

# Reports from the Planning and Environment Committee Meeting held at 7.30pm on Tuesday, 30 March 2010.

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## APOLOGIES

## ACKNOWLEDGEMENT OF LAND

## DECLARATIONS OF INTEREST

### Pecuniary Interests

### Non Pecuniary – Significant Interests

### Non Pecuniary – Less than Significant Interests

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**Minutes of the Planning and Environment Committee held on 30 March 2010**

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**Present** Councillor R Matheson (Chairperson)  
Councillor J Bourke  
Councillor G Greiss  
Councillor R Kolkman  
Councillor M Oates  
Councillor J Rowell  
Councillor R Thompson  
General Manager - Mr P Tosi  
Director Planning and Environment - Mr J Lawrence  
Manager Environmental Planning - Mr P Jemison  
Manager Development Services - Mr J Baldwin  
Manager Compliance Services - Mr A Spooner  
Manager Waste and Recycling Services - Mr P Macdonald  
Manager Community Resources and Development - Mr B McCausland  
Corporate Support Coordinator - Mr T Rouen  
Executive Assistant - Mrs D Taylor

**Apologies** Nil

**Also in Attendance**

Environmental Planning Coordinator - Ms R Winsor

**Acknowledgement of Land**

An Acknowledgement of Land was presented by the Chairperson Councillor Matheson.

**DECLARATIONS OF INTEREST**

Declarations of Interest were made in respect of the following item:

**Non Pecuniary – Significant Interests**

Councillor Matheson - Item 4.3 - Bradbury Inn Hotel - Application to Amend Licence Conditions - Councillor Matheson advised that as a member of a Political Party he received a donation from the applicant and that he will leave the Chamber and not take part in debate nor vote on the matter.

**Non Pecuniary – Less than Significant Interests**

Councillor Greiss - Item 4.1 - Legal Status Report, Pope Shenouda III Coptic Christian Centre - Councillor Greiss advised that he attends the Church in question on average on a fortnightly basis. He is not on the board nor does he receive remuneration.

Councillor Kolkman - Item 4.3 - Bradbury Inn Hotel - Application to Amend Licence Conditions - Councillor Kolkman advised that he is an occasional patron of Bradbury Inn Hotel.

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Councillor Rowell - Item 4.3 - Bradbury Inn Hotel - Application to Amend Licence Conditions - Councillor Rowell advised that he is an occasional patron of Bradbury Inn Hotel.

Councillor Kolkman - Item 3.4 - No. 22 Macquarie Links Drive, Macquarie Links - Construction of a Dwelling - Councillor Kolkman advised that he had had discussions with the applicant regarding this matter however as soon as he was made aware that the matter was before the Land and Environment Court no further discussions took place.

Councillor Matheson - Item 3.4 - No. 22 Macquarie Links Drive, Macquarie Links - Construction of a Dwelling - Councillor Matheson advised that he had had discussions with the applicant regarding this matter however as soon as he was made aware that the matter was before the Land and Environment Court no further discussions took place.

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## **1. WASTE AND RECYCLING SERVICES**

### **1.1 Strategic Waste Action Plan**

#### **Reporting Officer**

Manager Waste and Recycling Services

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#### **Attachments**

Draft Strategic Waste Action Plan (distributed under separate cover).

#### **Purpose**

To present Council with a draft Strategic Waste Action Plan for Council's consideration and if endorsed, recommended to be submitted to the Department of Environment, Climate Change and Water.

#### **History**

The 'Local Council Waste and Sustainability Improvement Payments' (WaSIP) Program forms part of the NSW Government's 'City and Country Environment Restoration Program'. The programs have been running since 2006 and are administered by the NSW Department of Environment, Climate Change and Water (DECCW).

Through the WaSIP Program the NSW Government will invest a total of \$256 million over seven years for various waste and sustainability programs nominated by eligible councils.

To be eligible to receive a WaSIP payment, councils are required to meet both the current year's and ongoing WaSIP standards.

Campbelltown City Council has met all WaSIP standards since the inception of the program. These include:

- A kerbside collection service for dry recyclables available to all residential dwellings, other than multi-unit buildings, within the local government area;
  - Information required under the National Environment Protection (Used Packaging Materials) Measure provided to the DECCW annually;
  - Baseline data on tonnages of dry recyclables, garden organics and residual domestic waste submitted to the DECCW annually;
  - New and replacement mobile garbage bins to conform to the Australian Standard 4123.7 for colours and markings;
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- New disposal contracts for residual waste to landfill must not be for more than five years;
  - Any new contracts entered into by Council after 30 June 2007, for the collection and disposal of household clean-up material, are to have recycling/resource recovery as a component of the service contract;
  - All development application consents issued after 30 June 2009 for the building of new multi-unit dwellings to incorporate the provision of dry recycling collection services;
  - Council to have in place a 'Waste Not Development Control Plan' (or a policy of similar nature) to include:
    - Development requirements for the management of demolition and construction waste;
    - Submission of a waste management plan,
    - On-site retention of demolition and construction waste dockets to confirm which facility received the material for recycling and disposal; and
    - Consideration of the facilities required for ongoing recycling and waste management services upon completion of the development.

To be eligible for the 2010/11 payments under the WaSIP Program Council must develop and adopt a 'Strategic Waste Action Plan' (SWAP) that contains system changes and actions that will assist Council in reaching the State Government nominated target to divert from landfill, at least 66% of the municipal waste stream. Evidence of Council's formal adoption of the SWAP must be submitted to the DECCW by 30 April 2010. The adopted SWAP must be in a standardised format provided by the DECCW. Council's draft SWAP, provided as a separate attachment, is presented in this standardised format.

## **Report**

### *Current Performance*

For the purposes of calculating diversion rates, the 'municipal waste stream' refers to waste collected from garbage bins, recycling bins, garden organics bins and kerbside clean-ups. From these four sources, Campbelltown City Council currently generates around 68,000 tonnes of municipal waste per year, of which just under 42,000 tonnes or around 62% are diverted from landfill. This achievement is due partly to Council's regional contract with the Councils of Camden, Wollondilly and Wingecarribee to engage WSN Environmental Solutions to build, own and operate the Macarthur Resource Recovery Park. In particular the Advanced Waste Technology (AWT) facility at the Macarthur Resource Recovery Park currently diverts a significant amount of domestic garbage from landfill.

It should be noted that without Advanced Waste Technology, had all Campbelltown's domestic garbage continued to be landfilled, Council's overall diversion percentage would have been far less than its current rate of 62%.

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*Proposed Strategic Waste Action Plan*

The proposed Strategic Waste Action Plan (SWAP) has been developed to further improve Council's already impressive landfill diversion rates in the Campbelltown Local Government Area. The following strategies summarise the actions contained in the draft SWAP, which is recommended to be adopted by Council and then submitted to the DECCW.

- The landfill diversion rate for domestic garbage is currently below expectations for the recently constructed AWT facility. The contractor, WSN Environmental Solutions, advises that this is due to a number of factors, including the need for ongoing design and process refinements at the processing facility, and a decline in demand for recyclable plastics following the recent 'global financial crisis'.

Diversion rates are expected to steadily improve with the gradual recovery of the world economy, along with ongoing design and process refinements at the facility.

- Council will continue to liaise with WSN Environmental Solutions at its monthly contract management meetings, at which updated diversion rates will be reported on an ongoing basis.
- Council is in the process of implementing a targeted inspection program for contaminated recycling and garden organics bins. Information received from both WSN and Council's waste collection contractor, SITA Environmental Solutions, is being used to identify areas where contamination levels are high. Council staff will carry out targeted inspections of bins in the areas of concern. It is envisaged that adopting a target based inspection program for contamination will result in an increased recovery rate of garden organics and dry recyclables.
- Information received from WSN Environmental Solutions and SITA Environmental Solutions has identified that a high percentage of contamination is collected from certain residential areas. Council will continue to work with these areas to increase community awareness of how to use Council's domestic waste and recycling collection services correctly.
- Council will continue to work with residents and caretakers at new and existing multi unit dwellings to educate residents on the correct usage of Council's domestic waste and recycling services. Council has already commenced sending information packs to residents moving into new multi unit dwellings to assist in reducing contamination rates and illegal dumping incidents.
- To assist in further improving Council's overall percentage of materials recovered from the municipal waste stream, Council will continue to implement the Free Domestic Recyclables Drop Off Day and Light Globe and Fluorescent Tube Recycling Program.

In addition to the initiatives above, the following projects and policies, which are already in place will continue, and where possible be enhanced:

- The Campbelltown (Sustainable City) Development Control Plan and Campbelltown City Council Waste Management Plan Template, to assist in identifying the type and volume of waste generated on the subject property at different stages of the development and how these materials will be re-used, recycled or disposed;
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- Home composting education and the availability of compost bins for residents at cost price;
- Diverting mattresses, white goods and metals from landfill;
- The Mobile Phone Recycling Program.

The adoption and implementation of the proposed Strategic Waste Action Plan will assist Council in meeting its objective to exceed the target of 66% diversion of municipal waste from landfill prior to 2014.

### **Officer's Recommendation**

1. That Council adopt the draft Strategic Waste Action Plan as shown attached to this report.
2. That Council refer the adopted Strategic Waste Action Plan to the Department of Environment, Climate Change and Water.

### **Committee's Recommendation: (Thompson/Bourke)**

That the Officer's Recommendation be adopted.

### **CARRIED**

### **Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

### **Council Resolution Minute Number 49**

That the Officer's Recommendation be adopted.

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## **2. ENVIRONMENTAL PLANNING**

### **2.1 Co-generation - Menangle Park**

#### **Reporting Officer**

Manager Environmental Planning

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#### **Attachments**

Nil

#### **Purpose**

To inform Council of the options available to incorporate energy co-generation facilities and systems as part of the future development of the Menangle Park Urban Release Area.

#### **History**

At its meeting on 17 November 2009, Council resolved:

*That a Report be presented examining the potential to incorporate energy co-generation facilities and systems as part of future development in the Menangle Park Urban Release Area.*

#### **Report**

##### **What is a co-generation/tri-generation system?**

Co-generation involves the simultaneous production of heat and electricity. Fuel (gas) is burnt in an engine which drives a generator to produce electricity. The waste heat from the engine is then used for space, water or process heating rather than being lost as steam through cooling towers.

Tri-generation is an extension of co-generation, adding cooling to electricity generation and heat production. The waste heat is then converted to cold water for cooling through the application of an absorption chiller. An absorption chiller is basically an air conditioner driven by a heat source rather than electricity, utilising excess heat and converting it into cold water or cold air.

Co-generation systems have existed for over a century. In the late 20<sup>th</sup> and early 21<sup>st</sup> century the use of co-generation and tri-generation systems has continued to expand. These systems, be they co-generation or tri-generation can be designed to suit any scale of development from small residential developments (Glenfield – 16 residential dwellings) to large city scale systems (Manhattan New York – 100,000 residential and commercial buildings).

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Australia has seen the steady growth of the number of systems being incorporated into new and re-developed buildings be they co-generation or tri-generation. These systems have been installed in office buildings, hospitals, universities, airports and residential estates. Typically the efficiency and cost effectiveness of these systems is linked to the area to which these systems are connected i.e. greater floor space can lead to increased efficiency.

The current trend is towards tri-generation systems. These systems have the advantage of providing both heating and cooling as well as generating electricity. As such this report will concentrate on tri-generation systems rather than traditional co-generation systems.

### **Advantages/Disadvantages of trigeneration**

The greatest advantage of tri-generation is the increase in efficiency compared to producing heat, cooling and electricity individually. Additional efficiency is gained from reducing electricity transmission losses. The use of tri-generation provides a reduction in the use of natural resources to produce the energy and consequently a reduction on the environmental impact. This reduced consumption of natural resources also has the impact of lowering the operational cost of the system.

Tri-generation is specifically beneficial in areas of a variable climate where there is a strong heating demand in winter alternating with high cooling demand in summer.

The biggest disadvantage of tri-generation is the initial upfront costs and the payback period, both in terms of the cost of the system and the cost to install the system. Tri-generation systems also need access to the desired fuel source (typically natural gas) and require specialist maintenance. Evidence also suggests that presently there has been a reluctance on behalf of the established utility providers to support tri-generation systems (refer to case studies below).

### **Case Studies**

#### *GirdX/Mirvac – Panorama Estate, Glenfield*

In 2006, Mirvac began selling the first ever release of residential homes powered by a tri-generation system. This system was designed, installed and operated by GridX, an Australian owned energy service provider. This release was seen as a pilot study to assess the feasibility and suitability of developing such a system for the residential market. As such only 16 homes were connected to the system.

Mirvac (the developer) has recently advised that the system has worked well and that they may be utilising this system in the future albeit at a much larger scale (involving several hundred dwellings). However, Mirvac highlighted a number of issues that they have encountered with the GridX system.

First and foremost were issues with the power authority, in this case Integral Energy. GridX and Mirvac were required to be accredited by the Office of Fair Trading and authorised by Integral Energy in order to undertake the work required to install the system. Mirvac reported that there were some difficulties in gaining the required accreditation approvals. As this was a pilot project, this was the first time that these accreditation/approvals had been sought for this type of development. It could be expected that accreditation/approvals for future developments would possibly be easier to gain.

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The other significant issue encountered was in relation to the up front cost of the system and the subsequent impact that this had on the price of the housing. Mirvac has indicated that the cost of the GridX system was between \$10,000 and \$20,000 extra per dwelling compared to similar properties in the vicinity (without access to the Grid X System). This increase in cost, despite the longer term operational savings, is understood to have given rise to some issues relating to the saleability of these dwellings.

In this regard, and given that at present the cost of power supplied by GridX is approximately half that of the traditional utility providers, it is estimated that the payback period may be in the order of 10 years.

#### *Canberra Airport Group – Brindabella Business Park/Majura Office Park*

As part of the development of the Brindabella Business Park/Majura Office Park, Canberra Airport has installed a tri-generation system to provide all the electricity, heating and cooling for the development.

Although this system is for a commercial/business environment a report prepared by Canberra Airport suggests that the system would provide electricity, heating and cooling for approximately 320 homes. It is noted that Canberra Airport estimate that this system cost \$3.2M over and above what a conventional system would have been to install. This would equate to an additional cost of approximately \$10,000 per dwelling, which is similar to the increase in costs reported by Mirvac. Canberra Airport indicates that it expects to have recovered this additional cost within 6 to 9 years.

#### **Options for Council**

There are a range of issues surrounding the incorporation of co-generation or tri-generation into new urban release areas. Council would need to ensure that the advantages of enhanced sustainability are balanced with the implications for development costs and land saleability, as well as possible issues regarding costs to consumers and "pay-back" periods.

#### **Conclusion**

It is considered that there may be some merit to investigate the application of tri-generation as part of the Menangle Park Urban Release Area project for further consideration by Council. This detailed work could more reliably inform Council on issues concerning costs and implications for consumers. The major landholders in the Menangle Park development are Landcom and Campbelltown Council and it is considered appropriate that Council initially seek the formal support of Landcom to be involved in further investigations.

#### **Officer's Recommendation**

1. That Council undertake an investigation into the use of tri-generation system with the Menangle Park Urban Release Area in partnership with Landcom.
  2. That Council approach Landcom with a view to securing their agreement to partner Council in the investigation.
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**Committee's Recommendation: (Oates/Bourke)**

1. That Council undertake an investigation into the use of tri-generation system with the Menangle Park Urban Release Area in partnership with Landcom.
2. That Council approach Landcom with a view to securing their agreement to partner Council in the investigation.
3. That Council investigate the potential for incorporating tri-generation facilities into future planning and development of employment generating lands.

**CARRIED**

**Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Committee's Recommendation be adopted.

**Council Resolution Minute Number 49**

That the Committee's Recommendation be adopted.

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## 2.2 Environmental Education Strategy

### Reporting Officer

Manager Environmental Planning

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### Attachments

Environmental Education Strategy (distributed under separate cover).

### Purpose

To seek Council's endorsement of the Environmental Education Strategy.

### History

The Draft Environmental Education Strategy was the subject of a Councillor Briefing night held on Tuesday 3 November 2009. At its meeting on 8 December 2009, Council considered a report on the draft Environmental Education Strategy and resolved to place the draft Strategy on public exhibition and to report the outcomes to Council.

### Report

Within the Campbelltown Local Government Area (LGA), the natural environment is subject to a number of pressures from a variety of sources. Council's charter in managing the LGA is to provide leadership in conserving and enhancing the local environment.

This is recognised in the *Campbelltown 2025 Looking Forward* strategy, which identifies "Protecting and enhancing the city's key environmental assets" as one of the six (6) Strategic Directions for Council to address in its operations. It is further recognised in Council's *Management Plan*, which states that "Campbelltown's Highly Valued Environmental Assets Need to be Maintained" and one of the key Principle Activities for Council is "Preserving our Hills, Rivers and Bushland – Campbelltown's Environment".

As such, Council undertakes a leadership role in a number of measures that can manage and mitigate the pressures on the local environment. These measures include planning instruments and compliance measures. It is also acknowledged that Councils have a role to play in raising community awareness and understanding about environmental and sustainability issues, through environmental education.

This Environmental Education Strategy has been developed to assist in the coordination of Council's environmental education programs. It was developed to strategically address local environmental issues, and is complimentary to existing Council programs.

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### **Public Exhibition**

The Draft Environmental Education Strategy was placed on public exhibition at Council's Civic Centre, HJ Daley Central Library, Ingleburn, Glenquarie and Minto Libraries, Eagle Vale Central as well as being featured on the Natural Environment page on Council's Web site. The exhibition of the Strategy was also advertised in the local notices section of the Campbelltown Advertiser and the Macarthur Chronicle. During the submission period, Council received three letters from the community in support of the Strategy.

One of the submissions was from a resident of Glen Alpine, who commented that he values the area for its natural bushland beauty and its recreational opportunities. He went on to say how it is vital for Local Government to play a lead role in educating the community about the environment, and that the programs outlined in the Strategy appear exciting and to cover a broad range of issues.

The second submission was received from a resident of St Helens Park. She commented that she was impressed by Council's commitment to the environment and supported Council's approach to encourage residents to gain a better understanding and appreciation of the natural environment.

The third submission was received from a resident of Bradbury, who has recently moved to the area from Newcastle. The resident expressed their concern about the state of some of the local creek lines, in particular the level of litter and dumped items. However, they also expressed their support for Council in recognising the importance of protecting the environment in the area and having the foresight to address these types of issues through environmental education.

### **Environmental Education Strategy Budget**

In order to fund the activities outlined within the Strategy, Council would be required to allocate sufficient available financial resources to the programs. It should be noted that a number of the programs listed below already receive funding as part of Council's core Environmental Planning Section budget.

Council's draft budget for implementation of the Environmental Education Strategy is \$19,000. This will be supplemented where at all possible with grants to maximise the effectiveness of Council's environmental education programs.

### **Conclusion**

The draft Community Environmental Education Strategy has been developed to strategically address community awareness and engagement in key environmental issues confronting the Campbelltown Local Government Area, and the wider issue of sustainability, embracing global matters such as climate change and natural resource management. The implementation of the Strategy in accordance with available resources will ensure the environmental education activities undertaken by Council will be focussed and appropriately prioritised for maximum community benefit and provide the best value outcomes.

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**Officer's Recommendation**

That Council adopt the Environmental Education Strategy.

**Committee's Recommendation: (Thompson/Rowell)**

That the Officer's Recommendation be adopted.

**CARRIED**

**Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

**Council Resolution Minute Number 49**

That the Officer's Recommendation be adopted.

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## **2.3 Minutes of the Heritage Protection Sub Committee Meeting held on 4 February 2010**

### **Reporting Officer**

Manager Environmental Planning

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### **Attachments**

Minutes of the Heritage Protection Sub Committee Meeting held on 4 February 2010.

### **Purpose**

To seek Council's endorsement of the Minutes of the Heritage Protection Sub Committee Meeting held on 4 February 2010.

### **Report**

Detailed below are the recommendations of the Heritage Protection Sub Committee. Council officers have reviewed the recommendations of the Sub Committee and they are now presented for Council's consideration. The recommendations that require a resolution of Council are detailed in the Officer's recommendation.

### **Recommendations of the Heritage Protection Sub Committee**

#### **Reports listed for consideration**

#### **7.1 Gravesite Restoration at St Peter's Anglican Church Cemetery - Funding Request**

1. That Council be requested to approve the Local Heritage Fund (2009-2010) application for a maximum of \$500 from Mrs June Young for the restoration of the Tyson Family Gravesite within the St Peter's Anglican Church Cemetery.
2. That Council advise the applicant in writing its decision with respect to this matter.

#### **7.2 2010 Heritage Festival Program**

That the information be noted.

#### **7.3 2010 Heritage Medallion Nominations**

That the Manager Cultural Services present a separate confidential report to Council seeking endorsement of the Heritage Protection Sub Committees recommended recipient/s of the 2010 Heritage Medallion/s.

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**Director's Comment:** It should be noted that after considering this matter at its meeting on 2 March 2010 Council resolved that four Heritage Medallions be awarded in 2010, one to each of the following:

- National Parks Association -Macarthur Branch
- Ms Jacqui Kirkby/Mr Peter Gibbs
- Mr Adrian Tesler
- Ms Lyn Bowden

### **8.1 Local Heritage Fund Guidelines**

That Council be requested to consider amending the Local Heritage Fund Guidelines to clarify that applicants (who are successful in achieving funding in one financial year) are not permitted to apply for funding in the following financial year.

### **8.2 Call for Nominations for the Heritage Medallion**

That the Manager Cultural Services be requested to present a report to the next meeting of the Heritage Protection Sub Committee in relation to possible adjustments to the time frame for advertising for Heritage Medallion nominations in future years.

### **Officer's Recommendation**

1. That the Minutes be noted.
2. That Council approve the Local Heritage Fund (2009-2010) application for a maximum of \$500 from Mrs June Young for the restoration of the Tyson Family Gravesite within the St Peter's Anglican Church Cemetery and that Council advise the applicant of its decision in this matter.
3. That the Local Heritage Fund Guidelines be amended to clarify that applicants (who are successful in achieving funding in one financial year) are not permitted to apply for funding in the following financial year.
4. That Council authorise the submission of a report to the next meeting of the Heritage Protection Sub Committee by the Manager Cultural Services, in relation to possible adjustments to the time frame for advertising for Heritage Medallions in future years.

### **Committee's Recommendation: (Bourke/Thompson)**

That the Officer's Recommendation be adopted.

### **CARRIED**

### **Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

### **Council Resolution Minute Number 49**

That the Officer's Recommendation be adopted.

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## **ATTACHMENT 1**

### **Minutes of the Heritage Protection Sub Committee Meeting**

**Held Thursday 4<sup>th</sup> February 2010 in Committee Room 3**

#### **1. Acknowledgement of Land**

An Acknowledgement of Land was presented by the Chairperson, Councillor Bourke.

#### **2. Attendance and Apologies**

**Attendance:** Councillor Julie Bourke (Chairperson)  
Councillor Meg Oates  
Jacqueline Green  
James Gardner  
Jenny Goodfellow  
Robert Wheeler  
Mario Majorich  
Trevor Rhodes

**Also in Attendance:** Jeff Burton - Strategic Environmental Planner  
Caroline Puntillo - Executive Planner  
Lisa Havillah - Manager Cultural Services  
Jane Worden - Executive Support

**Apologies:** Nil

#### **3. Declarations of Interest**

Mr James Gardner made a Declaration of Interest in relation to item 7.1 'Gravesite Restoration at St Peters Anglican Church Cemetery - Funding Request' and advised that he was involved in the restoration works.

Councillor Julie Bourke made a Declaration of Interest in respect of Item 7.3. '2010 Heritage Medallion Nominations'. Cr Bourke advised that a relative had submitted a nomination for the Heritage Medallion 2010.

Ms Jacqueline Green made a Declaration of Interest in respect of Item 7.3. '2010 Heritage Medallion Nominations'. Ms Green advised that she had submitted a nomination for the 2010 Heritage Medallion.

Mr Robert Wheeler made a Declaration of Interest in respect of Item 7.3. '2010 Heritage Medallion Nominations'. Mr Wheeler advised that he is a member of the National Parks Association who have been nominated for the 2010 Heritage Medallion.

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#### **4. Minutes of the Previous Meeting**

##### **Report**

The Minutes of the Heritage Protection Sub Committee Meeting held on 3 December 2009, copies of which were circulated to each Sub Committee Member, are being presented to Council for adoption at its meeting to be held on 9 February 2010.

##### **Officer's Recommendation**

That the information be noted.

##### **Sub Committee's Recommendation: (Oates/Gardner)**

That the information be noted.

##### **CARRIED**

#### **5. Business Arising from Previous Minutes**

##### **Purpose**

To report on business arising from the minutes of the Heritage Protection Sub Committee Meeting held on 3 December 2009.

