leachate interception system, with only high water flows continuing downstream. This means that the downstream section of Cripple Creek will not receive any low water flows during this stage. However, once completed the re-diversion will allow clean creek waters to traverse and exit the site and continue downstream of the landfill.

The applicant has indicated that the re-diversion process may take between 6-18 months. This is considered supportable provided that further loss of flows from the creek is mitigated, by implementing a temporary bypass system to ensure surface flows. The applicant will be required to notify Council and Department of Natural Resource if this re-diversion does not occur within six (6) months.

This approach is considered appropriate to protect the creek from further short term and long term degradation and has been included in the conditions of consent.

iv. Local Environmental Plan 1991

The subject site is zoned Recreation (Garbage Disposal and Quarry) and is considered a permissible use under the provisions Clause 33 of LEP 1991. This clause allows specific identified uses as indicated on Council’s zoning maps. The current application is necessary to ensure the appropriate continued operation of the WMF.
LAND USE MANAGEMENT

The proposal has been assessed against the development criteria contained within Clause 10 of LEP 1991. The proposed development is considered to comply with the relevant provisions relating to access, setbacks, design, heights, heritage, services, and site coverage, with significant issues discussed below.

Clause 10.5 (Environmental Impact) requires that Council cannot consider any development unless an assessment is made of a number of environmental factors including erosion, sedimentation, site disturbance and water management.

The proposed development is associated with the previously approved extension of the landfill area associated with the Blaxland WMF. Appropriate measures have been incorporated into the previous approval to ensure appropriate erosion control and clearance of vegetation. The proposed development is consistent with this assessment of the Blaxland WMF. A significant issue identified in relation to the Blaxland WMF was the presence of leachate in the existing diversion of Cripple Creek and a re-diversion of the creek was approved, whilst the current application works to intercept the leachate and dispose of it in an appropriate manner. This re-diversion was required to enhance the surface water quality of the creek and its downstream flows.

Conclusion

The proposed development provides the leachate interception system required to ensure the recently approved extension to the Blaxland WMF and re-diversion of Cripple Creek effectively mitigates existing contamination of the creek, ultimately protecting downstream water flows.

It is considered that the proposed development is appropriate and necessary to ensure that the extension of the approved landfill area is achieved in an environmentally appropriate manner.
Attachment 1—Proposed Conditions of Development Consent

### Confirmation of relevant plans

1. To confirm and clarify the terms of consent, the development shall be carried out generally in accordance with the following:

   - Interception Trench Details prepared by GHD Pty Ltd, numbered 21-14034-C0001, dated 28 July 2005, and
   - Leachate Interception System prepared by Douglas Partners, numbered 24206w, drawing 1A, dated 26 October 2004, and

   supportive documentation accompanying the application, 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 determination*). Should this not occur, the development consent will lapse.

### Construction certificate (building)

2. A construction certificate is required prior to the commencement of any site or building works. This certificate can be issued either by Council as the consent authority or by an accredited certifier.

### Requirements under the Sydney Water Act

3. To ensure the satisfactory disposal of intercepted leachate from the cut-off wall, you are required to submit to Council, prior to the commencement of any pumping to the Sydney Water sewer system, the following:

   a. The engagement of a Water Servicing Contractor to the requirements of Sydney Water.
   b. A certificate issued by Sydney Water under Section 73 of the Sydney Water Act indicating adequate sewer capacity is available to the site for this purpose.
   c. A Trade Waste Agreement between the applicant and Sydney Water for this purpose.
Attachment 1—Proposed Conditions of Development Consent

**General Terms of Agreement**

4. a. A permit shall be obtained from the Department of Primary Industry, under Section 200 of the Fisheries Management Act, for the in-stream works at the culvert outlet.

b. Application for the permit should include the relevant fee and provide detail on the proposed channel works between the culvert outlet and the wetland as well as describing the aquatic habitats present and the measures that would be used to prevent impacts on these aquatic habitats. In particular, measures to slow water velocities entering the wetland should be included within the channel design.

c. Best Practice environmental safeguards (sediment curtains etc) are to be used during construction of the proposed works to ensure there is no escape of sediment plumes into the aquatic environment. Sediment plumes caused by run off, earthworks etc has the potential to smother aquatic vegetation and have a deleterious effect on aquatic organisms.

**Site management**

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

Any construction work (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-1pm. Alteration to these hours may be possible for safety reasons but only on the approval of Council.

Waste from building operations shall be appropriately contained and disposed of.

**Plans on site**

6. A copy of the stamped and approved plans, development consent and the construction certificate are to be held on the site at all times during construction.
LAND USE MANAGEMENT

Attachment 1—Proposed Conditions of Development Consent

7. A Water Quality & Ecosystem Health Monitoring and Management Plan, consistent with the requirements of the current Environment Protection Licence No. 10039 issued by the NSW EPA, must be submitted to and approved by the Principal Certifying Authority prior to issue of a Construction Certificate.

The plan must detail appropriate sampling, analysis of:

a. Surface water quality within Cripple Creek upstream and downstream of the landfill site; and

b. Groundwater quality and groundwater levels within a range of representative groundwater monitoring wells up and down gradient of both proposed groundwater and leachate cut-off walls;

The plan must also detail appropriate monitoring of:

c. The condition, extent and response of the vegetation located adjacent to the leachate management works to changed water tables, particularly, the *Melaleuca linariifolia* forest.

d. Surface water flow volumes and provision of an adequate environmental flow within Cripple Creek downstream of the site until the Cripple Creek Diversion is completed.

e. Groundwater levels within any groundwater extraction bore located up gradient of the Groundwater Cut-off Wall during pumping and rest periods.

The plan must define management aims, identify appropriate water quality guidelines and objectives, establish a monitoring and assessment program and triggers for appropriate management response, consistent with the relevant guidelines and in accordance with the current Environment Protection Licence No. 10039 issued by the NSW EPA.

The plan should include a methodology for the installation and maintenance of the groundwater meters and a proposed frequency for all sampling and analysis and monitoring at established locations.

Sampling, analysis and reporting must occur before, during and after construction, for the life of the waste facility and a reasonable period after any decommissioning of the works the subject of this consent. Reports must be sent directly to Council.
The plan must incorporate the relevant sampling of parameters as required by the current Environment Protection Licence No. 10039 issued by the NSW EPA. In-stream sampling must also include annual macro-invertebrate monitoring.

8. The applicant shall immediately notify the NSW EPA and Council if, as a result of the sampling and analysis required by Condition 7, failure of the leachate management system is detected, or biological, chemical or physical indicators are found to trigger the need for a management response.

The strategy for dealing with this event, shall be determined in consultation with, and with the approval of, the NSW EPA and Council, and shall be implemented as soon as practicable by the applicant or by the owner of the waste management facility to restore desirable groundwater levels and/or ensure that any adverse environmental impacts are avoided.

Appropriate management responses and contingency measures shall be nominated within the Water Quality & Ecosystem Health Monitoring Plan required by Condition 7.

9. If an adverse environmental impact has not been avoided by an appropriate management response described in Condition 8, then a Remediation Plan addressing the physical, chemical or biological restoration of the site or adjoining sensitive areas, must be prepared in consultation with the NSW EPA, and submitted to and approved by Council, and implemented as soon as practicable by the applicant to mitigate the identified adverse environmental impact.

10. An adequate environmental flow within Cripple Creek and adequate groundwater levels to sustain the Melaleuca linariifolia forest shall be maintained downstream of the leachate system at all times until the construction of the Cripple Creek Diversion (DA X/1497/2004) is completed.

This is to be achieved by provision of a “Temporary Clean Water Bypass System” comprising the transfer of shallow groundwater or surface water from upstream of the Groundwater Cut-off Wall to:

a. The stream bed of Cripple Creek immediately downstream of the leachate system; and/or
Attachment 1—Proposed Conditions of Development Consent

b. The existing nightsoil trenches adjacent to the *Melaleuca linariifolia* forest; and/or
c. Directly into the groundwater table by injecting into a groundwater bore down located gradient of the leachate system

11. The applicant must submit final details of any “Temporary Clean Water Bypass System” required by **Condition 10**, along with confirmation of consultation with the NSW Department of Natural Resources, to Council, for approval by Council, prior to issue of a Construction Certificate.

12. During the operation of any “Temporary Clean Water Bypass System” the applicant must ensure:
   a. Groundwater levels at the extraction point are monitored regularly;
   b. The recovery period after pumping is at least twice as long as the pumping period;
   c. If a consistent decrease in the rest groundwater level prior to pumping is observed, the pumping period and yield is reassessed by an experienced hydrogeologist.

   If any adverse environmental impact(s) are detected all pumping must cease until appropriate contingency and remediation measures are determined.

13. The temporary diversion of existing culvert low flows and any “Temporary Clean Water Bypass System” shall be in effect for the absolute minimum time required to coordinate and complete the associated construction works the subject of this consent and the construction of the Cripple Creek Diversion (Development Consent X04/1497).

   The applicant must notify Council and the NSW Department of Natural Resources, and provide an explanation, if the construction of the Cripple Creek Diversion (Development Consent X04/1497) is NOT COMPLETED within 6 months of the date of issue of this consent.

14. The applicant must notify Council when the construction of the Cripple Creek Diversion (Development Consent X04/1497) is completed.
LAND USE MANAGEMENT

Item 17 - Ordinary Meeting, 13/12/05

Attachment 1—Proposed Conditions of Development Consent

Protection of site features

15. To preserve the natural site features and limit site disturbance,
   a. all natural landscape features including native bushland (comprising trees, shrubs and groundcovers), natural rock outcrops, caves and soil are to remain undisturbed within the areas located outside the footprint of the leachate management system as shown on the approved plans,
   b. ground covers, shrubs and trees outside the footprint of the leachate management system are to be retained,

Any vegetation requiring removal shall be immediately mulched or chipped and stockpiled on site to be used for the restoration at the completion of the works.

Exclusion zone

16. Prior to the commencement of any work on site, including clearing, an exclusion zone must be established and maintained around the location of the leachate management system to prevent damage to existing vegetation/site features. This area is to be clearly identified by the placement of a temporary brightly coloured barrier mesh around the perimeter of the area to be protected and the provision of weatherproof signage to indicate that no entry into the zone or removal of the barrier is permitted.

Within this zone, there is to be:
   a. no placement of temporary buildings or stockpiling of material,
   b. no parking or movement of machinery
   c. no change to the soil grade or level
   d. no changes to soil aeration or hydrological capacity
   e. no open cut trenching
   f. no spillage/disposal of building chemicals of any description.

An inspection of these barriers must be arranged with the Principal Certifying Authority
   a. prior to the commencement of site works
   b. at the first critical mandatory stage inspection.
Attachment 1—Proposed Conditions of Development Consent

**Soil erosion**

17. All exposed earthworks and disturbed areas shall have suitable sediment control measures in place prior to the commencement of construction to prevent soil erosion and the transport of sediment off the site during rainfall and runoff. The sediment control measures shall be continually monitored and maintained for the duration of construction and for six months after completion. All disturbed areas shall be revegetated with native vegetation endemic to the area.

**Rehabilitation of the site**

18. All works indicated in the endorsed Native Vegetation and Weed Management Plan as required by these conditions must be completed within the timeframes set out in the approved plan.

**Native Vegetation and Weed Management Plan**

19. A Native Vegetation and Weed Management Plan (the Plan) shall be developed and implemented for the site. The Plan shall incorporate but not be limited to:

a. Rehabilitation/replanting of all disturbed areas in the vicinity of approved works;

b. Rehabilitation and/or supplementary replanting of the *Melaleuca linariifolia* forest;

c. Replanting of identified areas 1 and 2

d. Replanting of the cleared area northeast of the stormwater ponds approx. 0.25 ha in size;

e. 5 year weed management program; and

f. A timeframe for completion of all tasks

g. On going monitoring and maintenance of the above works.

h. The Plan shall be prepared in accordance with Council’s Draft Guidelines for the Preparation of a Vegetation Management Plan, by a suitably qualified professional with relevant experience in the restoration of natural bushland areas, and submitted to and approved by Council prior to issue of a Construction Certificate.
### Attachment 1—Proposed Conditions of Development Consent

<table>
<thead>
<tr>
<th>Inspection of Rehabilitation</th>
<th>20. Rehabilitation works specified in the approved Native Vegetation and Weed Management Plan shall be implemented immediately it is possible to do so and within timeframes set out in the approved plan. Disturbed surfaces resulting from the approved works shall be revegetated and stabilised. All temporary sediment controls are to be decommissioned and spoils removed to approved landfill or, if uncontaminated, otherwise stabilised. Prior to the issue of Occupation Certificate, a site inspection must be undertaken by Council’s Environmental/Landscape Assessment Officer to ensure compliance with site rehabilitation requirements. A mutually convenient time for this inspection will need to be arranged with the nominated Officer.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitoring and Compliance</td>
<td>21. A photographic record of the areas undergoing weed control treatment, rehabilitation or revegetation works and monitoring should be maintained by the owner of the property before, during and after the work. These photographs will serve as evidence of the work undertaken, and must be made available to Council Officers upon request. The photographic record will allow council to determine the success of the project.</td>
</tr>
</tbody>
</table>
Attachment 2—Proposed Leachate Interception System
Attachment 2—Proposed Leachate Interception System
ITEM NO: 18

SUBJECT: DEVELOPMENT APPLICATION NO. X05/0828 FOR A DWELLING ON LOT 5 DP 31758, NO. 9 EMU ROAD, GLENBROOK

FILE NO: X05/0828

Recommendation:

That Development Application No. X05/0828 for a dwelling on Lot 5 DP 31758, No. 9 Emu Road, Glenbrook be determined pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 by refusing consent to the application for the following reasons.

1. The proposed development does not comply with the planning approach of Local Environmental Plan 2005 (“LEP 2005”) as reflected in:
   a. the principal objectives in relation to identifying and retaining diverse built and landscape elements that contribute to character (clause 12 (h)); and
   b. the relevant Living Conservation zone objectives (clause 23), which are primarily concerned with the retention and enhancement of established residential character and landscape settings.

2. The proposed building in the Living Conservation zone does not represent a suitable design response to the site’s context, as reflected in the following aspects of non-compliance with the Locality Management provisions (clause 15(2)) of LEP 2005:
   a. exceeding the prescribed maximum height of 6.5 metres and maximum height at eaves of 4.5 metres (Division 1, cl 1 – Building Height), and
   b. not retaining or promoting the prominence of the landscape setting, nor incorporating a design that minimises apparent bulk when viewed from the street (Division 1, cl 1 – Building Height), and
   c. protruding above adjacent buildings and inconsistency with the single storey residential character of buildings in the immediate vicinity (Division 1, cl 1 – Building Height), and
   d. providing inadequate setbacks having regard to the bulk and scale of the proposed dwelling and its incompatibility with the streetscape of the surrounding area (Division 1, cl 2 – Building Setback), and
   e. the building is inconsistent with and does not enhance the established character of the adjoining residential area (Division 2, cl. 1 – Retaining character within the Living Conservation zone).
3. Consenting to the proposed development would not be in the public interest having regard to:

a. the extensive plan-making and community consultation process that underpins LEP 2005, and

b. the resulting expectation of residents for the future form of development in their area, and

c. the objective of consistent administrative decision-making based on public planning policy.

Report by Group Manager, Environmental and Customer Services:

Reason for report  The application has been referred to Council for determination at the request of two (2) Councillors.

Applicant  Eden Brae Homes

Owner  Mr D Cox and Ms S Y Thomas

Application lodged  29 July 2005

Property address  Lot 5 DP 31758, No. 9 Emu Road, Glenbrook
Site description

The subject land is located at No. 9 Emu Road, Glenbrook and comprises a single rectangular allotment with a width of 18.29 metres and a length of 40.235 metres resulting in a total area of 735.9m².

The site was occupied by a single storey weatherboard clad dwelling and a garage. An application to demolish/remove the buildings was approved under delegated authority on 23 December 2004. All demolition works have been completed and the site is now vacant.

Pre-lodgement meeting with Applicant

Council planning staff met with the Applicant prior to the lodgement of the application on 12 May 2005. This followed earlier advice from assessment staff concerning the requirements for development. The meeting considered the Applicant’s proposals in the context of the planning framework of (Draft) Local Environmental Plan 2005 and the character attributes of the area. The development proposals discussed (including both one (1) and two (2) storey options) were considered to be markedly inconsistent with the outcomes sought for this established character area. The design proposals for a site of this size were excessive in terms of either site coverage or height and bulk.

Notwithstanding, the Applicant notified his intention to lodge an application and seek recourse to the Land and Environment Court at that meeting. Staff drew the Applicant’s attention to the approach taken by the Court in Guinness at Blue Mountains City Council, which concerned development in the Living Conservation zone that did not accord with the planning approach of then Draft LEP. As that particular proposal could be modified to achieve a suitable character outcome, the Court required its modification to accord with the outcomes sought by the then draft plan as recommended in Council’s planning evidence.

Staff outlined that the proposal for No. 9 Emu Road, Glenbrook was a less appropriate character outcome than the proposal before the Court in Guinness. The proposal would require a significant redesign to accord with the planning approach LEP 2005, the opportunities for which are constrained by the nature of the pre-formulated design and house type that has been proposed.

Proposal

The application seeks consent for the construction of a two storey slab on ground brick veneer dwelling. A copy of the plans showing the site area and extent of the existing and proposed building works is provided in Attachment 1 to this Report.
Development controls  
As the application was lodged prior to the gazettal of Local Environmental Plan 2005 (LEP 2005), Clause 6(4) ‘Savings and Transitional Provisions’ apply to the assessment of this application. This requires the assessment of the proposal under the provisions of Local Environmental Plan No. 4 (LEP 4) with consideration being given to LEP 2005 as if the plan had been exhibited but not made. As the certainty and imminence of LEP 2005 is therefore established, its planning approach is given significant weight for the purposes of this determination.

Zoning:
- Residential 2(a1) under LEP 4;
- Living – Conservation under LEP 2005;
- Blue Mountains Better Living DCP.

Notification  
The application was notified for a period of 14 days from 10 August 2005 to 28 August 2005 to adjoining and nearby properties.

One (1) submission was received during the notification period.

The main issues raised can be summarised as follows.

1. The proposed two storey dwelling is not consistent with the established character of the area which is predominately single storey and would adversely impact on the streetscape;
2. The two storey design would result in overshadowing of neighbouring homes and loss of privacy;
3. Draft LEP 2002 requires 60% of the site to be retained as soft, landscaped or pervious areas.