##### **Report**

A report on the minutes of the Heritage Protection Sub Committee meeting (held on 3 December 2009) are yet to be endorsed by Council at its meeting of 9 February 2010. Accordingly, the Sub Committee's recommendations have not been considered or endorsed by Council. Notwithstanding, the following updates are provided on selected items as applicable:

##### **7.1 Vernacular Housing in Campbelltown**

1. That Council investigate opportunities for funding to undertake a historic and pictorial database of the history of development and building styles within the Campbelltown Local Government Area with an emphasis on vernacular housing.
2. That as a matter of urgency, Council be requested to prepare a photographic record of streetscapes and vernacular housing located in vicinity of the Campbelltown Central Business District that may be lost through future redevelopment.

**Officer's comment:** There are limited opportunities for funding through the NSW Heritage Branch for historical research and local archive projects, and applications will not open for the 2010 program until May 2010. This grant is available on a dollar for dollar basis up to \$4,500 to assist with consultant costs. However, funding is restricted to individuals and community organisations and is generally for the purpose of archival recording of listed heritage items. Grants are not available under this scheme for Local Government bodies when undertaking this work as part of statutory responsibilities. As such, it is unlikely that this grant source could be successfully gained for the recording of (unlisted) vernacular housing.

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Subject to Council's endorsement of the request to prepare a photographic record, this task could possibly be assigned to Council's heritage consultant as part of future work at Council's expense, and if funds are available.

## **7.2 Nominations for filling a vacancy on the Heritage Protection Sub Committee.**

That the Heritage Protection Sub Committee request that Council:

1. Consider the appointment of Melissa Plummer (Heritage Item Owner) as a member of the Heritage Protection Sub Committee.
2. Write to the unsuccessful applicants thanking them for their applications.
3. Invite the unsuccessful applicants to attend any future Heritage Protection Sub Committee meeting as observers.

**Officer's Comment:** A separate report regarding the filling of the vacancy on the Heritage Protection Sub Committee has been presented to the Planning and Environment Committee meeting of 2 February 2010, in accordance with Councils' resolution of 15 December 2009.

## **7.3 Development Application 2276/2009/DA-O- Demolition of existing carport and the construction of a replacement Shed/Garage and repainting of Varro Ville House roof**

That Council be advised that the Heritage Protection Sub Committee supports the Development Application 2276/2009/DA-O (including the associated Statement of Heritage Impact), for the demolition of an existing garage/carport and the construction of a new shed/garage at Varro Ville, Lot 21 DP 564065, No. 196 St Andrews Road, Varroville.

**Officer's Comment:** A report on this development application was presented to Council at its meeting on 15 December 2009, at which Council resolved to grant consent to the proposed development.

## **7.4 Development Application 2165/2009/DA-DE - Extraction, processing and export of sand and soil products - Lot D DP 19853, Lot X DP 378264 Menangle Road, Menangle Park**

That Council be advised that:

1. The Heritage Protection Sub Committee notes the information relating to Development Application 2165/2009/DA-DE – Extraction, processing and export of sand and soil products, at Lot D DP 19853, and Lot X DP 378264, Menangle Road, Menangle Park; and
  2. That the Heritage Protection Sub Committee requests that Council raise the following concerns in its submission to the Joint Regional Planning Panel (JRPP) and that these matters also be taken into account in the JRPP's assessment of the application:
    - The need for conservation of the natural heritage values of the land including vegetation and biodiversity;
    - That consideration be given to changing the proposed boundaries of the extraction areas in order to protect the areas of high ecological and conservation significance;
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- That opportunities to refer concerns regarding vegetation (Cumberland Plain Woodland) to the Federal Government be considered;
- That due respect is given to the archaeological values of the land;
- That opportunities for appropriate signage to identify the sites of the former Chinese Market Garden and Brien's Farmhouse be investigated;
- That the feasibility of successful rehabilitation of the land, including an assessment of the future hydrology, be examined prior to determination of the Development Application;
- That consideration be given to the possible undermining of the riverbanks and the associated environmental impacts of such actions;
- That the impact of the proposed development on the existing topography, cultural rural landscape, and the relationship of the existing landscape to the river be considered.

**Officer's Comment:** A report on Council's Draft Submission to the Joint Regional Planning Panel on this development application was presented to Council at its meeting on 15 December 2009. The Draft Submission incorporated the Heritage Protection Sub Committee's recommendation. Council resolved to support the Draft Submission.

### **8.1 2010 Heritage Festival Program**

1. That a further detailed report regarding 2010 Heritage Festival Program be provided to the Heritage Protection Sub Committee at its meeting on 4<sup>th</sup> February 2010 and that a representative from the Campbelltown Arts Centre be present to address the Sub Committee on this matter.
2. That Council be requested to initiate the nomination process for the 2010 Heritage Medallion as a matter of urgency.
3. That the timeframe for the acceptance of nominations for the 2010 Heritage Medallion be revised so that the Heritage Protection Sub Committee can consider the applications at its meeting on 4 February 2010.

**Officer's Comments:** The nomination process for the 2010 Heritage Medallion commenced in December 2009 and will conclude prior to the forthcoming meeting of the Heritage Protection Sub Committee on 4 February 2010.

### **8.2 Old St John's Church**

That Council's Strategic Environmental Planner provides a status report on this issue to Sub Committee members at its meeting of 4 February 2010.

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**Officer's Comments:** Council has written to the owner's of the church requesting basic maintenance works be undertaken and providing details of grant opportunities under the Local Heritage Fund and from the NSW Heritage Branch that may be available to assist in the funding of such works.

A further verbal update on this matter will be provided at the meeting of the Heritage Protection Sub Committee.

**Officer's Recommendation**

That the information be noted.

**Sub Committee's Recommendation: (Goodfellow/Gardner)**

That the information be noted.

**CARRIED**

**6. Correspondence**

Nil

**7. Reports**

**7.1 Gravesite Restoration at St Peters Anglican Church Cemetery - Funding Request**

**Purpose**

To seek the endorsement of the Heritage Protection Sub Committee for a recommendation to Council for approval of a recent application for funding under the Local Heritage Fund 2009/2010.

**History**

St Peters Anglican Church Cemetery, located in Cordeaux Street, Campbelltown, is listed as a local heritage item within the 'St Peters Anglican Church group' in *Campbelltown (Urban Area) Local Environmental Plan 2002*. In this respect it is noted that the St Peters Anglican Church Group comprises the Church built 1821-22; Cemetery established 1822; and the Rectory built 1887.

The grant application relates to the historic family vault of the Tyson family, one of the early settler families in the Macarthur district, and located within the St Peters Anglican Church Cemetery. The Tyson family first came to Australia in 1809 and were given a land grant at Narellan in 1812. The gravesite dates from 1876, and is the burial place of James Tyson (1819 – 1889) who was a significant colonial pastoralist and Australia's first native born millionaire.

**Report**

Council has received a local heritage fund application (dated 25 November 2009), for financial assistance to continue restoration works on the Tyson family vault, located within the St Peter's Anglican Church Cemetery. The application has been submitted with the permission of the Church Minister, the Rev. Peter Stavert.

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The application has been submitted by Mrs June Young, a descendant of the Tyson family, who has already commenced a staged program of restoration works by an appropriately qualified tradesperson (James Gardner). The total cost of the works has been quoted at \$8,165 and the application is for the maximum allowance of \$1,500. Stages 1 and 2 of restoration works have been completed as part of a 4 stage program of restoration works:

Stage 1:	Restoration of Tablets	\$885	
Stage 2:	Sandblasting and Painting of Metal Fence	\$3,895	
Stage 3:	Repointing of Stonework	\$1,975	
Stage 4:	Cleaning Sandstone with Water Pressure	\$1,410	

The staged program of restoration works complies with the project eligibility criteria of Council's guidelines for local heritage funding, and may be approved by the Sub Committee. However, it is relevantly noted that:

1. Only \$500 remains unallocated from the available \$5,000 local heritage fund budget for the 2009/2010 financial year; and
2. On 17 November 2009, Council allocated the maximum project grant of \$1,500 for the St Peter's Anglican Church group, being for restoration works relating to the windows of the Church building).

Given the limit of available funds, and in order to provide an equitable distribution of heritage funding for all owners within the Campbelltown Local Government Area, it is considered that the subject application be granted funding of \$500 subject to no other eligible projects being approved within the 2009/2010 financial year. In this regard, it is noted that should the local heritage fund be expended on other eligible projects for the current financial year, then the applicant would have the option of re-applying for funding in the next financial year.

### **Conclusion**

The proposed works would assist in conserving an important colonial gravesite within the cemetery of the heritage listed St Peter's Anglican Church Group. The proposal complies with the eligibility criteria for financial assistance under Council's Guidelines for local heritage funding.

However, given that Council has already allocated \$4,500 from the \$5,000 local heritage budget for the 2009/2010 financial year, and that this allocation includes \$1,500 to the St Peters Anglican Church group, the allocation of further funds to the St Peters Anglican Church Group may deny other eligible applications within the current financial year. In this regard, it is considered that the balance of \$500 should only be allocated for the subject proposal subject to no further Local Heritage Fund applications being approved in the current financial year.

### **Officer's Recommendation**

1. That the Heritage Protection Sub Committee request that Council approve the Local Heritage Fund (2009-2010) application for a maximum of \$500 from Mrs June Young for the restoration of the Tyson Family Gravesite within the St Peters Anglican Church Cemetery, with payment being subject to allocated funds being available from the Local Heritage Fund at the end of the 2009/2010 financial year.
  2. That the applicant be advised in writing of Council's decision with respect to this matter.
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**Committee Note:** Having declared an interest in relation to this Item, Mr James Gardner left the room during the discussion of this item and returned to the room once the matter was dealt with by the remaining committee members. The book that accompanied the grant application titled: "Tyson's Outback - Paintings and story by June Young", was circulated at the meeting for the viewing of the Heritage Protection Sub Committee members.

**Sub Committee's Recommendation: (Green/Rhodes)**

1. That Council be requested to approve the Local Heritage Fund (2009-2010) application for a maximum of \$500 from Mrs June Young for the restoration of the Tyson Family Gravesite within the St Peters Anglican Church Cemetery.
2. That Council advise the applicant in writing its decision with respect to this matter.

**CARRIED**

**7.2 2010 Heritage Festival Program**

**Purpose**

To provide an update on the Heritage Protection Sub Committee on the 2010 Heritage Festival Program.

**Report**

Council's Heritage Festival will be held from the 9 - 24 April 2010 as part of the annual National Trust Heritage Festival. This year's theme is centred on the 200<sup>th</sup> Anniversary of appointment of Governor Lachlan Macquarie as the 5<sup>th</sup> Governor of the colony of New South Wales. The official theme is "The Making of Our Nation" with Macquarie influenced areas instructed to focus on the achievements of Governor Macquarie.

Campbelltown City Council's Heritage Festival Program will contain events presented by Campbelltown Arts Centre, Campbelltown and Airds Historical Society Inc, HJ Daley Library and Campbelltown's Visitor Information Centre - Quondong. The program will include the following key events.

**Campbelltown Arts Centre - Heritage Week Forum**

The key event of the Council's Heritage Festival Program will be the 2010 Heritage Forum coordinated by Campbelltown Arts Centre, to be held on Thursday 15 April at 7pm. Campbelltown Arts Centre will continue to use community oral histories as the foundation for the content of the 2010 Heritage Forum. The key components of the forum include the selection of a keynote speaker who will discuss the achievements of Governor Lachlan Macquarie, the presentation of the Heritage Medallion(s), and the premiere of a commissioned film.

The keynote speaker will be Dr James Broadbent. Dr Broadbent will discuss his new book *The Age of Macquarie*, which takes a close look at Governor Macquarie's colony (1810-1821) and his achievements. Dr Broadbent is well known as an historian, conservationist and author. His main area of study is the history of colonial houses in New South Wales, their furnishings, gardens and the society that built and lived in them. Dr Broadbent has studied the conservation and restoration of many significant Australian houses and gardens, most recently the recreation of the garden at 'Glenfield'.

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**Campbelltown Arts Centre - Heritage Week Medallion**

As a major part of the 2010 Heritage Forum, Campbelltown City Council will award the annual Heritage Medallion(s) to an outstanding member of the community (a school group) who have contributed significantly to the presentation of Campbelltown's built and natural heritage.

Nominations for the 2010 Heritage Week Medallion winner closed on the 22 January 2010. Four nominations were received. Four nominations were made for individuals or groups. No school nominations were received. The nominations are detailed in a separate report to the Heritage Week Sub Committee on this agenda.

**Campbelltown Arts Centre – Heritage Week Film Commission**

Campbelltown Arts Centre has commissioned Angelica Mesiti, winner of the 2009 Blake Prize, to produce a short film inspired by the achievements of Governor Macquarie, to screen at the 2010 Heritage Forum. Angelica Mesiti has chosen to focus on Macquarie's legacy of building works and is thus developing a work on the site of one of the oldest buildings in Campbelltown that dates back to the days of its settlement by Governor Macquarie. She has proposed to engage a local High School band to participate in the film project.

Angelica Mesiti was born in Sydney and gained her Bachelor of Fine Arts with Honors from the College of Fine Arts at UNSW where she is now completing her Masters. She works within the traditions of video, performance and installation and generates material through a range of approaches including staged situations, site specific performative acts, re-enactment and documentation. She has shown her work in exhibitions, video festivals and screenings in Australia and internationally, and is a founding member of the Sydney based collaborative group "The Kingpins" who have performed and exhibited internationally since 2000.

**Campbelltown & Airs Historical Society - Glenalvon Open Days**

On 10 and 21 April (from 10am to 1pm), Glenalvon will be open to visitors. The days will include an exhibition on Governor Macquarie.

**Campbelltown & Airs Historical Society - Glenalvon Open Day and Lecture**

On 24 April (at 1:30pm to 3:30pm), Arthur Jones OAM will present a lecture titled "*The Best of Friends: Dr William Redfern and Governor Lachlan Macquarie*", which will feature the relationship between Dr William Redfern and Governor Lachlan Macquarie. Afternoon tea and guided tours will be included.

**Campbelltown & Airs Historical Society Governor Macquarie, Founder of Campbell-Town Exhibition**

On 10 and 21 April (from 10am-1pm) Campbelltown & Airs Historical Society will host an exhibition of early images, maps and relics that illustrate the links between Macquarie, land grantees and the development of the greater Campbelltown area.

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### **HJ Daley Library - Elizabeth Macquarie the Colonial Years Heritage Lecture**

On 14 April 2010 (at 6:30pm) academic Jill Brigden-Brown will present a lecture on Elizabeth Macquarie's colonial years. The talk will cover her influence on the Governor and some of the more unusual events that befell her during his 12 year term. The speaker has a BA majoring in History from Sydney University and an MA in Public history from University of Technology.

### **Campbelltown Visitor Information Centre - Campbelltown Heritage Bus Tour**

On 18 April 2010, a guided coach tour will explore some of the region's historic properties and sites.

#### **Officer's Recommendation**

That the information be noted.

#### **Sub Committee's Recommendation: (Green/Rhodes)**

That the information be noted.

#### **CARRIED**

### **7.3 2010 Heritage Medallion Nominations**

#### **Purpose**

The purpose of this report is to update the Heritage Protection Sub Committee on nominations received for the 2010 Heritage Medallion, and to seek the Sub Committee's endorsement of the preferred recipient(s) for formal nomination to Council.

#### **Report**

The 2010 Heritage Medallion is open to individuals, businesses, community groups, schools or tertiary institutions that have made a significant contribution to one or more of the following categories in the Campbelltown Local Government Area:

- The conservation of Campbelltown's built or natural heritage.
- Increased community awareness about Campbelltown's built or natural heritage.
- Greater community participation in planning the built environment.
- Increased community awareness of built environment issues such as sustainability and the impact of the built environment on the natural environment.

Four nominations have been received for the 2010 Heritage Medallion:

**Nominee:** Adrian Tesler  
**Nominated by:** Karen Winch, Secretary, Soldiers Settlement Museum, Campbelltown East Public School.

Summary of Nominee Achievements:

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Adrian Tesler has been nominated for his ongoing commitment to preserving and increasing community awareness about Campbelltown's local and war history.

Adrian is a Vietnam veteran who served in The Royal Australian Regiment and is now a valued member of the Soldiers Settlement Museum, which is built on the grounds of poultry farms given as grants to returned World War 2 veterans, and is located within Campbelltown East Public School.

Adrian works as a regular volunteer at the Museum, where he leads guided tours for school groups and members of the public, as well as participating in special events, open days, and official functions such as Anzac Day, Remembrance Day and VP (Victory in the Pacific) Day.

Adrian has committed himself to ensuring that the students of Campbelltown East Public School and the wider community are enriched with knowledge of what life was like during the Vietnam War. He has significantly contributed to the Museum by donating personal items on loan, and making toys and replicas for visitors to view and handle, as well as introducing a 'membership' system for visitors to the Museum.

This nomination meets the selection criteria in the following ways:

- Adrian Tesler's activities contribute to the conservation of Campbelltown's built and natural heritage through his donations and assistance in the preservation of historical artifacts significant to Campbelltown's local history.
- Adrian Tesler's contribution to the Museum has increased community awareness of Campbelltown's heritage through the sharing of personal and local histories associated with the region.

**Nominee:** Lynn Bowden

**Nominated by:** Robert Close, Adjunct Associate Professor, University of Western Sydney

Lynn Bowden has been nominated for the Heritage Medallion for her major role in the running of the University of Western Sydney (UWS) Koala Research Unit since 1998. During this period she has:

- Conducted a radio tracking program to record information about the size, stability, habits, movement, reproductive success, mortality and longevity of koalas in the wild. As a result of this work the UWS Koala Research Unit is now able to provide the information required to manage and sustain the koala population in Campbelltown.
  - Participated in the capture of 472 koalas which are recorded in the research database.
  - Played a major role in the community program to report koala sightings, of which there have been 2,450.
  - Curated a skull collection of over 80 specimens from across the Sydney Basin, which will eventually be housed in the Australian Museum.
  - Taken part in public information days and presenting talks to schools and other interest groups to generate interest and enthusiasm for native bushland and wildlife in the area.
  - Given her time and effort as a volunteer, and supplied her own vehicle and phone, to significantly reduce the monetary expense of the research project.
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This nomination meets the selection criteria in the following ways:

- Lynn Bowden has contributed to the conservation of Campbelltown's natural heritage by conducting significant research to assist in the preservation of the local koala population.
- Lynn Bowden has increased community awareness about the value of conserving Campbelltown's wildlife populations.

**Nominee:** National Parks Association – Macarthur Branch

**Nominated by:** Julie Sheppard, Member of Executive Committee National Parks Association Macarthur Branch.

The National Parks Association of NSW Inc (NPA) is a non government community group dedicated to protecting natural heritage through community action.

The NPA was formed in 1957 to lead a campaign calling for a new government body to manage natural areas throughout the State. The success of this campaign resulted in the National Parks and Wildlife Act of 1967 and the establishment of the National Parks and Wildlife Service. The NPA is now a 6,000 person strong organisation with 19 branches across the State.

The NPA Macarthur is a long standing local organisation devoted to increasing community awareness and the conservation of Campbelltown's natural heritage. Activities that have been undertaken to increase community awareness of Campbelltown's natural heritage include:

- Developing educational tours and discussion talks within the Campbelltown region, as well as an activities program.
- Contributing to the multicultural environment day, Riverfest.
- Running biodiversity surveys and other surveys targeting specific animals.
- Running the Macarthur Heritage lecture series over the last 4 years as a successful ongoing partnership with Council through the Campbelltown Arts Centre and the University of Western Sydney.
- Involvement in a number of targeted campaigns to protect the built and natural heritage of the area.
- Active participation on a number of committees where environment group representatives are sought.
- Participation in a number of Public Inquiries and Commissions of Inquiry.

This nomination meets the selection criteria in the following ways:

- Contributing to the conservation of Campbelltown's built or natural heritage.
- Increasing community awareness about Campbelltown's built or natural heritage.
- Encouraging greater community participation in planning the built environment.
- Increasing community awareness of built environment issues such as sustainability and the impact of the built environment on the natural environment.

**Nominee:** Jacqui Kirkby and Peter Gibbs

**Nominated by:** Jacqueline Elizabeth Green

Jacqui Kirkby and Peter Gibbs have been nominated for the restoration and preservation of Varroville house and grounds as an ongoing project commenced in 2006.

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Jacqui and Peter purchased the property in 2006. Varroville house is listed as an item of local environmental heritage under Campbelltown Local Environmental Plan – District 8 (Central Hills Lands). It is also listed on the State Heritage Register as an item of State significance. The subject site is zoned 7(d1) Environmental Protection (Scenic) and is located within the Escarpment Preservation Area.

Varroville house was originally part of a larger estate known as the Varro Ville Estate, established from a 1000 acre grant made to Dr Robert Townson by Governor Lachlan Macquarie in 1811. The Estate was subdivided in the 1970s which excised Varroville house into a 3.16 hectare battle-axe lot, including the associated garden and some outbuildings.

Varroville has high historical, architectural and aesthetic significance and is only one of a small number of mid 19<sup>th</sup> century country houses remaining in New South Wales. It is included as a heritage item on the following statutory and non-statutory heritage lists:

- The State Heritage Register;
- The Campbelltown Local Environmental Plan – District 8 (Central Hills Lands);
- The Register of National Estate; and
- The Register of National Trust of Australia (NSW).

Jacqui and Peter have spent a significant amount of their own money restoring the house and gardens to their original form, demonstrated by their grant application to Campbelltown City Council's Local Heritage Fund in mid 2009. Part of this process has included rescuing surviving plantings from invasive species and bringing the garden back to reflect the three main eras of its development.

Jacqui and Peter are generous in sharing their house, garden and local heritage with special interest groups including tours by members of the Historic Houses Trust and the Australian Garden History Society.

This nomination meets the selection criteria in the following ways:

- Contributing to the conservation of Campbelltown's built or natural heritage.
- Increasing community awareness about Campbelltown's built or natural heritage.

**Officer's Recommendation:**

That the Heritage Protection Sub Committee indicate its preferred recipient(s) for the 2010 Heritage Medallion for Council's formal consideration and endorsement.

**Committee Note:** Having declared an interest in this item Mr Robert Wheeler, Cr Julie Bourke and Ms Jacqueline Green vacated the room during the discussion of this item and returned to the room once the matter was dealt with by the remaining Sub Committee members.

**Sub Committee's Recommendation: (Gardner/Majarich)**

That the Manager Cultural Services present a separate confidential report to Council seeking endorsement of the Heritage Protection Sub Committee's recommended recipient/s of the 2010 Heritage Medallion/s.

**CARRIED**

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## **8. General Business**

### **8.1 Local Heritage Fund Guidelines**

The Heritage Protection Sub Committee discussed the current guidelines in place in relation to the Local Heritage Fund and some possible restrictions that could be imposed in the future to prevent previously successful applicants from applying the following financial year. This would potentially increase the spreading of funds more widely amongst owners of heritage items within the Campbelltown Local Government Area.

It was suggested by the Heritage Protection Sub Committee that Council be requested to consider amending the Local Heritage Fund Guidelines to clarify that applicants (who are successful in achieving funding in one financial year) are not permitted to apply for funding in the following financial year.

#### **Sub Committee's Recommendation: (Oates/Green)**

That Council be requested to consider amending the Local Heritage Fund Guidelines to clarify that applicants (who are successful in achieving funding in one financial year) are not permitted to apply for funding in the following financial year.

**CARRIED**

### **8.2 Call for Nominations for the Heritage Medallion**

That Heritage Protection Sub Committee discussed the current time frames for advertising/calling for nominations for the Heritage Medallion and suggested that this time line should be adjusted to allow nominators a greater amount of time to submit potential nominations.

The Heritage Protection Sub Committee asked that the Manager Cultural Services be requested to present a report to the next meeting of the Heritage Protection Sub Committee in relation to possible adjustments to the time frame for advertising for Heritage Medallion nominations in future years.

#### **Sub Committee's Recommendation: (Wheeler/ Rhodes)**

That the Manager Cultural Services be requested to present a report to the next meeting of the Heritage Protection Sub Committee in relation to possible adjustments to the time frame for advertising for Heritage Medallion nominations in future years.

**CARRIED**

Next meeting of the Sub Committee will be held on 22<sup>nd</sup> April 2010 at 6.00pm in Committee Room 3.

Cr Julie Bourke  
**Chairperson**

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## **2.4 Review of the Bulli Seam Project by the Planning Assessment Commission**

### **Reporting Officer**

Manager Environmental Planning

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### **Attachments**

1. Agenda for the Public Hearing held by the Planning Assessment Commission Panel providing list of speakers
2. Draft (further) Submission to the Planning Assessment Commission

### **Purpose**

To inform Council on the proceedings of the Public Hearing held by the Planning Assessment Commission (PAC) concerning the Bulli Seam project as well as details of submissions on the project received by the Commission from relevant State Government agencies. The report also informs Council of further discussions held by the PAC Panel with officers of Campbelltown, Wollondilly and Wollongong Councils.

### **History**

At its meeting on 2 March 2010, Council considered a report outlining the details of Council's involvement in a Public Hearing conducted by the PAC in regard to the Bulli Seam project application lodged with the New South Wales Department of Planning (the Department) by BHP Billiton (BHP). This report advised that the Public Hearing formed part of consultation being conducted by the PAC that was established by the New South Wales State Government to review the project application for the Bulli Seam Project.

Accompanying the report was a copy of the proposed speech and accompanying presentation for the Public Hearing by Council's Director of Planning and Environment. Following its consideration of the report, Council resolved to endorse the submission and presentation to the PAC.

This report provides a summary of the proceedings of the whole Public Hearing, submissions received by the Commission from relevant Government Agencies as well as the outcomes of subsequent discussions conducted by the PAC Panel with Campbelltown, Wollondilly and Wollongong Councils.

### **Report**

1. **Consideration of the Bulli Seam Project Application by the Planning Assessment Commission**

The Commission was constituted by the NSW Minister for Planning on 13 November 2009 to review the Bulli Seam project in accordance with the following Terms of Reference:

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## 2.4 Review Of The Bulli Seam Project By The Planning Assessment Commission

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- Review of the potential subsidence related impacts of the project on significant natural features, built infrastructure and the values of Sydney's drinking water catchment, taking into consideration the recommendation of the Southern Coalfields Inquiry;
- Advise on the significance and acceptability of these potential impacts, and to recommend appropriate measures to avoid, minimise, remediate or offset these impacts; and
- Identify and comment on any other significant issues raised in submissions regarding the Bulli Seam operations project or during public hearings.

The Panel of the PAC (the Panel) comprises five members with expertise and experience in the fields of mining engineering, economics, groundwater and surface water. As part of its review of the project, the Panel held a Public Hearing for the purposes of obtaining the views of interested stakeholders in the project. It also undertook separate consultation with relevant NSW Government Agencies that had provided submissions on the Bulli Seam project to the State Government. The Panel has advised that it anticipates a report detailing the outcomes of its review of the project application will be provided to the State Government in the third quarter of 2010.

A summary of the major recommendations contained in the submissions from the Government Agencies and presenters to the Public Hearing is presented in Attachment 1. The following discussion summarises the proceedings of the Public Hearing and these submissions and their relevance to Council's submission previously sent to both the NSW Department of Planning and the PAC.

### **2. Proceedings of the Public Hearing**

#### (i) Summary of the proceedings of the Public Hearing

The Public Hearing conducted by the PAC was held at Appin on 17 and 18 February 2010. Council's Senior Environmental Officer (Environment Protection and Management) was in attendance for the entire duration of the Public Hearing. The agenda for the Public Hearing (presented in Attachment 2) indicates that a total of 20 registrations to speak at the Public Hearing were received by the PAC and comprised of the following:

- Representatives of 2 councils (Wollondilly Shire and Campbelltown City Councils);
- Representatives of 9 environmental groups;
- 2 academics (one retired);
- Representative of an Aboriginal group;
- 5 members of the public; and
- 1 representative of Delta Mining.

The major issues/concerns raised in regard to the Bulli Seam Project and in particular the Environmental Assessment (EA) by speakers at the Public Hearing included:

- Questions over the stated profitability of the project and intended level of employment during the construction and operation components;
  - Concerns over adverse implications associated with the 30 year project approval being sought by BHP;
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## 2.4 Review Of The Bulli Seam Project By The Planning Assessment Commission

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- Concerns over the adequacy of assessment of impacts associated with mine subsidence related impacts on the condition and functionality of the upland swamps located in the Dharawal State Conservation Area and the quality of waterways in general within the Georges and Nepean Catchments;
- Concerns over the adequacy of flora and fauna surveys and baseline data in general regarding flora and fauna;
- Concerns associated with the operation and expansion of the Brennan's Creek Coal Wash Emplacement Area in terms of impacts on the condition of waterways, impacts on flora and fauna and dust generation;
- Concerns over insufficient detail in the EA regarding the intended monitoring and remediation of potential impacts associated with the proposed development;
- Concerns over potential impacts of the proposed development on the natural and built environment within the Wedderburn district; and
- Concerns over the consistency of information material produced by the proponent in regard to the project application and the adequacy of community consultation undertaken.

A number of the comments and concerns raised by speakers at the Public Hearing were generally consistent with matters raised in Council's original submission to the New South Wales Department of Planning in December 2009.

### (ii) Key aspects of the presentation by Wollondilly Shire Council to the Public Hearing

The project area is located primarily in the Wollondilly Local Government Area and consequently, Wollondilly Shire Council is a key stakeholder in the project application. A copy of the Council's submission is available on the PAC website and is also held by Council's Environmental Planning Section. Key features of the submission included a request for staged 10 year approvals, a request that the issue of water loss associated with mine subsidence be examined by an independent authority and questions over the stated profitability of the project.

The Wollondilly Shire Council submission concludes that 'the EA in its current form cannot be used to assess and determine the Part 3A application in accordance with the Environmental Planning and Assessment Act, 1979'. It requests that 'BHP and its consultants be given the opportunity to revise the EA in full and that the revised EA be subject to further public exhibition before the assessment of the application'.

### (iii) Key aspects of presentations provided by academics at the Public Hearing

Two presentations considered of relevance to Council were provided by a retired academic from the University of New South Wales (Dr Ann Young) and a current academic at the University of Western Sydney (Dr Ian Wright). The following provides a summary of key aspects of both of these presentations

Presentation on the Impacts on mine subsidence impacts on bedrock within watercourses by Dr Ann Young: This presentation included comments on the Environmental Assessment (EA) in terms of the reliability of predictions and risk assessment methods, the assessment of impacts on stream beds and the impacts of the proposed development on the condition of the upland swamps located in the Dharawal State Conservation Area.

A copy of the presentation can be viewed on the website of the Planning Assessment Commission at [www.pac.nsw.gov.au](http://www.pac.nsw.gov.au). The following provides a summary of Dr Young's conclusions regarding the EA:

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The following provides a summary of Dr Young's conclusions regarding the EA:

- The conclusions regarding the impacts of mine subsidence on the condition of watercourses and upland swamps, are based on inadequate data;
- The modelling of the impacts of subsidence on the operation of natural processes occurring within watercourses and upland swamps (e.g. the contribution of upland swamps to surface and groundwater flows), does not accurately represent the site observations by Dr Young; and
- The intended commencement of monitoring programs following project approval may result in useful data regarding the identification of impacts on upland swamps and watercourse potentially attributable to mining operations, not being obtained.

Presentation on the Impacts of pollutants from mining operations on the environment by Dr Ian Wright: This presentation provided a summary of research undertaken in regard to the long-term impacts of underground mining on the ecology of the Gross River in the Blue Mountains and how the outcomes of this research could be transposed to the Bulli Seam project application. The presentation also expressed significant concerns over the inadequacy of the current Department of Environment, Climate Change and Water licence for the operation of the Brennans Creek Coal Wash Emplacement Area due to it not having a licenced maximum salinity emission.

The submission from Dr Wright is not available on the website due to it being lodged at a late stage but a copy of the submission as well as the presentation to the PAC has been obtained by Council's Environmental Planning Section. The following provides a summary of Dr Wright's key conclusions regarding the EA:

- Coal mining can create ecologically damaging water pollution that may impair rivers for decades or longer after operations cease;
- The high saline content in the current discharge from the Brennans Creek Coal Wash Emplacement Area is likely to damage aquatic ecosystems and the current DECCW licence for the discharge provides little incentive for the licensee (BHP) to invest in pollution reduction technologies.
- The current Bulli Seam operation and proposed expansion will continue to degrade and pollute the Georges River catchment waterways.

### **3. Submissions on the project application by relevant NSW Government agencies considered by the Committee**

The Public Hearing was advised by the Chairman of the Panel that presentations would not be heard from Government Agencies for the following reasons:

- The agencies had provided complex and lengthy submissions available on the PAC website that required separate consultation; and
- This consultation had already occurred involving approximately 3 hours 'face to face' discussions with each government agency that provided a submission to the PAC.

The submissions on the project from relevant Government Agencies can be viewed on the PAC website at [www.pac@nsw.gov.au](http://www.pac@nsw.gov.au). However, the following provides a discussion concerning to aspects of these submissions that have relevance to Council. This discussion indicates that Council's submission generally correlates with comments contained in the submissions from the NSW Government Agencies.

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(i) Department of Environment, Climate Change and Water

This Department of Environment, Climate Change and Water (DECCW) has responsibilities relating to the biodiversity, air quality, Aboriginal heritage and surface water components of the Environment Assessment. The following provides a discussion of the DECCW submission and the correlation of this submission with Council's original submission on the EA to the NSW Department of Planning.

Potential impacts on threatened species: Council's original submission expressed concern over the potential implications of the proposed development on important habitat corridors for fauna species (including the koala) identified by Council's Biodiversity Study that within the project area. Whilst not providing extensive comment on this issue, it is noted the DECCW submission disputes the claim of the EA that the site of the Brennans Creek Coal Wash Emplacement Area does not represent core habitat under the provisions of the 'State Environmental Planning Policy 44 - Koala habitat protection'. The DECCW submission also refers to a recent study on the local koala population that identified the need for the protection of the entire koala habitat corridor adjacent to the Georges River extending from Kentlyn to south of Appin.

In relation to vegetation clearance, Council's submission on the EA requested the Department of Planning (DoP) to require that a comprehensive assessment be conducted to determine the extent, significance and impact of any removal of vegetation as part of its recommended staged Part 3A application/approval process. It is noted the DECCW submission primarily provides comment in regard to the adequacy of the EA in assessing the impacts of vegetation clearance associated with the Brennans Creek Coal Wash Emplacement Area on identified threatened species. This matter was not referred to in Council's submission given the emplacement area is not located within the Campbelltown Local Government Area.

Potential impacts on Aboriginal heritage: Council's submission to the DoP on the EA, in recognising that the protection of Aboriginal heritage is a matter for the DECCW, requested the NSW Department of Planning to require BHP to consult with the DECCW regarding appropriate means of protecting subsurface potential archaeological deposits (PADs). While not specifically referring to issues associated with PADs, it is noted that the DECCW submission recommends that further field surveys be undertaken of the study area in order to comprehensively record all sites and that a comprehensive monitoring strategy be developed in consultation with the DECCW.

Potential impacts on air quality: Council's EA submission requested that the Department require the amendment of the air quality modelling within the EA to assess cumulative air quality impacts within the context of the Macarthur Region. The EA submission also requested the Department to require an assessment of health implications associated with the proposed expansion of the Brennan's Creek Coal Wash Emplacement facility located approximately 5 Kilometres south of the Wedderburn district. While noting the DECCW submission does not contain detailed comments regarding these matters, the submission does suggest additional 'Statements of Commitments' by BHP in regard to the project to limit the volume of dust generated from machinery and exposed surfaces such as roads.

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Potential impacts on watercourses and upland swamps: Council's original EA submission contended that the risk assessment approach adopted by the EA has resulted in an emphasis of the individual streams or reaches of individual streams, at the expense of an assessment within a whole of catchment context. Accordingly, the submission requested the Department to require that exclusion areas be established and maintained within 600 metres of all watercourses, 3rd order or above. In relation to this matter, the DECCW submission questions the adequacy of modelling of impacts on waterways by the EA and recommends 'a negligible environmental impact' standard be applied to all watercourses third order or above (with permanent flow) and all 1st and 2nd order streams that act as 'feeders' for upland swamps.

Whilst noting the comprehensive assessment of potential impacts on 26 of the 226 upland swamps in the project area, Council's EA submission requested that an assessment of swamps not previously analysed be conducted as part of Council's recommended staged Part 3A application/approval process. While the DECCW submission also welcomes aspects of the assessment of impacts on upland swamps, it identifies a number of deficiencies in this assessment including:

- Discrepancies and underestimation of subsidence predictions and impacts;
- A very low survey effort for the presence of flora and fauna;
- A lack of cumulative impact assessment; and
- Inadequate risk management plans.

Other key features or conclusions of the DECCW submission

Impacts on threatened species and impacts of vegetation clearance

The DECCW submission contains a detailed review of the adequacy of the assessment of the impacts of the intended expansion of the Brennans Creek Coal Wash Emplacement Area on threatened species and ecological communities and their habitats as included in the EA. The submission raises questions in regard to the adequacy of surveys conducted and concludes that

'DECCW does not support the current proposal for the expansion of the facility as it will result in significant impacts on threatened species listed at both the State and Commonwealth level'.

Socio economic assessment:

The DECCW submission also contains a review of the adequacy of the cost-benefit analysis within the EA which provides a monetary figure on the project in terms of predicted economic benefits (e.g employment and profitability) and predicted impacts (e.g. impacts on the natural and built environment). In regard to these matters, the DECCW submission raises questions over the adequacy of aspects of the methodology, the validity of estimated costs and benefits and concludes that the:

'assessment has undervalued the likely environmental impacts of the project on the condition of upland swamps'.

(ii) New South Wales Office of Water

Whilst the NSW Office of Water is an entity within the DECCW, it has provided a separate submission to the PAC in regard to its regulatory responsibilities associated with groundwater and water allocation from waterways.

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Council's original EA submission referred to preliminary discussions with the New South Wales Office of Water (NOW) that identified that any loss of water potentially attributable to underground mining could be considered as 'aquifer interference'. It therefore requested that the Department require BHP to consult with the NOW regarding these and any other potential implications of the draft Metropolitan Water Sharing Plan (MWSP) (soon to be placed on public exhibition) for the Bulli Seam project as a priority, and that Council be notified of the outcomes of this consultation. In this regard, it is noted that the NOW submission refers to the MWSP and requests close consideration of the potential impacts on water availability within waterways covered by the plan and the environment associated with the proposed development.

Other key features or conclusions of the submission by the NSW Office of Water

The NOW submission states that with 'major waterways reaching full allocation potential, it is important that the Department of Planning recognises the need to protect river flows from further mining related impacts to maintain reliability of supply to the range of existing water users, consistent with the objectives of the Water Management Act 2000'. Key conclusions of the submission in regard to this observation include:

- The EA does not consider the potential impact upon statutory water users either within the project area, or the downstream reaches of the Nepean or Georges Rivers; and
- In providing comments on the modelling of impacts on surface waters, the NOW submission states that:

'NOW does not accept the claim that riverine fracturing is proven to result in nil short or long-term impacts on lower flows on rivers within, or downstream of, the project area'.

(iii) Sydney Catchment Authority

The area of operation of the Sydney Catchment Authority (SCA) located within the project application is outside the boundaries of the Campbelltown Local Government Area. However, Council's EA submission included a range of references to issues of relevance to this area of operation such as the adequacy of the assessment of impacts by the EA on ground and surface waters and the adequacy of the intended mitigation and monitoring procedures.

The Sydney Catchment Authority (SCA) has considerable expertise in regard to the assessment of impacts on surface and groundwaters and catchment values and in this regard, employ a fulltime officer specifically in regard to mining issues. The Authority has developed the following broad principles (or performance measures) that provide a framework for the assessment of impacts associated with mining applications on its catchment infrastructure works and areas of operation.

- Quantity of water is protected: Mining and associated activities should not result in a reduction in the quantity of surface and groundwater inflows to storages or loss of water from storages or their catchments;
  - Quality of water is protected: Mining and associated activities should not result in a reduction in the quality of surface and groundwater inflows to storages; and
  - The structural integrity of SCA infrastructure is maintained; Adoption of best practice and compensation for SCA costs and losses: The SCA expects mining and associated activities to be conducted in accordance with best practice, and to be compensated for any damage to infrastructure or losses incurred.
-

In regard to these criteria, Council may wish to note that in regard to the EA, the SCA submission has concluded the following:

'If mining goes ahead as proposed, the predicted impacts on a number of watercourses will not meet the Authority's desired performance measures and are not considered acceptable, not withstanding the proposal to carry out remediation work on bedrocks in watercourses (where this work is technically feasible).'

(iv) Roads and Traffic Authority

Council's original submission on the EA referred to predicted subsidence impacts on roads and structures owned and managed by both Council and the RTA noted that the approximately 3.2 Kilometres of local roads in the Wedderburn district had not been subject to a detailed analysis as part of the EA. The submission also requested the Department require that BHP be burdened with the cost of implementing any identified remediation work on the Menangle Road bridge (under Council's care and control) in the event of the structure being affected by subsidence related impacts attributable to the proposed mining development.

In relation to these matters, it is noted the RTA submission (while restricted to roads and assets that Authority owns) states there must be no mining that will directly impact on bridges on any State road (e.g. Menangle Park twin bridges on the Hume Highway). The submission also requires a Deed of Agreement indemnifying the RTA from any costs in repairing damage to its assets attributable to mining operations.

#### **4. Consultation by Council with the Planning Assessment Commission Panel**

On 11 March 2009, Council's representatives met with the PAC Panel at Wollondilly Council in association with representatives from this Council as well as Wollongong City Council (given that a small portion of the project area is located in this LGA). Council's representatives at the meeting included the Director of Planning and Environment, Co-ordinator Environmental Planning and Senior Environmental Officer (Environment Protection and Management). Wollongong City Council did not provide a submission on the project application.

The meeting provided an opportunity for a detailed 'face to face' discussion with the PAC Panel on aspects of the project and the submissions of both Campbelltown and Wollondilly Shire Councils. The PAC Panel gave ample opportunity at the meeting for the views of Councils to be expressed and indicated the holding of the meeting would be beneficial in the preparation of their report to the NSW Government. The major topics of discussion (that included all key issues contained in Council's original submission) were matters associated with the:

- Proposed 30 year project approval in regard to the terms of approval and that it provided limited protection in the event of changes in factors such as technology and understanding of environmental impacts/processes;
  - Impacts of the project on surface and ground water, upland swamps, biodiversity and air quality;
  - The operation and proposed expansion of the Brennan's Creek Coal Wash Emplacement Area;
  - Potential conflicts associated with the project on possible future urban growth in the Macarthur South region;
  - The inclusion of a section of the Wedderburn district in the project application; and
  - The effects of mine subsidence on mining on infrastructure.
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## 2.4 Review Of The Bulli Seam Project By The Planning Assessment Commission

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As a result of questions/scenarios posed by the PAC Panel, the following issues were also discussed:

- The major concerns of the community expressed to councils in regard to mining operations (a matter raised by the PAC);
- The need to preserve access to existing open spaces areas such as the Georges River in the long-term (a matter raised by the PAC); and
- Economic issues associated with the project such as employment and profitability (a matter raised by the PAC and Wollondilly Shire Council's submission).

It should be noted that the PAC Panel invited Councils to make a further submission to the Commission to elaborate further on the matters raised at the meeting, should the Councils wish to do so.

In response to the invitation, officers have prepared a Draft (further) Submission to the PAC on the Bulli Seam Project, which is shown as Attachment 2.

### **5. Conclusion**

This report has provided details of the consideration of the Bulli Seam project application by the Planning Assessment Commission Panel in terms of the proceedings of the Public Hearing as well as key aspects of submissions on the project that have been received from relevant Government Agencies. The review identified a general correlation of information identified by officers, from presentations at the Public Hearing and from material included in the submission by Government Agencies, with Council's submission on the project application and accompanying Environmental Assessment previously sent to the New South Wales Department of Planning.

The report also outlines the key issues of discussion at a meeting with the Planning Assessment Commission Panel held on 11 March 2010 that was attended by officers from Campbelltown and Wollongong City Councils and Wollondilly Shire Council.

### **Officer's Recommendation**

1. That Council note the proceedings of the Public Hearing and details of submissions received from State Government Agencies outlined in this report and their correlation with Council's submission on the Bulli Seam project application.
  2. That Council note the items of discussion at the meeting with the Planning Assessment Commission Panel held on 11 March 2010, attended by staff representatives of Campbelltown, Wollondilly and Wollongong Councils.
  3. That Council endorse a further submission to the Planning Assessment Commission concerning the Bulli Seam Project, shown as Attachment 2.
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**Committee's Recommendation: (Kolkman/Oates)**

That the Officer's Recommendation be adopted.

**CARRIED**

**Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

**Council Resolution Minute Number 49**

That the Officer's Recommendation be adopted.

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## ATTACHMENT 1



**Schedule of Planning Assessment Commission Hearings  
 Bulli Seam Operations Project  
 Held at Appin House, 150 Appin Road, Appin**

<b>Wednesday, 17 February 2010</b>			
09:00-09:10		Panel Chair Opening Statement	Neil Shepherd
09:10-09:40	1	Rivers SOS	Caroline Graham
09:40-10:10	2	Colong Society	Keith Muir
10:10-10:40	3	Wollondilly City Council	Ms Ally Dench
10:40-11:00	4	Northern Illawarra Aboriginal Collective	Alan Carriage, Daniela Reverberi, Ray Smith
11:00-11:15		<i>MORNING TEA</i>	
11:15-11:45	5	Campbelltown City Council	Jeff Lawrence, Renee Winsor
11:45-12:15	6	Nat. Parks Association of NSW (Macarthur)	Patricia Durman
12:15-12:25	7		Barry Durman
12:25-12:40	8		Julie Sheppard
12:40 – 1:40		<i>LUNCH</i>	
1:40-2:10	9		Dr Ann Young
2:10-2:30	10		Dr Ian Wright
2:30-2:40	11	GREA	Robert Michie
2:40-2:50	12		Elizabeth Michie
2:50-3:00	13		Marilyn Dollemore
3:00-3:20	14	Jewfish Point Action Group (by Video)	Sharyn Cullis
3:20-3:30		<i>AFTERNOON TEA</i>	
3:30-3:40	15		Robyn Craig
3:40-3:50	16		Pat Harding
3:50-4:20	17	Wedderburn Against Mining Inc.	Sarah Kennedy
4:20-4:40	18	Delta Mining	Tony Desantis
<b>Thursday, 18 February 2010</b>			
9:00-9:10	19	Panel Chair Opening Statement	Neil Shepherd
9:10-9:40	20	Total Environment Centre	Dave Burgess
9:40-10:10	21	Botany Bay & Catchment Alliance	Brian Shaw
10:10-10:20		<i>MORNING TEA</i>	
10:20-10:30	22		Cita Murphy
10:30-11:30	23	Nat. Parks Association of NSW (Sydney)	Gary Schoer
11:30-12:00	24	GREAT	Kathe Robinson

Coffee, tea and biscuits will be provided on both days.

**Note: All submitters, please be at the hearing venue 30 minutes prior to your scheduled time, except for those who are scheduled to present first and second in the morning or after lunch.**

## ATTACHMENT 2

### **Supplementary Submission by Campbelltown City Council on the application under Part 3A of the *Environmental Planning and Assessment Act 1979*, by BHP Billiton (BHP) associated with the expansion of the Bulli Seam Underground Mining Project**

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On the 17<sup>th</sup> of February 2010, Campbelltown City Council submitted a letter to the Planning Assessment Commission (PAC) which raised a number of concerns regarding the Environment Assessment presented to Council in January 2010. Subsequent to Council's initial letter, and in accordance with discussions held between Council officers and PAC members on the 11 March 2010, Council is seeking to make a supplementary submission. This submission particularly highlights issues associated with planned future growth in the region, as well as the corresponding requirement for recreational opportunities.

#### **Population pressures and demands on the Campbelltown LGA:**

The Campbelltown LGA occupies an area of approximately 312 square kilometres and is located on the south-western edge of the Sydney Metropolitan Area, approximately 53 kilometres from the Sydney Central Business District (CBD).

First developed as a satellite city in response to the *Sydney Region Outline Plan* of the 1960s and now identified as part of the Macarthur Growth Sector, the Campbelltown LGA contains 32 suburbs and hosts a population of approximately 150,000 people.

As the regional centre of Macarthur, population growth will present both challenges and opportunities for Campbelltown. New housing of up to 100,000 dwellings in the South West Growth Centre is expected to increase the population of the region by more than 300,000 people. In addition to this, Campbelltown's population growth is expected to be increased from the inclusion of in-fill development around the existing centres of Campbelltown and Ingleburn, potential Greenfield development in the Macarthur South area, in the longer term as well as the new green field residential land release in areas such as Edmondson Park and Menangle Park.

#### **The Menangle Park Urban Release Area:**

Planning for the Menangle Park Urban Release Area has been ongoing for a number of years. In the 1990s progress was delayed due to concerns regarding water and air quality issues. Following the preparation of a preliminary draft Local Environmental Study (LES), work recommenced in 2000. However, the project was shortly delayed again in 2004 due to concerns associated with the coal resource beneath the site. In 2006, the Department of Planning addressed this matter and provided the following advice to Council:

*"Mining of coal resources beneath Menangle Park should be restricted to enable urban development to occur at the scale and form necessary to make that development viable. This is because of the importance of Menangle Park's contribution to land supply in the Sydney Metropolitan Region."*

Since that time, Council, in partnership with the second largest landowner at Menangle Park, Landcom, has been working toward the preparation of a number of planning documents, including, but not limited to: a Local Environmental Study, Local Environmental Plan, Development Control Plan and Infrastructure Strategy. The

latest planning investigation have led to an estimated revised yield of approximately 3,600 residential allotments, employment land and associated community facilities. It is important to recognise that Menangle Park also includes the regionally recognised Menangle Park Paceway, which is proposing to expand its facilities due to the closure of the Harold Park Paceway.