Issues  
Assessment issues:

1. Principal Objectives of Local Environmental Plan 2005;
2. Living Conservation zone objectives;
3. Building height;
4. Preserving established character;
5. Public submissions;
6. Approach to determination.
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The application has been assessed against the requirements of LEP 4, LEP 2005 and Blue Mountains Better Living DCP. The assessment in relation to LEP 4 is outlined below:

### Local Environmental Plan No. 4

<table>
<thead>
<tr>
<th>Clause</th>
<th>Standard</th>
<th>Proposed</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>cl. 9</td>
<td>Permissibility</td>
<td>The proposed dwelling is permissible in the zone.</td>
<td>Yes</td>
</tr>
<tr>
<td>cl. 39</td>
<td>Height of buildings – maximum 2 storeys.</td>
<td>The proposed dwelling is of two storey construction.</td>
<td>Yes</td>
</tr>
<tr>
<td>cl. 40</td>
<td>Utility services.</td>
<td>The existing dwelling is presently serviced by all utilities.</td>
<td>Yes</td>
</tr>
<tr>
<td>cl. 42</td>
<td>Suitability of site for development.</td>
<td>The property is not mapped as being on bushfire prone. It is not affected by flooding, slip or subsidence. The property is not listed as a Heritage Item nor is it adjacent a listed item.</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The proposed development is considered to be in general compliance with LEP 4. However the development does not comply with the planning approach and a number of key provisions of LEP 2005 as identified below:

### Local Environmental Plan 2005

<table>
<thead>
<tr>
<th>Clause</th>
<th>Standard</th>
<th>Proposed</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>cl. 12</td>
<td>Compliance with the principal objectives of the plan that are relevant to the development.</td>
<td>Refer to discussion below: “1. Principal objectives”</td>
<td>No</td>
</tr>
<tr>
<td>cl. 13</td>
<td>Compliance with the objectives of the Living Conservation zone (clause 23) that are relevant to the development</td>
<td>Refer to discussion below: “2. Zone objectives”</td>
<td>No</td>
</tr>
<tr>
<td>cl. 15(2)</td>
<td>Refer ‘Locality Management: Schedule 2, Part 2 (Living Conservation zone)’</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cl. 32</td>
<td>Permissibility</td>
<td>A dwelling is permissible in the Living – Conservation zone with the consent of Council.</td>
<td>Yes</td>
</tr>
<tr>
<td>Clause</td>
<td>Standard</td>
<td>Proposed</td>
<td>Compliance</td>
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</tr>
<tr>
<td>cl. 44</td>
<td>Environmental Impact - Development shall be designed and sited having regard to any adverse environmental impact.</td>
<td>The proposed dwelling will replace an existing dwelling that is to be demolished. Some exotic and indigenous trees and shrubs are proposed to be removed.</td>
<td>Yes</td>
</tr>
<tr>
<td>cl. 60 (1)</td>
<td>The development is consistent with, or enhances, the established character and streetscape of the surrounding area.</td>
<td>A two storey dwelling is proposed. The buildings in the immediate vicinity have a one storey residential character. The scale and building form proposed is inconsistent with the established character and streetscape of the surrounding area.</td>
<td>No</td>
</tr>
<tr>
<td>cl. 65</td>
<td>A concept landscape plan is required to be submitted. Such a plan would be assessed with reference to zone objectives, which include provision for establishing a landscape setting.</td>
<td>The submitted landscape plan shows two mature eucalypts to retained on the site. Two mature trees have been removed with approval prior to DA lodgement. New planting for the site will comprise four medium sized trees and 50-60m² of shrub beds.</td>
<td>No (May be partly addressed by conditions)</td>
</tr>
<tr>
<td>Clause</td>
<td>Standard</td>
<td>Proposed</td>
<td>Compliance</td>
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</tr>
<tr>
<td>cl. 1(2)</td>
<td>Non-complying building height permitted where: proposal retain prominence of landscape setting and not protrude above adjacent buildings, and building have a design that minimise apparent bulk, and buildings in the immediate vicinity have a 2 storey character, and not exceed a maximum height of 8 metres/6.5 metres at eaves</td>
<td>Refer to discussion below: “3. Building height”</td>
<td>No</td>
</tr>
<tr>
<td>cl. 2</td>
<td>Building setbacks: Front building setback to be within 20% of the average setback of adjoining dwellings or a minimum of 10 metres. Maximum width of a building across the allotment – 75% (for allotments less than 20 metres in width) ie 13.72 metres. Minimum setback – 1 metre. Notwithstanding the above setback provisions, the LEP requires the location of dwellings on the allotment to take account of the bulk and scale of development in ensuring consistency with the existing streetscape.</td>
<td>11.03 metres</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12.83 metres</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.3 metres</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Note: the bulk and scale of development in relation to the site precludes any increases in setbacks to minimise impacts</td>
<td></td>
<td>No (see note)</td>
</tr>
<tr>
<td>Cl. 3 (1)</td>
<td>Site coverage – 30% of allotment area or 160 m² whichever is the greater, (allotments under 1000m²) ie 220.77 m².</td>
<td>The total building site cover including the dwelling and garage is 240.69 m². This equates to site cover of 32.7%.</td>
<td>No (minor non-compliance)</td>
</tr>
</tbody>
</table>
### Local Management: Schedule 2, Part 2 (Living Conservation zone)

#### Division 1 (Building Envelope)

<table>
<thead>
<tr>
<th>Clause</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Cl. 3(4)</td>
<td>Minimum area to be retained as soft, pervious or landscaped areas (excluding hard surfaces) is 60% of the total allotment area.</td>
<td>The landscape plan indicates the existing driveway is to be removed and landscaped and the new driveway will be formed with crushed gravel. On this basis approximately 65% of the allotment being retained as soft, pervious or landscaped areas.</td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Division 2 (Retaining character within the Living-Conservation zone)

<table>
<thead>
<tr>
<th>Clause</th>
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<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cl. 1</td>
<td>A detailed assessment of character shall demonstrate how the proposed development is consistent with and enhances the established character of the surrounding residential area.</td>
<td>Refer to discussion below: 4. “Established character”</td>
<td>No</td>
</tr>
</tbody>
</table>

Notwithstanding the non-compliance with the planning provisions identified above, it is necessary to consider the planning approach and intent of those provisions. This is necessary in considering the merits of the application, but also appropriately taking account of the savings and transitional provisions of LEP 2005.

### Discussion of Issues

1. **Principal Objectives: Identifying and retaining diverse built and landscape elements that contribute to character**

One of the principal objectives of LEP 2005 is to “identify and retain the diverse built and landscape elements that contribute to the character and image of the Blue Mountains”. Building on Environmental Management Plan 2 (EMP 2) as prepared and exhibited in 1994 and 1995, Draft LEP 1997 and then Draft LEP 2002 identified that the locality in which the development is proposed as being characterised by larger allotments and a predominant landscape setting. In the case of Draft LEP 2002, this was identified as part of a character study, which indicated that the area as being within a “Dominant Landscape” character designation.
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Both EMP 2 and the two subsequent draft planning instruments proposed that the locality should be zoned “Living Conservation” and that measures should be put in place to preserve the character and landscape setting. Such an outcome was proposed to be achieved by the introduction of controls such as limiting the height of buildings, bulk, scale and site coverage, in relation to the allotment size. This is a consistent planning position of Council over the past decade, and one endorsed by the State Government and was supported in the major findings arising from the Public Hearing into Draft LEP 1997. Following exhaustive public exhibition processes, Council has zoned the land Living-Conservation to protect this character attribute. The protection of this character is important not only for its intrinsic value to a local sense of place and community identity, but also to the contribution to the tourist industry which draws in part on the character values of towns and villages.

As such the character attribute has been identified and incorporated into Council’s planning framework. The proposed two-storey dwelling does not have the effect of preserving this character attribute or enhancing the streetscape and therefore the proposal is fundamentally at odds with this principal objective of the plan, and the planning framework that underpins that objective.

2. Zone objectives of the Living Conservation zone

As noted above, in assessing the principal character objective of LEP 2005, it is considered that the development does not comply. The objectives of the Living Conservation zone provide further direction for the Council in assessing this aspect of the application. The objectives of the Living Conservation zone, as provided by Clause 23 of the LEP, are reproduced below to assist Council in its deliberation:

(a) To retain and enhance the character of residential areas that are formed by larger allotments and single dwelling houses within a prominent traditional garden setting.

(b) To enhance the landscape character and setting along roads of heritage significance where the road forms a visually significant entrance to a village or a linkage/pathway between major visitor destinations.

(c) To ensure development, including development within adjoining road reserves, retains the prominence of landscape elements and traditional garden settings.

(d) To ensure that established gardens are retained or landscape settings are re-established as part of any development of land, including development involving major alterations and additions.

(e) To allow for a limited range of non-residential land uses where these are conducted in association with a predominantly residential land use and are consistent with the retention of a residential character based on a landscape or open space setting.

In assessing the proposed development against the objectives outlined above it is considered that Clause 23 (b) and (e) are not relevant to the proposed development.
Objective (a) (retaining and enhancing the character of areas formed by larger allotment sizes) takes a similar form to the corresponding Principal Objective of the plan in that it seeks to retain and enhance character. In this case, the character of the area is derived from generally single storey residential developments. The second contributing element is that the scale and form of dwellings in relation to allotments is such that there is a predominant landscape or garden setting which characterises the area. The preservation of this established character is the primary role of the Living Conservation zone. It is considered that the proposed two-storey development, the bulk and scale of which is inconsistent with the streetscape, does not comply with this objective. Further, should the proposal be approved, it would serve to erode this character attribute. It would set a precedent for future two storey developments of this type that would be inconsistent with the planning policy developed to protect this aspect of the built environment.

Objectives (c) and (d) (Retaining and re-establishing landscape settings) are also relevant considerations. The proposed development will retain the limited vegetation presently on the site. While the development will comply with the LEP requirements in terms of front and side setbacks, this is at the cost of not complying with building height. Accordingly, the apparent bulk of the proposed dwelling when viewed from the road will adversely impact on the existing character of the landscape setting. The view lines available to the backdrop or landscape canopy is highly compromised compared to the situation where (1) the existing dwelling was retained, (2) a new single storey structure was proposed or (3) second storey elements made up a component of the building rather than extending across the elevations. The limited landscaping proposed does not serve to ameliorate the streetscape impacts of the development.

In assessing the proposed development it is therefore evident that the proposed development is contrary to the stated objectives of the Living Conservation zone in important respects.

3. Building Height

The development consists of a two-storey brick veneer dwelling with an overall height from the ground level to the ridge of 7.35 metres and a maximum height at eaves of 5.6 metres.

Clause 15(2) of LEP 2005 requires compliance with the relevant Locality Management provisions for the Living Conservation zone within Schedule 2, Part 2 (the “Locality Management provisions”). The prescribed maximum height of a building is one of a suite of measures designed to ensure that new developments retain and enhance the established character of the surrounding residential area.

The proposed dwelling does not comply with clause 1(1) of the Locality Management provisions in that the proposed dwelling exceeds the 6.5 metre height limit to the ridge and the 4.5 metre height limit to the eaves. However under clause 1(2), consent may be granted for a building that does not comply with subclause (1), but only where the consent authority is satisfied that the each of the following factors is satisfied:
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(a) the building will retain the prominence of the landscape setting and will not protrude above the existing tree canopy of vegetation adjacent to the building or above adjacent buildings, and
(b) the building incorporates a design that minimises its apparent bulk when viewed from a public road, and
(c) …[only applicable in a Protected Area—Period Housing Area]
(d) buildings in the immediate vicinity in the Living—Conservation zone have a 2 storey residential character, and
(e) the building does not exceed a maximum building height of 8 metres or a maximum height at eaves of 6.5 metres.’

While the proposed building would not protrude above the two mature trees on the site, it protrudes above a significant portion of the landscape backdrop or canopy as viewed from the street. Importantly, the proposed two-storey dwelling would also protrude above the adjacent buildings, which are both single-storey. This impact is exacerbated by the unrelieved bulk of dwelling, which is the product of the side walls of the second storey being located over the corresponding walls on the ground floor. As the second storey is not contained wholly or partly within the roof void, and accommodates a high proportion of floor space within the second storey, the design of the building does not minimise its apparent bulk when viewed from the road.

In relation to the residential character in the immediate vicinity in the Living—Conservation zone, it is considered that it is predominantly a single storey character. Buildings in the immediate vicinity are limited to single storey dwellings, or present as single storey dwellings with a second storey contained within a lofted roof design with dormer windows and the like on landscaped allotments of 2000m². More broadly, of the 32 dwellings in Emu Road, there are only six (6) dwellings in various locations along the street approved under Local Environmental Plan 4 over may years that contain two storey components. Of these buildings, three (3) contain the second storey within a lofted roof design, with two (2) such dwellings visible from the subject site. With the possible exception of one (1) dwelling located some 300 metres from the site, no dwellings have been identified in this locality that are equivalent to the height and bulk of the proposal.

As the prevailing residential character in the immediate vicinity is that of single storey dwellings, and taking account of the visual bulk of the dwelling and its impact on the existing streetscape, LEP 2005 limits the maximum building height to 6.5 metres.

4. Preserving established character of the Living Conservation zone

Arising from the consideration of the principal objectives, zone objectives and the primary provisions of LEP 2005, it is apparent that the proposed development is inconsistent with the established character of the streetscape.
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The principal concerns with the development arise from the height, bulk and scale of the development. Placing this development in context, the proposed dwelling has a total floor space of approximately 259 square metres. Should it be proposed in the Living-General zone it would be equal to the maximum space ratio (FSR) of 0.35:1 applying to dwellings in that zone. Within the context of Living Conservation zone and its provisions, the assessment of this application suggests its incompatibility with the planning approach of LEP 2005 in preserving character.

5. Public submissions

The following comments are made in relation to the issues raised in the submission received following notification of the application.

- The proposed two storey dwelling is not consistent with the established character of the area which is predominately single storey, and would adversely impact on the streetscape.
  
  Comment: This matter has been considered above in evaluating the proposal in relation to the matters prescribed by s.79C of the Act.

- The two storey design would result in overshadowing of neighbouring homes and loss of privacy.
  
  Comment: whilst some shadow will be cast onto the adjoining land, the proposed building will not overshadow the neighbouring dwelling on the southern side of the property due to the distance separating the two buildings.

  It is considered that the setbacks to the rear and side boundaries and the proposed retention of the existing vegetation will minimise any adverse impact on the privacy of adjoining properties.

- Draft LEP 2002 requires 60% of the site to be retained as soft, landscaped or pervious areas.
  
  Comment: the concept landscape plan indicates the existing driveway is to be removed and landscaped and the new driveway will be formed with crushed gravel. This will result in approximately 60% of the allotment being retained as soft, pervious or landscaped areas.

6. Approach to determination

The levels of non-compliance with the provisions of the planning instrument, which have been identified above, do not necessarily mean that an application must be refused. Modifications to an application may be considered to bring it into accord with the planning framework. It is clear that a broad range of design options could be employed to provide for a high quality residential outcome in the context of this allotment that complies with the requirements.
During the initial stages of the assessment process the Applicant was requested to submit amended plans that addressed the requirements of the, then, Draft LEP 2002. Following the request to amend the submitted plans, a number of submissions were subsequently received from the Applicant in support of the proposal, sighting the existing streetscape in their submission to demonstrate compliance with the LEP. In the circumstances of this case, the Applicant has not proposed any amendments or modifications to the application to align the development with the requirements of the planning framework.

In making its determination in relation to the LEP 2005 (which is regarded as draft plan by virtue of cl. 6(4), albeit a plan that is certain and imminent), the following observation of the Court of Appeal in *Terrace Tower* is relevant:

6 Notwithstanding “certainty and imminence”, a consent authority may, of course, grant consent to a development which does not comply with the draft instrument. Different kinds of planning controls will be entitled to different levels of consideration and of weight in this respect.

7. Where a draft instrument seeks to preserve the character of a particular neighbourhood, that purpose will be entitled to considerable weight in deciding whether or not to reject a development under the pre-existing instrument, which would in a substantial way undermine that objective.

In assessing the effect of an approval on a planning approach that seeks to preserve character and proposes a significant and targeted planning intervention to restrict incompatible development, it is necessary to understand the intention of provisions and the veracity of the planning policy. This has been outlined above. In making a determination of this application, it is necessary for Council to:

- determine whether the proposed development is incompatible with the aim and principles of LEP 2005.
- consider the purpose and strategies underpinning the character and landscape considerations of the planning instruments,
- weigh the required variations to the provisions of the plan against the objectives of the Living Conservation zone,
- consider the individual merits of the proposal and whether it represents a reasonable outcome within this streetscape,
- assess the effect of an approval on the planning framework.

Such an approach is informed by the framework for decision-making outlined by the previous Chief Justice of the Land and Environment Court in *Stockland*:

*Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property.*

(McClellan, CJ, *Stockland* at 87)
LAND USE MANAGEMENT

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Such a position necessarily extends to LEP 2005, which is the product of an extensive plan making process, set against the need to balance the merits of each case against the nature of the provisions under consideration and the planning approach that underpins them. As demonstrated above, it is considered that the proposed development does not accord with the planning approach of LEP 2005 in fundamental respects.

Conclusion

The proposed development complies with the various provisions of LEP 4, however it represents a marked deviation from the planning strategies and locality management provisions of LEP 2005.

Should the development proceed, it is anticipated that it would have an unacceptable impact on the character of the area, the landscape setting and compromise the objectives of the plan and the Living Conservation zone. This in turn would erode the character of the area and set a precedent for similar developments in the future. On balance, the proposal is considered to represent a poor residential outcome in this locality.

The inconsistencies with Council’s planning framework are such that the application is recommended for refusal.
Attachment 1—Plans
Attachment 1—Plans
ITEM NO: 19

SUBJECT: SECTION 96 (2) APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. X04/1255 FOR ALTERATIONS AND ADDITIONS TO SCENIC WORLD’S EASTERN ANCHOR TERMINAL TO INCLUDE A LANDING PLATFORM, SHELTER AND ROAD CONSTRUCTION TO PROVIDE A BUS PICKING UP AND SETTING DOWN AREA AT SKYWAY LEASE, PART PORTION 59 DP 751657, CLIFF DRIVE, KATOOMBA

FILE NO: X04/1255

Recommendation:

That Development Application No. X04/1255 for alterations and additions to Scenic World’s eastern anchor terminal to include a landing platform, shelter and road construction to provide a bus picking up and setting down area at Skyway Lease, Part Portion 59 DP 751657, Cliff Drive, Katoomba be modified pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, subject to modified conditions of consent as shown at Attachment 1 to this Report.

Report by Group Manager, Environmental and Customer Services:

Reason for report: The proposed modifications, as outlined in this report, are referred to Council for determination, as Council also determined the original application. This is in accordance with Council’s current policy and delegations.

Applicant: Mr S Molino, Molino Stewart Pty Ltd

Owner: Department of Crown Lands (Ord No. 9—Lessee)

Application lodged: 27 July 2005

Property address: Skyway Lease, Part Portion 59 DP 751657 off Cliff Drive with in Katoomba Falls Reserve, Katoomba
Introduction

The Section 96 modification was submitted to Council on 30 August 2005 seeking to carry out alterations and additions to the eastern anchor terminal of Scenic World’s skyway attraction.
LAND USE MANAGEMENT

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The works proposed will allow passengers to board and alight at the eastern anchor terminal and enable coaches to drop off and pick up passengers. It was considered these works would benefit tourism by providing pedestrian options between Scenic World and Echo Point with fewer movements of motor vehicles, consistent with the objectives of the Echo Point Plan of Management.

The proposal was publicly exhibited and attracted submissions both in support and opposed to the proposal. Those opposed to the development raised issues relating to permissibility, traffic safety and environmental impact, whilst those in support stated the perceived benefits to tourism.

The above issues were assessed in the Council Report of 8 March 2005, with Council resolving to approve the application subject to conditions of consent.

The applicant has subsequently submitted two (2) Section 96(2) applications (received 3 June 2005 and 27 July 2005) seeking amendment to a number of conditions from the development consent. The first of the Section 96(2) applications essentially involved the completion of the development in two (2) stages with modification to a number of conditions to reflect the proposed staging format. This application was approved by Council at its meeting of 1 November 2005.

The second Section 96(2) application is assessed in this Report.

Proposal

The application seeks approval to modify conditions of the development consent relating to the following:

- The design of the bus loop road and its intersections with Cliff Drive;
- The design and location of the footpath between the site and Katoomba Street (ie. in Cliff Drive/Birdwood Avenue);
- Funding arrangements for the maintenance of Prince Henry Cliff Walk.

Accordingly, the applicant seeks Council support to modify the current conditions of consent, with the applicant’s reasons for these modifications summarised as follows:
a. Condition 13c — to make it clearer and more precise;
b. Conditions 19a xii and 19b ix (street lighting for bus loop and intersections) — in accordance with further discussion with Council technical staff and agreements that street lighting is unnecessary;
c. Conditions 19b ii — to remove the need for median rumble bars, which are considered unnecessary and a potential traffic hazard in this location;
d. Condition 19b x — to remove the requirement for pedestrian pathways along the loop road and to discourage pedestrian movement via the loop road.
e. Condition 19c (design of the foot path along “Cliff Drive) — reflect further discussions with Council technical staff as shown on the revised attached plans.’

Notification

The application was notified to adjoining and nearby properties and advertised in the Blue Mountains Gazette in accordance with the provisions of the Environmental Planning and Assessment Act (Regulations 2000) and Council’s Community Consultation Policy.

A fourteen (14) day exhibition period commenced on 9 November 2005 and, at its conclusion, Council had received two (2) written submissions, with the issues raised summarised as follows:

- A modified footpath from Katoomba Street to the southern anchoring point will result in significant loss of vegetation.
- Claims that much of the pedestrian traffic along Prince Henry Walk will not be attributed to the eastern terminal seems to contradict statements in the original development application.
- Installation and maintenance of road reflectors, if required, should be borne by the applicant.
- Any conditions relating to lighting should allow their installation at a later date, if required.
- New pathways should be natural or dark coloured.

The issues raised above have been considered and addressed in the following Report. It should be noted that the conditions of consent require that all engineering works associated with the construction of the approved roadway and pathway shall be at the applicant’s expense.
The written submissions also provided support for the following aspects of the modified proposal.

- Deletion of the lighting provisions.
- Deletion of the rumble bar medians.
- The provision of pedestrian access on both the northern and southern sides of the loop road considered unnecessary.

Assessment of Modifications

Under Section 96(2) of the Environmental Planning and Assessment Act 1979, Council must be satisfied that the development, as modified, is substantially the same development as that originally approved.

The modifications sought in this Section 96(2) application can generally be described as being:

- Modifications to conditions in relation to the design of the bus loop road and its intersections with Cliff Drive;
- Modifications to the design and location of the footpath in Birdwood Avenue;
- Modifications to the consent condition regarding funding for the Prince Henry Cliff Walk.

Other than the funding issue, these modifications involve work to Stage 2 of the project approved by Council at its meeting held 1 November 2005.

The issues for assessment therefore are:

1. Whether or not the modifications sought are appropriate for the development and in the general public interest,

and, if so;

2. Whether the development remains substantially the same as that for which consent was originally granted by Council.

1. Modification of conditions

An assessment of the proposed modifications to conditions 13(c), 19(a)(xii) and 19(b)(ix), 19(b)(ii), 19(b)(x) and 19(c) is set out as follows.
Condition 13(c) (Environmental Management)

The Prince Henry Cliff Walk shall at all times be maintained at an appropriate standard and shall not be closed as a result of additional pedestrian movement arising from this development. Accordingly, sufficient funding must at all times be available to ensure necessary work is carried out if and when it is deemed necessary.

The reason put forward by the applicant in support of this modification is that people boarding and alighting the Skyway from the eastern anchor terminal do not specifically rely on the presence of the Prince Henry Cliff Walk, and in any case would comprise a small amount of all the people who would use the walk. It is stated that over 100,000 pedestrians currently use the relevant section of the track between Scenic World and Echo Point. For this reason, pedestrian traffic along the Prince Henry Cliff Walk cannot be specifically attributable to the Skyway’s Eastern Terminal and accordingly, the track may be closed for reasons that do not involve this development.