**The Macarthur South Area:**

Situated south of Campbelltown and predominantly within the Georges River catchment, this area was first identified as a possible future urban release area in the late 1980s, particularly referenced in the 1988 Sydney Metropolitan Strategy. If commenced, the planned release would have seen approximately 62,000 houses built over 17,000 hectares of land. However, more recently the State Government has requested that any future development be withheld. Notwithstanding this, the Government has its procedures to consider land release of a smaller scale within the Macarthur South area, stating:

*"Consideration of land releases proposals within this area maybe given if they meet the Government's requirements, particularly regarding Council infrastructure provision".*

Council acknowledges that there may potential for some urban development to occur within the Macarthur South region over the proposed 30 year life of the project. Potential future land use conflicts within this region should therefore be considered in accordance with the applicable Director General's Requirement.

**Pressure on the environment:**

The Campbelltown Local Government Area (LGA) is fortunate to contain considerable areas of protected bushland which boast high levels of biodiversity and a large number of threatened species. In addition, the LGA contains a number of environmentally sensitive lands including the:

- Wedderburn Plateau;
- O'Hare's Creek Catchment;
- Georges River Regional Open Space;
- Scenic Hills;
- Holsworthy Military Training Area; and,
- Browns Bush.

The largest areas of bushland are located on steeper terrain towards the east and southeast of the LGA, adjacent to the Georges River. However, there are also significant remnants in the west and central sections of the LGA, where a higher level of urban development has occurred. These areas contain Endangered Ecological Communities listed on the NSW *Threatened Species Conservation Act 1995* and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

It is considered that the predicted increase in population and corresponding infrastructure in the Campbelltown LGA and the Macarthur Region as a whole will significantly impact on the Georges and Nepean River catchments both in terms of environmental impact and increased take up of the river catchments and bushland as recreational resources. It is recognised under the current proposal by BHP Biliton that infrastructure and processing of mining of resources will partly take place in areas that are located within catchment lands under the control of the Sydney

Catchment Authority. At present, public access to this land is restricted. However, it cannot be anticipated whether access rights will change over time particularly with regard to the aforementioned population pressures.

- Environmental Issues:

Environmental Research released by the Australian Government (Department Environment Water Heritage and the Arts) concludes that sediment generated from mining sites can impact on water quality by increasing turbidity and thus decreasing light penetration in the water column. Elevated suspended sediment loads can affect fish and benthic organism respiration, feeding, reproduction and change in community structure. Studies on mining areas in Australia have found that macroinvertebrate community structure was impacted as suspended sediment increases<sup>1</sup>. It is recognised that macroinvertebrate communities play a fundamental role in the river ecosystem and are a true indicator of water quality and river health.

Notwithstanding the actions occurring upstream and the associated potential environmental impacts, it is inevitable that any changes to the ecosystem, attributable to mining operations, will result in effects downstream.

- Recreational Significance:

According to Australian Bureau Statistics (ABS) data, the median household weekly income within the Campbelltown LGA is lower than that within the Sydney Statistical District (SD). Therefore, on average it can be concluded that Campbelltown residents have less disposable income than residents of many other parts of Sydney. Additionally, there is proportionally a high number of public housing residences located within the LGA when compared to other areas. These socio-economic issues often make it difficult for residents to access recreational venues such as beaches and National Parks.

The Georges River provides a range of accessible recreational opportunities for these residents including bushwalking, swimming, fishing, passive boating and sightseeing. A number of recreational access points exist at present along the Georges River including those at Simmo's Beach, Ingleburn Weir, Frere's Crossing, The Basin and the Woolwash. The utilisation rates for these sites are high, particularly in Summer. Council recognises this Community demand and provides a full time caretaker at Simmo's Beach and includes maintenance of the other sites in its program of works. Moreover in a recent television broadcast by Channel 7, regarding warm weather in Sydney, Simmo's Beach was featured. A number of beach users were interviewed who highlighted their desire to access the beach for recreation and to escape the "heat". Additionally, these locations hold significant historical and in some cases heritage value to the Campbelltown community. Generations of residents have accessed these sites for recreational opportunities and in some cases provide an invaluable venue for social networking.

Any development reducing the water quality of the Georges River would be likely to have an impact on these recreational uses and thus the unique opportunities that the River affords residents. In the interests of environmental and social sustainability Council encourages people to further access these natural assets. In the interest of the principles of Ecologically Sustainable Development caution should be exercised in considering the potential impacts from activities set out in the Project Application.

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<sup>1</sup> Department of Water Heritage and the Arts, <http://www.environment.gov.au/ssd/research/hgp/waterquality.html>

- Aboriginal Significance:

An Aboriginal Heritage Study prepared for Council by specialist consultant firm Navin Officer in 2002 identified that the Georges River forms part of a '*cultural landscape*' with identified Aboriginal significance due largely to the rugged terrain that exists. The study noted that the river is likely to have been an important focus destination for Aboriginal groups including hunting and traveling. A more recent Aboriginal Heritage Cultural Management Plan for Simmo's Beach prepared for Council in 2009 concluded that rock shelter sites '*form part of an extended cultural/archaeological landscape linked to the natural values and resources of the Georges River.*'

The protection of this cultural significance in association with local Aboriginal groups is a key component of Plans of Management adopted by Council for three Reserves adjacent to the Georges River. In a broader context (comment regarding the UGR SEMP).

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### **3. DEVELOPMENT SERVICES**

#### **3.1 Development Services Section Application Statistics - February 2010**

##### **Reporting Officer**

Manager Development Services

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##### **Attachments**

Development Services Application Statistics for February 2010 (distributed under separate cover).

##### **Purpose**

To advise Council of the status of development applications and other key matters within the Development Services Section.

##### **Report**

In accordance with Council's resolution that Councillors be provided with regular information regarding the status of development applications, the attachment to this report provides details of key statistics for February 2010 as they affect the Development Services Section.

##### **Officer's Recommendation**

That the information be noted.

##### **Committee's Recommendation: (Thompson/Greiss)**

That the Officer's Recommendation be adopted.

##### **CARRIED**

##### **Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

##### **Council Resolution Minute Number 49**

That the Officer's Recommendation be adopted.

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### **3.2 No. 11 Watsford Road, Campbelltown - Construction of fitout and use of premises as a religious establishment**

#### **Reporting Officer**

Manager Development Services

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#### **Attachments**

1. Recommended Conditions of Consent
2. Locality Plan
3. Existing Site Plan
4. Proposed Floor Plan

#### **Purpose**

To assist Council in its determination of the subject development application in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

<b>Property Description</b>	Lot 21 DP 880897, No.11 Watsford Road, Campbelltown
<b>Application No</b>	1821/2009/DA-C
<b>Applicant</b>	Samoan Assembly of God Campbelltown
<b>Owner</b>	Mr Mohinder Pal Sing Dhillon
<b>Statutory Provisions</b>	Campbelltown 2025 - Looking Forward Campbelltown (Urban Area) Local Environmental Plan 2002 Campbelltown (Sustainable City) Development Control Plan 2009 Development Control Plan No.82 - Religious Establishments
<b>Date Received</b>	1 September 2009

#### **Introduction**

A development application has been received for the fitout and use of an industrial building as a religious establishment at Lot 21 DP 880897, No.11 Watsford Road, Campbelltown. The site is located within an industrial setting and contains a vacant industrial building.

The development application was notified to nearby and adjoining land owners with no submissions being received.

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### **The Site**

The land has an area of 2301 square metres and is almost rectangular in shape. The land has a street frontage of 30.48 metres, average depth of 56.48 metres and width at the rear of 40.97 metres.

An industrial building was constructed on the site in accordance with development consent F730/99 which was approved in June 1999. The approved building has a gross floor area of 1004 square metres and 18 car parking spaces are accommodated on the land.

The building is presently vacant.

Adjoining land uses include a religious establishment to the south west and an automotive service centre to the north east. Development uses across the road from the subject land include a motor vehicle repair station and a party/fancy dress hire warehouse.

Other nearby land uses include warehousing, manufacturing and automotive based industries. An additional religious establishment is located in the vicinity of the subject land at No.5 Watsford Road.

### **The Proposal**

Development consent is being sought for the fitout and use of the premises as a religious establishment.

The fitout includes the construction of five meeting rooms, additional WC facilities, a kitchen, a stage and two offices on the existing mezzanine. A carpeted children's play area will also be designated within the factory unit. The stage will have an area of 67 square metres.

The meeting rooms and offices will be constructed with metal frames and finished with gyprock sheets and suspended ceilings. No physical works are required to the external areas of the site and the footprint of the existing building is not proposed to be altered.

The proposed operating hours of the religious establishment and maximum number of users of the site are as follows:

- Monday to Friday 9.00am to 5.00pm - maximum 10 persons
- Saturday 4.00pm to 7.00pm - maximum 15 persons
- Sunday 10.00am to 1.00pm - maximum 60 persons

The application does not mention any 'special events' that may occur on the site and how traffic management would be undertaken on these days should they occur.

The applicant has indicated that the auditorium/hall will not be hired or leased for functions outside of these days and times.

The applicant has submitted a Traffic and Parking Assessment that is addressed later in this report.

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## Assessment

The development has been assessed having regard to the matters for consideration prescribed under Section 79C(1) of the *Environmental Planning and Assessment Act 1979*. Subsequently, the following matters have been identified for further consideration and discussion.

### i. Campbelltown 2025 Looking Forward

'Campbelltown 2025 Looking Forward' is a statement of broad town planning intent for the longer term future of the City of Campbelltown that:

- Responds to what Council understands people want the City of Campbelltown to look, feel and function like;
- Recognises likely future government policies and social and economic trends; and
- Sets down the foundations for a new town plan that will help achieve that future.

The document establishes a set of strategic directions to guide decision making and development outcomes. These directions are broad in nature and form a prelude to a new statutory town plan for the City.

The strategic directions relevant to this application are:

- Growing the regional City; and
- Building a distinctive Campbelltown sense of place.

The proposed development is considered to be consistent with the relevant strategic directions.

Some of the desired outcomes of Council's Vision include:

- Urban environments that are safe, healthy, exhibit a high standard of design, and are environmentally sustainable;
- Development and land use that matches environmental capacity and capability.

The development application been assessed having regard to *Campbelltown 2025 Looking Forward*. It is considered that the proposal is consistent with the relevant desired outcomes having regard to its location, sensitive design and size.

### ii. Statutory Controls

Section 79C(1)(a) requires Council to consider any relevant environmental planning instrument, draft environmental planning instrument or development control plan.

### iii. Campbelltown (Urban Area) Local Environmental Plan 2002

Pursuant to Campbelltown (Urban Area) Local Environmental Plan 2002 (CLEP), the site is zoned 4(b) Industry B zone.

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The zone objectives include:

- (a) To encourage activity that will contribute to economic and employment growth in the City of Campbelltown, and
- (b) To encourage a high quality standard of development which is aesthetically pleasing, functional and relates sympathetically to nearby and adjoining development, and
- (c) To protect the viability of the commercial centres in the City of Campbelltown by limiting commercial activities to those associated with permitted industrial, storage and allied development or primarily intended to provide a professional facility to serve people employed or occupied in land uses permitted in the industrial zones, and
- (d) To permit the display and sale by retail of bulky goods only if such activities cannot appropriately be located in, or would not adversely affect the viability of development in, the business or comprehensive centre zones, and
- (e) To ensure development will not be carried out if the processes to be carried on, the transportation to be involved or the plant, machinery or materials to be used interfere unreasonably with the amenity of the area.

Except as otherwise provided by this plan, consent must not be granted for development on land within this zone unless the consent authority is of the opinion that carrying out the proposed development would be consistent with one or more of the objectives of this zone.

The proposed development is considered to be consistent with one or more of the above objectives and subsequently Council can issue development consent for this application should it deem appropriate.

Under the Plan, the proposed development is defined as a 'religious establishment'. The definition provided by the Plan is as follows:

***religious establishment** means a building or place used primarily for the purpose of religious worship, instruction or training, whether or not it is also used for ancillary purposes such as counselling, recreation or social events, and includes any building or place formerly described or granted consent as a place of public worship.*

Religious establishments are permissible with Council's consent in the 4(b) - Industry B Zone.

#### **iv. Campbelltown Sustainable City Development Control Plan (SCDCP)**

Campbelltown (Sustainable City) Development Control Plan (SCDCP) applies to the subject land. The aims of the SCDCP are:

- Ensure that the aims and objectives of any relevant EPI including Campbelltown's LEPs and IDOs are complemented by the Plan;
  - Ensure that the principles of ecological sustainability are incorporated into the design, construction and ongoing operation of development;
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- Facilitate innovative development of high quality design and construction in the City of Campbelltown;
- Ensure that new development maintains or enhances the character and quality of the natural and built environment;
- Ensure that new development takes place on land that is capable of supporting development;
- Encourage the creation of safe, secure and liveable environments;
- Ensure that new development minimises the consumption of energy and other finite resources, to conserve environmental assets and to reduce greenhouse gas emissions; and
- Provide for a variety of housing choices within the City of Campbelltown.

It is considered that the development is consistent with the relevant aims of the SCDCP.

The SCDCP currently does not contain any prescribed development standards for the development of religious establishments with the exception of car parking rates.

The SCDCP prescribes that religious establishments provide 1 car parking space per 10 square metres of leasable floor area. The leasable floor area in this instance includes the auditorium, offices, meeting rooms and children's area and has a total area of 930 square metres. The development is therefore required to provide 93 car parking spaces. The proposed development provides 18 car parking spaces located on-site.

The applicant has requested a variation to the DCP standard based on the following arguments:

- The development will not adversely impact the environment or local amenity;
- The development will not erode the relevant standard;
- Compliance is unreasonable or unnecessary in the circumstances of the case.

The applicant has submitted a Traffic and Parking Assessment prepared by consultants Traffic Solutions Pty Ltd.

The applicant has indicated that the maximum number of worshippers congregating at the religious establishment at any one time will occur on Sundays with 60 persons in attendance.

The traffic and parking assessment states that the current on-site parking design and layout satisfies the relevant Australian Standard and states that there is capacity for 5 additional car parking spaces given the existing parking layout and aisle widths. This would provide a potential maximum 23 of car parking spaces.

The consultant's report states that the existing 18 car parking spaces will be able to accommodate the operation of the religious establishment Mondays to Saturdays.

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The Sunday service, that is proposed to be held between 10am and 1pm, is expected to contain a maximum 60 worshippers at the site. The applicant's parking consultant has indicated that the development will generate 29 car parking spaces - a potential shortfall of 6 spaces.

The land is located in an industrial setting with no or very little on-street parking demand being anticipated on Sundays. The street frontage can cater for 5 vehicles.

The applicant has indicated that several members of the congregation own vehicles that can cater for 8 passengers that would increase the usual ratio of persons/vehicle attending religious establishments and place a lesser demand on the on-site car parking. The accompanying Statement of Environmental Effects also states that a mini bus will be used to take worshippers to and from services.

Car parking rates contained in Development Control Plan No.82 - Religious Establishments are discussed later in this report. The development application has also been assessed against the standards contained within DCP No.82

Should Council approve the development application the size of congregation could be limited by way of a condition of consent.

Given the proposed religious establishment is located within an industrial setting, hours of operation being for 3 hours on a Sunday, availability of on-street car parking in the vicinity of the development on Sundays, the site being a walkable distance of 480 metres from the Campbelltown Railway Station, it is considered that the variation sought is acceptable in this instance.

#### **v. Development Control Plan No. 82 - Religious Establishments**

Development Control Plan No. 82 - Religious Establishments (DCP 82) applies to the subject development type. The Plan contains Council's objectives and controls for the development of religious establishment premises throughout the City.

DCP 82 establishes a set of criteria that should be investigated as part of the selection of a site where an applicant wishes to establish a religious establishment. The DCP states:

*"Locations should be deemed suitable not only on the basis of their zoning, but also their capacity to meet the needs and expectations of the religious groups' current and future requirements. It is also desirable that sites allow harmonious co-existence with adjoining land owners."*

The site in this instance is considered to be relatively suitable for the proposed development. It is a relatively modest industrial building, with a scale and appearance similar to that of the buildings in the immediate vicinity. Car parking has been provided on the site at a rate in compliance with relevant DCP for industrial development at the time of the building's development in 1999 and in order to reduce any impact the site's use may have on the local road network.

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Other relevant matters contained in DCP 82 are discussed as follows:

*Design of buildings*

The DCP requires that religious establishment buildings in residential areas be set back from boundaries the same or greater distance than adjoining residential buildings.

This standard is not applicable as the proposal is located in an industrial setting.

*Landscaping*

DCP 82 requires that religious establishment sites be well landscaped, particularly along boundaries in order to reduce their impact on residential area streetscapes. The DCP also recommends that existing trees be retained where possible.

The existing industrial development is landscaped along the front boundary and is considered appropriate in this instance.

*Operation of the establishment*

DCP 82 requires the applicant and Council to take into account the impact of the establishment on adjoining neighbours by considering matters such as the number of visitors, hours of use, noise levels and the types of activities undertaken at the site.

As detailed earlier in this report, the proposed operating hours and likely number of visitors is as follows:

- Monday to Friday 9.00am to 5.00pm - maximum 10 persons
- Saturday 4.00pm to 7.00pm - maximum 15 persons
- Sunday 10.00am to 1.00pm - maximum 60 persons

The plans accompanying the development application do not indicate any seats in the main auditorium where the services would be held. The auditorium would contain the maximum 60 worshippers that will use the site on Sundays, according to information submitted with the application.

The applicant states that no amplified music is to be used at the site during weekdays and that the hall would not be available for hire by others at any time. Amplified music would be played during the worship team rehearsals and Sunday services.

The worship team rehearsals will occur most Saturdays between the allocated time of 4.00pm to 7.00pm. The team comprises of 3 to 5 singers and 4 to 5 musicians. Instruments that are played include guitar, bass guitar and keyboards. Rehearsals are required for the band to practice and finalise songs for the Sunday service the following day. It is anticipated that the amplified music levels at rehearsal would be lower as the band would not be playing to an audience.

A recommended condition of development consent would require that the use not disturb adjoining and nearby land users at any time and also prevent the hall from being privately hired for functions, should Council resolve that the application be approved.

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### *Car parking provision*

DCP 82 requires that car parking be provided on site at the rate of one space per 10 seats. The DCP goes further and states that "*car parking should be able to accommodate 'normal use' of the development, but it should not necessarily be designed to accommodate all vehicles associated with a limited number of 'special' religious days.*"

Having regard to the size of the congregation using the main room of the church building, the applicant states that a maximum of 60 people would use the space during Sunday services. Utilising that figure and the controls in DCP 82, the development would require 6 car parking spaces to be provided on-site.

The development provides for 18 sealed and line marked car parking spaces, with a potential redesign to accommodate 23 car parking spaces. Having regard to the controls contained within DCP 82, the proposed use of the building as a religious establishment would comply with the car parking requirement, providing the maximum number of worshippers on Sundays remains at 60.

### *Noise*

The DCP requires that building and site design take into consideration the impact that the development may have on noise transmission in the neighbourhood and further requires that the noise level from activities undertaken at the religious establishment shall not exceed background noise levels by more than 5db(A).

The applicant has indicated that amplified music would be played between the following times:

- Saturday 4.00pm to 7.00pm - Worship Team rehearsals
- Sunday 10.00am to 1.00pm - Church service

No amplified music would be played during weekdays.

It is anticipated that the development would not have a detrimental impact on the amenity of the locality having regard to the noise transmission from the proposed use as a religious establishment. The nearest residence from the site is located approximately 240 metres to the south in Queen Street, Campbelltown. An acoustic report has not been provided by the applicant to accompany the development application.

Overall, the proposal is considered to satisfy the objectives and controls contained within Council's Development Control Plan No. 82 - Religious Establishments.

### **vi. Traffic Impact**

The applicant has submitted a Traffic and Parking Assessment prepared by consultants Traffic Solutions Pty Ltd. Proposed traffic movements were assessed against existing traffic conditions.

The traffic assessment estimates that the development will generate 33 peak hour vehicle trips on Sundays, prior to the commencement of service, when the usage of the religious establishment is at its maximum.

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The traffic assessment concludes that:

*"an additional 33 vehicle trips on a Sunday in an industrial precinct is not considered to be unacceptable and will not have a detrimental impact upon the current operation or level of service of Watsford Road or the surrounding road network."*

Council's development engineering officers concur with this conclusion.

### **Public Notification**

The development application was notified to adjoining and nearby land owners in accordance with Council's Notification Policy from 14 September 2009 for a period of 14 days. During this period Council received no submissions objecting to the development application.

### **Conclusion**

Development consent is sought for the fitout and use of the subject premises as a religious establishment. The proposed development includes the construction of five meeting rooms, additional WC facilities, a kitchen, a stage, two offices and a children's play area.

In addition, the use of the religious establishment would include the following hours of operation and maximum number of users:

- Monday to Friday 9.00am to 5.00pm - maximum 10 persons
- Saturday 4.00pm to 7.00pm - maximum 15 persons
- Sunday 10.00am to 1.00pm - maximum 60 persons

The site provides 18 line marked car parking spaces, with the potential for 23 car parking spaces on site which should be a requirement of any approval. The surrounding road network is capable of accommodating the additional vehicles travelling to and from the site on Sundays when site is at peak use.

The development is permissible under the CLEP and is generally consistent with the relevant DCPs applying to the land. Having regard to the matters for consideration under the Act and the circumstances of the case, it is considered the development is worthy of Council's support, subject to certain conditions.

### **Officer's Recommendation**

That development application 1821/2009/DA-C for the fitout and use of a religious establishment at No. 11 Watsford Road, Campbelltown be approved subject to the conditions contained in Attachment 1.

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**Committee's Recommendation: (Kolkman/Rowell)**

That the Officer's Recommendation be adopted.

**CARRIED**

Voting for the Committee's Recommendation were Councillors: Bourke, Greiss, Kolkman, Matheson, Oates, Rowell and Thompson.

Voting against the Committee's Recommendation: nil.

**Council Meeting 6 April 2010 (Oates/Rowell)**

That the Officer's Recommendation be adopted.

**Council Resolution Minute Number 50**

That the Officer's Recommendation be adopted.

Voting for the Council Resolution were Councillors: Borg, Bourke, Chanthivong, Dobson, Glynn, Greiss, Hawker, Kolkman, Lake, Matheson, Oates, Rowell, Rule, Thomas and Thompson.

Voting against the Council Resolution: nil.

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## **ATTACHMENT 1**

### **Recommended Conditions of Consent**

#### **GENERAL CONDITIONS**

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land.

For the purpose of these conditions, the term 'applicant' means any person who has the authority to act on or benefit of the development consent.

#### **1. Approved Development**

The development shall take place in accordance with the approved development plans containing Council's approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.

#### **2. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the *Building Code of Australia*. In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

#### **3. Advertising Signs – Separate DA Required**

This consent does not permit the erection or display of any advertising signs.

Most advertising signs or structures require development consent. You should make separate enquiries with Council prior to erecting or displaying any advertising or signage.

#### **4. Storage of Goods**

All works, storage and display of goods, materials and any other item associated with the premises shall be contained wholly within the building.

#### **5. Graffiti Removal**

In accordance with the environmental maintenance objectives of 'Crime Prevention Through Environmental Design', the owner/lessee of the building shall be responsible for the removal of any graffiti which appears on the buildings, fences, signs and other surfaces of the property within 48 hours of its application.

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**6. Car Parking Spaces**

23 car parking spaces shall be designed, sealed, line marked and made available to all users of the site in accordance with Australian Standards 2890.1 and 2 (as amended).

**7. Rubbish/Recycling Bin Storage**

The rubbish and recycling bins shall not be stored within vehicle parking, vehicle manoeuvring areas or landscaped areas.

The bin(s) shall only be stored in accordance with the approved plans.

**8. Use of Religious Establishment**

Hours of operation and maximum occupancy shall be in accordance with the following schedule:

- (a) Monday to Friday 9.00am to 5.00pm - maximum 10 persons
- (b) Saturday 4.00pm to 7.00pm - maximum 15 persons
- (c) Sunday 10.00am to 1.00pm - maximum 60 persons

The building shall only be used for a place of worship and for ancillary purposes. The building shall not be used for secular education, accommodation or for conventions. The building shall not be sub-leased, rented or hired for any purpose.

**PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

The following conditions of consent must be complied with prior to the issue of a construction certificate by either Campbelltown City Council or an accredited certifier. All necessary information to comply with the following conditions of consent must be submitted with the application for a construction certificate.

**9. Waste Management Plan**

Prior to Council or an accredited certifier issuing a construction certificate, the relevant provisions of Council's *Waste Management Plan* is to be completed to the satisfaction of Council.

**10. Section 94A Developer Contribution - Community Facilities and Services**

Prior to Council or an accredited certifier issuing a Complying Development Certificate or a Construction Certificate, the applicant shall provide a receipt for the payment to Council of a community facilities and services contribution in accordance with the provisions of the *Campbelltown City Council Section 94A Development Contributions Plan*.

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For the purposes of calculating the required S94A contribution, where the value of the total development cost exceeds \$100,000, the applicant is required to include with the application for the respective certificate, a report setting out a cost estimate of the proposed development in accordance with the following:

- where the value of the proposed development is greater than \$100,000 but less than \$500,000, provide a Cost Summary Report by a person who, in the opinion of the Council, is suitably qualified to provide a Cost Summary Report (Cost Summary Report Template 1). All Cost Summaries will be subject to indexation on a quarterly basis relative to the *Consumer Price Index - All Groups* (Sydney) where the contribution amount will be based on the indexed value of the development applicable at the time of payment; or
- where the value of the proposed development is \$500,000 or more, provide a detailed development cost report completed by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors (Quantity Surveyors Estimate Report Template 2). Payment of contribution fees will not be accepted unless the amount being paid is based on a Quantity Surveyors Estimate Report (QS Report) that has been issued within 90 days of the date of payment. Where the QS Report is older than 90 days, the applicant shall provide an updated QS Report that has been indexed in accordance with clause 25J(4) of the Environmental Planning and Assessment Regulation 2000 to ensure quarterly variations in the *Consumer Price Index All Group Index Number for Sydney* have been incorporated in the updated QS Report.

Copies of the Cost Summary Report - Template 1 and the Quantity Surveyors Estimate Report - Template 2 are located under "Developer Contributions" on Council's web site ([www.campbelltown.nsw.gov.au](http://www.campbelltown.nsw.gov.au)) or can be collected from Council's Planning and Environment Division during normal business hours.

On calculation of the applicable contributions, all amounts payable will be confirmed by Council in writing.

Payment of Section 94A Developer Contributions will only be accepted by way of Cash, Credit Card or Bank Cheque issued by an Australian bank. Payment by any other means will not be accepted unless otherwise approved in writing by Council.

**Note: This condition is only applicable where the total development value exceeds \$100,000.**

### **PRIOR TO THE COMMENCEMENT OF ANY WORKS**

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with prior to the commencement of any works on site.

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**11. Erection of Construction Sign**

Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:

- a. Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours;
- b. Stating that unauthorised entry to the work site is prohibited; and
- c. Pollution warning sign promoting the protection of waterways (issued by Council with the development consent);
- d. Stating the approved construction hours in which all works can occur.
- e. Showing the name, address and telephone number of the principal certifying authority for the work.

Any such sign/s is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**12. Trade Waste**

Prior to the commencement of any works on the land, a trade waste facility shall be provided on-site to store all waste pending disposal. The facility shall be screened, regularly cleaned and accessible to collection vehicles.

**13. Public Property**

Prior to the commencement of any works on site, the applicant shall advise Council of any damage to property which is controlled by Council which adjoins the site, including kerbs, gutters, footpaths, and the like. Failure to identify existing damage may result in all damage detected after completion of the development being repaired at the applicant's expense.

**DEVELOPMENT REQUIREMENTS DURING CONSTRUCTION**

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with during the construction of the development on site.

**14. Construction Work Hours**

All work on site shall only occur between the following hours:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No Work.

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**15. Work Zones**

All loading, unloading and other activities undertaken during construction shall be accommodated on the development site.

Where it is not practical to load, unload or undertake specific activities on the site during construction, the provision of a 'Work Zone' external to the site may be approved by Council following an application being submitted to Council's Traffic Unit outlining the proposal for the work zone. The application is required to be made prior to the commencement of any works and is to include a suitable 'Traffic / Pedestrian Management and Control Plan' for the area of the work zone that will be affected. All costs of approved traffic / pedestrian control measures, including relevant fees, shall be borne by the applicant.

**16. Completion of Construction Works**

Unless otherwise specified in this consent, all construction works associated with the approved development shall be completed within twelve (12) months of the date of the notice of the intention to commence construction works under Section 81A of the Act.

In the event that construction works are not continually ongoing, the applicant shall appropriately screen the construction site from public view with architectural devices and landscaping to Council's written satisfaction.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

The following conditions of consent must be complied with prior to the issue of an occupation certificate by either Campbelltown City Council or an accredited principal certifying authority. All necessary information to comply with the following conditions of consent must be submitted with the application for an occupation certificate.

Note: For the purpose of this development consent, any reference to "occupation certificate" shall also be taken to mean "interim occupation certificate".

**17. Structural Engineering Certificate**

Prior to the principal certifying authority issuing an occupation certificate, the submission of a certificate from a practising structural engineer certifying that the building has been erected in compliance with the approved structural drawings and relevant *SAA Codes* and is structurally adequate.

**18. Completion of External Works Onsite**

Prior to the principal certifying authority issuing an occupation certificate, all external works, repairs and renovations detailed in the schedule of treatment/finishes, landscaping, driveways, fencing and retaining walls to be completed to the satisfaction of the principal certifying authority.

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**19. Public Utilities**

Prior to the principal certifying authority issuing an occupation certificate, any adjustments to public utilities, required as a result of the development, shall be completed to the satisfaction of the relevant authority and at the applicant's expense.

**20. Building Code of Australia**

Prior to the principal certifying authority issuing an occupation certificate, the building shall be brought into total conformity with the Building Code of Australia.

**21. Council Fees and Charges**

Prior to the principal certifying authority issuing an occupation certificate, the applicant shall obtain written confirmation from Council that all applicable Council fees and charges associated with the development have been paid in full. Written confirmation will be provided to the applicant following Council's final inspection and satisfactory clearance of the public area adjacent the site.

**ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, other relevant Council Policy/s and other relevant requirements. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

**Advice 1. Environmental Planning and Assessment Act 1979 Requirements**

The Environmental Planning and Assessment Act 1979 requires you to:

- a. Obtain a construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 4645 4608.
  - b. Nominate a principal certifying authority and notify Council of that appointment prior to the commencement of any works.
  - c. Give Council at least two days notice prior to the commencement of any works.
  - d. Have mandatory inspections of nominated stages of the construction inspected.
  - e. Obtain an occupation certificate before occupying any building or commencing the use of the land.
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**Advice 2. Disability Discrimination Act**

Nothing in this consent is to be taken to imply that the development meets the requirements of the *Disability Discrimination Act 1992* (DDA1992). Where a Construction Certificate is required for the approved works, due regard is to be given to the requirements of the *Building Code of Australia* (BCA). However, your attention is drawn to the existence of the DDA1992 and that compliance with the various requirements of the BCA does not provide automatic compliance with the DDA1992. In this regard it is the sole responsibility of the owner, builder and applicant to ensure compliance with the DDA1992.

**Advice 3. Covenants**

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this permit. Persons to whom this permit is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.

**Advice 4. Adjustment to Public Utilities**

Adjustment to any public utilities necessitated by the development is required to be completed prior to the occupation of the premises and in accordance with the requirements of the relevant Authority. Any costs associated with these adjustments are to be borne by the applicant.

**Advice 5. Asbestos Warning**

Should asbestos or asbestos products be encountered during construction or demolition works you are advised to seek advice and information prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by Work Cover NSW), be engaged to manage the proper disposal and handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)

[www.adfa.org.au](http://www.adfa.org.au)

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Alternatively, call Work Cover Asbestos and Demolition Team on 8260 5885.

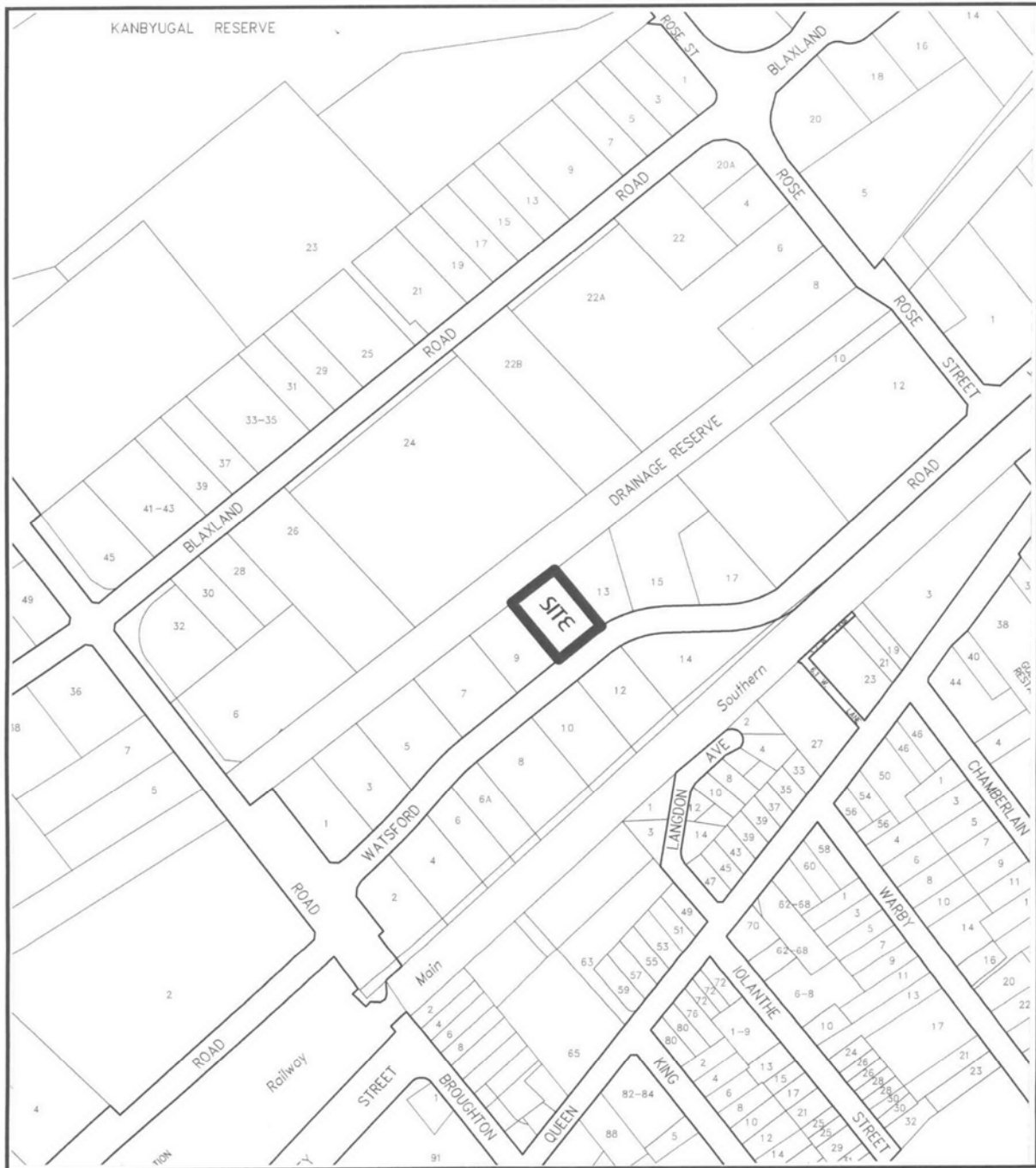
**Advice 6. Smoke Free Environment Act**

Nothing in this consent is to be taken to imply that the development meets the requirements of the *Smoke Free Environment Act 2000* (SFEA2000) or the *Smoke Free Environment Regulations 2007* (SFER2007). In the event that the occupier wishes to facilitate smoking within any enclosed public place of the premises (in accordance with clause 6 of the SFER2007), the occupier must first contact NSW Department of Health to ensure that the design and construction of the area proposed to facilitate smoking fully complies with the requirements of the SFEA2000 and the SFER2007.

**END OF CONDITIONS**

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## ATTACHMENT 2



### LOCALITY PLAN



**SUBJECT:**

CONSTRUCTION OF FITOUT AND USE OF PREMISES  
AS A RELIGIOUS ESTABLISHMENT.  
LOT 21 DP 880897 - No. 11 WATSFORD ROAD, CAMPBELLTOWN.







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### **3.3 UDIA 2010 National Congress**

#### **Reporting Officer**

Director Planning and Environment

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#### **Attachments**

Nil

#### **Purpose**

To provide Council with a summary of issues raised at the 2010 National Congress of the Urban Development Institute of Australia held in Sydney between 8-10 March 2010.

#### **Report**

The Urban Development Institute of Australia (UDIA) National Congress was held between Monday 8 March and Wednesday 10 March 2010 in Sydney. Council is a member of the UDIA and was represented at the Congress by Councillors Kolkman and Glynn and the Director Planning and Environment.

The theme of the Congress focused on the development industry's experiences with the Global Financial Crisis and the emerging market recovery.

A wide range of stakeholder interests involved in urban development processes were represented at the Congress including planning, engineering consultancies, developer firms, finance houses, representatives of Federal and State Agencies, Local Government interests and industry suppliers.

A summary of the views and issues raised at the Congress plenary and workshop sessions is provided below:

- Recognition that the development industry needs to improve the standard of new urban development (both in greenfield and infill projects) to achieve better urban design outcomes that respect context of place.
  - Sydney's role as a true global city must not be taken for granted and the City must continue to grow and achieve high quality and integrated planning outcomes that facilitate 'high end' investment.
  - Metropolitan planning should be the responsibility of single planning authorities to ensure metropolitan goals are achieved, particularly in the circumstance of State significant places such as, for example, the environs of Sydney Harbour.
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- Australia faces a shortage of new housing in the face of pent up and future predicted demand from immigration and new household formation. The rate of new lot/dwelling production must increase significantly to address demand;
  - New housing production in Australian cities has not kept pace with demand which has subsequently exerted pressures on the price of housing. The development industry has been subject to tighter lending restrictions particularly for multi unit-apartment development.
  - There remains a point of view across the private development sector that there is too much uncertainty and inconsistency around development approval and rezoning times, outcomes, and infrastructure contributions as managed by State and local government.
  - Many communities located on the fringes of most capital cities in Australia are experiencing significant growth and a level of community disadvantage in terms of access to employment, facilities and services.
  - It can demonstrate that Councils on the metropolitan fringe are constrained by their capacity to satisfy basic infrastructure needs (in terms of both their financial capacity and service responsibilities).
  - Economic modelling undertaken on behalf of the National Growth Areas Alliance (NGAA) indicates that a "gap" is emerging and will continue to widen that puts the cost of raising the level of "community standards of living" in metropolitan fringe locations to a reasonable level (compared to other Metropolitan communities) beyond the scope of local councils.
  - A strong case can be made that demonstrates assistance to metropolitan fringe Councils by State and Federal Governments to boost funding of key infrastructure and services (including hard and soft infrastructure) would achieve a high value cost/benefit ratio and address the inequality in community living standards suffered by fringe communities. It should be noted that the Campbelltown Local Government Area was used as a case study by the NGAA in its presentation to the Congress and the position put by the presenter was consistent with Council's continued advocacy to higher levels of Government to assist it to redress infrastructure imbalances.
  - The private development industry retains a view that development contributions (particularly in NSW) are too high and work against housing affordability.
  - There is significant disparity in the performance of each state across Australia in terms of the extent of development contributions and the administration and accountability of these systems.
  - New models of infrastructure funding based around "value capture" and the dedication of rate revenue arising from new development (redevelopment) for a certain period of time to pay for upgraded infrastructure, are in place in the USA and worthy of investigation for application in Australia. (e.g. TIF model).
  - The Federal Government is about to introduce regulations to require all new "greenfield subdivisions" (release areas) to incorporate fibre optic telecommunications networking infrastructure.
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- The pace of technological change in the telecommunications industry is growing exponentially and the integration of communication with information technology needs to be incorporated into new urban development infrastructure (both neighbourhood wide and within individual dwellings).
  - The Barangaroo Delivery Authority is making rapid progress with the development of the Barangaroo site. It is anticipated that the first stages of redevelopment will be tenanted by 2014. Strong interest has been received from investment groups and high profile global companies to occupy new office and retail premises planned for the Barangaroo precinct which will be developed as a western gateway to the Sydney CBD. Significant effort has been dedicated to sustainability, connectivity and achieving high level urban design outcomes for this iconic site.
  - There is mounting evidence and understanding in the market to suggest that the rate of demand for the creation of new housing units is forecast to outstrip the rate of increasing supply, thereby creating housing price pressures in both the housing for sale and rental markets and translating into decreasing housing affordability.
  - These trends may also manifest in changing housing occupancy rates and patterns as demand adjusts, such as for example, the possible increasing propensity for children to stay in the family home for longer. This may lead to increased investment in housing alterations and additions as distinct from investment in the creation of new housing to accommodate new household formation.
  - There are claims from the development sector that finance for new development (and of major significance, higher density housing projects) is difficult to source as lenders continue to focus on the traditional residential mortgage market.
  - There is evidence in the real estate market (nationally) to suggest that housing price growth is set to accelerate after a period of stable or falling prices, responding to the recovery from the Global Financial Crisis, the take up of capital and resources such as skilled labour and services to assist investment in a recovering resources sector, and a shortage in housing supply. This may be offset by a potential for increasing interest rates.
  - Younger home buyers will face increasing difficulty in entering the housing markets due to price pressures stemming from housing shortages and continued interest rate rises, which potentially place additional pressures on rental rates and availability.
  - The development sector continues to express a consistent view that development approval times, development requirements and developer contributions (applied by State and Local Governments) create uncertainty and time delays that are not accepted by contemporary development financiers (particularly for new developers with little institutional borrowing history) which equates uncertainty with increased risk.
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By way of comment, there is a significant supply of already residentially zoned vacant land located within the Campbelltown Local Government Area, including for instance, the Glenfield Urban Release Area, the Macarthur Gardens precinct, and the Edmondson Park Urban Release Area. These opportunities are supplemented by land zoned for higher density housing within the Campbelltown and Ingleburn Business centres, and capacity that exists in the Residential 2b zones across much of the City which permits multi dwelling housing. In addition, Council is currently engaged in detailed planning for the rezoning of the Menangle Park Urban Release Area which has an estimated dwelling yield in the vicinity of 3500 new dwellings and further capacity exists in the East Leppington precinct (part of the South West Growth Centre) and potentially in the longer term, at South Campbelltown.

Council does have in place a series of development contributions applicable to new residential development. These contributions are in accordance with statutory provisions and at the Glenfield Urban Release Area have been approved by the NSW Minister for Planning.

The Congress did not specifically turn its attention to the issues which have been of continuing interest to Council being that:

- There is no guarantee that any reduction in contributions will be transferred by developers into a reduction in housing prices; and
- There is little or no recognition that an inequity exists between existing and new communities when new communities do not meet the total costs of infrastructure that they themselves create a need for, either creating pressure on existing communities to subsidise the cost of providing the shortfall infrastructure or forcing existing communities to suffer a loss of service amenity when new facilities are not developed.

The National Congress was a successful event attracting approximately 700 registrations nation wide. The Congress promoted discussion and improved understanding of the key issues affecting new development at both "macro" and at more localised levels.

### **Officer's Recommendation**

That the information be noted.

### **Committee's Recommendation: (Thompson/Greiss)**

That the Officer's Recommendation be adopted.

**CARRIED**

### **Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

### **Council Resolution Minute Number 49**

That the Officer's Recommendation be adopted.

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### 3.4 No. 22 Macquarie Links Drive, Macquarie Links - Construction of a Dwelling

#### Reporting Officer

Manager Development Services

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#### Attachments

1. Reasons for Refusal
2. Location Plan
3. Subdivision Plan with Building Envelopes
4. Site Plan
5. Floor Plans and Elevations
6. Revised Landscape Structure Plan (Map I) of Development Control Plan No. 63 Macquarie Field House

#### Purpose

To assist Council in its determination of a development application for the construction of single storey dwelling.

<b>Property Description</b>	Lot 8 DP 285774 No. 22 Macquarie Links Drive, Macquarie Links
<b>Application No</b>	2406/2009/DA-DW
<b>Applicant</b>	Alkira Homes
<b>Owner</b>	Mr Gabriel Joseph Vella and Mrs Betty Vella
<b>Statutory Provisions</b>	Local Environmental Plan 112 - Macquarie Fields House Development Control Plan No. 63 - Macquarie Fields House Campbelltown Sustainable City Development Control Plan 2009 Heritage Act 1979
<b>Date Received</b>	10 November 2009

#### Preamble

##### *Land and Environment Court*

On 10 November 2009, development application 2406/2009/DA-DW for the construction of a single storey dwelling on the subject site was submitted to Council. This was followed on 21 December 2009 by development application 2873/2009/DA-SP for the construction of a swimming pool on the same land.

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Assessment of the dwelling application was commenced and on 22 January 2010, a deferral notice was sent to the applicant in respect to application 2406/2009/DA-DW, requesting amended plans. Issues of concern related to details of roofing tiles, roof guttering and the issue of a non-compliant building setback that related to a restriction that had been placed on the title of the subject land.

The applicant subsequently lodged amended plans that resolved the issues relating to the roofing tiles and guttering. However, the issue of the building setback remained unresolved with the owner of the property disputing the need for the restriction which culminated in a meeting with Council's senior officers to discuss the reasons behind the restriction.

Despite the above, on 12 February 2010, the applicant lodged a Class 1 Appeal with the Land and Environment Court against the *deemed refusal* of development application 2406/2009/DA-DW.

Both applications remain undetermined at this time and Council is currently in course of preparing its defence of the deemed refusal.

## History

The Macquarie Links Estate has been subject to several development applications for various stages of development, consisting of a golf course, club house, pro shop, retail shops, recreation facilities, reserves, landscape works and residential subdivision, dwelling houses and apartment buildings.

Development of the Macquarie Links Estate is guided by a masterplan (refer to Attachment No 6) adopted by Council pursuant to Local Environmental Plan No. 112 – Macquarie Field House, and Development Control Plan No. 63 – Macquarie Field House. The Plans also relate to the Ingleburn Gardens site, Macquarie Field House and land north of Macquarie Field House adjoining properties owned by the NSW Department of Education.

An initial masterplan was prepared in 1991 and has subsequently been amended with Council's approval to reflect desired future outcomes for the land to which it applies.

The allotment subject of this report (Lot 8 DP 285774), forms part of what was known as Stage 12 of the Macquarie Links Estate. Stage 12 was approved by Council under development consent G84/2000 and consists of 13 residential Community Title allotments and one residue allotment. Initially the application (G84/2000) was deferred by Council pending the submission of a Visual and Heritage Impact Assessment which was to assess the impact of future dwellings on Macquarie Field House. An archaeological investigation was also undertaken to determine the potential for the presence of any relics in the vicinity of the site.

The developer of the land (in 2001) engaged Mayne-Wilson and Associates (Conservation Landscape Architects) to undertake a Visual and Heritage Impact Assessment of the site. Their report dated January 2001 considered the views to and from Macquarie Field House both from inside and outside the estate. The assessment considered a "No Development" option as well as limited development options for the development of single storey dwellings and the development of two storey dwellings. The recommendations acknowledge that Council may have preferred the no development option, however it was recommended that single storey dwellings could be permitted with the inclusion of strict controls such as minimum boundary setbacks and single storey height restrictions. An excerpt from the report is provided as follows:

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*Section 7 Proposal for Future Works.*

*.....Given that the recommendations and guidelines of the Clouston report were made after stage 6 was approved by Council, it would seem that some compromise would be appropriate. Jessica Investments considers that some type of development should be allowed if, in return, it were prepared to modify the proposed layouts or scale of dwellings on the allotments in the study area, in order to ameliorate the most substantial impacts. For example, amelioration would occur if houses were to be limited to one storey, with low pitched roofs, built with non reflective (preferably natural) materials and painted in recessive colours. (if this were adopted, the possibility should be investigated as to whether an additional house or two could be sited further up the slope, because they would not intrude above the ridgeline/horizon.)*

*Further, if such houses were well separated, with substantial landscape spaces around them, this would improve the quantity of landscape open space near Macquarie Field House. In this regard, Jessica Investments notes that the proposed lots are already wider and have greater depth than the average lot within the estate.*

Giving regard to the above, Council subsequently approved the Stage 12 subdivision application (G84/2000) at its ordinary meeting on the 18 December 2001 subject to Amendment No 5 to the Masterplan becoming effective. In this report, it stated that:

*Council's heritage advisor held a meeting with the Applicant to discuss the preferred option of creating a building envelope to provide the required setbacks and height controls, should the subdivision proceed. The applicant submitted a proposed layout showing the potential building envelopes.*

In addition to this, Council approved Amendment 5 to Development Control Plan No 63 but required that prior to the amendment being deemed effective; the amendment was to be publicly notified by way of the placement of an advertisement in the local newspaper.

As required, the amendment was publicly notified and as such, Amendment No 5 became effective on 17 January 2002. Amendment No. 5 stipulates controls for the subject site (the expressed development intent being for subdivision and residential development).

The majority of Stage 12 has now been built upon with dwelling houses. Two variations to the 88b Restriction placed on the original subdivision (approved on 18 January 2002) have been identified. The variations are on lots 13 and 14 and the reasons for the variations are summarised as follows:

**The dwelling on Lot 13** was the first dwelling approved within the subdivision. The dwelling was approved as a split level home with a two storey element facing the street which is contrary to the 88b restriction that specifies *single storey height limits at street level* (in other words, the dwelling must present to the street as a single storey dwelling).