Comment
The point raised by the applicant is understood however the boarding and alighting of passengers via the Skyway’s eastern anchor terminal will intensify the movement of pedestrians along Prince Henry Cliff Walk between Echo Point, the Cliff View Lookout and Scenic World, a position made clear in the Report to Council of 17 March 2005 for the alterations and additions to the eastern anchor terminal.

Notwithstanding this, the applicant has put forward an amendment that will achieve the requirements and intent of the condition and also reflect the current agreements entered into by the applicant and Council for the continued maintenance and future enhancement of Prince Henry Cliff Walk. Therefore it is proposed to amend the condition as follows:

Scenic World shall enter into an agreement with the Department of Environment and Conservation and Blue Mountains City Council to pay an annual fee considered by these organisations to be sufficient to cover the costs of walking track maintenance to an appropriate standard, commensurate with the likely increased use resulting from the development.

No objections therefore are raised with this modification replacing the current wording of Condition 13(c).

Condition 19(a)(xii)

The provision of lighting including street lighting at no cost to Council. Lighting is to be maintained and operated by the applicant/lease owner at no cost to Council.

The lighting is to be provided in accordance with the relevant standards and shall address and be operational when foggy or bad weather conditions prevail.
This condition involves the provision of lighting along the bus loop road. The applicant seeks to delete this condition as the provision of this lighting is unnecessary making the point that the Skyway only operates during daylight hours and buses will travel along the loop road at low speed. Provision of lighting would therefore provide little benefit but have significant impacts including vegetation removal and visual pollution as a result of the presence of power lines and poles and lighting which may not necessarily fit in with the bush setting when viewed from different vantage points.

Comment
While the applicant’s contention that the lighting will have an adverse environmental and visual impact is not entirely agreed with, the key issue is that the Skyway is to operate only during daylight hours. On this basis the need to provide lighting is considered unnecessary and would generally be out of keeping with the surrounding bush setting. There will be times when foggy or wet weather will prevail on certain days however sufficient ‘day’ light would be available, including the use of headlights, to satisfactorily address these situations.

Accordingly, it is agreed that this condition should be deleted however it is recommended that the condition be replaced with the following:

*The operation of the Skyway shall be limited to daylight hours only. Any change to these hours of operation shall not occur without prior Council approval.*

Any variation to the above condition would require a new application being lodged with Council for assessment. The issue of whether additional lighting should be provided as a result of such a proposal could be appropriately assessed by Council at that time.

**Condition 19(b)(ii) (Engineering works – Cliff Drive Road works)**

The provision of 0.6 metres wide rumble bar medians in Cliff Drive to deter vehicles from turning right from Cliff Drive into the intersections and to deter vehicles from turning right from the northern intersection. The layout of the intersection is also to physically restrict the unapproved vehicular movements.

The applicant seeks to delete the requirement for rumble bar medians in Cliff Drive on the grounds of actual necessity and the likelihood that they may prove to be a traffic hazard.

Comment
A further review of this requirement by Council’s technical staff indicates that it is considered unnecessary to specifically require median rumble bars when other options are available.

Accordingly, it is recommended that the conditions be modified to provide greater flexibility in traffic design.
Condition 19(b)(ix)

The provision of lighting and the maintenance of such lighting at no cost to Council.

In this regard, a minimum standard is T5 lighting with 2 x 14 watt lights at both intersections.

As with the provision of lighting along the bus loop road, the applicant again raises the issue of the necessity for this condition, in particular when visual and environmental impacts are taken into account. The applicant does recognise the importance of having the intersections clearly defined however is of the opinion that alternative solutions are available.

Comment
Street lighting currently does not exist in Cliff Drive through this section of Katoomba Falls Reserve. The provision of lighting would therefore involve some impact both visually and environmentally with its establishment and continued presence.

As the applicant has stated, the eastern anchor terminal will only be operational during daylight hours and as such the concern that led to this condition being imposed is diminished.

Concern over vehicular movement at the intersections of the bus loop road at times of poor visibility, principally the northern egress intersection, remains. However, it is considered that other engineering options, such as appropriate signage or alternative forms of lighting could satisfactorily resolve this situation, therefore it is recommended that the condition be modified to provide greater flexibility and incorporate other options.

Condition 19(b)(x) (Internal pathways)

The provision of pedestrian access and paths in particular linking the path adjacent to the bus bays and providing access between the proposed intersections together with linkages to the path required in condition 19(c) below.

The applicant seeks to delete the pathway between the bus bays and northern intersection of the bus loop road with Cliff Drive on the grounds of actual necessity. It is stated that this pathway would create unnecessary bushland impacts by the removal of vegetation when the existing and nearby sealed section of Prince Henry Cliff Walk is available and may be accessed from the bus bays. The path from the bus bays to the southern intersection of the loop road and Cliff Drive is to remain as a pedestrian link with the new footpath to be constructed between the site and Katoomba Street.

Comment
The applicant’s request is to remove the northern section of the path only, due to its close proximity to the existing sealed section of Prince Henry Cliff Walk. This is able to be accessed directly from the eastern anchor terminal, which in essence means that the requirement for the northern section of the pathway could be viewed as ‘doubling up’.
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It is recommended that this condition be modified to not require a formal pathway on the northern part of the bus loop road.

**Condition 19(c) (Pedestrian pathway)**

The construction of a 1.5 metre wide sealed pedestrian pavement from Katoomba Street to the southern access road to cater for pedestrians seeking to access the Skyway via Cliff Drive to the east and return. Such path shall be the subject of engineering design and needs to comprise, in order to minimise tree removal, a path on the southern side of Birdwood Avenue for an approximate distance of between 60–80 metres from Katoomba Street then on the northern side of Cliff Drive to a point allowed by sight distance requirements to cross back to the south side. The work shall include but not be limited to the following:

i. Any necessary drainage and works to make the construction effective.

ii. Where there is no existing kerb and guttering, kerb and guttering and the adjacent sealed shoulder pavement is to be provided in order to support, protect and provide adequate drainage.

iii. Kerb ramps at road crossing points.

iv. The alignment of the kerb and guttering and path paving is to provide for 8.4m wide minimum road carriageway in the straights (wider in bends).

The applicant seeks to modify the design and route of the pathway required by this condition. The revised design will remove the need for pedestrians to cross Birdwood Avenue whilst walking from Echo Point and other locations, such as Lilianfels, Echos via Council's roadways to the Scenic Skyway Eastern Terminal.

**Comment**

This alternative proposal has been the subject of further inspection and review by Council technical staff and it is considered that an acceptable and aesthetically attractive pathway can be provided on the southern side of Birdwood Avenue between the site and Katoomba Street. An engineering plan showing this pathway forms Attachment 2 to this Report.

This pathway may be provided in a manner that requires minimal loss of vegetation and obviates the need for pedestrians to cross Birdwood Avenue as is the case with the current proposal. It is therefore considered that the pathway shown at Attachment 2 to this report should be supported.

**Conclusion**

In brief, the Section 96(2) application before Council seeks to make modifications to certain conditions of the Development Consent. In general, the changes to the development are considered to have merit and are supported. The development as modified is considered to be substantially the same development as approved and as such the proposal is not contrary to the provisions of Section 96(2) of the Environmental Planning and Assessment Act 1979 (as amended).

Accordingly, it is recommended that each of the conditions be modified in the terms stated in Attachment 1 to this Report.
Attachment 1—Amended Conditions of Development Consent

(Recommended amendments are in italics for ease of reference)

Condition No. 13(c) be amended to read:

<table>
<thead>
<tr>
<th>Environmental management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 13 December 2005</td>
</tr>
<tr>
<td>13 c. Scenic World shall enter into an agreement with the Department of Environment and Conservation and Blue Mountains City Council to pay an annual fee considered by these organisations to be sufficient to cover the costs of walking track maintenance to an appropriate standard.</td>
</tr>
</tbody>
</table>

Condition No. 19(a)(xii) be deleted and replaced by:

<table>
<thead>
<tr>
<th>Engineering works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 13 December 2005</td>
</tr>
<tr>
<td>19 Loop Road Construction</td>
</tr>
<tr>
<td>xii. The operation of the Skyway shall be limited to daylight hours only. Any change to this position shall not occur without prior Council approval.</td>
</tr>
</tbody>
</table>

Condition No. 19(b)(ii) be amended to read:

<table>
<thead>
<tr>
<th>Engineering works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 13 December 2005</td>
</tr>
<tr>
<td>19 Southern and northern intersections with Cliff Drive and associated works</td>
</tr>
<tr>
<td>ii. The provision of appropriate traffic safety infrastructure, to be determined by engineering design, to ensure vehicles are deterred from making right hand turns from Cliff Drive into the site at the bus loop road intersections.</td>
</tr>
</tbody>
</table>

Condition No. 19(b)(ix) be amended to read:

<table>
<thead>
<tr>
<th>Engineering works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 13 December 2005</td>
</tr>
<tr>
<td>19 Southern and northern intersections with Cliff Drive and associated works</td>
</tr>
<tr>
<td>ix. Subject to engineering design, the provision of lighting and/or other intersectional treatment that ensures the presence of each bus loop road intersection is clearly defined to motorists at time of poor visibility. In this regard, the minimum standard for any lighting is T5 lighting with 2 x 14 watt lights.</td>
</tr>
</tbody>
</table>
Attachment 1—Amended Conditions of Development Consent

Condition No. 19(b)(x) be amended to read:

<table>
<thead>
<tr>
<th>Engineering works</th>
<th>19</th>
<th>b. Southern and northern intersections with Cliff Drive and associated works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 13 December 2005</td>
<td>x</td>
<td>The path adjacent to the bus bays is to be extended to the southern intersection of the bus loop road with Cliff Drive to meet with the path required in Condition 19(c) below.</td>
</tr>
</tbody>
</table>

Informal graded gravel pedestrian access is to be provided in Cliff Drive on the western side between the southern and northern intersections of the bus loop road with Cliff Drive.

Condition No. 19(c) be amended to read:

<table>
<thead>
<tr>
<th>Engineering works</th>
<th>19</th>
<th>c. Path paving construction – Cliff Drive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 13 December 2005</td>
<td></td>
<td>The construction of a 1.5 metre wide sealed pedestrian pathway on the southern side of Birdwood avenue extending uninterrupted between the existing footpath in Katoomba Street to the required footpath to be constructed pursuant to Condition 19(b)(x) above. The path shall be generally in accordance with Preliminary Drawing No. C 200A prepared by SKM Pty Ltd and dated 25 June 2004 with the final location being subject to engineering design. The work and location is to include/address but not be limited to the following:</td>
</tr>
</tbody>
</table>

i. Any necessary drainage and works to make the construction effective.

ii. Loss of indigenous vegetation to be minimised. In this regard, the path must be located within the existing areas of site disturbance within the footpath area of the road reserve.

iii. Uniform grades are to be provided.

iv. Measures to protect tree roots shall be incorporated where tree roots are encountered.

v. All areas of site disturbance shall be appropriately mulched and revegetated with appropriate ground covers.
vi. Both sides of the asphaltic concrete path shall be retained by timber edging of appropriate width, staked or secured in order that it remains in place for the life of the path.

vii. The minimum pavement thickness shall be subject to engineering design detail but not less than 25 mm AC5 100 mm DGB 20 on an approved subgrade.
Attachment 2—Engineering Plan of Pathway
ITEM NO: 20

SUBJECT: DEVELOPMENT APPLICATION NO. X05/0708 FOR AN 11 (ELEVEN) DWELLING SENIORS LIVING DEVELOPMENT ON LOT 5 DP 20951, LOT 1 DP 361128 AND LOT 3 DP 570465, NOS. 416 AND 418 HAWKESBURY ROAD, WINMALEE AND NO. 1A WHITE CROSS ROAD, WINMALEE

FILE NO: X05/0708

Recommendation:

That Development Application No. X05/0708 for an 11 (eleven) dwelling seniors living development on Lot 5 DP 20951, Lot 1 DP 361128 and Lot 3 DP 570465, Nos. 416 and 418 Hawkesbury Road, Winmalee and No. 1A White Cross Road, Winmalee be determined pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 by refusing consent to the application for the following reasons:

1. The proposal is not permissible within the context of the Seniors Living State Environmental Planning Policy in that the application involves the use of land zoned Environmental Protection and land designated as bushfire prone land – vegetation category I.

2. The proposal is contrary to Section 79C(b) of the Environmental Planning and Assessment Act owing to inappropriate impact on the surrounding area as a result of the development’s bulk, scale and character.

3. The proposal has not been granted a clear and indisputable Bush Fire Safety Authority from the Rural Fire Service.

4. The proposal is not permissible under Section 79C(a)(i) of the Environmental Planning and Assessment Act, as outlined above, and is inconsistent with LEP No. 4 in that the development would not achieve the required setbacks to an arterial road and the development would exceed permissible densities on the site.

5. The proposal is not permissible under Section 79C(a)(ii) of the Environmental Planning and Assessment Act, as outlined above, and is inconsistent with the provisions of LEP 2005 in particular with regards to the objectives of the plan and the zone and the potential environmental impact of development on the Environmental Protection zone.
Report by Group Manager, Environmental and Customer Services:

Reason for report  Application has a value in excess of $1,000,000.

Applicant  Mr W M Wheatley

Owner  Mr C W M Wheatley and Mrs M T Wheatley and Mr W M Wheatley and Garplea Pty Limited

Application lodged  29 June 2005

Property address  Lot 5 DP 20951, Lot 1 DP 361128 and Lot 3 DP 570465, Nos. 416 and 418 Hawkesbury Road, Winmalee and No. 1A White Cross Road, Winmalee

Background  This application is the second application for units for aged persons on the subject site. The previous application was lodged for twelve (12) units under the provision of State Environmental Planning Policy No. 5 on 20th August 2003 and was withdrawn on 19 April 2004. The previous proposal had a number of issues that were not resolved, particularly with regards to achieving appropriate asset protection zones on the site.
The applicant has received advice from Council officers on numerous occasions with regards to the capacity of the site for development.

**Site description**

The subject site incorporates three allotments with two road frontages. The site is in a relatively prominent position east of the Winmalee shopping centre. The total parcel of land constitutes 9,739m², of which 162m² is zoned as Regional Transport Corridor (Road) and 4,833m² is zoned as Environmental Protection under the provisions of Local Environmental Plan 2005. The remaining 4,742m² is zoned Living General and has been mapped as an Accessible Housing Area.

The site has been partially cleared and contains a moderate level of diversity, particularly within that part of the site known as 1A White Cross Road where the land is zoned Environmental Protection. The site slopes to the gully area at the northern end of the site. The existing remnant vegetation consists predominantly of Ironbark and Turpentine forests.

The site is mapped as containing a watercourse at the rear of the site.

Surrounding development to the east and west primarily consists of residential development and to the north, bushland on large private allotments.

**Proposal**

The subject development application seeks approval for the demolition of two (2) existing residential buildings and the construction of eleven (11) Seniors Living/Accessible Housing units on the site. The proposal also involves consolidation and subdivision of part of the site and internal access, the construction of circulation and car parking areas, landscaping works and clearing of bushland for asset protection zones.

The proposal seeks to consolidate the eastern portion of 1A White Cross Road with Nos. 416 and 418 Hawkesbury Road Winmalee creating an allotment with an area of 8,336m². A residual (vacant) lot will also be created fronting White Cross Road, with an area of 1,402m².

The proposal will result in encroachments into land zoned Environmental Protection of buildings (Unit 11), works ancillary to buildings (decks stairs/patio areas for Units 8 and 7) and the provision of Asset Protection Zones.
The proposal provides for eleven (11) units, 3 of these being 3 bedroom units and eight (8) being 2 bedroom units. The proposal provides thirteen (13) garages on site. No visitor parking spaces are proposed.

**Development controls**

The application was lodged prior to the gazettal of LEP 2005 and as such the savings and transitional provision provided at Clause 6(4) of LEP 2005 apply to this application. This requires the assessment of the application as though LEP 4 and LEP 1991 were still in force whilst giving significant weighting to the provisions of LEP 2005.

The site was zoned:

- Residential 2(a1) under the provisions of Local Environmental Plan 4 (LEP 4), as amended and
- Environmental Protection under Local Environmental Plan 1991 (LEP 1991).

The site has been rezoned:

- Living General, (Accessible Housing Area);
- Environmental Protection General; and
- Regional transport Corridor (Road)

under the provisions of Local Environmental Plan 2005 (LEP 2005).

The development is sought on the proposed new consolidated allotment of 8336m².

It is calculated that the new consolidated allotment will have areas zoned as follows:

- Living General (Accessible Housing Area): 3,503m²
- Environmental Protection: 4,833m²

**Notification**

The application was advertised for a period of 30 days from 20 July 2005 until 19 August 2005 in the Blue Mountains Gazette as well as written notification to adjoining and nearby properties.

No submissions were received.

**Issues**

Assessment issues:

1. Integrated development – RFS
2. Compliance with Seniors Living Policy
3. Compliance with statutory requirements
Discussion of Issues

1. Integrated Assessment – Rural Fire Service

The application is defined as Integrated Development under the provisions of Section 91 of the Environmental Planning and Assessment Act (EP and A Act) and was accordingly referred to the Rural Fire Service (RFS). Consent cannot be granted to the development without the concurrence of the RFS. The RFS initially refused to issue a Bush Fire Safety Authority due to the consideration that the proposal was not permissible as Seniors Living Housing on land that contains land zoned Environmental Protection and bushfire prone land vegetation category 1.

Subsequent advice received from the RFS determined that should the application be supported by Council, then the RFS would issue a conditional Bush Fire Safety Authority. The advice received reiterated concerns in relation to the proposal’s permissibility with regards to provisions and objectives of the Seniors Living policy. However the RFS acknowledged that if the site were cleared and mapped incorrectly then the Bushfire Safety Authority would be issuable. The subject site is not incorrectly mapped and vegetation on the site is identified as being scheduled. This situation effectively suspends the RFS’s conditional support for the proposal and as such eliminates the possibility of supporting the application as the proposal requires concurrence from the RFS.

2. Compliance with Seniors Living Policy

The proposal has been lodged as a Seniors Living development and must therefore comply with the provisions of the Seniors Living Policy. Seniors Living is a State Environmental Planning Policy and the provisions of this policy have precedence over local environmental plans. Seniors Living housing is permissible in the Blue Mountains on land designated as an Accessible Housing area.

Parts of the subject site have been designated as an Accessible Housing Area across those parts of the site zone Living General. The application proposes the construction of Seniors Living Housing on those parts of the site zoned Living General and a minor encroachment of Unit 11 into the land zoned Environmental Protection. The application also proposes to utilise land zoned Environmental Protection for the purposes of Asset Protection Zones required for the provision of the Seniors Living housing. The use of the Environmental Protection land for construction of units and to provide asset protection zones is considered to constitute development and forms part of the Seniors Living development proposal.

The part of the site zoned as Environmental Protection contains land mapped as bushfire prone land – vegetation category 1 and contains vegetation that is possibly consistent with shale sandstone transition forest (Schedule 2B or 2C). This vegetation community is listed as threatened species under the Threatened Species Act and also listed under federal legislation (the Environmental Protection and Biodiversity Conservation Act) as an item of National Environmental Significance. It is proposed to clear this land for asset protection purposes associated with the use of the land for Seniors Living development.
Schedule 1 of the Seniors Living policy exempts land that is zoned Environmental Protection and land that is mapped as bushfire prone land – vegetation category 1 from development for the purposes of Seniors Living housing. The development is therefore prohibited on the land zoned Environmental Protection and bushfire prone – category 1. Development for the purposes of Seniors Living (including associated asset protection zones) must be contained on those parts of the site not subject to these limitations.

The development proposed extends into parts of the site that are not designated to permit the Seniors Living housing. The proposal is considered to be an over development of the site and extends beyond the capacity of the site and into land where Seniors Living/Accessible Housing is not permissible.

The application did not provide a statement of compliance with the Seniors Living policy despite requests be Council to do so. However assessment of the proposal identify the following areas where the proposal does not comply with the policy:

**Clause 31 Neighbourhood amenity and streetscape**
The proposal provides a setback of 8 metres to Hawkesbury Road. This setback provides little opportunity for screening landscaping to be provided for the development. The inclusion of vehicular turning bays within the frontage of the two front dwellings will increase the amount of hard surfaces and further reduce landscaping opportunities.

The existing streetscape is characterised by single residential development. The application does not make adequate attempts to harmonise with the existing character of the locality.

**Clause 32 Visual and acoustic privacy**
The design and layout of the development results in driveways parking areas and paths being located in close proximity to living areas and bedrooms.

**Clause 33 Solar access and design for climate**
The applicant has failed to provide shadow diagrams, providing information on solar access to the development. It cannot be clearly demonstrated that the minimum requirements for solar access are achieved on the site.

**Division 4 Self contained dwellings – standards concerning access and usability**
The applicant has not provided adequate details with regards to compliance with these specific clauses.

**Clause 81 Standards that cannot be used to refuse development consent for self contained dwellings**
The application provides 11 garages and 3 external (from the proposed buildings) car parking spaces. The 3 external car parking spaces cannot be accessed in accordance with Australian Standards for vehicular manoeuvring on site. Two of the external car parking spaces are clearly in conflict with manoeuvring required for units 6 and 10.

The SEPP requires the provision of 13 on site car parking spaces to be a minimum of 3.2 x 6 metres. The external car parking spaces and those provided for units 3-10 do not meet this minimum standard.
3. Compliance with other relevant statutory requirements

i. Local Environmental Plan No. 4

Part of the site (45%) is zoned under the provisions of Local Environmental Plan No. 4. This part of the report assesses the impact of the proposal on that part of the site.

The provisions of LEP 4 as they relate to the application have also been considered and are summarised in the following Table.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Standard</th>
<th>Proposed</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>cl. 9</td>
<td>Permissibility</td>
<td>Parts of the site are mapped as Accessible Housing Area. Parts of the site are zoned Environmental Protection. SEPP Seniors Living permits those areas with AHA designation to develop the land for Seniors Living housing, but not on land zoned Environmental Protection. Compliance with the requirements of that SEPP is required. This matter has been assessed previously in this report.</td>
<td>No</td>
</tr>
<tr>
<td>cl. 17</td>
<td>Height of buildings</td>
<td>The proposal provides for single storey dwellings. This complies with the maximum height of buildings</td>
<td>Yes</td>
</tr>
<tr>
<td>cl. 18</td>
<td>Provision of services</td>
<td>The site is provided with reticulated sewer and water</td>
<td>Yes</td>
</tr>
<tr>
<td>cl. 20</td>
<td>Residential flat buildings – car parking</td>
<td>This clause is superseded by the requirements of SEPP SL and DCP 29.</td>
<td>N/A</td>
</tr>
<tr>
<td>cl. 33</td>
<td>Subdivision</td>
<td>The proposal will result in two new allotments one being 980m² (proposed Lot 3015) and the other being 8758m² (undesignated). The lot size and configuration complies with the requirements of this clause</td>
<td>Yes</td>
</tr>
<tr>
<td>cl. 36</td>
<td>Building lines along arterial roads</td>
<td>The site fronts Hawkesbury Road. The minimum setback to Unit 2 is 8.5 metres and to Unit 1 is 8 metres. This clause requires the provision of 18 metres setback in the 2(a1) zone. The applicant contends that the proposal will match the existing streetscape and provide new building lines only marginally smaller than that of the existing dwellings on the site. This argument is not accepted. The density of the proposed development is not consistent with development within the locality.</td>
<td>No</td>
</tr>
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**LAND USE MANAGEMENT**

**Item 20 - Ordinary Meeting, 13/12/05**

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<td></td>
<td></td>
<td>The 18 metre setback would reduce the impact of higher density housing within the locality and allow for the provision of appropriate screening with landscaping. As the development is presently proposed there is inadequate screening provided from the development to the street.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The application has been referred to the RTA for their comment. At the time of writing this report no advice had been received from this authority. The applicant has modified plans to provide turning bays within the front setback of the development to allow vehicles from garages of units 1 and 2 to access and egress to and from the site is in a forward direction. This design will impact adversely on the streetscape creating more hard surfaces and less landscaped areas.</td>
<td></td>
</tr>
<tr>
<td>cl.38</td>
<td>Floor Space of Buildings</td>
<td>The 2(a1) zone prescribes a FSR of 0.35:1. The proposal comprises 1493m² of floor space and when calculated against the area zoned 2(a1) (3503m²) it is calculated that the floor space ratio of the site is 0.42:1. It is noted that this calculation is not consistent with the figure quoted in the application. That part of the land zoned Environmental Protection is identified as development excluded land under the provisions of LEP 1991 and cannot be used in calculations of development density for the site, (Clause 90 (2) of Draft LEP 2002)</td>
<td>No</td>
</tr>
<tr>
<td>cl.42</td>
<td>Assessment of certain factors</td>
<td>The proposal provides asset protection zones on land zoned EP. The application has been referred to the RFS and the RTA with respect to the adequacy of asset protection and access via Hawkesbury respectively. The RFS have expressed concern at the use of land mapped as bushfire category 1 vegetation for the purposes of Seniors Living Housing. The RFS have provided conditional concurrence to the application provided that Council allows the applicant to disregard the mapping of the site as environmentally sensitive land and consents to the clearing of this land to accommodate asset protection zones. It is recommended that Council does not endorse this position. Without this endorsement the concurrence is invalid.</td>
<td>No</td>
</tr>
</tbody>
</table>
The above table demonstrates that the proposal is inconsistent with the provisions of LEP No. 4. The applicant has not sought a SEPP 1 objection received with regards to those parts of the proposal that are inconsistent with LEP 4. The proposal cannot be supported due to the inconsistencies identified above and due to the proposal being prohibited on those parts of the site zoned Environmental Protection.

ii. Local Environmental Plan 1991

It is considered that the proposal contravenes Clause 10.5(c) of LEP 1991 in that the proposal will result in an adverse environmental impact on the development excluded land (that land being zoned EP) as a consequence of proposed Asset Protection Zones being located within the EP zones on steep slopes and in close proximity to a mapped watercourse. This proposal would also contravene the objectives for the EP zone.

iii. Local Environmental Plan 2005

Consideration has been given to the provisions of Local Environmental Plan 2005 and the relevant provisions are discussed in more detail below.

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<tr>
<td>12, 24 and 30</td>
<td>Objectives of the of the plan and the zones</td>
<td>The proposal fails to comply with the objectives of the plan with regard to the potential impacts of the proposal on the natural environment, particularly in relation to the requirements to provide asset protection zones within land zoned EP.</td>
<td>No</td>
</tr>
<tr>
<td>42(2)</td>
<td>Site analysis</td>
<td>The applicant has failed to lodge a flora and fauna report despite requests from Council to do so on the basis of the potential for scheduled vegetation communities on the site and the need to assess the impact of the proposed development on this vegetation community. No effective mitigating measures are proposed in relation to the development.</td>
<td>No</td>
</tr>
<tr>
<td>44(4)</td>
<td>Environmental Impact</td>
<td>The applicant has failed to demonstrate that the proposal will not create unacceptable impacts on the EP zone. It is noted that the proposal does not comply with the requirements of Planning for Bushfire Protection.</td>
<td>No</td>
</tr>
<tr>
<td>44(7)</td>
<td>Impacts of bush fire protection measures</td>
<td>The proposal does not incorporate measures to mitigate the effects of clearing for the purposes of asset protection environmentally sensitive land.</td>
<td>No</td>
</tr>
</tbody>
</table>
## LAND USE MANAGEMENT

**Item 20 - Ordinary Meeting, 13/12/05**

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<tr>
<td>51(3)</td>
<td>Watercourses</td>
<td>The site contains a watercourse not identified on Council’s mapping of environmental features; the applicant has not provided details in relation to buffers provided around the watercourse, and the ability or otherwise of that buffer to protect development.</td>
<td>No</td>
</tr>
<tr>
<td>53 and 66(3)</td>
<td>Retention and management of vegetation</td>
<td>The proposed landscape plan inadequately responds to the bushland character of the locality and proposes a range of unsuitable plantings.</td>
<td>No</td>
</tr>
<tr>
<td>57</td>
<td>Stormwater Management</td>
<td>The applicant has provided a Stormwater Management Plan as required by this clause.</td>
<td>Yes</td>
</tr>
<tr>
<td>60(3)</td>
<td>Character and landscape</td>
<td>The application is of a scale and bulk that will adversely affect the existing urban form of the locality.</td>
<td>No</td>
</tr>
<tr>
<td>67</td>
<td>Private Open Space</td>
<td>The proposal does not meet minimum requirements for private open space for Units 8, 10 and 11. In addition the applicant has failed to provide shadow diagrams that indicate the effect of fencing on solar access both internally to private open space within the site and to adjoining properties.</td>
<td>No</td>
</tr>
<tr>
<td>80(2)(b)</td>
<td>Asset Protection Zones</td>
<td>This issue has been previously discussed in this report. The APZs do not satisfy Council’s criteria particularly with regards to the impact of the APZs on the bushland on site.</td>
<td>No</td>
</tr>
<tr>
<td>98 and 99</td>
<td>Vehicular access and manoeuvring</td>
<td>The applicant has not provided adequate car parking to the site. 13 garages are provided, however there is no provision for on site visitor parking. The DCP requires 0.5 spaces per bedroom equating to 13.5 car parking spaces. It is Council policy to round up the requirement for car parking. Given the nature of development and the potential for high visitation by carers/ family and friends it is considered important that visitor car parking be provided. At least one additional car parking space is required. The layout with regards to car parking and manoeuvring on site creates adverse impacts on the streetscape. The applicant has modified plans to provide turning bays in front of Units 1 and 2.</td>
<td>No</td>
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LAND USE MANAGEMENT

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<td></td>
<td></td>
<td>Whilst this will allow for vehicles to leave and enter the site in a forward direction it will limit the ability to soften the impact of the bulk of the development from the street through the provision of landscaping.</td>
<td></td>
</tr>
<tr>
<td>Schedule 2</td>
<td>Locality management in the Living General Zone</td>
<td>The proposal does not comply with the requirements for building envelope with the development proposing an FSR of 0.42:1. As previously mentioned in this report, this figure is not consistent with the applicant’s figures. The proposed maximum height of 7 metres complies with the maximum heights prescribed by this clause.</td>
<td>No</td>
</tr>
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</table>

The application fails to comply with numerous clauses of LEP 2005. The application does not have merit with regards to the circumstances of the site and should not be supported.

Conclusion

The development application for eleven (11) Seniors Living units on the subject site includes the use of land zoned Environmental Protection to provide required Asset Protection Zones. The use of the land in such a manner does not comply with the Seniors Living SEPP with regards to Schedule 3 of that policy and as such the proposal cannot be supported. Further the application does not comply with various provisions of LEP No. 4, LEP 1991 and LEP 2005. The applicant has not lodged SEPP 1 objections to support non-compliance with these clauses. The applicant has not provided adequate information in relation to the impact of the proposed Asset Protection Zones on the native vegetation on the site, nor on the unmapped watercourse that exists on the site.

Council officers have met with and advised the applicant in writing on three separate occasions that the proposal in its current form could not be approved. Further Council officers have sought to negotiate with the applicant to modify the plans to a form that would be permissible and designed in a manner that would reduce the impact on the scheduled vegetation identified at the rear of the site. These meetings did not result in any improvements to the plan.

The proposal is considered to be an over development of the site and it is recommended that the application be refused.
Attachment 1—Plans and Elevations

Asset Protection Zone
Attachment 1—Plans and Elevations
Attachment 1—Plans and Elevations
ITEM NO: 21

SUBJECT: SECTION 96 (2) APPLICATION TO AMEND DEVELOPMENT CONSENT NO. X04/0122 FOR TWELVE (12) DWELLINGS UNDER STATE ENVIRONMENTAL PLANNING POLICY 5 (SEPP 5) ON LOT 2 DP 366451, NO. 90 GREAT WESTERN HIGHWAY, BLAXLAND

FILE NO: X04/0122

Recommendation:

That the Section 96 (2) Application to amend development consent No. X04/0122 for twelve (12) dwellings under State Environmental Planning Policy 5 (SEPP 5) on Lot 2 DP 366451, No. 90 Great Western Highway, Blaxland be modified pursuant to Sections 96 (2) and 95A of the Environmental Planning and Assessment Act 1979 by approving the application in accordance with the modified plans.

Report by Group Manager, Environmental and Customer Services:

Reason for report: Application seeks to modify an approval previously determined by Council.

Applicant: Adriaan Winton Architects

Owner: Amaret Pty Ltd

Application lodged: 22 September 2005

Property address: Lot 2 DP 366451, No. 90 Great Western Highway, Blaxland
**Background**

The original application for twelve (12) SEPP 5 dwellings was approved by Council as a deferred commencement consent on 21 September 2004. The consent is not yet operational. The current application seeks to modify the approved development as well as extend the period for material to be submitted in relation to the deferred matters. The proposed modification involves the increase in height of the dwellings.

The matters of deferred commencement relate to:

- the provision of details in relation to a site stormwater system, and
- modifications to the plans to ensure that the driveway complies with RFS requirements, and
- the provision of landscaping and fencing details.

This application relates to deferred commencement condition No. 2 to provide drawings for a site stormwater system to be designed and submitted to Council for consideration. The site stormwater system must be designed to allow for all stormwater from the site to drain to the Great Western Highway. These drawings have been submitted to Council for assessment. The drawings show an increase in ground levels on the site, which will subsequently result in changes to building heights, thus necessitating the subject application to modify consent.

Council’s development engineer has assessed that the stormwater plan can be designed so as to have no adverse impact on adjoining properties.
Upon inspection of the site for the subject application it became apparent that the site has been cleared. This clearing was undertaken without Council consent and contravenes the intention of the deferred commencement condition relating to landscaping (Condition 4). The landscaping condition required the submission of an arborist’s report that detailed all existing trees that were to be retained on site and the modification to landscape plans showing the retention of trees where appropriate and the identification of trees considered unfit for retention. The arborist’s report and landscaping plan has been submitted to Council. However, the clearance of the site circumvents Council’s assessment of the landscaping plans and arborist’s report.

Council’s Development Monitoring Team has been notified of the breach and a penalty infringement notice has been issued in the amount of $600.00. The applicant will be required to submit a new arborist’s report and amended landscaping plans. The landscaping plan will be required to ameliorate the impact of tree removal, restore the pre-existing character of the streetscape and establish an interesting and hardy tolerant landscape that provides separation of private open spaces, screening to adjoining property owners and opportunities for passive recreation.

The matter of landscaping and site clearing do not affect assessment of the subject application. However the above matters will further delay the issuing of an operational consent for the development.

**Site description**

The subject land is located at 90 Great Western Highway and comprises one (1) allotment having a total area of 4,029m². The site is located approximately 890 metres east of Blaxland Railway Station. The site is a large block with a 32 metre frontage to the Great Western Highway with one (1) access point. The site has been cleared of all outbuildings and the majority of vegetation.

The predominant surrounding character is comprised of suburban allotments with single storey dwellings with infill SEPP 5 (Seniors Living) housing in the locality.
LAND USE MANAGEMENT

Proposal

It is proposed to modify the heights of the buildings in the following manner:

Units 1 – 10: increase in height of 275mm resulting in a finished height of 5.775 metres for the single storey units and 7.28 metres for the two storey units.

Units 11 and 12 which are located on the rear (western) boundary of the site will be increased in height by 1.05 metres. This will result in a height of 6.05 metres for these units.

The applicant also seeks to extend the consent. The information required to resolve the deferred matters was to be submitted to Council within 12 months of the issue of consent. This time period lapsed on 27 September 2005. Full and complete documentation has not yet been received. The applicant applied for the extension of consent on 22 September 2005.

Development controls

Development controls applicable to the site have changed since the development application was approved in September 2004. At the time of approval LEP 4 and SEPP 5 were applicable to the site. The following development controls are now relevant to the site and the proposal:

- Zoning: ‘Living-General’ under Local Environmental Plan 2005 (and Accessible Housing Area)
- State Environmental Planning Policy – Seniors Living
- Sydney Regional Environmental Plan 20 – Hawkesbury Nepean River
- Better Living Development Control Plan

Notification

The application was advertised for a period of fourteen (14) days from 5th October 2005 to 19th October 2005 in the Blue Mountains Gazette as well as written notification to adjoining and nearby properties.

One (1) submission was received as a result of this notification process, with issues raised summarised below.
Issues Resident issues:

- Potential for overlooking to neighbouring yards from units 11 and 12.
- Impact of clearing on the site.

Assessment issues:

1. Statutory Considerations.
2. Suitability of the site.
3. Integrated Development.

Discussion of Issues

1.  Statutory Considerations

Section 96 of the Environmental Planning and Assessment Act relate to applications to modify existing consent in cases where the modifications have minimal environmental impact. In assessing an application the Council must be satisfied that the proposed modifications will have minimal environmental impact, and that the modified development substantially the same as that originally approved.

i.  State Environmental Planning Policy (SEPP) No. 5

The original proposal was assessed against the provisions of SEPP 5, which is now superseded SEPP Seniors Living. The current application was lodged on 22 September 2005, as such, the provisions of SEPP Seniors Living apply. However the proposed modifications do not alter the developments compliance with the relevant provisions of SEPP 5 or SEPP Seniors Living. The main change is a minor increase to building heights. However, the proposal, as modified, continues to comply with the maximum 8m heights.

ii.  Sydney Regional Environmental Plan No. 20: Hawkesbury Nepean Catchment

The subject site is located within the Glenbrook Creek/Erskine Creek sub-catchment under the provisions of SREP 20. The proposed modification will not result in any adverse impacts on this catchment. The modifications are sought in order to achieve appropriate stormwater management for the site. The proposed modifications will assist in achieving consistency with the SREP.

iii.  Local Environmental Plan 2005

The subject site has been rezoned Living General – Accessible Housing Area. The proposal remains consistent with the provisions of LEP 2005 and the relevant precinct controls for the subject site. Of relevance to the proposed modifications are the prescriptions for maximum height which is 8 metres; 6.5 metres at eaves. The proposed maximum height that will eventuate from the proposed modification will be 7.28 metres and 6.5 metres at eaves and therefore complies.
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2. Suitability of the Site

The proposed modifications are considered minor and do not alter the suitability of the site for the development.

3. Integrated Development

The proposed development is sited on bushfire prone land and was therefore subject to integrated assessment requiring concurrence from the NSW Rural Fire Service. A Bush Fire Safety Authority was received from the RFS with respect to the original application on 6 April 2004. The conditions related to access to the site and required that any future development of the site would be required to be subject to the requirements of Planning for Bushfire Protection. These matters may be dealt with at Construction Certificate stage. The subject application does not affect these conditions; as such further concurrence with the RFS was not required in this instance in accordance with Section 96(2)(b) of the E P and A Act 1979.

4. Resident Issues

Issues raised by a resident submission during notification of the proposed development relate to the following:

*The impact of the development as viewed from the rear of the property.*

The increase in height will not have significant adverse impacts on adjoining properties. It is considered there will be no unacceptable levels of overlooking from Units 11 and 12 to the adjoining properties to the north of the site. Additional screen planting at the rear of the site will be required to be provided within the landscaping plans which will need to be reviewed.

*Impact of clearing of the site.*

This matter has been discussed in the background provided to this report. Council is taking appropriate action with regards to this matter which should not influence the consideration of the proposed modification which are legally separate issues for consideration and determination.

Conclusion

There is no objection to the extension of time proposed to complete matters of deferred commencement and no objection to the proposed increases in heights to the dwellings. The increases in heights are relatively minor and will not adversely impact on adjoining properties. The proposed modifications to the development are necessary in order to achieve adequate stormwater management on site. This issue is imperative to the feasibility of the project and are considered reasonable within the context of the site and the locality. Matters relating to landscaping will be resolved through the requirement of the developer to comply with the existing deferred commencement condition.
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It is considered that the development complies with the requirements of Section 96 of the Environmental Planning and Assessment Act, in that that the proposed modifications will have minimal environmental impact, and that the modified development is substantially the same as that originally approved.
LAND USE MANAGEMENT

Attachment 1—Conditions of development consent

Part A—Conditions of Deferred Commencement Consent

Period of consent

1. Substantial physical commencement of construction is required within 3 years from the date of this consent. Should this not occur, the Consent will lapse and a new Development Application will need to be submitted.

Site stormwater system

2. All stormwater runoff from the site is to be collected and piped to the Great Western Highway via an on-site detention system. The stormwater system shall be designed and endorsed by a chartered civil engineer with NPER registration and shall incorporate but not be limited to the following:

   a. Minimum internal pipe grades of 1%.
   b. The stormwater drainage system shall be designed to ensure the 1 in 100 year runoff from the site can be collected and conveyed to the OSD system.
   c. Provision shall be made for an emergency overland flow path capable of conveying all surcharge flows up to and including the 1 in 100 years ARI storms to the public road.
   d. The on-site detention shall be designed to incorporate but not be limited to the following:
      i. Maintain post development flows from the site to pre-development flows for all storms up to and including the 1 in 100 year ARI storm.
      ii. Habitable and garage floor levels are to be located a minimum 300 mm and 100 mm above the 1 in 100 year ARI top water levels.
      iii. Emergency overflow facility capable of safely conveying all storms up to and including the 1 in 100 year ARI storm to the public road.
      iv. 300 mm x 300 mm wide by 300 mm deep silt trap is to be drained by weep holes and a 90 mm diameter agricultural line surrounded by 200 mm thick gravel bed wrapped in a geofabric. The agricultural line shall be connected to the nearest downstream stormwater pipe/pit.
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Attachment 1—Conditions of development consent

v. Allowable storage depth shall be:
   Car parks—0.2 metres maximum.
   Landscaped areas—0.6 metres maximum. Depth greater than 0.6 metres is permissible subject to the installation of pool type fencing surrounding the detention area.
   Underground tanks—0.8 metres minimum depth.

Detailed engineering plans incorporating the above requirement are to be submitted to Council for approval.

Bush fire turning area

3. The bush fire vehicle turning area at the end of the access drive shall be amended to as shown in red on the approved architectural plan to accommodate an Isuzu 4 x 4 fire tanker length 8 m, width 2.4m and full turning circle 18m (kerb to kerb).

Amended architectural plans incorporating the above are to be submitted to Council.