A review of the assessment and the subsequent approval reveals that the dwelling was approved in error. Efforts by Council to have the incorrect approval surrendered were not successful and the building was constructed as approved. The dwelling complies with all other restrictions on title.

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**The dwelling on Lot 14** was varied due to the irregular dimensions of the site (wide and short) and the inability to easily place a standard building within the highly restricted and irregular building envelope.

Both dwellings on Lots 13 and 14 comply with all other restrictions on title.

It is noted that Lots 13 and 14 are visually/physically isolated from all other houses within Stage 12 and as such, despite these variances, do not impact on the "rhythm" or streetscape character along the lower portion of Macquarie Links Drive where the subject allotment exists.

## Report

Council has received a development application for the construction of a single storey dwelling at lot 8 DP285774 No. 22 Macquarie Links Drive, Macquarie Links.

### The Site

The subject site (the site) is located within the suburb of Macquarie Links. The site is regular in shape with a frontage width of 20.07m and a rear width of 20.00m. The side boundaries are of a length of 42.945m and 44.615m giving a site area of approximately 875.6m<sup>2</sup>.

The site is vacant and generally slopes from the rear to the front with a height difference of approximately 4.5m when measured diagonally across the site.

There are no established trees on the site.

The land is burdened by way of a 2m wide drainage easement located at the rear of the property which runs parallel to the rear boundary.

The site is also burdened by way of the following Restrictions On the Use of Land pursuant to Section 88b of the Conveyancing Act, 1919;

1. Front Building Setback (6.0m from the front boundary);
2. Rear Building Setback (10.0m from the rear boundary);
3. Side Building Setbacks (3.0m from the side boundaries);
4. Single storey height limit at street level;
5. Finished floor levels;
6. Alteration to surface levels; and
7. External colours and finishes.

The restrictions listed above were created at the time of the subdivision of the land pursuant to Council's approval of G84/2000 which created the allotment subject of this report.

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## **Assessment**

The development has been assessed in accordance with the heads of consideration prescribed under Section 79C of the Environmental Planning and Assessment Act, 1979, and having regard to those matters, the following issues have been identified for further consideration.

### **1. Campbelltown 2025 - Looking Forward**

Campbelltown 2025 Looking Forward is a vision statement of broad town planning intent for the longer term future of the City of Campbelltown that:

- *Responds to what Council understands people want the City of Campbelltown to look, feel and function like;*
- *Recognises likely future government policies and social and economic trends; and*
- *Sets down the foundations for a new town plan that will help achieve that future.*

The document establishes a set of strategic directions to guide decision-making and development outcomes. These directions are broad in nature and form a prelude to a new statutory town plan for the City.

The strategic directions relevant to the Project Application are:

- *Growing the Regional City;*
- *Protecting and enhancing the City's key environmental assets;*
- *Building a Distinctive Campbelltown Sense of Place;*

Some of the relevant desired outcomes of the strategic directions included in Campbelltown 2025 include:

- *Development and land use matches environmental capacity and capability;*
- *Match the type, scale and intensity of new land use and development within the capability of the local environment to sustain that land use/development;*

### **2. Heritage Act 1977**

The Heritage Act 1997 includes a range of provisions for identifying and protecting items of environmental heritage. In addition to the establishment of the State Heritage Register (SRH) (a list of items assessed as having State heritage significance), these provisions also include Interim Orders, Orders to stop work, heritage conservation registers and relics provisions.

The site shares a common boundary with the land containing Macquarie Field House. Macquarie Field House and its curtilage is listed on the State Heritage Register where it is noted as being an item of both State and National heritage significance. Macquarie Field House is also listed as an item of heritage significance on both the National Trust of Australia Register and the Register of National Estate. An excerpt (from the NSW Heritage Branch data base) describing Macquarie Field House is provided as follows:

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*Macquarie Fields House is of state and national heritage significance as one of the finest examples of early Australian residential architecture and a landmark, carefully sited in an intact 19th Century rural cultural landscape.*

*The house is a fine sandstone Regency dwelling built c.1838-40 by Samuel Terry and represents the final flowering of the Australian colonial country house style, symmetrical in plan, bold in mass and outline, possessing qualities of simplicity, unity and repose, tempered with a refinement of detail and a careful control in the disposition of the various elements in the design.*

*The property has considerable historical, architectural and archaeological significance as the site of the estate of three well known colonial figures\* and for its associations with an early period of colonial history. (\*James Meehan, ex-convict who became Deputy Surveyor General and surveyed much of the land south of Sydney between 1810-1820, and then of Samuel Terry, ex-convict, 'Botany Bay millionaire' for his daughter and her husband John Hosking, the first elected Mayor of Sydney).*

*The complex has regional aesthetic significance as its siting closely relates to the surrounding landscape, being a landmark on a prominent hilltop amidst along undulating ridge of high land, surrounded by mature trees, and commanding expensive views to the south and west. This siting demonstrates the Australian nineteenth century fashion for picturesque country estate development which followed the eighteenth century English landscape tradition, and its corresponding attention to lands ape siting and moulding and the cultivation of a 'prospect'. It also demonstrates the distinctive lifestyle of the early nineteenth century County of Cumberland settler, including their deliberate moulding of the landscape's appearance.*

*While the detail of the early arcadian style garden has been eroded, the remainder of Meehan's original 1810 land grant, plantings of mature Araucarias, pepper trees, African olives and oleanders and the open rural cultural landscape surrounding the estate are relatively intact today, adding to the significance of the property.*

The subdivision application which was previously approved by Council (G84/2000) creating the subject allotment and Amendment No 5 to Development Control Plan No 63 and Master Plan was accompanied by a Visual and Heritage Impact Assessment undertaken by Wilson and Associates – Conservation Landscape Architects. Importantly, it should be noted that this report recommended, in addition to increased lot sizes (particularly frontage), building envelope controls on all future lots in order to preserve view corridors between Macquarie Links Drive and the land comprising Macquarie Field House.

The proposed development does not comply with the limits of the Council approved building envelopes, nor does it comply with the development restriction - *side building setback greater than 3.0m*, as the dwelling is proposed to be setback only 1.5m from each side boundary. It is also the case that the applicant has not provided reasonable justification for a variation to the building envelope restrictions applied pursuant to section 88b of the Conveyancing Act 1919 and the application fails to demonstrate that due regard has been given to the relevant setback restrictions of the site. Council sought additional information and adjustment to the submitted plans on the 22 January 2010 by way of a deferral notice. A response to the deferral notice was received, with all but one item (3.0m side setbacks) being resolved to Council's satisfaction.

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In view of the fact that the development application was not accompanied with reasonable justification to vary the side building setback, nor was it justified by way of lodgement of a heritage impact assessment, there appears to be no reasonable justification to disregard the Council approved site restrictions or to vary the side building setback.

Adjoining dwelling house developments have complied with the 3.0m side building setback and as such, observe and uphold the intended objectives of the recommendations of the report by Wilson and Associates – Conservation Landscape Architects - Visual and Heritage Impact Assessment, in terms of maintaining a visual corridor to and from Macquarie Field House, and establishing a distinct separation between dwelling houses.

In this regard the proposed development does not demonstrate adequate consideration of the heritage significance of the State Register listed item.

### **3. Local Environmental Plan 112 - Macquarie Field House (LEP 112)**

LEP 112 was gazetted on 14 January 1991 and was subsequently amended through LEPs 135, 176 and 204. The LEP 112 provides the land use zoning for the subject site.

The objectives of LEP 112 are:

- (a) *To control the uses to which the land to which this plan applies may be put;*
  - (b) *To conserve the environmental heritage of the land to which this plan applies;*
  - (c) *To protect and enhance the role of the land to which this plan applies in providing a clearly perceived break between urban development in the City of Campbelltown and that in the City of Liverpool by preserving the visual character and landscape quality of that land;*
  - (d) *To protect and enhance the role of the land to which this plan applies in providing a rural backdrop to the residential areas of Glenfield, Macquarie Fields and Ingleburn;*
  - (e) *To protect the quality and nature of the view from the South Western Freeway where it passes through the land to which this plan applies;*
  - (f) *To protect that part of the major urban drainage system for the City of Campbelltown situated on the land to which this plan applies;*
  - (g) *To control, by means of a development control plan, the siting, height, bulk, scale and density of any buildings to be erected on the land to which this plan applies to achieve the objectives stated in paragraphs (c), (d), (e) and (f);*
  - (h) *To guide, by means of a development control plan, the future landscaping of the land to which this plan applies to achieve the objectives stated in paragraphs (c), (d), (e) and (f).*
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*Comment:*

The proposed development for the construction of a dwelling house satisfies most of the above objectives with exception of objective (b). It can be demonstrated that the proposed development would compromise vistas to an item of environmental heritage. This issue is further discussed later in this report.

Clause 8 of LEP 112

Within the land subject to this LEP, Clause 8 nominates a wide range of uses that are permissible with development consent, including the following uses applicable under the Masterplan:

- *Dwelling houses (used in conjunction with development for other permissible purposes);*
- *Drainage;*
- *Planting of trees or shrubs for re-forestation;*
- *Roads*

It has been established by legal precedent (eg. Winten Property vs Campbelltown City Council 1999) that pursuant to Clause 8 of LEP 112, that among other uses, dwelling houses within a master plan scheme constitute permissible development under the LEP. Therefore the construction of a dwelling house is permissible with Council's consent and Council is able to approve the application should it deem appropriate.

Clause 17 of LEP 112

Clause 17 relates to development to be undertaken within the vicinity of a heritage item. The subject land shares a common boundary with the land containing Macquarie Field House.

This matter is discussed in section 2 of this report. It is considered that the development application does not give regard to the heritage significance of Macquarie Field House and as such, fails to satisfy Clause 17 of the LEP 112.

Therefore the development does not satisfy the provisions of LEP112.

**4. Development Control Plan No. 63 – Macquarie Field House (DCP 63)**

The purpose of DCP 63 is to provide more detailed provisions than are contained within LEP 112. The DCP does not contain any additional specific objectives.

Clause 2.1 makes provision for geotechnical investigation of land within identified “moderately steep” or “very steep” areas. The subject site is located in both these areas and as a result, it is recommended a condition of consent be applied requiring a geotechnical report prior to issue of a construction certificate, should Council decide to approve the application.

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Clause 3.2 relates to the siting of buildings. Building height controls are confined to the "Significant Distant View from the Freeway over Study Area" and "Corridors of Visual Significance" as nominated on Map B of the DCP 63 Plan. The subject site is not located within any of these areas.

Clause 5 of the DCP states that Council can only approve development that is in accordance with the Masterplan which nominates permitted development in specific locations (see Attachment No 6).

Clause 5 of DCP 63 provides guidelines for preserving **two** view corridors across the area from the east. The intention of the DCP is to protect the rural nature of the area surrounding Macquarie Field House as viewed from these general locations. The east-west corridor across Macquarie Links Golf Course is not affected by the proposed development.

Sub-Clause 5.3.1 of the DCP seeks to protect the identified views through the limiting of building heights so that protrusion above the horizon is avoided or minimised in order to protect the rural nature of the area surrounding Macquarie Field House.

DCP 63 also identifies a view cone across the area from the F5 freeway. This is labelled as significant, however it is located west of the site and is not affected by the current development proposal.

## **5. Campbelltown (Sustainable City) Development Control Plan 2009 (SCDCP)**

The recently adopted Campbelltown (Sustainable City) Development Control Plan 2009 (SCDCP) applies to the subject site.

*Clause 2.2 relates to site analysis with the following objectives:*

### *Objectives*

*Identify the constraints and opportunities for the development of the site.*

*Provide an understanding of how the development relates to the site.*

*Identify the capability and suitability of the site for development.*

### *Comment:*

The proposed development has not identified nor appropriately dealt with all of the constraints for development of the site, and disregards the side building setback restrictions that are specified within the section 88b Instrument. It does not demonstrate nor show an understanding of how the development relates to the side building setback restriction, in terms of preserving view corridors between dwellings through to Macquarie Field House and its surrounding curtilage and landscape setting.

### *Clause 2.3 Views and Vistas*

#### *Objectives*

*Protect the scenic value of Campbelltown's natural and built environment.*

*Protect significant views and vistas from and to public places.*

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*Design Requirements*

- (a) *Development shall appropriately respond to Campbelltown's important views and vistas to and from public places. These include views and vistas to and from:*
  - (i) *the Scenic Hills;*
  - (ii) *rural/semi rural landscape areas;*
  - (iii) *the Georges and Nepean River corridors;*
  - (iv) *areas of significant public open space (formal and informal); and*
  - (v) *heritage items.*
- (b) *District views and existing significant view corridors as viewed to and from public places shall be protected.*
- (c) *The opportunity to create new view/vista corridors shall be taken wherever possible and appropriate.*

*Comment:*

The site is situated adjacent to Macquarie Field House which is listed on the State Heritage Register and noted as being an item of both state and national heritage significance. Macquarie Field House is also listed as an item of heritage significance on the National Trust of Australia Register and the Register of National Estate.

The building envelope exists as a response to the concerns raised in the Visual and Heritage Impact Assessment associated with previous planning applications and associated documentation undertaken as a consequence of the site's proximity to Macquarie Field House.

Despite the 3.0m boundary setback restriction being on title for a period of some nine years, the proposed house design does not take appropriate account of the restrictive building envelope, setback controls or the reasons for the setbacks. The proposed 1.5m setback is inconsistent with adjoining development and approval of the sought variation would undermine the intent of Council's previous resolution to approve restricted building allotments that preserve the view corridors between Macquarie Field House and Macquarie Links Drive.

*Clause 2.11 of the Campbelltown (Sustainable City) Development Control plan 2009*, is also relevant in that the development gives no regard to the value or importance of the City's heritage resource.

The plan includes the following objectives:

*Objectives:*

*Ensure that new development takes appropriate account of the significance of heritage items, heritage conservation areas, relics and their settings.*

*Respect the City's indigenous and non-indigenous heritage resource.*

*Promote the protection or conservation of those resources wherever possible*

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*Comment:*

As discussed in sections 2 and 3 of this report, the application fails to address and respond to the building constraints that have been applied to the site by Council pursuant to s88b of the Conveyancing Act 1919.

## **6. Heritage**

Macquarie Field House is situated directly east of the subject land, at a distance of approximately 130m to the nearest property boundary. The development application was not required to be referred to the NSW Heritage Office under the provisions of the NSW Heritage Act, 1977.

## **7. Site Constraints**

The site is burdened by way of a 2m wide drainage easement located at the rear of the property which runs parallel to the rear boundary.

The site is also burdened by way of the following Restrictions On the Use of Land created pursuant to Section 88b of the Conveyancing Act, 1919;

1. Front Building Setback (6.0m from the front boundary);
2. Rear Building Setback (10.0m from the rear boundary);
3. Side Building Setbacks (3.0m from the side boundaries);
4. Single storey height limit at street level;
5. Finished floor levels;
6. Alteration to surface levels; and
7. External colours and finishes.

The restrictions listed above were created at the time of the subdivision of the land in accordance with Council's approval of G84/2000 which was for the subdivision of the land that created the allotment subject of this report.

The application complies with all restrictions on title other than for the 3.0m side setback restriction shown at point 3 above.

Council has the authority to vary the restrictions of the 88b Instrument that apply to the site. However, in regard to this application, it is not considered that the applicant has provided reasonable justification to warrant the variation or reduction of the 3.0m side setback restriction to a side setback of 1.5m.

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## 8. Submissions

The application was notified in accordance with Council's Development Control Plan No. 87 – Public Notification and Public Exhibition Policy. In addition, as the application was lodged during the Christmas period, the notification period was extended in accordance the direction of the Department of Planning (DoP) with respect to the notification of development applications lodged during the Christmas period. In this regard, and in accordance with the DoP's requirements, the notification period was extended through to the 15 February 2010. A search of Council's records reveals that no submissions were received as a result of the notification.

## 9. Recent correspondence

A letter from the applicant was received by Council on 9 March 2010 which requested that the Department of Planning and Environment submit the application to Council for its determination. This report has been submitted to Council as per the applicant's request and the applicant's justification for this request is summarised in the following table:

**Table 1:**

	<b>Matters raised by applicant</b>	<b>Officer Comment</b>
1	Council can still determine the development application independent of the deemed refusal process.	Council can determine the application while the matter is being dealt with by the Land and Environment Court, but such determination needs to be made prior to determination by the Court to have any effect.
2	The side boundary setback between the garage and the fence is 1.5m. After the garage clears, the boundary setback on the right hand side is 3.17m. Similarly the side boundary setback on the left hand side between the first 2 bedrooms and the fence is 1.5m. The third bedroom, laundry and bathroom have a side setback of 1.97m from the fence. Bedroom 4 has a side setback of 1.5m.	The 88b Restriction does not allow any encroachment within the 3.0m side building setback. The side building setback has been established to retain view corridors between Macquarie Links Drive and Macquarie Field House. The garage is still attached to the dwelling house and despite the section of building behind the garage being setback over 3.0m from the side boundary, the garage would impinge upon this view corridor.

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3.4 No. 22 Macquarie Links Drive, Macquarie Links - Construction Of A Dwelling

	<b>Matters raised by applicant</b>	<b>Officer Comment</b>
3	<p>In the Architectural Standards and Landscape Design Guidelines, the Macquarie Links Planning Committee and Community Association stipulates a minimum front setback of 6.0m, a minimum rear setback of 4.5m and a minimum side setback of 1.5m. The Macquarie Links Committee Planning Committee and Community Association states the above setbacks exist on order to maintain separation between houses, to maximise opportunities for landscape between houses, and to ensure a high standard of solar and light access. The plans for the subject site were approved by the Macquarie Links Planning Committee and Community Association on 5 November 2009.</p>	<p>The Architectural Standards and Landscape Design Guidelines, the Macquarie Links Planning Committee and Community Association have no statutory weight in respect to planning issues. Council is required to assess the development proposal with regards to site constraints, and relevant statutory provisions.</p>
4	<p>Macquarie Field House sits on a hill some 150m behind our site. The house itself cannot be seen at all as it is completely screened off by large trees and numerous shrubs.</p>	<p>It is agreed that Macquarie Field House contains extensive vegetation surrounding the house. This forms an integral part of the heritage context and landscape significance of the site and its curtilage and is a reminder of the natural setting of Macquarie Field House.</p>
5	<p>We are prepared to reduce the building footprint to 2.0m side building setback.</p>	<p>The dwelling houses constructed either side of the subject allotment have complied with the 3.0m side setback restriction and as such, uphold the objectives and desired outcomes of Council's original subdivision approval. The subject allotment is the last vacant site within the Stage 12 subdivision and as such, a reduction of the side boundary setback would only reduce the community's opportunity to enjoy views of the Macquarie Field House Heritage Item which is available as you move along Macquarie Links Drive.</p>

3.4 No. 22 Macquarie Links Drive, Macquarie Links - Construction Of A Dwelling

	<b>Matters raised by applicant</b>	<b>Officer Comment</b>
6	<p>There are 2 other blocks within the same development plan as our own that have the same 88b Instrument imposed on them. Somehow, both of these lots (lots 13 and 14) have had the 88b Instrument lifted.</p>	<p><b>Lot 13</b> was the first dwelling approved within the subdivision. The dwelling was approved as a split level home with a two storey element facing the street which is contrary to the 88b restriction that specifies <i>single storey height limits at street level</i> (in other words, the dwelling must present to the street as a single storey dwelling).</p> <p>A review of the assessment and the subsequent approval reveals that the dwelling was approved in error. Efforts by Council to have the incorrect approval surrendered were not successful and the building was constructed as approved. The dwelling complies with all other restrictions on title.</p> <p><b>Lot 14</b> was varied due to the irregular dimensions of the site (wide and short) and the inability to easily place a standard building within the highly restricted and irregular building envelope.</p> <p>The dwelling complies with all other restrictions on title.</p> <p>It is also noted that Lots 13 and 14 are visually/physically isolated from all other houses within Stage 12 and as such, despite these variances, do not impact on the "rhythm" or streetscape along the lower portion of Macquarie Links Drive where the subject allotment exists.</p>
7	<p>Lot 13 were somehow given permission to construct a split level dwelling with a clear second storey balcony above the garage (at street level). We are advised that Council has classed this to be single storey dwelling. In addition to this, Lot 14 clearly breaches the 3.0m side setback restriction at various points.</p>	<p>Refer to the comments in item 6 above.</p> <p>The proposed development does not seek variation to the height limitation, only the side setback.</p>
8	<p>The views enjoyed by neighbouring properties are not being impeded. Lot 9 (next to our site) has a higher ground level and subsequently is able to look over our home. Lot 7 is a split level home with a second floor to the rear of the property that also looks over our land. The houses opposite our block are of a double storey construction and also have views over our home.. Macquarie Field House is perched on a hill approximately 150 from our lot and at least 10-15m above our lot in terms of ground level. The house is completely screened by numerous large trees to the point that you wouldn't know it was there.</p>	<p>Both Lots 7 and 9 provide a 3.0m side building setback. The side building setback is not for the purpose of privacy nor for the amenity of those occupancies. It is to provide for the opportunity for allowing views to and from Macquarie Field House.</p> <p>Macquarie Field House contains extensive vegetation immediately around the house, but has cleared areas beyond the house, which is consistent with the period of the house and agricultural surrounds. The side building setback allows an opportunity for Macquarie Field House, including its landscaping, to be viewed from various locations.</p>

3.4 No. 22 Macquarie Links Drive, Macquarie Links - Construction Of A Dwelling

	<b>Matters raised by applicant</b>	<b>Officer Comment</b>
9	<p>The extensive views enjoyed by Macquarie Field House are towards the railway line, Glenfield, Macquarie Fields and Ingleburn. The NSW Heritage branch website confirms Macquarie Field House dense screen planing close to the homestead reduces any views to Macquarie Links Estate. The website also confirms that the associated plantings of Macquarie Field House could also in time further obscure the open views to and from the property – which they have now done.</p>	<p>The NSW Heritage Branch website advises that the site is of State Significance and is noted as being an item of national heritage significance. The lands of Macquarie Field House contain extensive vegetation surrounding the house and it is this vegetation that forms an integral part of the heritage context and landscape significance of the site and its curtilage and is an important reminder of its natural setting.</p> <p>In this regard, it is considered that the vegetation forms an important part in respect to establishing the context in which Macquarie Field House existed and as such, upholding the building side setback controls is considered warranted to ensure the continued protection of the view corridors for the benefit of all of the community.</p>
10	<p>Lot 13 is split level dwelling with a single level on the right hand side of the lot and is attached to a double storey dwelling with front balcony on the left hand side. Upon discussions with the Estate developer, it is understood that the 88b restrictions imposed on Lot 13 were waived.</p>	<p>Refer to the comments in item 6 above.</p>
11	<p>The new 47 lots released as part of stage 15 also located on Macquarie Links Drive (about 100m away) have a side boundary setback of 0.0m These lots also adjoin Macquarie Field House and curtilage and have extensive views of Macquarie Field House. In addition to this, development consent has been given for an approved hotel to be situated within the new release.</p>	<p>Stage 15 under went rigorous visual and heritage assessment. It was deemed that the site was sufficiently removed enough and contains site constraints that allow residential development and a hotel to be built within the vicinity of Macquarie Field House without affecting view scapes. Stage 15 does not contain the same land constraints that Stage 12 did due to its proximity to Macquarie Field House.</p>
12	<p>If council can lift restrictions on some lots, why not lift them for others. Our lot is the only one left in our DP, so we fail to see how why our development will have such a significant impact. We will still have a 4.5m separation between our roof and the neighbouring roof on each side. And once our garage clears, we actually have a side boundary setback of 3.0m on the right hand side. Yet just down the road, the new land release with the 47 lots will have less than 1.8m of separation between their roofs and they actually have direct views to the grounds of Macquarie Field House.</p>	<p>It is noted that Council is able to vary 88b Restrictions if the variation request is reasonable and justified and Council deems appropriate in the circumstances. In respect to this development proposal, the variation is not supported. The variation would be inconsistent and detract from the existing development within Stage 12 which has observed the 88b restrictions that applies to all of these lots. Existing development either side of the subject site provide a 3.0m side building setback. Therefore is it is recommended that Council should be consistent in its application of the 88b Restriction and not support this application. Considering the site is over 20m wide, and with a 3.0m side building setback, leaves a 14m wide building envelope which is suited to many forms of dwelling houses, achieving the same density and similar layout and preserving a scenic corridor to Macquarie Field House.</p>

### **13. The Public Interest**

The public interest is an overarching requirement, which includes the consideration of the matters discussed above. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the desired future outcomes expressed in LEPs and DCPs.

It is clear that the development proposal is inconsistent with the side building setbacks/site constraints which have been applied to the title of the subject land to ensure that view scapes and a reduction in built form does not detract from the heritage significance of Macquarie Field House.

Adjoining sites have been developed and comply with the 3.0m side building setback, providing a consistent and unified separation between dwellings having a common boundary with Macquarie Field House.