Landscaping

4. Landscaping is required to ensure that the development contributes to the character of the Blue Mountains, the surrounding area and to ensure its environmental sustainability.

In accordance with Section 80A of the Environmental Planning and Assessment Act 1979, a detailed landscape plan and arborist report shall be submitted to and approved by Blue Mountains City Council for approval prior to release of Operational Consent.

The arborist report shall include the following:

a. A statement on the condition of all existing trees that are to be retained on the site and within two metres of the property boundary.

b. Recommendations for appropriate protection and construction methods to ensure that the health of the trees are not compromised by the development.
Attachment 1—Conditions of development consent

c. Should any of the trees proposed for retention be deemed to be of poor health, form or low amenity value or should any of the trees proposed be assessed as posing an immediate hazard modification of the landscape plan will be required.

The Landscaping Plan shall include the following:

a. Any modifications required as a consequence of the amended architectural plans.
b. Any modifications required as a consequence of findings within the Arborist’s report.
c. All disturbed areas are to be revegetated or re-grassed. Kikuyu grass is not to be used for this purpose.
d. Additional screen planting is required along the northern boundary to provide improved amenity for the new dwellings.
e. The proposed method(s) of protection of vegetation to be retained on the site.
f. All plants and landscaping on the site are to be maintained at all times. Any plants that die or are removed must be replaced with plants of the same species and of a similar stage of growth.

**Fencing**

5. To avoid potential adverse impact on the amenity of residents, new fencing shall be provided along all property boundaries. All internal boundaries shall consist of soft landscaped fencing, except where these are inadequate or inappropriate for privacy or safety reasons.

The front fence is to be setback at least 5m from the front property boundary and the areas in front of the fence appropriately landscaped.

Details of proposed fencing shall be included on the submitted Landscape Plan.

**Time to comply with deferred commencement conditions**

6. Evidence that this condition has been satisfied must be provided to Council within 24 months from the date of the issue of the consent.
Confirmation of relevant plans

Amended 13 December 2005

7. To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by Adriaan Winton, Architects:

- DA-002, site set out, Issue B dated January 2004;
- DA-008, site elevations, Issue A dated January 2004;
- DA-010, three bedroom townhouse floor plans, Issue A dated January 2004;
- DA-011, three bedroom villa elevations, Issue A dated January 2004;
- DA-010, three bedroom villa floor plans, Issue A dated January 2004;
- DA-014, three bedroom townhouse elevations, Issue A dated January 2004;
- DA-016, two bedroom villa floor plans, Issue A dated January 2004;
- DA-017, two bedroom villa elevations, Issue A dated January 2004;

and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.

Demolition management

8. The work is to be executed by a competent person, with due regard for safe working practices and in accordance with the requirements of the Workcover Authority.

At all times during demolition a competent person shall directly supervise work. It is the responsibility of the person to ensure that:

a. The structure to be demolished and all its components shall be maintained in a stable and safe condition at all stages of the demolition work. Temporary bracing, guys, shoring or any combination of these, shall be added for stability where necessary.
b. Precautions are taken to ensure that the stability of all parts of the structure and the safety of persons on and outside the site are maintained particularly in the event of sudden and severe weather changes. Severe weather changes refer primarily to the localised high winds. In these circumstances loose debris can become airborne, particularly if it is in sheet form.

c. The site shall be secured at all times against the unauthorised entry of persons or vehicles.

d. Utility services within the structure not required to be maintained during the demolition work shall be properly disconnected and sealed off before any stripping or demolition commences.

Demolition of Buildings generally

9. The demolition work is to be supervised by a competent person with due regard to safe working practices and in accordance with the requirements of the NSW Workcover Authority;

Such work is to be carried out in accordance with the Occupational Health & Safety Regulations, 2001, and Australian Standard 2601 – 1991.

Demolition of Buildings containing asbestos cement

10. The applicant is to notify Council and adjoining residents, in writing, at least ten (10) working days prior to demolition commencing, of their intention to commence demolition works. In the case of adjoining residents, such notification is to be a clearly written note, on at least note pad size paper, giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately to the rear of the demolition site.

Disposal of Asbestos

11. All asbestos material, including asbestos cement, is to be disposed of to an approved waste management facility licensed to receive asbestos.

Display of signage

12. The developer will display appropriate asbestos/demolition signage prior to and during demolition works.
13. In consideration of the proximity of the site’s adjoining buildings:

a. Safe access and egress from adjoining buildings is to be maintained at all times for the duration of the demolition work.

b. No demolition activity is to cause damage to or adversely affect the structural integrity of adjoining buildings. Consideration should be given to the use of shoring and underpinning and to changes in the soil conditions as a result of demolition and appropriate action taken.

c. The effect of vibration and concussion on adjoining buildings and their occupants is to be minimised by selection of appropriate demolition methods and equipment.

14. The techniques adopted for stripping out and for demolition are to minimise the release of dust into the atmosphere.

a. Before commencing work, any existing accumulations of dust are to be collected, placed in suitable containers and removed. Selection of appropriate collection techniques, such as vacuuming or hosing down, shall take account of the nature of the dust and the type of hazard it presents (eg, explosive, respiratory etc).

b. Dust generated during stripping or during the breaking down of the building fabric to removable sized pieces shall be kept damp until it is removed from the site or can be otherwise contained. The use of excess water for this purpose is to be avoided.

It should be borne in mind, that in certain environments and under certain stimuli, deposits of combustible dust on beams, machinery and other surfaces may be subject to flash fires, and suspensions of combustible dusts in the air can cause them to explode violently (see NFPA Handbook).
Removal of material

15. All demolished material and excess spoil from the site shall be disposed of at a location and in a manner approved of by Council. No material is to be burnt on site.

Removal of hazardous waste

16. Removal of dangerous or hazardous materials shall be carried out in accordance with the provisions of all applicable State legislation and with any relevant recommendations published by the National Occupational Health and Safety Commission (Worksafe Australia).

- Only competent persons, or competent and registered persons shall carry out removal.
- Removal of asbestos or materials containing asbestos fibres, shall be in accordance with the NOHSC code of practice.
- Precautions to be observed and procedures to be adopted during the removal of dangerous or hazardous materials other than asbestos, shall be in accordance with the relevant State regulations pertaining to those materials.

Construction certificate (building)

17. A construction certificate is required prior to the commencement of any site or building works. This certificate can be issued either by Council as the consent authority or by an accredited certifier.

Access and mobility statement

18. To ensure appropriate access and facilities for Older People or People with a Disability, a statement required from a suitably qualified Access and Mobility Specialist, certifying that the development complies with all the relevant provisions of the following:

State Environmental Planning Policy No. 5 Clause 13A (4)-(21) access
Australian Standards AS1428, and
Australian Standards AS4299-1995 Adaptable Housing Class C

This statement is to form part of the Construction Certificate documentation.
Attachment 1—Conditions of development consent

National Housing Energy Rating Scheme.

19. A final set of plans shall be submitted to Council, prior to release of the Construction Certificate, showing how each dwelling shall achieve a minimum 3.5 star rating under the NatHERS system. The final set of plans shall include all finished external and internal material, including insulation levels, cladding etc, used to attain the respective rating for each dwelling.

The material submitted for the Construction Certificate shall include the detail included in the final set of plans to show that all material used for the rating has been incorporated into the Construction Certificate plans.

Services

20. Arrangements must be made with Integral Energy, Sydney Water and an approved telecommunications service provider for the extension of services to and within the site. Written evidence of such arrangements are to be submitted prior to the issue of the Construction Certificate.

In this regard a Section 73 Certificate is to be obtained from Sydney Water prior to issue of a Construction Certificate.

Compliance with State Environmental Planning Policy 5 (SEPP 5)

21. An instrument is to be created, pursuant to Section 88B of the Conveyancing Act 1919, and submitted in a form acceptable to Council, prior to occupation of the units, indicating that the only permitted occupants of units within the development are the following:

i. older people (aged 55 years or over) or people who have a disability,
ii. people who live with older people or people who have a disability,
iii. staff employed to assist in the administration of and provision of services to housing provided under State Environmental Planning Policy 5 (SEPP 5).

Council is to be the only body with authority to vary any of the above provisions.
## Attachment 1—Conditions of development consent

### Bush Fire Safety Authority

22. The Rural Fire Service is prepared to grant a Bush Fire Safety Authority, under Section 100B of the Rural Fire Act 1997, subject to the following conditions:

a. All access to be constructed to comply with Planning for Bushfire Protection policy 2001; S.4.3.2.

b. Any future development application lodged for construction under Section 79BA of the E P and A Act will be subject to the requirements as set out in Planning for Bushfire Protection, 2001.

### Building Code of Australia

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

### Builders details

24. Prior to any works commencing on the site, written advice as to the builder's details (name, address and licence number) is required for Council records.

### Signage

25. To ensure that the site is easily identifiable for deliveries and provides information on the person responsible for the site, a sign displaying the following information is to be erected:

a. The statement “Unauthorised access to the site is not permitted”.

b. The names of the builder or another person responsible for the site along with an out of hours contact number.

c. Lot or Street number.

### Site management

26. To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during all relocation, demolition and construction work:

a. Site and building works (including the delivery or removal 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 Council.
Attachment 1—Conditions of development consent

b. 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.

c. 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.

d. Builders waste must not be burnt or buried on site. All waste must be contained and removed to a Waste Disposal Depot.

Erosion & sediment controls

27. To preserve the surrounding environment, a soil and water management plan in accordance with Council’s Erosion & Sediment Control policy is to be submitted to and approved by the Principal Certifying Authority, prior to clearing of any site vegetation and the commencement of site works.

This plan is to include scaled drawings and detailed specifications that can be readily understood and applied on site by supervisory staff. Items to be shown on the plan are to include:

a. locality;

b. contours (existing and final);

c. existing vegetation;

d. existing site drainage;

e. limit of clearing, grading and filling (location of all earthworks including roads, areas of cut and fill and regrading);

f. locations and design criteria of erosion and sediment control structures;

g. site access;

h. proposed vegetative buffer strips;

i. location of critical areas (drainage lines, water bodies etc.);

j. proposed techniques for stabilisation of disturbed ground;

k. procedures for maintenance of erosion controls;

l. details for staging works;

m. techniques for dust control.
Attachment 1—Conditions of development consent

**Workers amenities**

28. Before work starts, toilet facilities must be provided for construction personnel on the site on the basis of 1 toilet for every 20 workers. Amenities are to be installed and operated in an environmentally responsible and sanitary manner. Toilets cannot remain on site for any longer than 12 months, without the further approval of Council.

**Plans on site**

29. A copy of the stamped and approved plans, Development Consent and the Construction Certificate are to be held on site at all times during relocation, demolition and construction work.

**External finishes**

30. To ensure that the development is compatible with the surrounding environment, colours and finishes are to be as indicated in the submitted Schedule of Finishes.

The driveway is to be finished in muted non reflective tones.

Modification of the submitted colours and finishes is only possible upon the written approval of Blue Mountains City Council.

**Fences**

31. All costs associated with boundary fencing are to be borne by the developer.

**Lighting**

32. To protect the amenity of the local area, all external lighting is to be positioned, directed and shielded so that it does not interfere with traffic safety or cause nuisance to adjoining and nearby properties.

**Provision of egress signage**

33. In accordance with Roads and Traffic Authority requirements, a ‘No Stopping’ sign shall be provided at the street frontage of the site. In this regard, liaison with the Roads and Traffic Authority shall occur.
Attachment 1—Conditions of development consent

On site detention positive covenant

34. To ensure the on site detention system is satisfactorily maintained, a covenant under Section 88E of the Conveyancing Act, 1919 shall be prepared and registered over the subject land.

The terms of the 88E Instrument with positive covenant shall include, but not be limited to, the following:

a. The Proprietor of the property shall agree to be responsible for keeping clear and the maintenance of all pits, pipelines, trench barriers and other structures.

b. The Proprietor shall agree to have the on site stormwater detention facilities (OSD) inspected annually by a competent person.

c. The Council shall have the right to enter upon the land referred to above at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures in or upon the said land which comprise the OSD or which convey stormwater from the said land and recover the costs of any such works from the Proprietor.

d. The registered Proprietor shall indemnify the Council and any adjoining landowners against damage to their land arising from the failure of any component of the OSD or failure to clean, maintain and repair the OSD.

The applicant shall bear all costs associated in the preparation of the subject 88E Instrument. The working of the Instrument shall be submitted to and approved by Council prior to lodgement at NSW Land and Property Information. Proof of lodgement with NSW Land and Property Information shall be submitted to Council prior to the issue of the Occupation Certificate

Sedimentation and erosion control

35. Prior to release of the Occupation Certificate, all disturbed areas are to be stabilised and all redundant sediment and erosion control structures are to be removed.
### Internal driveways and pavement

36. Provision of kerbs and sealing of access driveways and car parking areas in the development site together with any necessary drainage, retaining walls and other engineering works that may be required to make the construction effective. All driveways and sealed areas are to have a featured surface with the driveway at the entrance being widened to a minimum 6m wide for the first 6m inside the eastern property boundary.

All internal driveway and access shall be designed to ensure vehicles using the site can enter and leave the site in a forward direction and in accordance with Australian Standards 2890.1/2004.

### Roads and Traffic Authority approval

37. Written approval from the Roads and Traffic Authority for the proposed works along the Great Western Highway frontage shall be submitted to the Principal Certifying Authority prior to issue of Construction Certificate. All requirements of the Roads and Traffic Authority are to be complied with.

### Roads and Traffic Authority works

38. External engineering works along the Great Western Highway frontage are to be approved and supervised by the Roads and Traffic Authority. Prior to issue of Occupation Certificate, a certificate shall be obtained from the Roads and Traffic Authority certifying that all the works under their control have been completed to their satisfaction.

### External Engineering works

39. To facilitate access and pedestrian movement the applicant shall replace all damaged footpaths and remove redundant vehicular crossing and its replacement with vertical concrete kerb and gutter along the Great Western Highway frontage of the site at the applicant’s expense prior to release of the Occupation Certificate.

### Repair of damage

40. The applicant shall repair or reconstruct all damages caused by construction activity relating to the development as required by Council's Supervising Engineer prior to release of the Occupation Certificate.
### LAND USE MANAGEMENT

**Item 21 - Ordinary Meeting, 13/12/05**

Attachment 1—Conditions of development consent

<table>
<thead>
<tr>
<th><strong>Restore disturbed area</strong></th>
<th>41. All disturbed earthworks and/or batters are to be restored, stabilised, topsoiled and turfed/revegetated to Council's satisfaction prior to release of the Occupation Certificate.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Compliance with standards</strong></td>
<td>42. All internal and external engineering works required by this development are to be in accordance with Council's Specification for Engineering Work for Subdivisions and Development, Part 1—Design and Part 2—Construction (Development Control Plan No. 31), Australian Rainfall and Runoff 1987 and other relevant Australian Standards. The design and construction is to include any additional works to make the construction effective. Where the works affect Roads and Traffic Authority controlled roads, the design and construction is to be in accordance with Roads and Traffic Authority requirements.</td>
</tr>
<tr>
<td><strong>Traffic Management of Construction activities</strong></td>
<td>43. Safety devices such as signs, barricades, barriers, warning lights, etc. shall be placed where works affect Traffic Authority roads and shall be in accordance with Australian Standard No. 1742—Manual of Uniform Traffic Control Devices and Roads and Traffic Authority Manual—Traffic Control at Work Sites 1998. Details prepared by a qualified person shall be submitted for approval by the RTA with the Traffic Management Plan Report. The contractor shall submit to Council the names of proposed traffic controllers with a signed declaration that they are appropriately trained in the duties of traffic controllers and Roads and Traffic Authority accredited.</td>
</tr>
<tr>
<td><strong>Bond</strong></td>
<td>44. A performance maintenance bond to the value of five (5) percent of the engineering construction or a minimum of $5,000, whichever is the greater, to guarantee the safety of the public, environmental protection performance and maintenance during construction in public road shall be paid to Council. This bond shall be retained for six (6) months after construction is completed to the satisfaction of Council's Supervising Engineer. The bond is to be paid prior to the issue of a Construction Certificate.</td>
</tr>
</tbody>
</table>
LAND USE MANAGEMENT

Item 21 - Ordinary Meeting, 13/12/05

Attachment 1—Conditions of development consent

<table>
<thead>
<tr>
<th>Section 94 Development Contributions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Open Space</td>
<td>2,396.25</td>
</tr>
<tr>
<td>Bush Fire Services</td>
<td>2,788.77</td>
</tr>
<tr>
<td>Administration</td>
<td>366.11</td>
</tr>
<tr>
<td><strong>Total contribution due</strong></td>
<td><strong>5,551.13</strong></td>
</tr>
</tbody>
</table>

The above amounts will remain fixed for a period of three months from the date of this consent after which time they will be indexed in accordance with Council's Development Contributions Plan.

The Development Contributions Plan is available for inspection at Council's Katoomba Office, Civic Place, Katoomba Monday to Friday, 8.30 am to 5.00 pm., or Council's Springwood Office, Macquarie Road, Springwood, Monday to Friday, 9.00 am to 5.00 pm.
Attachment 2—Plans
ITEM NO: 22

SUBJECT: ENVIRONMENTAL ISSUES ASSOCIATED WITH GREAT WESTERN HIGHWAY ROADWORKS AT LEURA

FILE NO: R11/012

Recommendations:

1. That the progress of the Working Party to date as identified in this report be received and noted.

2. That Council engineers review the options presented in the Cardno Report for improving the existing capacity of the Highlands Road stormwater drainage system and, if found cost effective, the identified works are to be included for consideration in the 2006/07 Capital Works Program.

3. That Council agree in principle to accept responsibility for the additional elements of weed remediation works in the Katoomba Weed Plan subject to formal agreement by the RTA to fund those additional elements identified in this report.

4. That Council agree in principle to accept responsibility for the maintenance, decommissioning and rehabilitation of the environmental sediment sump to be located on the Brahma Kumaris site, subject to the full cost of the agreed works being provided by the RTA and subject to lease agreements being reached between the RTA and the Brahma Kumaris Centre.

5. That Council officers and the RTA liaise with Brahma Kumaris Centre on a lease and the design for the construction of the environmental sediment sump.

Report by Group Manager, Community and Corporate:

Introduction

At its Ordinary Meeting of the 18 October 2005, Council considered a report on the progress of actions required to address the environmental issues associated with the Great Western Highway upgrade works at Leura. In particular, that report identified that the NSW Roads and Traffic Authority (RTA) had committed to the establishment of a Working Party consisting of the RTA, Council, NSW National Parks and Wildlife Service (NPWS), Landcare, Bushcare and the North Leura Residents Group to develop a remediation plan and identify actions required to prevent further degradation of Govetts and Wentworth Creek catchments. The RTA subsequently requested that Council organize and convene the Working Party.
In advance, the RTA had commissioned the following consultant reports to assist the Working Party in considering options for action and funding of remedial and preventative works:

- Govetts Creek Headwaters Remediation Action Plan, Great Western Highway Upgrade, Leura – SOILCON (August 2005); and
- SH5 Great Western Highway Widening Leura to Katoomba, Highlands Road Stormwater Drainage Investigation – Cardno (September 2005).

**Progress by the Working Party**

The Working Party has been established and has now met in full on two (2) occasions, 24 October and 11 November 2005. A site visit of available Working Party members was also held on 14 November 2005 to discuss, clarify and confirm some of the outcomes agreed at the previous meetings.

The Working Party has made good progress in developing and negotiating a strategy and associated funding package to regenerate and prevent further degradation of Govetts and Wentworth Creeks. This strategy comprises the following three (3) key components:

**Weed Remediation Strategy**

A weed remediation strategy has been developed for both the Govetts and Wentworth Creek catchments based on an expansion of the "Katoomba Creek Weed Management Plan 2002 – 07", that covers the entire length of Govetts Creek. This takes into account the scope of additional sediment loads etc contributed by the RTA upgrade works. Both the expanded works and associated costing of the current five year plan have been extrapolated to year six recognising that the works associated with the first year had already been completed. Based on the input of the SOILCON report, and other key factors raised by the Working Party members, the reasonable proportion of costs to be covered by the RTA was identified, taking into account historical sediment loads and other contributory factors from existing urban run off. The Working Party has agreed that the RTA would contribute one-third of the **total** cost of the weed management funding required for Govetts Creek as part of broader Katoomba Creek Plan. Based on this proportion, the RTA has agreed to contribute $65,208 for the Govetts Creek catchment.

Using a similar methodology, the works and associated costs to remediate and regenerate Wentworth Creek were identified and agreed by the Working Party. As a result, the RTA has agreed to contribute $45,250 for the restoration works in the Wentworth Creek catchment.

This would see a total RTA contribution for the two catchments of $110,458. It has also been agreed by the Working Party that those funds would be paid as a one off lump sum to Council and administered jointly by Council and NP&WS through the existing operational arrangements for the Katoomba Creek Plan.
Sediment Control
The SOILCON report identified an approach to the capture and treatment of sediment within Govetts Creek that essentially involved both mechanical and manual removal of existing sediment deposits at various locations along the creek line. However, the report also identified problems associated with access to particular locations for the works and the potential additional damage that could be incurred to the stream in the course of carrying out the works. On this basis, and following both site visits and further discussions, the remediation process highlighted in the SOILCON report was not favoured as an efficient solution by RTA, NPWS and Council environmental representatives because of its possible repercussions on the health of the creek.