There has been no reasonable justification provided by either a suitably qualified heritage consultant or by the applicant that demonstrates that the side building setback restriction (in the circumstances of this dwelling site and its relationship to the adjoining heritage item) is unreasonable. Hence, the application remains contrary to the building controls for the site, and as such, approval of the application is not considered to be in the public interest.

### **Conclusion**

The proposed development fails to acknowledge the relevant constraints of the subject site, specifically in regard to side building setbacks of 3.0m. The side building setback restriction, along with other constraints and restrictions, has been developed to ensure the preservation of view corridors between Macquarie Links Drive and the land comprising of Macquarie Field House (being a heritage item of local and state significance). In this regard, it is considered that the applicant's submission has not provided reasonable justification for Council to approve a variation to the side setback restrictions.

Further to the above, the applicant has not demonstrated that the view corridor to/from Macquarie Field House will not be adversely affected by way of the reduced setback nor has it been demonstrated that a dwelling with reduced side setbacks will not have an adverse impact on the residential streetscape in terms of built form and rhythm when viewed in line with other dwellings with compliant setbacks.

Despite the above, the applicant has been given the opportunity to amend the application to comply with the site constraints; however, Council has since been advised that the applicant has appealed to the Land and Environment Court and wishes to have the matter determined by the Court. Should Council consider supporting this application with appropriate conditions, subject to the applicant accepting the conditions, it is likely that the Land and Environment Court action would be dismissed, but that is a matter for the applicant to consider, should that eventuality arise.

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Finally, for the reasons tabled within the report, the proposed development is not supported in its current form. Should the proposal be amended to comply with the side building setbacks and other restrictions on title, it is considered that the development could be approved.

### **Officer's Recommendation**

That development application 2406/2009/DA-DW for the construction of a single storey dwelling at Lot 8 DP 285774, No.22 Macquarie Links Drive, Macquarie Links, be refused for the Recommended Reasons for Refusal contained in Attachment No 1.

**Committee Note:** Mr and Mrs Vella addressed the Committee in support of their application.

### **Committee's Recommendation: (Greiss/Thompson)**

That development application 2406/2009/DA-DW for the construction of a single storey dwelling at Lot 8 DP 285774, No.22 Macquarie Links Drive, Macquarie Links be approved subject to appropriate conditions.

### **CARRIED**

Voting for the Committee's Recommendation were Councillors: Greiss, Matheson, Rowell and Thompson.

Voting against the Committee's Recommendation were: Councillors Bourke, Kolkman and Oates.

### **Council Meeting 6 April 2010 (Greiss/Lake)**

That development application 2406/2009/DA-DW for the construction of a single storey dwelling at Lot 8 DP 285774, No.22 Macquarie Links Drive, Macquarie Links be approved subject to appropriate conditions.

### **LOST**

### **Council Meeting 6 April 2010 (Kolkman/Oates)**

That development application 2406/2009/DA-DW for the construction of a single storey dwelling at Lot 8 DP 285774, No.22 Macquarie Links Drive, Macquarie Links, be refused for the Recommended Reasons for Refusal contained in Attachment No 1.

### **Council Resolution Minute Number 51**

That the above Resolution be adopted.

Voting for the Council Resolution were Councillors: Borg, Bourke, Chanthivong, Dobson, Glynn, Kolkman, Lake, Oates, Rule and Thomas.

Voting against the Council Resolution were Councillors: Greiss, Hawker, Matheson, Rowell and Thompson.

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## **ATTACHMENT 1**

### **Recommended Reasons for Refusal**

#### **Inconsistent with Objectives of DCP 2009**

1. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with clause 2.3 of the Campbelltown (Sustainable City) Development Control Plan 2009 ("DCP 2009").
2. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the objectives of clause 2.11 of DCP 2009.

#### **View Corridors**

3. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development fails to ensure the preservation of view corridors between Macquarie Links Drive and the land comprising of Macquarie Field House being a heritage item of local and state significance.

#### **Built Form and Streetscape**

4. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the built form and rhythm of the existing dwellings along the North-Eastern side of Macquarie Links Drive and South of Hebrides Avenue. In that regard, the dwelling in its proposed form will have an adverse impact upon the existing and future desired streetscape of the North-Eastern side of Macquarie Links Drive, South of Hebrides Avenue.

#### **Design not consistent with approved Building Envelope**

5. Pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development fails to give regard to the physical limitations of the approved building envelope burdening the allotment and is not contained within the building envelope identified for the land on the plans approved under development consent G84/2000.

#### **Public Interest and Precedent**

6. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and/or inappropriate ancillary development to existing dwellings and is therefore not in the public interest.
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# ATTACHMENT 2



## LOCALITY PLAN

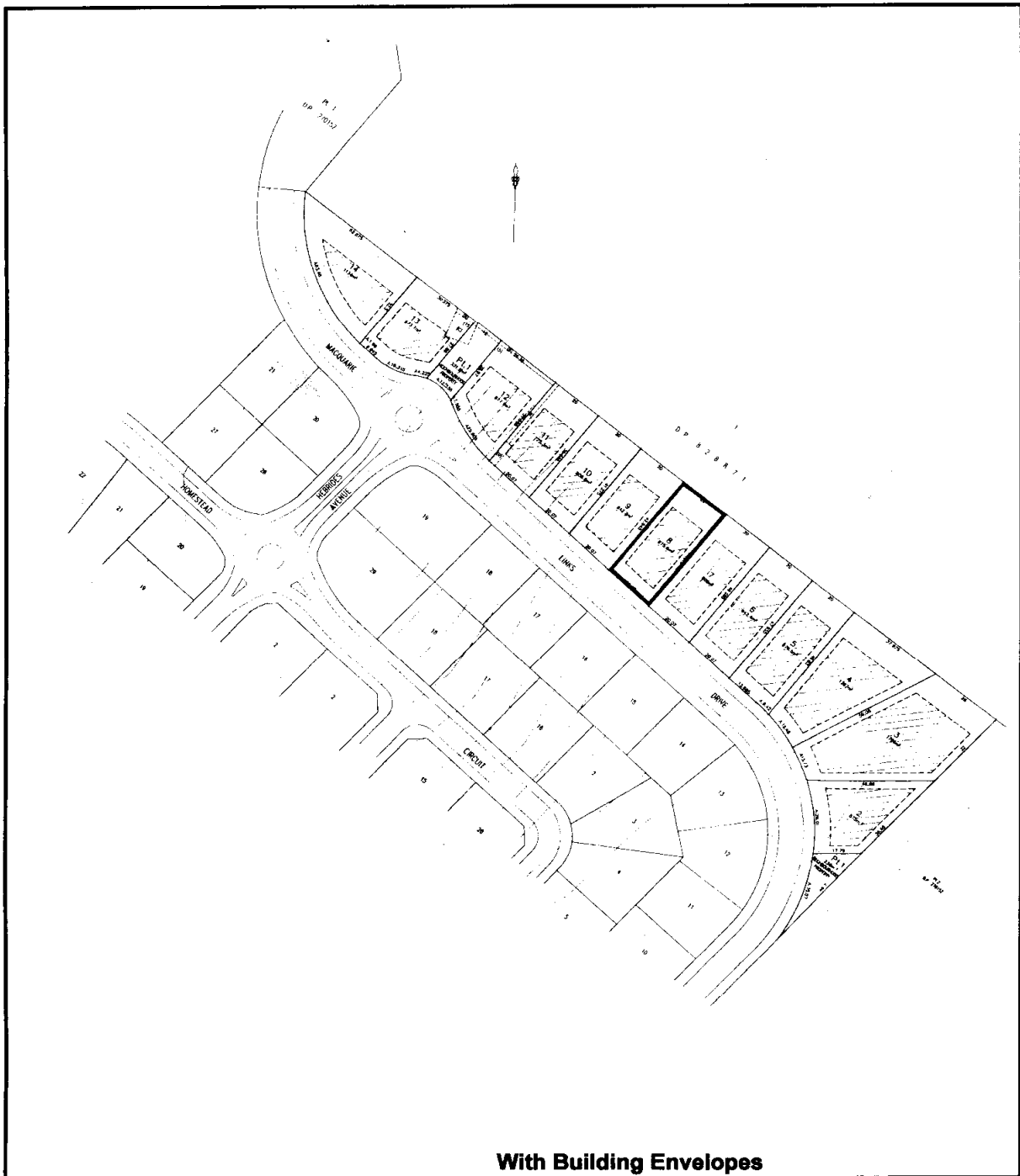


**SUBJECT:**

CONSTRUCTION OF A DWELLING.

LOT 8 DP 285778 - No. 22 MACQUARIE LINKS DRIVE, MACQUARIE LINKS.

**ATTACHMENT 3**



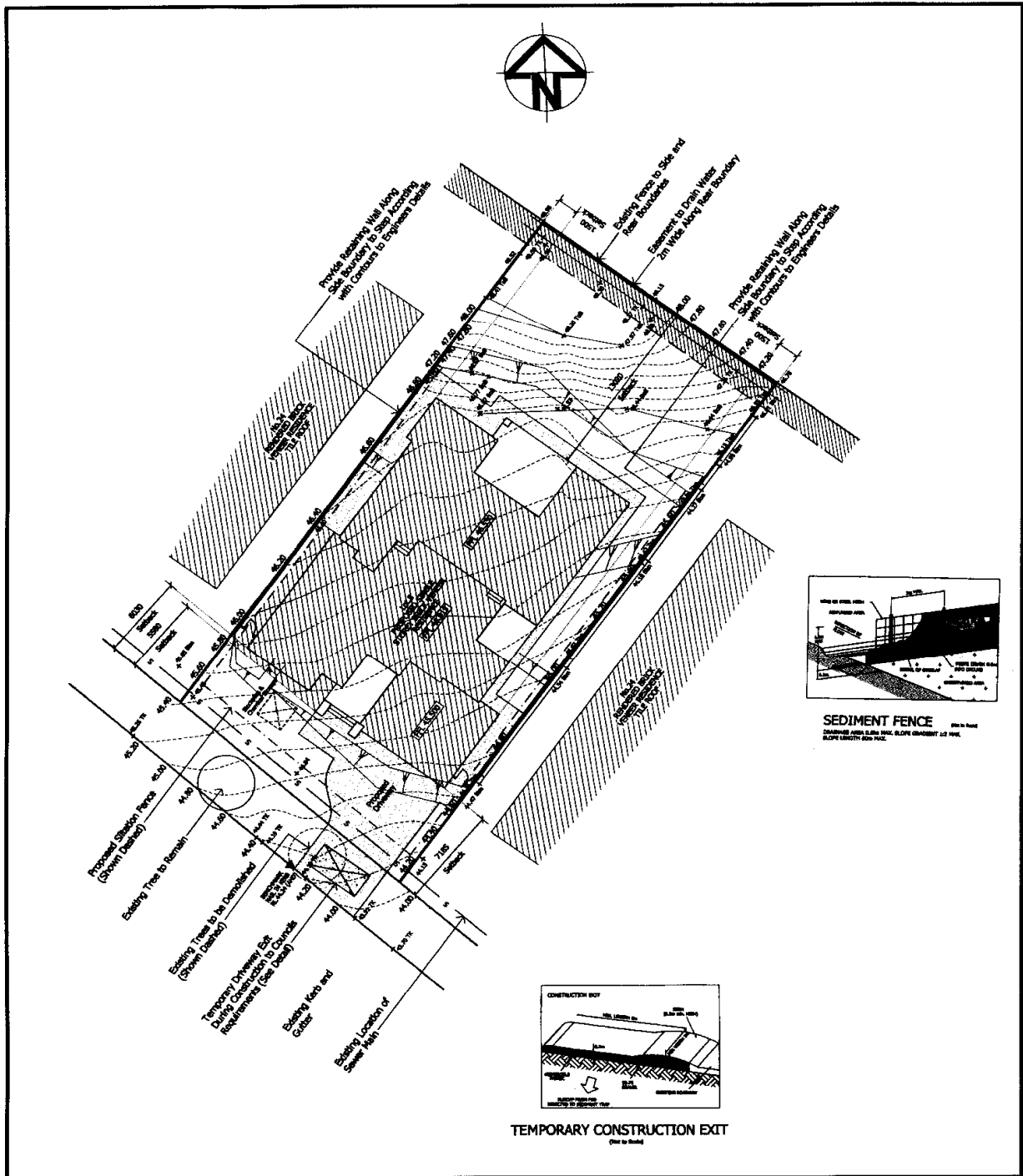
**SUBDIVISION PLAN**

**SUBJECT:**

CONSTRUCTION OF A DWELLING.

LOT 8 DP 285778 - No. 22 MACQUARIE LINKS DRIVE, MACQUARIE LINKS.

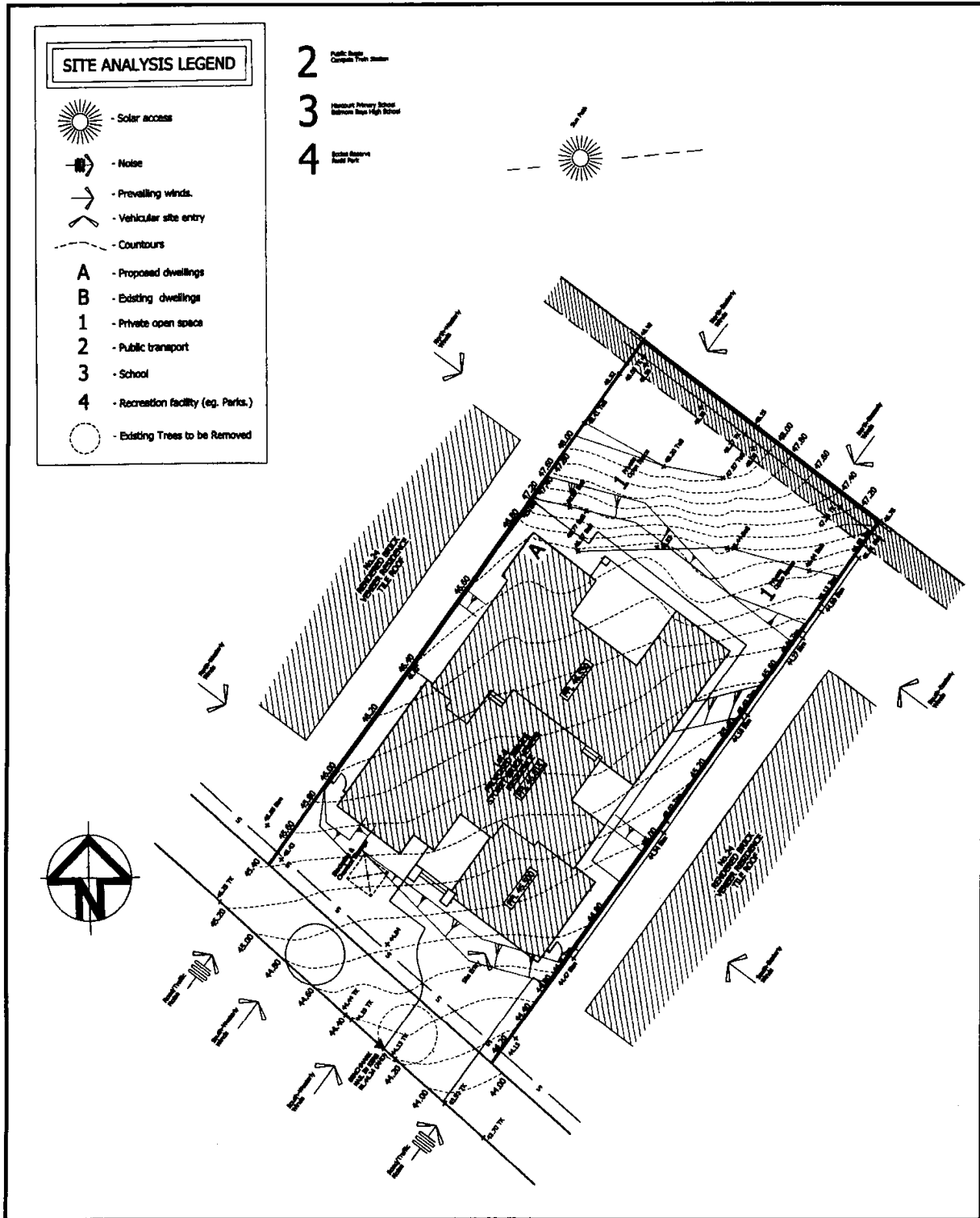
# ATTACHMENT 4



## SITE PLAN

**SUBJECT:** CONSTRUCTION OF A DWELLING.  
LOT 8 DP 285778 - No. 22 MACQUARIE LINKS DRIVE, MACQUARIE LINKS.

3.4 No. 22 Macquarie Links Drive, Macquarie Links - Construction Of A Dwelling



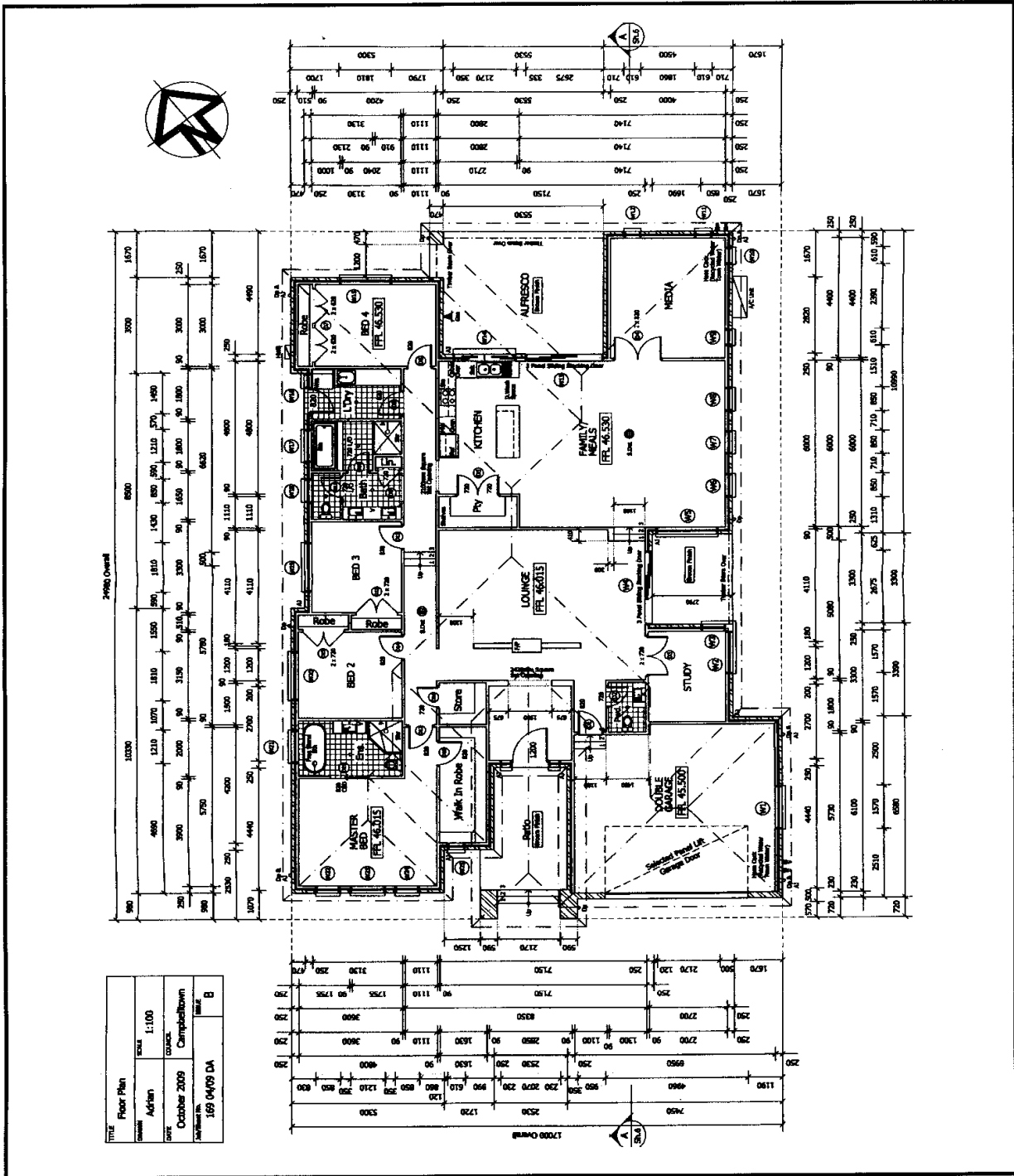
**SITE ANALYSIS PLAN**

**SUBJECT:**

CONSTRUCTION OF A DWELLING.

LOT 8 DP 285778 - No. 22 MACQUARIE LINKS DRIVE, MACQUARIE LINKS.

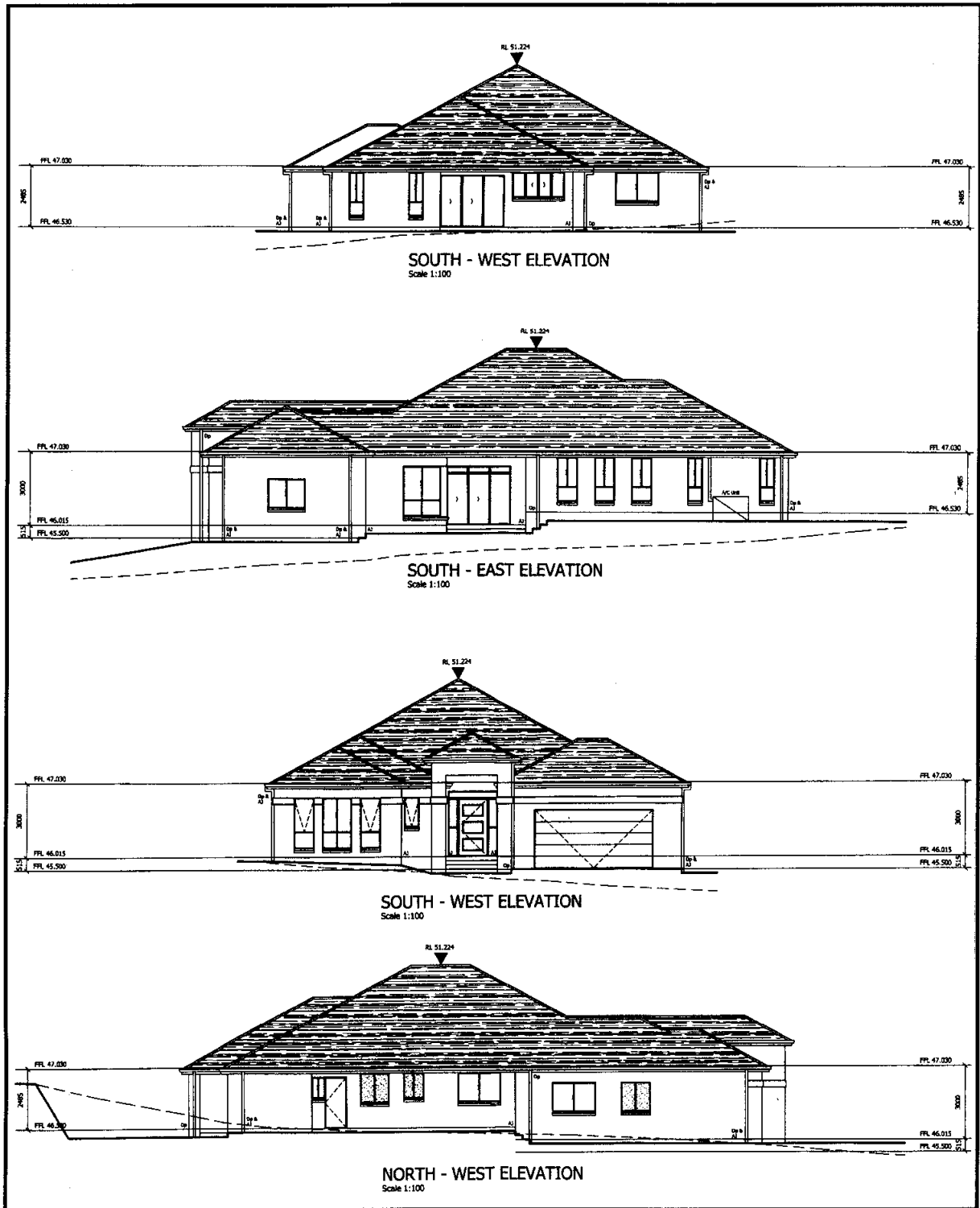
**ATTACHMENT 5**



**FLOOR PLAN**

**SUBJECT:** CONSTRUCTION OF A DWELLING.

LOT 8 DP 285778 - No. 22 MACQUARIE LINKS DRIVE, MACQUARIE LINKS.



## ELEVATIONS

**SUBJECT:**

CONSTRUCTION OF A DWELLING.

LOT 8 DP 285778 - No. 22 MACQUARIE LINKS DRIVE, MACQUARIE LINKS.



### **3.5 No. 5 Benson Road, Ingleburn - Use of existing warehouse for the storage and distribution of gaseous products**

#### **Reporting Officer**

Manager Development Services

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#### **Attachments**

1. Recommended conditions of development consent
2. Locality plan
3. Site layout and elevations plan

#### **Purpose**

To assist Council in its determination of the subject development application in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979*.