In response, an alternative option was developed involving the construction and maintenance of an "environmental sediment sump" upstream of the Brahma Kumaris Centre, to collect the additional sediment loads within the creek until the Section 1 Highway upgrade works have been completed and post construction regimes established. Concept designs and details associated with construction, maintenance time frame, decommissioning and rehabilitation of the sump, together with notional lease arrangements with the Brahma Kumaris Centre (as owners of the proposed site for the sump) have been considered in detail by the Working Party. Available members of the Working Party inspected the site of the proposed sump on 14 November to confirm the suitability of the site and to further discuss the concept design and operational and post-operational arrangements.

At the time of writing this report, the Working Party has agreed in principle to the provision and siting of the sump as the optimal approach. It has also generally been agreed that the sump would be maintained in place for a two (2) year period but that the option to extend the operation of the sump should be assessed at the end of that period. The RTA has also agreed in principle to cover the full cost of the design, construction, maintenance, decommissioning and rehabilitation of the sump, the streambed and associated areas surrounding the facility. Whilst not finalised, discussions to date suggest that the RTA would, itself, undertake any supporting environmental studies, obtain approvals etc and install the sump. Once operational, the ongoing inspection, maintenance, decommissioning and rehabilitation of the sump would be carried out by Council with full funding from the RTA. Any lease with the Brahma Kumaris Centre would be with the RTA but be negotiated in consultation with Council.

Issues that are still to be agreed and finalised amongst the Working Party include:
- The frequency of inspections and maintenance of the sump;
- The nature and extent of rehabilitation of the sump site, the stream bed and the surrounding area;
- The final allocation of tasks between the RTA and Council during the life cycle of the project; and
- Negotiations and legal arrangements with the Brahma Kumaris Centre for the leasing of the site and access to it.
LAND USE MANAGEMENT

Item 22 - Ordinary Meeting, 13/12/05

Stormwater Drainage
In addition to the impact of sedimentation associated with past heavy rainfall events, localised flooding has created problems for local property owners and Council. As identified in the Cardno report, this has resulted partly from additional runoff from the highway upgrade works but, more particularly, because of inadequacies or design constraints in the capacity of the local drainage system. The Cardno report identified key works and other minor improvements that could enhance the capacity of the existing local system and address the issues of local flooding to a significant extent.

The RTA has identified that most of the key works identified in the Cardno report will be undertaken as part of the completion works for Section 1. It has been identified that through some minor supplementary funding by Council, the full extent of the key works could be integrated into the RTA project thereby delivering enhanced efficiency and capacity to the existing system. The Cardno report also identified a number of additional works that would provide some limited extra capacity to the local drainage system, specifically the installation of two (2) additional pits in Highlands Road. However, it was the general view of the Working Group that the very minor increase in extra capacity and reduction in stormwater volumes offered by the additional pits and the disruption within Highlands Road required for their installation may not be justified in terms of the cost of installation.

Notwithstanding, Council's engineers will review the recommendations and preliminary designs within the Cardno report to provide accurate cost estimates for both the key works and the additional pits. This will inform decisions as to the extent of funding that could or should be made available to the RTA to supplement the key works and whether the additional pits in Highlands Road are cost effective.

Additional Considerations and Actions

Negotiations with Brahma Kumaris
During the first Working Party meeting, representatives of the RTA, NPWS and Council tabled the construction of the sediment sump at Brahma Kumaris site as a preferred option for the remediation of Govetts Creek. The representative of the Brahma Kumaris Centre informed the meeting that any decision regarding the acceptance of a lease between RTA and Brahma Kumaris Centre would be negotiated if the community was satisfied and agreed to the proposal. Following the site visit and acceptance of the option by the community representatives, the RTA, in consultation with Council, will now enter negotiations with the Brahma Kumaris Centre for a lease agreement for the usage of part of the upstream land for an initial period of 2 years.

Letter to Government re changes to Blue Book specifications
Council wrote to the Minister for the Environment on 2 November 2005 in response to a resolution from the Council meeting of 18 October 2005. The letter requested that the Minister support the revision of Vol. 2 of the Blue Book (Soil and Construction- Landcom) ensuring that the standards for sediment and erosion control used for road construction around NSW be upgraded. This revision should take in consideration regional environmental parameters, as well as facilitating and improving the existing set standards to prevent environmental incidents in the future.
At the time of writing this report, Council had not received any response to the above-mentioned letter.

**Conclusion**

Despite early delays in its establishment, the Working Party has made considerable progress. Whilst the issues have been contentious, the members have worked positively with a view to resolving the issues.

Additional tasks will be undertaken as soon as possible and final outcomes reported to Council for information and any further required decisions.
Recommendation:

That Council approve the following donations from the Councillors’ Minor Local Projects

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinship at Christmas Foundation</td>
<td>$300</td>
</tr>
<tr>
<td>The Returned &amp; Services League – Blaxland Glenbrook</td>
<td>$250</td>
</tr>
<tr>
<td>Rotary Club of Lower Blue Mountains</td>
<td>$150</td>
</tr>
<tr>
<td>Glenbrook – Blaxland Cricket Club Inc.</td>
<td>$100</td>
</tr>
<tr>
<td>Mid Mountains Combined Churches</td>
<td>$100</td>
</tr>
<tr>
<td>Blue Mountains Food Services</td>
<td>$100</td>
</tr>
<tr>
<td>Winmalee Neighbourhood Centre</td>
<td>$55</td>
</tr>
</tbody>
</table>

Report by General Manager:

On 11 July 2000 Council adopted a revised Policy for Councillors’ Minor Local Projects allocations for the provision of community assistance/donations. The following recommendations for donation, which appear to fall within the ambit of the Policy, have been received and are submitted for approval.

<table>
<thead>
<tr>
<th>Recommending Councillor</th>
<th>Organisation</th>
<th>Purpose</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clr Creed</td>
<td>Kinship at Christmas Foundation</td>
<td>Annual Katoomba Christmas Community lunch</td>
<td>$300</td>
</tr>
<tr>
<td>Clr Creed</td>
<td>The Returned &amp; Services League – Blaxland Glenbrook</td>
<td>To assist with the purchase of an outdoor PA system</td>
<td>$250</td>
</tr>
<tr>
<td>Clr Creed</td>
<td>Rotary Club of Lower Blue Mountains</td>
<td>Australia Day celebrations</td>
<td>$150</td>
</tr>
<tr>
<td>Clr Creed</td>
<td>Glenbrook – Blaxland Cricket Club Inc</td>
<td>Administration expenses</td>
<td>$100</td>
</tr>
<tr>
<td>Clr Searle</td>
<td>Mid Mountains Combined Churches</td>
<td>Help fund the free Christmas Carols</td>
<td>$100</td>
</tr>
</tbody>
</table>
### FACILITATING COMMUNITY DEVELOPMENT

**Item 23 - Ordinary Meeting, 13/12/05**

<table>
<thead>
<tr>
<th>Recommending Councillor</th>
<th>Organisation</th>
<th>Purpose</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clr McLaren</td>
<td>Blue Mountains Food Services</td>
<td>Hire of Springwood Civic Centre for Client Christmas Function</td>
<td>$100</td>
</tr>
<tr>
<td>Clr McLaren</td>
<td>Winmalee Neighbourhood Centre</td>
<td>Awareness stall for Blue Mountains Aspergers Support Group</td>
<td>$55</td>
</tr>
</tbody>
</table>
ITEM NO: 24

SUBJECT: TUNNEL GULLY RESERVE PLAN OF MANAGEMENT – AMENDMENT AND ADOPTION

FILE NO: H01382

Recommendations:

1. That Council adopts the Tunnel Gully Reserve Plan of Management and uses it to guide the management and development of Tunnel Gully Reserve.

2. That Councillors, groups and individuals who participated in the development of the Plan are provided with a final copy of the adopted Plan of Management.

Report by Group Manager, Community and Corporate:

At its Ordinary Meeting of 2 August 2005 (Minute No. 264), Council resolved:


2. That the exhibition of the Plan be widely advertised and promoted and be for a period of not less than eight (8) weeks.

3. That a report comes back to Council following the public exhibition.

4. That the Tunnel Gully Reserve Draft Plan of Management be amended for exhibition to allow for 5 netball courts to be hard-surfaced.

5. That any associated costing and other change, as a result of amending the Draft Plan to allow for 5 courts to be hard-surfaced, be reflected in the Draft Plan of Management.”

This report outlines the outcomes of the public exhibition period and recommends that Council adopt the Plan of Management and begin implementation.
PROVISION OF RECREATIONAL & COMMUNITY SERVICES/FACILITIES

Item 24 - Ordinary Meeting, 13/12/05

Background

Council staff prepared a Draft Plan of Management (DPoM) for Tunnel Gully Reserve in Lapstone. The Plan has been prepared as required under both the Crown Lands Act and Local Government Act and provides responses to issues currently faced at the Reserve. Some of the main issues include:

- Improvements to residential amenity through additional landscaping;
- Relocation of the existing playground to Explorers Rd frontage;
- Sealing of additional netball courts;
- Protection and enhancement of Aboriginal and Cultural heritage items;
- Protection and regeneration of existing bushland areas; and
- Sealing of carpark areas and delineation of their edges.

The DPOM was on public exhibition from Wednesday 17th August to Friday 14th October 2005. Copies of the plan were available at Council’s business centres, all Council Libraries and on Council’s website. Copies were sent to each member of the Lapstone Advisory Group (LAG), stakeholders and other interested parties for their comment. During the exhibition phase, an information day was held on Sunday 18th September and a public hearing was held on Thursday evening 22nd September.

The exhibition period and associated events were advertised in the Blue Mountains Gazette on nine (9) separate occasions, through a letterbox drop to 900 Lapstone / Glenbrook residents, the Government Gazette and a notice was placed at the Glenbrook shops noticeboard.

Results of the exhibition

During the exhibition phase of the Tunnel Gully Reserve DPOM the following were received:

- 368 submissions;
- Stakeholder submissions from Lapstone/Glenbrook Residents Action Group; Faulconbridge Netball Club, Darug Tribal Aboriginal Corporation, National Parks and Wildlife Service, Blue Mountains Conservation Society Inc and NSW Netball Association;
- One (1) petition letter with 90 signatures;
- Three (3) form letters each consisting of 38, 120 & 86 individually signed letters treated as individual submissions; and
- Public hearing report completed by external consultant including a summary of 21 verbal submissions.

The issues raised are outlined in Attachment 1. The public hearing report and Plan of Management document form part of the enclosure.

There was strong support for the DPOM and appreciation that all issues and concerns experienced by users of the Reserve and residents were documented and considered in the completion of this POM.
In summary, the main issues of concern contained in the submissions focused on:

- The sealing of additional netball courts;
- the proposed playground relocation site;
- general concerns raised regarding the potential environmental impacts that additional hard surfaces may cause; and
- the perceived dominance of one sporting club in the area.

Discussion

The amended DPOM is enclosed for the information of Councillors. Council has carefully considered the submissions including the recommendations contained in the public hearing report (Refer Public Hearing Report enclosure). The proposed change to the POM arising from the exhibition period includes:

- Limiting the number of additional sealed netball courts to three (3) instead of the exhibited five (5) courts.

This amendment has been made based on the following:

- Recommendation to seal three (3) netball courts not five (5) made in the public hearing report compiled by an independent external town planning consultant;
- Further detailed review of Netball’s current and future needs and requirements; and
- Strong viewpoint put forward by the residents against the sealing of additional netball courts.

It is considered that the amendment detailed above provides a compromise position that offers benefits to both the Blue Mountains Netball Association and the local residential amenity. It is noted that any improvements include an examination and improvement to existing drainage issues that occur.

The extent of the proposed changes to the Plan of Management are not considered significant and the Plan of Management does not need to be re-exhibited if adopted with this amendment.

Action Plan

The DPOM sets the direction for the land use of Tunnel Gully Reserve, Lapstone and contains actions to achieve the objectives. Councillors should note that not all of the Action Plan is funded. Where the action is unfunded, Council staff will attempt to progress the delivery of the Plan by lodging applications for funds and seeking relevant staff commitments and partnerships with user groups and other agencies.
The main components of the Action Plan and the resourcing of these is shown in the table below:

<table>
<thead>
<tr>
<th>Key Action</th>
<th>Resource Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Residential Amenity / Parkland</strong></td>
<td></td>
</tr>
</tbody>
</table>
| Relocate playground and create new exclusive parkland area adjacent to sportsground along Explorers Rd. | Unfunded  
Relocate play equipment: $40,000  
Install bubbler, turf, shade etc: $25,000  
Provide wet pour soft fall: $25,000  
Footpath connection to play equipment: $25,000 |
| Development and maintenance of buffer zone between residents and netball courts | Funded through existing maintenance budget.     |
| **Bushland Management**                                                   |                                                  |
| Develop an interpretive walking track communicating both the Aboriginal and Historical values of the reserve to the public. | Unfunded, potential grant and CWP.              |
| List presence of threatened species and ecological communities in next revision of the constraints mapping of DLEP and amend zoning accordingly to protect these areas. | Staff time.                                     |
| Weed removal and general regeneration of bushland areas.                  | Unfunded, potential grants.                     |
| **Provision of Sporting Facilities**                                      |                                                  |
| Sealing of netball courts, improved floodlighting and relocated cricket wicket to sportsground. | Unfunded, however it is anticipated improvements will be made in partnerships with sporting clubs.  
Sealing 3 netball courts (including provision for drainage etc): $90,000  
Floodlighting sports field: $16,000  
Relocate Cricket Wicket: $10,000 |
| **Traffic, Parking and Access**                                           |                                                  |
| Formalise existing unsealed carparks, defining edges and improving efficiency. | Unfunded.  
Netball overflow carpark: $318,500  
Tennis / Rugby Union carpark: $273,000 |
| Two (2) pedestrian refuges located along Explorers Rd.                    | Unfunded.  
Cost estimate: $65,000                         |
Summary of Action Plan

Total estimated cost of all Capital Works contained within the plan is $1,078,750 with:

1. Projects that Council would seek to fund are estimated to be $927,750
2. Projects funded in partnership with sporting clubs are estimated to be $151,000

The actions contained within the plan are not expected to adversely impact maintenance practices and expenditure. It is expected that the proposed sealing of netball courts and carparks may reduce the current maintenance costs in this area.

There are also other projects within the Action Plan that include:

19 Actions to be included in existing staff resources; and
13 Key areas for where further investigation is needed to determine the most appropriate action. These may lead to design refinements and capital works nominations.

Conclusion

This DPOM has been vital to Tunnel Gully Reserve, as it provides clear direction for the future use and management of the Reserve, providing an opportunity for all concerns raised to and documented.

It is recommended that Council adopt the Tunnel Gully Reserve Plan of Management with the one (1) amendment being to reduce the number of additional sealed netball courts from five (5) to three (3).
PROVISION OF RECREATIONAL & COMMUNITY SERVICES/FACILITIES
Attachment 1

TUNNEL GULLY RESERVE - DRAFT PLAN OF MANAGEMENT
Public Exhibition 17th August to 14th October 2005

During the exhibition phase of the Tunnel Gully Reserve Draft Plan of Management the following were received:

- 368 submissions (including 57 emails & 311 through mail / fax);
- Stakeholders submissions by Lapstone / Glenbrook Residents Action Group, Faulconbridge Netball Club, Darug Tribal Aboriginal Corporation, National Parks & Wildlife Service, Blue Mountains Conservation Society Inc and NSW Netball Association;
- Three (3) form letters (total: 38, 120 & 86) all individually signed and addressed and treated as individual submissions;
- One (1) petition of 90 individually signed (only) letters (details below); and
- Public hearing report completed by external consultant including 21 verbal submissions.

Issues raised are outlined below:

<table>
<thead>
<tr>
<th>Item</th>
<th>No of respondents</th>
<th>% of total respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>General support for DPoM</td>
<td>104</td>
<td>28</td>
</tr>
<tr>
<td>General NON support for DPoM</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Supports sealing of 5 netball courts</td>
<td>321</td>
<td>87</td>
</tr>
<tr>
<td>Objects to sealing of 5 netball courts</td>
<td>35</td>
<td>9.5</td>
</tr>
<tr>
<td>Supports a compromise of sealed / non sealed</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Supports proposed location of playground</td>
<td>184</td>
<td>50</td>
</tr>
<tr>
<td>Objects to proposed location of playground</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Supports the proposed carpark upgrade</td>
<td>96</td>
<td>26</td>
</tr>
<tr>
<td>Objects to proposed carpark upgrade</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>Supports the pedestrian refuges</td>
<td>98</td>
<td>27</td>
</tr>
<tr>
<td>Concerns regarding potential environmental impacts</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Supports walking tracks formalisation</td>
<td>89</td>
<td>24</td>
</tr>
<tr>
<td>Supports additional netball facility elsewhere in the Mts</td>
<td>12</td>
<td>3</td>
</tr>
</tbody>
</table>

Petition Letter

- That the “Plan of Management” be adopted to include 5 of our remaining 10 grass courts at Lapstone be sealed.
- Blue Mountains Netball Association is keen to discuss financial arrangements with the Council.
- Netball needs to be played on sealed courts for safety. Maintenance is easier, particularly now in times of drought.
- Please give us “5”
ITEM NO:  25

SUBJECT:  RESIGNATION OF VOLUNTEER COMMITTEE MEMBER FROM BRAEMAR HOUSE & GALLERY

FILE NO:  C00131. C00322

Recommendations:

1. That Council accept the resignation of Pamela Crafoord, Co-director & Chairperson of Braemar House & Gallery.

2. That Council forward a letter of appreciation to extend our sincere thanks for her years of voluntary dedication to Council and the community.

Report by Group Manager, Community and Corporate:

On November 7th 2005 Pamela Crafoord, Co-director & Chairperson of Braemar House & Gallery committee tendered her resignation to Council.

Ms. Crafoord was a founding member of the group, which in 1988 formed the Braemar House Committee and was the first co-director of the Braemar Community Gallery. During her time on the Braemar House & Gallery Committee Ms. Crafoord had taken on various executive roles.

Ms. Crafoord's commitment to the management of the Braemar House & Gallery has been of incalculable value to both Blue Mountains City Council and the community and her dedication should be acknowledged by Council.
ITEM NO:  26

SUBJECT:  ADOPTION OF DRAFT MASTERPLAN FOR WARRIMOO OVAL

FILE NO:  H01394

Recommendations:

1.  That the Draft Masterplan for Warrimoo oval be adopted and used to guide future developments at the oval.

2.  That the Lower Mountains Junior Rugby League be acknowledged and thanked for their offer of assistance towards improving the facilities at Warrimoo Oval.

Report by Group Manager, Community and Corporate:

Introduction

Warrimoo Oval is the local park for North Warrimoo and a major sporting facility in the Lower Mountains. It receives high levels of use from Lower Mountains Touch Football Club (1200 members in 2004) and Lower Mountains Junior Rugby League Club (300 members in 2004). There is currently pressure on Council to improve and expand the sporting facilities on site, to improve the local park facilities and to address the issues generated by high sporting use. Council, in consultation with the community and user-groups, has developed a draft Masterplan to guide future use and developments. In addition the Lower Blue Mountains Junior Rugby League have offered to fund and build a new amenities building.

Consultation Overview

Extensive consultation has occurred during the development of the Draft Masterplan for Warrimoo Oval. The key steps involved researching the issues, developing the draft plan and seeking comment on the draft plan. The main steps in researching the issues included:

- All user groups were contacted and six (6) on site meetings were held with the Tennis Club, Warrimoo Citizens Association, Lower Mountains Junior Rugby League Club – (2 meetings), the Lower Mountains Touch Football Club, and John Wycliffe School (which is located opposite).
- Letters were sent to all residents of Cross Street and Rickard Road surveying their values and issues with the park – 200 letters sent, 36 responses received.
- Sydney Water representative met on site (there is a pumping station in the park).
Issues Raised

The issues raised through the consultation process were wide ranging. They addressed strategic direction, management issues and masterplanning issues. The types of findings and the proposed responses are outlined in table 1 below.

<table>
<thead>
<tr>
<th>Area</th>
<th>Issues</th>
<th>Council response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic issues</td>
<td>Level of use inappropriate for residential street</td>
<td>Ongoing research for development of alternative sporting venues at the old Lawson Golf Course</td>
</tr>
<tr>
<td></td>
<td>Work arising from masterplan may increase levels of use</td>
<td></td>
</tr>
<tr>
<td>Traffic</td>
<td>Parking congests streets and blocks driveways</td>
<td>Refer issues to traffic engineer</td>
</tr>
<tr>
<td></td>
<td>People attending sporting events drive anti-socially</td>
<td>Improve parking facilities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Provide bus parking facilities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extend bike path to school into park</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Investigate line marking for parking and bike paths on Rickard Road</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extra parking to be provided if a minifield is built</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Refer issues to the Sports Council.</td>
</tr>
<tr>
<td>Facilities</td>
<td>Amenities block needs replacing</td>
<td>Allow for club to build new amenities block</td>
</tr>
<tr>
<td></td>
<td>Public want access to toilets</td>
<td>Identify site for additional mini-field</td>
</tr>
<tr>
<td></td>
<td>Play equipment is inadequate in poor location.</td>
<td>New amenities block can be designed to have independent toilets</td>
</tr>
<tr>
<td></td>
<td>No bubbler, no shade, no seating</td>
<td>Provide shade trees, bubbler, and seating</td>
</tr>
<tr>
<td></td>
<td>Oval surface is poor</td>
<td>Upgrade and partially fence play equipment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Upgrade oval surface and provide facilities for training off the oval surface</td>
</tr>
<tr>
<td>User/resident issues</td>
<td>Sport dominates oval</td>
<td>Local park facilities are to be upgraded along with sport facilities</td>
</tr>
<tr>
<td></td>
<td>People attending sporting events display anti-social behaviour</td>
<td>Refer anti-social issues to the Sports Council and address through the “Sportsground hire and use handbook” currently being developed</td>
</tr>
<tr>
<td>New resident issues</td>
<td>People bought opposite bushland (zoned recreation) and do not wish to see parking or mini-field developed in the bush.</td>
<td>Alternative sites for the mini-field were investigated but none are feasible due to slope and zoning constraints. Parking for future mini-field is proposed as angle parking along existing road, to minimise clearing and ensure that no residence is opposite a large carpark.</td>
</tr>
<tr>
<td>Girl Guide/ user issues</td>
<td>The Girl Guides Association and Tennis would prefer not to share a carpark with the Rugby League club</td>
<td>There is insufficient space in the reserve to provide separate parking facilities for different user groups. Difficulties would arise in trying to enforce the separation.</td>
</tr>
</tbody>
</table>

Table 1
PROVISION OF RECREATIONAL & COMMUNITY SERVICES/FACILITIES

Item 26 - Ordinary Meeting, 13/12/05

Community Comment on Draft Masterplan

Council carefully considered all the issues and developed a draft masterplan for further comment. The main steps in seeking comment on the draft masterplan included:

- All user groups were sent copies of the draft – one meeting was held and 3 written responses were received; (Girl Guides Association, Warrimoo Citizens Association and Warrimoo Tennis Courts 377 Committee).
- Draft masterplans were sent to all residents of Cross Street and Rickard Road for comment – 28 responses received.
- A site meeting was held with Park Maintenance Staff.
- Copy sent to Police for Safer by Design audit.

Only minor changes have been made to the draft masterplan that was sent out for comment. Copies of the draft masterplan broad scale and a detail of the hub area are presented in Attachment 1 and Attachment 2.

Implementing the Masterplan

The approximate costs of the major elements in the masterplan are shown in table 2 below.

<table>
<thead>
<tr>
<th>Item</th>
<th>Preliminary estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>New amenities block</td>
<td>$774,000 (Club Funds)</td>
</tr>
<tr>
<td>- Demolition of old amenities building and toilet</td>
<td></td>
</tr>
<tr>
<td>- Design and DA</td>
<td></td>
</tr>
<tr>
<td>- Construction and service connections</td>
<td></td>
</tr>
<tr>
<td>- 2-way vehicular access and 4 car parking</td>
<td></td>
</tr>
<tr>
<td>Oval upgrade and facilities</td>
<td>$103,000</td>
</tr>
<tr>
<td>- New surface and irrigation for top oval</td>
<td></td>
</tr>
<tr>
<td>- New and additional fencing</td>
<td></td>
</tr>
<tr>
<td>- Water connection and bubblers</td>
<td></td>
</tr>
<tr>
<td>- Seating and planting</td>
<td></td>
</tr>
<tr>
<td>Play area</td>
<td>$65,000</td>
</tr>
<tr>
<td>- Relocate equipment</td>
<td></td>
</tr>
<tr>
<td>- Additional equipment</td>
<td></td>
</tr>
<tr>
<td>- Seating and planting</td>
<td></td>
</tr>
<tr>
<td>Parking and access</td>
<td>$355,500</td>
</tr>
<tr>
<td>- Design and DA of parking areas</td>
<td></td>
</tr>
<tr>
<td>- Construction of parking areas</td>
<td></td>
</tr>
<tr>
<td>- Buffer planting, landscape works</td>
<td></td>
</tr>
<tr>
<td>- Extension of bike path</td>
<td></td>
</tr>
<tr>
<td>Facilities to reduce wear-and-tear on the oval (Low Priority)</td>
<td>$108,000</td>
</tr>
<tr>
<td>- Training track</td>
<td></td>
</tr>
<tr>
<td>- Practise goal areas</td>
<td></td>
</tr>
<tr>
<td>Mini-field (Low Priority)</td>
<td>$343,000</td>
</tr>
<tr>
<td>- Design and DA</td>
<td></td>
</tr>
<tr>
<td>- Construction</td>
<td></td>
</tr>
<tr>
<td>- Additional parking</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,748,650</td>
</tr>
</tbody>
</table>

Table 2
The Lower Mountains Junior Rugby League has offered to build the new amenities block and assist with other works. Department of Sport and Recreation Grants will be sought for some aspects of the work. Not all work needs to proceed at once, however some works need to be packaged together to ensure that some user groups do not suffer at the expense of others. Work identified in this plan is considered mainly renewal in nature, and implementation will be considered in the context of the broader Strategic Asset Management Plan that is currently being prepared for all recreation assets. The removal of the old toilet block and sports amenities block, which required frequent maintenance due to their age, replaced with a new building will reduce Council’s building maintenance expenditure.

Conclusion

Extensive consultation has occurred during the development of this draft masterplan. The Lower Mountains Junior Rugby League has offered to fund the development of the new amenities block. Council staff will seek funding and grants to implement this masterplan in line with Council priorities.
PROVISION OF RECREATIONAL & COMMUNITY SERVICES/FACILITIES

Item 26 - Ordinary Meeting, 13/12/05

Attachment 1 – Warrimoo Oval Draft Masterplan
Attachment 2 – Warrimoo Oval Draft Masterplan: Hub Area Detail
Recommendations:

1. That Council receives and notes this report.

2. That Council adopts the Jackson Park Plan of Management and uses it to guide the management and development of Jackson Park.

3. That Councillors, groups and individuals who participated in the development of the Plan are provided with a final copy of the adopted Plan of Management.

Report by Group Manager, Community and Corporate:

At its Ordinary meeting of 13 September 2005, Council resolved:


2. That the exhibition of the Plan be widely advertised and promoted and be for a period of not less than four (4) weeks.

3. That a report comes back to Council following the public exhibition.”

This report outlines the outcomes of the public exhibition period and recommends that Council adopt the Plan of Management and begin implementation.

Background

Council staff have prepared a draft Plan of Management for Jackson Park in Faulconbridge. This has been prepared as required under the Local Government Act 1993 and provides direction for management of the park with particular direction to address the issues of:

- preservation of the natural values of the site;
- categorisation of community land to allow for the provision of a mid-mountains SES base;
- consideration of residential amenity; and
- overall placement, development and management of the site.
The draft of the Plan of Management was placed on public exhibition from Wednesday October 5 to Friday November 4 2005. Notice of the public exhibition period was given through the Blue Mountains Gazette and on council’s website. Copies of the plan were made available at council’s business centres, all of council’s libraries and on council’s website.

During the exhibition period a public hearing was held at Faulconbridge Rural Fire Brigade station on the evening of Tuesday, October 25 2005. This meeting was attended by 14 interested people, and several matters relating to the draft Plan of Management were discussed at length. The meeting was facilitated by P&A Walsh Consulting Pty Ltd, and a summary of the matters discussed plus a small number of recommendations was provided to council by the consultant.

Results of the exhibition

During the exhibition period of the Jackson Park draft Plan of Management the following were received:

- one stakeholder submission from Blue Mountains SES;
- one resident submission; and
- verbal submissions during the public hearing, which are noted in the consultant’s report.

No issues were raised during the exhibition period, and all submissions were supportive of the general direction of the draft Plan of Management. The public hearing report forms Attachment 1. The main areas of concern raised related to the construction of a new Scout hall adjacent to the reserve, however this matter is outside the scope of the Plan of Management.

Discussion

The draft Plan of Management is appended for Councillors information. The proposed changes to the Plan of Management arising from the exhibition include:

- updating the reference to the new Scout hall to reflect its current state of construction;
- an additional bullet point be added to the nominated Policies for Section 4.3 relating to Bushland Management as follows:

  In recognition of their immediate presence in Jackson Park, SES and Scouts be invited to participate in the above bushland management programs, and where appropriate in their planning

- revision of sections 2.6.7 Bushfire Hazard and 4.5 Fire Management, and Action Plan item 5, Fire Management.

The extent of the proposed changes to the Plan of Management are not considered significant and the Plan of Management does not need to be re-exhibited if adopted as is.
**Action Plan**

The draft PoM contains an action plan. The Plan of Management sets the direction for the land use of Jackson Park and contains actions to achieve the objectives. Councillors should note that not all of the Action Plan is funded. Where the action is unfunded, Council staff will attempt to progress the delivery of the Plan by lodging applications for funds and seeking relevant staff commitments and partnerships with user groups.

The main components of the Action Plan and the resourcing of these is shown in the table below:

<table>
<thead>
<tr>
<th>Key Actions</th>
<th>Resource Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency Services – re-categorisation of community land to allow the provision of a new SES base</td>
<td>Staff time</td>
</tr>
<tr>
<td>Bushland Management – ongoing support of Bushcare Group, stormwater management, rehabilitation of disturbed bushland, conservation of riparian vegetation</td>
<td>Staff time; investigation of external funding (grants) or funding from the Environmental Levy.</td>
</tr>
<tr>
<td>Bushwalking – track maintenance and provision of interpretive signage</td>
<td>Unfunded; seek grants and application to CWP</td>
</tr>
<tr>
<td>Playground/Picnic Area – Australian Standards compliance, maintenance and upgrade as required</td>
<td>Staff time; upgrading unfunded, seek grants and applications to CWP</td>
</tr>
<tr>
<td>Residential Amenity – retention of residential amenity, particularly with respect to future development</td>
<td>Staff time</td>
</tr>
<tr>
<td>Bushfire Management – provision of asset protection zones, fuel management</td>
<td>Staff time; Bushland Management SLA</td>
</tr>
<tr>
<td>Park Maintenance – maintenance of recreational areas</td>
<td>Staff time though SLA</td>
</tr>
<tr>
<td>Leases and Licences – ensure any leases and licences are consistent with the core objectives of the PoM</td>
<td>Staff time</td>
</tr>
</tbody>
</table>
REPORT TO BLUE MOUNTAINS CITY COUNCIL

DRAFT PLAN OF MANAGEMENT INCLUDING LAND CATEGORISATION, JACKSON PARK, FAULCONBRIDGE

Report on a Public Hearing Held in Accordance with the Provisions of Section 40A of the Local Government Act 1993

Prepared by

Peter Walsh
Independent Chairperson

November 2005
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1. INTRODUCTION
   1.1 The Proposal
   1.2 Statutory Context
   1.3 The Hearing
   1.4 This Report and Future Council Decisions

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   2.1 Council Submission
   2.2 Public Questions and Submissions

3. CONCLUSIONS AND RECOMMENDATION
   3.1 Conclusions
   3.2 Recommendations

Annexure A

   Attendance at Public Hearing

Abbreviations Used In Report

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act</td>
<td>Local Government Act, 1993</td>
</tr>
<tr>
<td>SES</td>
<td>State Emergency Service</td>
</tr>
<tr>
<td>Council</td>
<td>Blue Mountains City Council</td>
</tr>
<tr>
<td>EP&amp;A Act</td>
<td>Environmental Planning and Assessment Act 1979</td>
</tr>
<tr>
<td>PoM</td>
<td>Plan of Management</td>
</tr>
<tr>
<td>Park</td>
<td>Jackson Park</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

1.1 The Proposal

Blue Mountains City Council (Council) has before it a proposed Plan of Management (PoM) for Jackson Park in Faulconbridge.

Jackson Park is located south of Sir Henry Parkes Parade and the Main Western Railway Line at Faulconbridge. See **Figure 1**. The Park currently comprises extensive areas of bushland with walking trails, and a neighbourhood park with play equipment and an open play area.

![Figure 1: Location](image)

1.2 Statutory Context

The proposed PoM would provide for changes to the “categorisation” of land as introduced under the NSW public land management regime set in train by the Local Government Act, 1993 (the Act).
Section 40A(1) of the Act provides as follows:

_The council must hold a public hearing in respect of a proposed plan of management (including a plan of management that amends another plan of management) if the proposed plan would have the effect of categorising, or altering the categorisation of, community land under section 36 (4)._ 

Section 47G(2) of the Act provides as follows:

_The person presiding at a public hearing must not be:_
   a) _a councillor or employee of that council holding the public hearing, or_
   b) _a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment._

In accordance with the above provisions I was subsequently appointed as independent chair for the public hearing. This document is intended to comprise the report of the public hearing.

1.3 The Hearing

The hearing was held on the evening of Tuesday 25 October 2005, at the Faulconbridge Rural Fire Brigade premises. The hearing was publicly notified by Council officers. Some 14 members of the public were in attendance according to the attendance records. Three Council officers were also in attendance. A list of attendees is provided at Attachment A.

The hearing opened with an address from the chair, outlining procedural details. The hearing proceeded with an outline of the draft PoM content, and questions/comments from members of the public, representatives of community groups and Council officers.

1.4 This Report and Future Council Decisions

This report is intended to provide a summary of the submissions to the hearing. Conclusions are drawn and recommendations are provided.

It is understood that Council will consider this report along with other submissions to the current exhibition of the draft PoM, as it further considers the adoption of a PoM for Jackson Park.
2. SUBMISSIONS

2.1 Council Submission

Council’s submission to the Public Hearing was effectively the draft PoM itself. Mr Alan Holley from Council, assisted by the chair, briefly outlined the content of the draft PoM to others present.

It was explained that the draft PoM contained information about the natural and cultural history of the park. According to the draft PoM, the two primary community roles of Jackson Park are concerned with the provision of:

- recreation opportunities, including for: informal play, bush walking, dog walking, bike riding, bird watching and children’s’ play areas.
- aesthetic benefits of a quiet, peaceful, bushland reserve.

Jackson Park is also valued as:

- a bushland reserve with a diverse flora and fauna community.
- a bushland corridor providing connectivity with other bushland areas.
- a passive recreation setting.
- a landscape character setting of Faulconbridge.
Attachment

The draft PoM also establishes a series of management directions for Jackson Park, and establishes four land categories as indicated in the map at Figure 2 and described below.

Figure 2: Proposed Categories in Draft PoM

A brief outline of the categories is provided below:

- **Park** - playground and associated area at the corner of Sir Henry Parkes Road and Wigram Road.
- **Natural area/bushland** – the greater portion of the park.
- **Natural area/watercourse** – watercourse areas within the bushland.
- **General community use** – an area fronting Sir Henry Parkes Road.

According to the draft PoM, the land proposed to be categorised as **general community use** is intended to be used for a local State Emergency Services facility.
2.2 Public Questions and Submissions

Given the relatively small number of members of the public attending, an informal approach was adopted in regard to public submissions to the hearing. In effect, persons attending raised a number of queries or comments which in turn became points of brief discussion for those in attendance. Below I itemise a series of the key points which were raised in this discussion with relevant comments.

Boundaries of Jackson Park

A question was raised as to whether the area indicated in the draft PoM was all of that land which comprised Jackson Park, or whether Jackson Park extended further to the east from the boundaries shown in the draft PoM. Council’s officers advised that the draft PoM covered the entirety of Jackson Park and that the land further to the east was understood to be in private ownership.

Will the land be reclassified to Operational Land under the Local Government Act?

Council’s officers indicated that there was no intent to reclassify the land as operational land. The Chair explained that there was a formal statutory process involved in any reclassification of community land to operational land prescribed in the Local Government Act, and that this process was similar to that involved in the preparation of a Local Environmental Plan (LEP) and included a requirement for the relevant Minister within the State Government to sign off his/her approval. The matter at hand here had not been concerned with reclassification to operational land and was instead about the management of community land into the future.

Why is the area currently under development as a Scout Hall not included in the draft PoM?

There was considerable attention given to the current building works for a proposed Scout Hall on land which is adjoining and to the east of the area proposed to be re-categorised to General Community Use (see Figure 2). Council officers explained that the Scout Hall land was not in fact under Council ownership. It was indicated that this area was Crown Land, and that Council was not required to incorporate this Crown Land within its plans of management.

Updating of PoM content with respect of Scout Hall

It was noted that the draft PoM indicated that the Scout Hall had not yet secured development approval, whereas it was clear that the building works on the site were now very well advanced. The draft PoM was dated August 2005. It was indicated by Scouts representatives that since this date development consent had been secured for the Scout Hall and associated works. The chairperson indicated that a recommendation would be made for the PoM to update its reference to the Scout Hall proposal.
Scout representative express interest in sharing of facilities

Representatives of the Scouts indicated their interest in the sharing of facilities with the proposed SES development. It was suggested that there may be opportunities to share a range of facilities including meeting halls, toilet facilities, access and parking facilities and that perhaps this could be considered as the SES finalises its development plans for the site. SES representatives indicated their appreciation of the offer and that this could be considered as plans proceed. However, it was noted that there were special needs for self-sufficiency for the SES facility, including in relation to its future role as a backup emergency centre during emergencies. The chair indicated a view that there was no particular need for the PoM to give consideration to this matter and that opportunities for sharing of resources and facilities was a matter that the parties could readily take up outside the parameters of the PoM.

Purpose of SES Depot

Following questions from community members, Mr Costa Zakis, the SES Local Controller – Blue Mountains, explained that the role of the State Emergency Service was centred on the provision of local community support in instances of severe storm and tempest activities. At present the local SES operates from Glenbrook in outdated premises and the intention was to replace the Glenbrook operation with the proposed new facility at Faulconbridge. Mr Zakis emphasised the local volunteer nature of SES staff. The Faulconbridge building would be principally used for the following purposes:

- training of SES staff
- as a second/backup operational base for emergency management in the Mountains
- as a resource for potential use for other appropriate groups.

Mr Zakis indicated that during training days around ten vehicles might attend the site.

Concerns about impact of SES and Scout activities on the local bushland

A concern was raised that the activities of both Scout and SES personnel in the immediate area could have potential implications for the bushland values of Jackson Park. It was suggested that currently the community held this park in high regard as a place of peace and quiet, a place for meditation, and a place for bush walking with little disturbance. The concern was to ensure that the introduction of these two activities did not unreasonably impact on the local community’s enjoyment of these values.
While the Scout Hall development was not subject to the PoM in particular, representatives of the Scouts indicated that the hall would be used around three nights per week, with principally children attending the site and that commonly there would be little activity in Jackson Park itself. There may be some opportunity to use the park for activities like map reading. The Scout representatives also indicated that their core values included concern about environment protection and management and these sorts of values were commonly imbued in children attending scouting activities.

The SES advised that their training activities would be located within and in the immediate environs of the proposed building, rather than in the parklands proper.

This matter is given further attention at Section 4 below.

**Current use of proposed SES site as a truck turning area**

It was suggested that at present trucks regularly use the land proposed for the SES building as a turning area. Apparently there are no opportunities for a right-turn movement off the highway after the railway crossing. It was suggested that recent development had brought some demand for heavy vehicles to turn to head west off the highway after crossing the railway line. While it was explicitly suggested that this matter should not prevent the proposed SES facility from going forward, it was requested that this matter be drawn to Council’s attention.

**Leases and Licenses**

One person queried whether the site could be leased or licensed for various purposes or only for use by the SES. Council’s representative suggested that the PoM currently proposed to permit only a lease or license for SES purposes on the proposed community land.

**3. CONCLUSIONS AND RECOMMENDATION**

**3.1 Conclusions**

Considerable support was expressed for the proposed SES facility within Jackson Park. There was little discussion about the particular content of the draft PoM in regard to the bushland or other areas of Jackson Park. However, there was a concern raised by one community member about the potential impact of both the proposed SES facility and Scout Hall on Jackson Park and particularly on its natural bushland character.
I note that Section 4.3 of the draft PoM nominates particular objectives in regard to bushland management which include the following:

- to reduce the impact of activities and developments on the bushland within Jackson Park.
- to raise awareness of factors degrading bushland among reserve patrons and neighbours.

A series of policies are then indicated with regard to bushland management as follows:

- Ensure ongoing support for the Jackson Park Bushcare Group
- Investigate options for further bush regeneration and revegetation programs
- Ensure that bushland restoration and protection measures are included in all works to develop or upgrade facilities in the park
- Include environmentally sensitive design practices in future any developments at Jackson Park, and
- Ensure that any landscaping works implemented only incorporate the planting on non-invasive endemic plant species.

Comment

I note that the future consideration of a specific development proposal for the SES facility will need to take account of direct environmental impacts, and conditions on development can be expected to be applied to mitigate against such impacts. It is important the PoM principles be considered in the environmental assessment of the future development proposal.

Further, there is some value, in my opinion, in the PoM giving consideration to the future significant presence of both the SES and Scouts in regard to the achievement of PoM objectives. As local community groups, it seems to me probable that both SES and Scout patrons would hold high regard for the bushland and other community values of Jackson Park and there may be some opportunity for mutual benefit from their direct involvement as a stakeholder in the park given the relative levels of activity likely to occur within portions of the park, and its immediate environs, as a consequence of their presence. I note that the draft PoM makes reference to future “partnerships with user groups” in section 4.6 with respect to ongoing maintenance considerations, and it seems to me useful that these two groups warrant more direct attention from Council when developing a plan of management for the park.
3.2 Recommendations

The following recommendations are provided following the public hearing into Jackson Park draft Plan of Management:

1. The submissions and comments to the public hearing, as summarised in this report, be noted by Council.

2. The Plan of Management be updated with respect to the status of the Scout Hall.

3. The Plan of Management in general, and the following provisions in particular, be considered in Council’s assessment of the intended future development proposal for the SES facility within Jackson Park:

   If any development occurs in the categorised ‘General Community Use’ area, all care must be taken during planning, construction and use to ensure that there will be no resulting impacts upon the adjoining bushland areas from increased runoff, altered water flows, increased nutrification, weed incursion, pollution, rubbish dumping, trampling etc. (Source: Section 4.3 draft PoM August 2005)

4. With regard to the aim of inviting the participation of both SES and Scouting interests in the achievement of the objectives of the draft Plan of Management:

   i. An additional bullet point be added to the nominated Policies for Section 4.3 relating to Bushland Management as follows:

      In recognition of their immediate presence in Jackson Park, SES and Scouts be invited to participate in the above bushland management programs, and where appropriate in their planning.

   ii. Concomitant amendments to the Action Plan at Section 5 of the plan be made as Council staff see appropriate.
## Attendance at Public Hearing

<table>
<thead>
<tr>
<th>Name</th>
<th>Address / Organisation</th>
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<tbody>
<tr>
<td>Chris Watson</td>
<td>7 Martin Place Faulconbridge</td>
</tr>
<tr>
<td>Ken Parsons</td>
<td>5 Martin Place Faulconbridge</td>
</tr>
<tr>
<td>Bill Ivin</td>
<td>4 Railway Avenue Faulconbridge</td>
</tr>
<tr>
<td>Frank Newton</td>
<td>77 Shirlow Avenue Faulconbridge</td>
</tr>
<tr>
<td>Marlene Travers</td>
<td>20 Sir Henry Parkes Parade Faulconbridge</td>
</tr>
<tr>
<td>Tony Travers</td>
<td>20 Sir Henry Parkes Parade Faulconbridge</td>
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<tr>
<td>James Wyatt</td>
<td>22 Summer Road Faulconbridge</td>
</tr>
<tr>
<td>Costa Zakis</td>
<td>SES Local Controller – Blue Mountains</td>
</tr>
<tr>
<td>Mal Barton</td>
<td>President Faulconbridge Rural Fire Brigade</td>
</tr>
<tr>
<td>Brenda Moulliment</td>
<td>3 Magic Pudding Place Faulconbridge</td>
</tr>
<tr>
<td>“Fred” Kaltenbacher</td>
<td>31 Shirlow Avenue Faulconbridge</td>
</tr>
<tr>
<td>Therese Kaltenbacher</td>
<td>31 Shirlow Avenue Faulconbridge</td>
</tr>
<tr>
<td>John Van der Have</td>
<td>3 Home Street Faulconbridge</td>
</tr>
<tr>
<td>Michael Aaronson</td>
<td>519 Great Western Highway Faulconbridge</td>
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<tr>
<td>Peter Belshaw</td>
<td>BMCC</td>
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<tr>
<td>Alan Cattermole</td>
<td>BMCC</td>
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<tr>
<td>Alan Holley</td>
<td>BMCC</td>
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<tr>
<td>Peter Walsh</td>
<td>Chairperson</td>
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</tbody>
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Please note that this attendance list incorporates the details of those people signing onto the attendance sheet available at the public hearing. Apologies for any misinterpretation/misspelling of the handwritten names and other details appearing on the attendance sheets.
ITEM NO: 28

SUBJECT: KNAPSACK RESERVE DRAFT PLAN OF MANAGEMENT - REVISION OF MANAGEMENT PLAN OBJECTIVES & GLENBROOK SEWAGE TREATMENT PLANT OPTIONS FOR FUTURE USES

FILE NO: H01442

Recommendations:

1. That the draft Plan of Management consultation and research commence during 2005/06 with completion of the Management Plan milestone extended from 2005/06 to 2006/07.

2. That options for the future use of the Management Plan milestone of land occupied by the Glenbrook Sewerage Treatment Plant are considered as part of the Plan of Management process for Knapsack Reserve. This is to occur in liaison with Sydney Water during the preparation of their Decommissioning Environmental Plan.


Report by Group Manager, Community and Corporate:

Introduction

This Council report overviews the development and timing for the Plan of Management (PoM) for Knapsack Reserve and responses to the adopted Notice of Motion (NoM) of 31st May 2005, which stated:

“That a report come back to Council, outlining the various possible options for the future uses of the land occupied by the sewerage treatment within the reserve 83996, for Public Recreation (Part of Knapsack Park) at Glenbrook. Estimates of costs associated with each option should also be provided together with Sydney Water’s contribution to such costs.”

(Min. No. 172)

Glenbrook Sewerage Treatment Plant

In May 2005, Sydney Water released a discussion paper “Glenbrook Sewerage Treatment Plant Decommissioning and Future Use”. This paper recommends a Decommissioning Environmental Management Plan, which Sydney Water would complete during 2005/6 – 2006/7. This Plan has not yet been completed but will include future uses of the sewerage treatment plant.
PROVISION OF RECREATIONAL & COMMUNITY SERVICES/FACILITIES

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It is considered the most appropriate way to manage the investigation of future potential uses is through the PoM, and, while not legally required, it would provide a transparent and consultative process to issue a lease if needed to a potential user. Further reports to Council, associated with the Knapsack Reserve draft PoM will include options, costs and Sydney Water’s role, responsibility and financial contribution to the future use of the sewerage treatment plant.

Previous Planning Commitments for Knapsack Reserve

Over the previous year Council has made two (2) separate commitments to developing a PoM for Knapsack Reserve. Each commitment is summarised below.

2005/6 Management Plan
A “Looking After People” milestone in Council’s 2005/6 Management Plan is the completion of “recreational facility Plans of Management for Lapstone Oval (Tunnel Gully Reserve) and Knapsack Park”. Tunnel Gully Reserve is on track and is the subject of separate Council reports and briefings.

Blue Mountains Nature Based Recreation Strategy
Council’s second commitment to developing a PoM for Knapsack Reserve is within the Nature Based Recreational Strategy 2005 – 2015, which states under Outcome 1: that “a Plan of Management be prepared for the “Eastern Escarpment Lands [including Knapsack Reserve] and other natural areas managed by BMCC in Area 4 and 5 (including mountain biking facilities management guidelines)”.

Background to Knapsack Reserve

Knapsack Reserve is located on the eastern escarpment between the Great Western Highway and Mt Riverview. It is owned by the Crown and managed by Council through the Knapsack Reserve Trust. It stretches approximately 3.5 kilometres in length and covers 240 hectares over twenty three (23) parcels and is classified as ‘Public Recreation Reserve’. This Plan will not cover the full Reserve. Only those areas of highest use are included and these are indicated below. The remainder will be programmed for future years. The location map (Attachment 1) overviews the plan boundary and the points of significance.

The parcels of land to be covered in this plan are:

- Crown Land – Part Knapsack Reserve (No. 83996) including Knapsack Park soccer fields, sewerage treatment plant and a number of heritage items including Lennox Bridge;
- Crown Land – Skarratt Park (No.62317) including Lapstone Zig Zag and a number of highly used walking tracks;
- RTA Land – 6-8 Great Western Hwy;
- Crown Land – 140A Olivet St site of old disused quarry including walking tracks and area of dirt jump bike site;
- Crown Land – 19A Surveyor Abbot Dr site of old disused quarry including walking tracks;
PROVISION OF RECREATIONAL & COMMUNITY SERVICES/FACILITIES

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- RailCorp Land – 37 Great Western Hwy providing access to mushroom farm, Lapstone tunnel and sewerage treatment plant;
- Council Land – John Whitton Memorial Park; and
- RTA Land – 4 Great Western Hwy.

Values of Knapsack Reserve

The area of highest use within the Reserve is located between Mitchell’s Pass and the Great Western Hwy; the remainder of the Reserve (from Mitchell’s Pass north) is natural bushland with little to no use or disturbance by the public. The areas of Knapsack Reserve that are of high use are highly regarded for their natural, cultural and sporting values. Some of the significant values are indicated below:

- Fifteen (15) heritage items or points of interest listed on national, state & local heritage registers including Lennox and Knapsack Bridges, John Whitton Memorial, Marges Lookout, and Lapstone Tunnel;
- Glenbrook Sewerage Treatment Plant which will be decommissioned in the near future and returned to Council;
- Numerous walking tracks that link heritage items and points of interest throughout the high use area of the Reserve;
- Knapsack Park sportsgrounds provide areas for formalised active recreation; and
- Dirt Jump Bike and Mountain Bike track sites providing areas of active nature based recreation.

Recommendations

The Glenbrook Sewerage Treatment Plant is recommended to form part of the Plan of Management.

The importance of Knapsack Reserve both nationally and regionally necessitates a high level of work to be conducted. Due to the scale and complexity of this work and the allocation of resources to other recreation projects such as the Warrimoo Oval Master Plan and bringing forward of the Summerhayes Park tennis courts capital works project, it is proposed that the timeframe for the PoM be extended so that it is undertaken largely during 2005/06 and completed in 2006/07.
Attachment
ITEM NO: 29

SUBJECT:  KERB AND GUTTER PROVISION - TERRYMONT ROAD, WARRIMOO

FILE NO:  R22/0045

Recommendation:

That Council receives and notes this report.

Report by Group Manager, Community and Corporate:

Introduction

A Notice of Motion, at the Council Meeting on 4/10/05 (Item 15) by Councillor A McLaren states “That a report come to Council on the costs to Council and to residents of providing kerb and guttering to Terrymont Avenue, Warrimoo”

Terrymont Road, Warrimoo is a no through road intersecting Railway Parade and continuing approximately 600 metres where it terminates. The road is sealed with a chip seal, with Gwen Crescent a short loop road being accesses off Terrymont Road. Both roads generate residential vehicle movements only; consequently traffic volumes of both roads are low.

Background

Road shoulders in Terrymont Road are formed using various materials along the length of the road, including cement stabilised sandstone, gravel and grass. While extensive road shoulder erosion is not present, some isolated erosion at the road shoulder / road surface interface is present. Rectification work required is minor, which would be completed under routine maintenance.

Due to low longitudinal grades existing in Terrymont Road there are several locations where minor property flooding is occurring, caused by water flows from the table drain being diverted onto private property. Several attempts to rectify this by maintenance methods over many years have been minimally successful. The installation of kerb and gutter in this road would improve the efficiency of rainwater flows to enter constructed drainage systems, and eliminate any occurrence of property flooding.

Councils Work Request Register (WRR) and Customer Service Request (Pathway) programs reveal that Terrymont Road has had eleven (11) requests from residents and three maintenance activities from routine inspections for road maintenance listed since 2002. Only one activity, heavy road patching listed since June 2004, is marked as incomplete. Only three of the above work activities relate to road shoulder drainage.
TRANSPORTATION & ROADS

Asset Management Practices

The objective of kerb and gutter is to ensure that water in gutters can flow uninterrupted into drainage structures. Kerb and gutter provides a very effective drainage route, controlling and directing water flows to be released into drainage systems (pits, pipes or open channels). It also mitigates the potential for adjacent property flooding, which could otherwise be caused by excess water flows not adequately accommodated in earthen flow paths. Visually, kerb and gutter provides an aesthetically pleasing straight edge to roads, giving a clear delineation between the road pavement and roadside.

Council has reduced the practice of providing kerb and gutter to pre-constructed roads in the City unless there is a major drainage problem that cannot be resolved through other means. In addition to this available funding in the Capital Works Program was prioritised into other areas such as renewals (Resurfacing program), leaving this item largely unfunded. There are currently 152 unfunded jobs on the kerb and gutter list.

Given the issues above, requests for upgrading to kerb and gutter would not generally be recommended for funding unless chronic flooding, excessive erosion or high traffic volumes causing unacceptably high shoulder wear that could not be solved by routine maintenance methods existed.

However, council supports retrofitting kerb and gutter to constructed roads such as Railway Parade, Warrimoo, which is a major link road with high traffic in the City provided that funding is made available from Federal or State government grants.

Provision of New Kerb and Gutter

Once a decision has been made to include a location for installing kerb and gutter, a formula is applied to allow a prioritised list to be compiled. The work is then recommended for inclusion in a Capital Works Program in accordance with funding availabilities, with highest priority locations treated first.

The basis of kerb and gutter assessment is a formula analysing and applying a score to traffic volumes, the quantity of water flowing in the shoulder, the grade of the shoulder, the number of vehicles normally parked on the road shoulder, the housing density in the street, pedestrian density and aesthetic considerations. Weighting is applied to each category providing a maximum possible score of 36. Terrymont Road is not on the kerb and gutter list, but as part of the investigations for this report it was assessed at 16 out of a possible 36. This is a medium rating score; with the kerb and gutter list having 108 locations with a score of 16 or above.

The cost to provide kerb and gutter in Terrymont Road, Warrimoo is estimated at $328,595, represented by a resident contribution of $62,401 and $266,194 Council contribution. It would be appropriate if kerb and gutter were installed in Terrymont Road to also install kerb and gutter in Gwen Crescent. The cost to do this is estimated at $99,610, represented by a resident contribution of $19,383 and $80,227 Council contribution. The total cost for the both projects is $428,205.
NOTICE OF MOTION

Ordinary Meeting, 13/12/05

ITEM NO: 30

SUBJECT: HAZELBROOK PUBLIC TOILETS

FILE NO: H00267

By Councillor C Van der Kley:

“That a report come to Council examining the following options:

- Council constructing a new toilet block in Hazelbrook.
- Opening of the toilets in the new shops and taking over the maintenance.”

Note by Councillor Van der Kley:

The RTA is going to remove the block in Memory Park and is not going to replace it with a new one.

Further, when the development application for the new shops was passed by the Council, the toilets were to be open to the public. The owner of the shops was given permission by Council staff to have the toilets locked.
NOTICE OF MOTION

Ordinary Meeting, 13/12/05

ITEM NO:  31

SUBJECT:  LOWER MOUNTAINS AQUATIC AND FITNESS CENTRE - PROVISION OF FANS

FILE NO:  H00616 Pt 2

By Councillor A McLaren:

“That Council ask staff to immediately investigate the provision of fans during the summer months for Group Fitness classes at the Lower Mountains Fitness Centre.”

Note by Councillor McLaren:

Several patrons of the Lower Mountains Fitness Centre have approached me about the temperature of the group fitness room on hot days. The Centre is air conditioned, however this appears to be inadequate for the most active classes during the summer months.

The provision of several fans for use during group fitness classes would make exercise more comfortable for patrons. As Council does not meet again until 31 January, towards the end of summer, it is appropriate that staff investigate the possible provision of fans at the Centre.
NOTICE OF MOTION

ITEM NO: 32

SUBJECT: LOWER BLUE MOUNTAINS AQUATIC AND FITNESS CENTRE - EXERCISE BIKES

FILE NO: H00616 Pt 2

By Councillor A McLaren:

“1. That a report come to Council regarding the costs associated with the provision of an additional twelve exercise bikes for the RPM classes at the Lower Blue Mountains Fitness Centre.

2. That this report include details of additional revenue that the additional bikes would bring to the Centre.”

Note by Councillor McLaren:

The RPM classes offered by the Lower Mountains Aquatic and Fitness Centre are one of the most popular programs offered by the Centre. This class requires the use of a stationary exercise bike.

The Centre currently has 25 bikes for use during this class. The popularity of the class means that many patrons are being turned away due to the limited numbers available.

The provision of additional bikes would allow more patrons to participate in the class. As patrons who are willing to pay to participate in this class are being turned away, Council is losing an opportunity to increase our revenue from the Centre.
NOTICE OF MOTION

Ordinary Meeting, 13/12/05

ITEM NO: 33

SUBJECT: PEDESTRIAN CROSSING ON GREAT WESTERN HIGHWAY, NEAR BLACKHEATH RAILWAY STATION

FILE NO: C00584

By Councillor T Hamilton:

“1. That Council advises the Roads and Traffic Authority that their proposals to initially slightly move the location of the pedestrian crossing on the Great Western Highway adjacent to Blackheath Railway Station or, alternatively, simply add blisters to the existing crossing area and do away with the small safety island in the middle of the road, are not considered adequate to address the long record of traffic accidents between vehicles and pedestrians at this crossing.

2. That Council requests the Roads and Traffic Authority, as a matter of urgency, to install traffic signals at the current pedestrian site, for the following reasons:

   - the high level of use of the crossing by people accessing the Railway Station and traversing the railway line to access the village centre;
   - the large number of school children, older people and those with disabilities, in a location with restricted sightlines, due to building encroachment, street trees and frequent poor visibility due to mist;
   - the history of accidents – the last two being in November 2005 – one of which involved a resident being knocked down by a car and seriously injured.

3. That a copy of this letter be sent to the Hon Joe Tripodi, Minister for Roads, and the Hon Bob Debus, Member for the Blue Mountains, requesting their support in this matter.”

Comments by Councillor Hamilton:

Following recent extensive community consultation in the Blackheath community, and review by Council staff, the two recent Roads and Traffic Authority’s proposals are not considered adequate to address the long record of traffic accidents between cars and pedestrians at this location.
NOTICE OF MOTION

The Blackheath Chamber of Commerce and the Blackheath Area Neighbourhood Centre have rejected the current RTA proposals as being inadequate to deal with the life threatening issues being experienced at the crossing.

In addition, the broad support of the Blackheath community is evident by the large number of residents signing a petition requesting the RTA to install traffic signals at the pedestrian crossing.
ITEM NO: 34

SUBJECT: PRECIS OF SELECTED CORRESPONDENCE, 13/12/2005

FILE NO: C00680

Recommendation:

That the Precis of Selected Correspondence be received and appropriate letters forwarded where necessary.

1. **10/11/2005 – Resident of Warrimoo**

   Thanking Council staff for the prompt replacement of her damaged garbage bin. Also, expressing appreciation for the assistance of Council staff with regard to general advice on building standards for household renovation.

2. **16/11/2005 – The President, Lachlan Regional Transport Committee Inc**

   Enclosing the business paper of the meeting of the Transport Committee held in Condobolin on 12 November 2005 (available on file), and noting that the meeting was extremely productive. Adding that the Minutes of the 12 November 2005 meeting will follow.


   Referring to Council’s letter (dated 29 July 2005) concerning drainage issues associated with the Great Western Highway at Medlow Bath, addressed to the former Minister for Roads, The Hon Carl Scully MP.

   (Please refer to Attachment 1 for a copy of Council’s letter of 29 July 2005, to the former Minister, followed by the current Minister’s response).
29 July 2005

The Hon. Carl Scully, MP
Minister for Roads
Level 36, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Mr Scully,

SUBJECT: Drainage issues associated with the Great Western Highway roadworks around Medlow Bath.

At its Council meeting on 28th March 2005, Council made a Notice of Motion relating to this subject matter:

“That Council immediately writes to the Roads and Traffic Authority, with a copy to the Minister for Roads, the Hon. Carl Scully, and the Member for Blue Mountains, the Hon. Bob Debus, outlining the need for urgent remedial works in regard to drainage issues caused by the recent highway widening at Medlow Bath, and requests that this work proceed with the utmost expediency.”

Since this Council Meeting, Council and the RTA’s project manager Bruce Taggart have been working collaboratively to remediate a number of issues that have been identified by Council and residents. These issues focused primarily around stormwater and drainage in Coach House Lane, damage to road surfaces and pedestrian access.

These negotiations between Council and RTA have resulted in additional funding being made available by the RTA to engage Council to undertake works to remediate outstanding issues.

Please find attached for your reference a copy of a letter sent to Phil Mahoney, Senior Project Development Manager for the RTA as per Notice of Motion above.

Yours faithfully,

MICHAEL WILLIS
General Manager

Blue Mountains City Council
Locked Bag No.3 Katoomba, N.S.W. 2780
T (02) 4780 5000 F (02) 4780 5555 E council@bmcc.nsw.gov.au W www.bmcc.nsw.gov.au B X BM Katoomba
(Minister Tripodi’s Response to Council’s Letter of 29 July 2005)

Mr W Willis
General Manager
Blue Mountains City Council
Locked Bag No. 5
KATOOMBA NSW 2780

22 NOV 2005

Dear Mr Willis,

Thank you for Council’s letter to the former Minister for Roads concerning drainage issues associated with the Great Western Highway upgrade at Medlow Bath.

I am advised by the Roads and Traffic Authority (RTA) that the matters related to the RTA’s recent construction works at Medlow Bath have been resolved.

However, I am further advised that Council is responsible for the drainage structures in Coach House Lane.

Should Council require further information regarding this matter the RTA’s Project/Contract Manager, Mr Bruce Taggart (telephone 8814 2240) would be pleased to assist.

Yours sincerely,

Joe Tripodi
Minister for Roads
ITEM NO: 35

SUBJECT: SECTION 94 CONTRIBUTIONS

FILE NO: C01518 Pt 2

Question by Councillor C Van der Klei (13/12/05):

“How does the condition to require a Bank Guarantee for Section 94 Contributions operate?”