<b>Property Description</b>	Lot 65 DP 263978, No. 5 Benson Road, Ingleburn
<b>Application No</b>	152/2010/DA-I
<b>Applicant</b>	Supagas
<b>Owner</b>	Deemco Pty Ltd
<b>Statutory Provisions</b>	State Environmental Planning Policy No. 33 - Hazardous and Offensive Development Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment Campbelltown (Urban Area) Local Environmental Plan 2002 Campbelltown (Sustainable City) Development Control Plan
<b>Other Provisions</b>	Campbelltown 2025 - 'Looking Forward'
<b>Date Received</b>	27 January 2010

#### **Introduction**

A development application has been received for the use of an existing warehouse building for the storage and distribution of gaseous products. The property on which the use is proposed to be located is within an existing industrial area at Ingleburn.

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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

#### The Site

The site is legally described as Lot 65 DP 263978 and is known as No. 5 Benson Road, Ingleburn. It has an area of just over 2 hectares and is largely regular in shape. The site is accessed via Benson Road, which is a cul-de-sac finished street that extends from Williamson Road. The South Western Freeway (Hume Highway) adjoins the site's western boundary.

The site is located in a well established area of large industrial land holdings, where a range of manufacturing, processing and distribution facilities presently operate.

The site contains a large open warehouse building, which was constructed with a roof only. Council granted development consent for the site to be used for the storage and distribution of timber products in 1997 (D138/97). A small office area is incorporated into the warehouse building at its northern end. A staff car parking area containing approximately 20 spaces is located adjacent to the office area.

Since the building's approval in 1997, there have been a small number of development consents issued at the site for minor extensions and modifications to the main building. A large portion of the site that is not contained under the existing building is finished in concrete and was used for the external storage of timber products in accordance with the previously mentioned primary development consent. An internal road provides access for semi-trailers trucks around the building and outdoor storage areas.

A landscaping strip containing several mature trees finishes off the site to the west and provides effective screening of the building and its outdoor storage areas when viewed from the South Western Freeway (Hume Highway).

#### The Proposal

The development application proposes the use of the existing warehouse building and external areas for the storage and distribution of gaseous products. The application also includes the construction of minor alterations to the building in order to facilitate easier loading and storage of the gaseous products. A plan of the site as proposed in the application is contained in Attachment 3 to this report.

Details of the breakdown of the quantity of gases to be stored at the site are outlined in the following table.

Material	Phase	Storage Type	Maximum quantity (tonnes)
Liquefied Petroleum Gas	Liquid	External under ground tank	28.11
Acetylene	Dissolved	Internal cylinders	0.67
Helium	Liquid	Internal above ground tank	1.25
Helium	Gaseous	Internal cylinders	3.13
Argon	Liquid	External above ground tank	56.44
Carbon Dioxide	Liquid	External above ground tank	29.13

3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

Material	Phase	Storage Type	Maximum quantity (tonnes)
Oxygen	Liquid	External above ground tank	51.33
Nitrogen	Liquid	External above ground tank	21.86
Nitrous Oxide	Liquid	Internal cylinders	1.80
<b>Total</b>			<b>193.72</b>

The site's total gas storage is less than 200 tonnes, meaning that the proposal is not '*designated development*' pursuant to the *Environmental Planning and Assessment Regulation 2000*. This matter is discussed in more detail later in this report.

Proposed changes to the existing building and the site include:

- Construction of an underground liquefied petroleum gas (LPG) storage tank;
- Construction of a cylinder filling dock;
- Construction of a laboratory within the existing building roof space;
- Construction of above ground cryogenic storage tanks for argon, oxygen, carbon dioxide and nitrogen;
- Construction of loading dock facilities;
- Use of existing approved outdoor storage areas for gas cylinder storage in accordance with Australian Standard 4332; and
- Conversion of an existing outdoor storage area to create an additional 32 car parking spaces for staff.

As illustrated by the plan at Attachment 3, the under ground LPG tank would be located in the north eastern corner of the site, the cryogenic facility (above ground tanks) would be located adjacent to the building in the south western corner of the site, outdoor cylinder storage would be undertaken in the open area along the eastern boundary and a portion of the western side of the building and the additional car parking spaces would be located at the site's northern end adjacent to the existing car parking area. All parts of the site would be accessible to a 19 metre semi-trailer. The outdoor storage of empty cylinders would be undertaken in accordance with Australian Standards and the dangerous goods code for each gas.

The above ground cryogenic storage tanks would be 12.5 metres in height, which closely matches the height of the existing building's ridge line (as illustrated in Attachment 3's 'south west part elevation' diagram).

Gases would be transported to the site in semi-trailer trucks, where they would be decanted into the on-site storage tanks. The gases would then be transferred to smaller cylinders stored on the site and distributed in medium rigid trucks as customer orders arrive.

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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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It is proposed to operate the site on a 24 hour, seven day per week basis. The use would employ up to 85 people in two shifts (including office and sales representative staff), with a maximum of 50 people working on-site at any one time.

At peak gas use periods (usually in winter as that is the time of greatest demand for LPG), the site is anticipated to receive up to 26 semi-trailer deliveries per week and up to 125 medium rigid truck dispatches.

Tanks and cylinders would be installed, stored and maintained in accordance with the requirements of relevant Australian Standards, including, but not limited to:

AS 1596 - *LP Gas storage and handling*;

AS 4332 - *The storing and handling of gases in cylinders*; and

AS 1894 - *The storage and handling of non-flammable cryogenic and refrigerated liquids*.

A description of the main gas storage operations that would be undertaken at the site is provided below:

#### *Liquefied Petroleum Gas (LPG)*

Trucks would deliver bulk LPG to the site from its production sources (oil refineries). The LPG would be stored in one underground tank. LPG would be used to fill varying sized cylinders for storage and distribution. Trucks would be loaded to carry LPG to delivery sites across metropolitan Sydney from the site, in varying cylinder sizes according to customer/vehicle requirements.

#### *Acetylene*

Acetylene gas is used in welding and metal cutting. It would be transported to the site by truck and stored in cylinders for distribution to customers as required.

#### *Other Gases*

*Argon* is non-toxic, non-flammable and considered to be extremely inert, forming no known chemical compounds. Common uses include MIG and TIG welding, gas purging and scientific equipment testing applications.

*Oxygen* is non-flammable and non-toxic. It is an oxidising agent and supports combustion. It is commonly used by industry or small businesses with acetylene or LPG for welding, cutting and localised heating. It may also be used to sustain life and for other medical applications.

*Carbon dioxide* is a non-flammable, non-toxic, colourless, odourless gas. Carbon dioxide is commonly used in the hospitality industry for beer and soft drink dispensing. It is also used for gas purging, food packaging, welding, fire fighting and scientific equipment testing applications.

*Nitrogen* is also an inert, non-flammable, non-toxic gas that is colourless and odourless. Common uses include gas purging, food packaging, winemaking, air tools and scientific equipment testing applications.

Helium is an inert, non-flammable, non-toxic gas that is colourless and odourless. Common uses include super cooling of magnets, industrial leak detection, balloon filling and for scientific purposes.

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Oxygen, nitrogen, argon, helium and carbon dioxide would be received in bulk tankers and transferred to bulk aboveground tanks in the tank farm using on site cryogenic liquid pumps or road tanker transfer pumps.

It is important to note that no gas manufacturing will be undertaken on the site.

## **Assessment**

The development has been assessed having regard to the matters for consideration prescribed under Section 79C(1) of the *Environmental Planning and Assessment Act 1979*. Subsequently, the following matters have been identified for further consideration and discussion.

### **1. Statutory Controls**

Section 79C(1)(a) requires Council to consider any relevant environmental planning instrument, draft environmental planning instrument or development control plan.

#### **1.1 Designated Development**

The application is not designated development under Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation). Under the Regulation, a chemical storage facility is designated development only where it:

- (a) stores or packages chemical substances in containers, bulk storage facilities, stockpiles or dumps with a total storage capacity in excess of:
  - (i) 20 tonnes of pressurised gas, or
  - (ii) 200 tonnes of liquefied gases, or
  - (iii) 2,000 tonnes of any chemical substances, or
  
- (b) that are located:
  - (i) within 40 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable or highly permeable soil, or
  - (iii) in a drinking water catchment, or
  - (iv) on a floodplain

In this instance, the development proposes the storage of less than 194 tonnes of liquefied gas and is not located on a site that is within 40 metres of a natural waterbody, is not located on highly permeable soil, within a drinking water catchment, or on a floodplain.

Accordingly, the proposal is not classified as designated development. As the proposal is not designated development, there is no requirement for an 'environment protection licence' to be issued by the Department of Environment, Climate Change and Water pursuant to Schedule 1 of the *Protection of the Environment Operations Act 1997*. Nor is the development application required to be accompanied with an Environmental Impact Statement.

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## 1.2 State Environmental Planning Policy No. 33 - Hazardous and Offensive Development

State Environmental Planning Policy 33 applies to the proposed development and provides for objectives and definitions of the proposed development. The relevant objective is provided below:

*to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and*

### Comment:

A Preliminary Hazard Analysis (PHA) report was submitted to Council as part of the application. The PHA report identifies measures to be implemented at the site to ensure that the development is not a hazardous or offensive industry. The PHA is discussed in detail later in this report as part of the environmental assessment of the proposed development.

*to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact,*

### Comment:

The PHA report contains relevant information and provides for Council to impose suitable conditions on any development consent it may deem appropriate.

Various definitions are provided for different development types included within the Policy. The relevant definition of the proposed development is located in Clause 3 of the Policy. The definition is:

*In this Policy:*

**potentially hazardous industry** means a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality:

- (a) to human health, life or property, or
- (b) to the biophysical environment,

*and includes a hazardous industry and a hazardous storage establishment.*

The PHA concludes that the development is not a hazardous or offensive industry in terms of its compatibility with the surrounding environment or potential to be hazardous or offensive.

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Clauses 8 and 9 of the Policy contain provisions to assist in determining whether a use is hazardous or offensive. Clause 8 reads as follows:

*8 Consideration of Departmental guidelines*

*In determining whether a development is:*

- (a) hazardous storage establishment, hazardous industry or other potentially hazardous industry, or*
- (b) an offensive storage establishment, offensive industry or other potentially offensive industry,*

*consideration must be given to current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development.*

The relevant circulars and guidelines were used in the preparation of the Preliminary Hazard Analysis (PHA), which concludes that the development is not a hazardous or offensive storage establishment. The assessment and conclusions contained within the PHA are considered to be satisfactory and are detailed further in Section 2.2 of this report.

Clause 9 follows:

*9 Storage facilities*

*A provision of an environmental planning instrument which prohibits the carrying out of development for the purposes of, or purposes which include, a storage facility (however the storage facility may be described or referred to in the instrument) on the ground that the storage facility is offensive or hazardous has no effect unless the storage facility is a hazardous storage establishment or an offensive storage establishment as defined in this Policy.*

Based on the findings of the PHA, the development is not considered to be a hazardous storage establishment in accordance with the definitions of such development contained in the SEPP. The assessment and conclusions contained within the PHA are considered to be satisfactory and are detailed further in Section 2.2 of this report.

The development is considered to be complementary to the objectives and controls detailed in the SEPP and is permissible at the site.

### **1.3 Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment**

GMREP No. 2 applies to the site and establishes objectives and certain considerations for development within the Georges River catchment (where it is located in metropolitan areas). Under the Plan, the development would be defined as '*chemical or fuel storage on land*'.

Matters for consideration detailed in the Plan are detailed below:

- *That adequate provisions have been made to contain water that may be contaminated by its use for fire control purposes.*
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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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- *Whether the proposal meets the requirements of the local council's stormwater management plan or, if no such plan is prepared, the local council's stormwater management objectives or policy determined by the council in consultation with the relevant Catchment Management Committees, the community, the Environment Protection Authority and the Department of Land and Water Conservation.*
- *Whether the proposal is in accordance with the local council's soil erosion and sediment management plan or policy.*
- *Any impacts on groundwater.*
- *Provision for on-site bush fire hazard reduction where relevant.*

The application and development respond favourably to the matters for consideration and address the issues raised in the Plan. Subject to appropriate soil and sedimentation controls being implemented during the construction process, the development is unlikely to have any adverse impacts on stormwater run-off and water quality in the Georges River system. The methods of fire control water containment would be undertaken in accordance with the recommendations in the Hazardous Industry Planning Advisory Paper (HIPAP) No. 2 - Fire Safety Study Guidelines, as published by the Department of Planning and would be required as a recommended condition of development consent.

#### 1.4 Campbelltown (Urban Area) Local Environmental Plan 2002

The site is zoned 4(a) General Industrial under the provisions of Campbelltown (Urban Area) Local Environmental Plan 2002 (CLEP).

The proposed development is for an industry that involves the storage of both inert and flammable gases/liquids. The application has been accompanied by a Preliminary Hazard Analysis (PHA) prepared pursuant to Clause 12 of State Environmental Planning Policy No. 33 - Hazardous and Offensive Development (SEPP 33). The PHA indicates that the proposed development would employ sufficient safeguards and mitigation measures to ensure the development would not pose a significant risk to the environment or the safety of persons and property in the vicinity of the site.

Having regard to the above, and notwithstanding that the proposal is not considered to be a hazardous industry pursuant to SEPP 33 it is considered that the proposed development is defined under LEP 2002 as a "potentially hazardous industry" which is defined under Schedule 3 of the Plan as:

***potentially hazardous industry*** means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality:

(a) to human health, life or property, or

(b) to the biophysical environment,

and includes a hazardous industry and a hazardous storage establishment.

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Potentially hazardous industries are permissible with Council's consent within the 4(a) zone.

Clause 12(2) of CLEP lists the objectives of the zone as:

- (a) to encourage activities that will contribute to the economic and employment growth of the City of Campbelltown, and*
- (b) to allow a range of industrial, storage and allied activities, together with ancillary uses, the opportunity to locate within the City of Campbelltown, and*
- (c) to encourage a high quality standard of development which is aesthetically pleasing, functional and relates sympathetically to nearby and adjoining development, and*
- (d) to protect the viability of the commercial centres in the City of Campbelltown by limiting commercial activities to those associated with permitted industrial, storage and allied development, and*
- (e) to ensure development will not be carried out unless the consent authority is satisfied that the processes to be carried on, the transportation to be involved, or the plant, machinery or materials to be used, do not interfere unreasonably with the amenity of the area.*

Council must not grant consent for the development unless it is of the opinion that carrying out the proposed development would be consistent with one or more of the objectives of this zone.

It is considered that the development is generally consistent with the above objectives for the following reasons:

- The development would provide a net gain in employment positions to the Campbelltown area;
- The proposed development does not involve a commercial component that would detract from the viability of businesses within established commercial centres;
- Subject to appropriate safeguards being implemented, it is considered that the development would not unreasonably interfere with the amenity of the area.

In this respect, it is considered that the development is for a permissible use that satisfies the requirements relating to the zone objectives.

Accordingly, the proposal complies with the relevant provisions of LEP 2002 and may be approved by Council should it deem appropriate.

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## 1.5 Campbelltown (Sustainable City) Development Control Plan

Council's Campbelltown (Sustainable City) Development Control Plan (SC DCP) applies to the site and development type. A discussion of relevant excerpts from the Plan is provided below.

*Views and vistas* – The visual impact of the development would be generally limited to the 12.5 metre tall white liquid storage tanks, located in the south western portion of the site. The siting of the tanks together with an existing tree plantings around the site have been designed to reduce the potential impact of these structures. At 12.5 metres, the tanks are consistent with the height of the existing building on the site. The site is generally very well screened from the South Western Freeway (Hume Highway) and Benson Road, owing to significant established screen trees and the setbacks to each road.

*Landscaping* – There are no trees on the site listed on Council's significant tree register. Existing landscaping at the site would not be altered under the present application, although landscaping along the rear boundary should be enhanced to provide for a more effective visual screen.

*Risk Management* - The potential for environmental impacts has been examined and the site is considered suitable for the proposed development.

*Waste Management* - a Waste Management Plan for the development has been submitted and is considered satisfactory.

### 6.3.1 Building Design

There are no significant alterations proposed to the building. The existing building is well screened from nearby roads.

### 6.3.2. Setbacks

Setbacks of the proposed development comply with the controls detailed in the SC DCP and Campbelltown LEP 2002.

### 6.3.3 Fences

The fencing proposed to surround the site complies with the standards contained in the Plan.

## 6.4 Access and Car Parking

The proposal contains:

- 180 square metres of office space;
- 6,245 square metres of warehouse space ; and
- 2.635 square metres of outdoor storage space.

Under the SCDCP, the proposal requires 51 car parking spaces to be provided on site. 52 spaces would be provided.

Heavy vehicle access is provided in accordance with the SCDCP. Satisfactory manoeuvring area is provided for semi-trailers and all vehicle entry and exit from the site would be in a forward direction, thereby complying with the requirements of the SCDCP.

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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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#### 6.5 Landscaping

Landscaping of the site would not be altered under the proposal, although should Council decide to support the application, it is recommended that a condition be included that requires the embellishment of landscaping along the rear boundary to enhance visual screening.

#### 6.6 Outdoor Storage Areas

The proposal contains large areas dedicated to the storage of products in outdoor parts of the site. The Plan requires that outdoor storage areas are effectively screened from surrounding development and the street and that outdoor storage areas be sealed and connected to an approved stormwater system. The development generally complies with these controls.

#### 6.8 Environmental Management

The development is not considered likely to generate noise that would affect nearby businesses and would not exceed levels specified in the *Industrial Noise Policy* published by the Department of Environment, Climate Change and Water. The site's operations would not generate noise over and above that of the neighbouring South Western Freeway.

Stormwater and drainage from the site would not change from that approved by Council previously.

The development would create negligible emissions. The primary source of emissions would be from vehicles entering and leaving, which is controlled under separate legislation. As detailed earlier, the site does not require licensing by the Department of Environment, Climate Change and Water.

Having regard to the above discussion, the development is considered to be compliant with the controls and objectives contained in Council's Sustainable City Development Control Plan.

## 2. Environmental Impacts

Section 79C(1)(b) of the Act requires Council to consider the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

### 2.1 Traffic

As detailed earlier in the report, during peak gas use periods (usually in winter as that is the time of greatest demand for LPG), the site is anticipated to receive up to 26 semi-trailer deliveries per week and up to 125 medium rigid truck despatches. These figures are not beyond that which would ordinarily be anticipated at an industrial premises of this size and would not detrimentally impact on neighbouring properties.

### 2.2 Preliminary Hazard Analysis

A detailed Preliminary Hazard Analysis (PHA) pursuant to SEPP No. 33 was undertaken as part of the assessment process. The PHA was prepared by a suitably qualified and practicing specialist consultancy firm. The PHA was peer reviewed internally as part of the firm's quality control.

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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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The primary hazard associated with the proposed development is the storage of Class 2.1 flammable gases, being the LPG and acetylene. It should be noted that no acetylene nor LPG will be manufactured on the land.

Analysis of the potential events and consequences was undertaken as part of the PHA. Selected scenarios were investigated to determine if uncontrolled events such as explosions and fires on the proposed site could cause off-site or on-site consequences of a harmful nature.

The PHA concludes that the risks associated with the proposed operations at the site do not exceed the risk criteria published by the Department of Planning. The PHA concludes that the storage of gas at the site is potentially hazardous and would be permissible under the zoning at the site.

The PHA assessed the potential frequency of risk at the site and undertook a consequence analysis. Following completion of that analysis, undertaken in accordance with Department of Planning guidelines, the PHA reached the conclusion detailed above.

It is important to note that the PHA found that there was a 'zero risk' of fatality during an event at the South Western Freeway and also noted that there was a 'zero risk' of fatality at the nearest residential dwelling. The fatality risk at the nearest residential dwelling is approximately 1% of the maximum criteria permitted by the Department of Planning's guidelines for acceptable risk criteria when it is expressed numerically.

Notwithstanding the above, the PHA contains a number of recommendations in order to ensure that the risks at the site remain as low as reasonably practicable. These recommendations relate to the installation and maintenance of equipment, installation and maintenance of site safety systems and compliance with Department of Planning guidelines. Compliance with the PHA and its recommendations has been included as a recommended condition of development consent (found at Attachment 1 of this report) should Council deem it appropriate to support the application.

The PHA concludes that there is minimal potential of a risk to life and property as a result of the facility being located at the proposed site.

### **2.3 Social and Economic Impacts**

The social and economic impacts of the development are considered to be positive. The site would generate direct employment for approximately 85 persons and would allow for an established business to increase its production and profitability. In addition to those employed on-site, the multiplier effects of those jobs and employment for contractors such as truck drivers and waste management are considered to be of benefit to the local area and the City's economy.

### **3. Suitability of the Site**

Section 79C(1)(c) of the Act requires Council to consider the suitability of the site to accommodate the development.

The subject site is a large parcel of industrially zoned land that enjoys access to industrial roads and close links to major transport roads in and out of Campbelltown City. The use would be undertaken using an existing building previously provided with Council's development consent and would not significantly alter the building or its surrounds.

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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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Having regard to the absence of any significant environmental impacts that would likely result from the proposed development, its compliance with Council's planning objectives and controls and the findings of the Preliminary Hazard Assessment, it is considered that the site is suitable for the proposed development.

#### **4. Public Exhibition and Notification**

Although Council's Development Control Plan No. 87 – Public Notification and Public Exhibition Policy does not specify that industrial development of this nature be publicly notified, it was considered prudent to notify the residential dwelling located nearest to the development site.

The dwelling is located at No. 5 Gibson Road, Denham Court and at its nearest point to the gas storage facility, is approximately 130 metres to the west. Between the subject development site and the dwelling is the South Western Freeway (Hume Highway), which at that point is an 8-lane road. It is important to note that a significant noise attenuation wall (approximately 8 metres high) has been erected on the eastern boundary of No. 5 Gibson Road, Denham Court, meaning that there is no potential for noise associated with the development or any visual impact to be imparted on the residential property or others which adjoin the freeway on its western side, in the vicinity of the development site.

The application was notified to the residence for a period of 14 days in February 2010. Council has not received a response/submission.

#### **5. The Public Interest**

Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979* requires Council to consider the public interest in consenting to a development application.

The public interest is a comprehensive requirement that requires Councils to consider the long term impacts of development and the suitability of the proposal in a larger context. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the desired future outcomes expressed in SEPPs, LEPs and DCPs.

The application is considered to have satisfactorily addressed Council's relevant objectives and controls required for the development on the land and is not considered likely to detrimentally impact on the natural and built environment. Appropriate conditions of development consent have been formulated to ensure that the use would operate in accordance with relevant State and National guidelines for the storage and handling of gaseous products. The site would provide valuable employment and utilise an existing industrial facility that is presently vacant.

Having regard to the above, granting development consent of the proposal is considered to be in the public's interest.

#### **Conclusion**

The application seeks consent for the use of an existing warehouse to store and distribute gaseous products at Lot 65 DP 263978, No. 5 Benson Road, Ingleburn.

The development would allow for the storage and distribution of gases such as LPG, acetylene, oxygen, argon, carbon dioxide, nitrogen and helium.

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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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The application is not classified as "designated development" under Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* as the quantity of liquefied gases to be stored on the site is below 200 tonnes. Following, the use does not require an Environment Protection Licence under the *Protection of the Environment Operations Act 1997* as it is beneath the threshold stipulated in Schedule 1 of that legislation. In addition, the application is not required to include an environmental impact statement.

The development is considered to be complementary to relevant State and local planning controls and objectives. The development would not adversely impact on the natural and built environment and is considered suitable for the site having regard to its size, access to transport routes low impact on the existing buildings and landscaping.

Having regard to the matters for consideration listed under Section 79C(1) of the *Environmental Planning and Assessment Act 1979*, it is subsequently recommended that the application be approved subject to appropriate conditions.

#### **Officer's Recommendation**

That Council grant development consent to development application 152/2010/DA-I to use an existing warehouse for the storage and distribution of gaseous products at Lot 65 DP 263978, No. 5 Benson Road, Ingleburn, subject to the conditions detailed in Attachment 1.

**Committee Note:** Mr Michalowsky addressed the Committee in support of the application.

#### **Committee's Recommendation: (Oates/Thompson)**

That the Officer's Recommendation be adopted.

#### **CARRIED**

Voting for the Committee's Recommendation were Councillors: Bourke, Greiss, Kolkman, Matheson, Oates, Rowell and Thompson.

Voting against the Committee's Recommendation: nil.

#### **Council Meeting 6 April 2010 (Chanthivong/Bourke)**

That the Officer's Recommendation be adopted.

#### **Council Resolution Minute Number 52**

That the Officer's Recommendation be adopted.

Voting for the Council Resolution were Councillors: Borg, Bourke, Chanthivong, Dobson, Glynn, Greiss, Hawker, Kolkman, Lake, Matheson, Oates, Rowell, Rule, Thomas and Thompson.

Voting against the Council Resolution: nil.

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## **ATTACHMENT 1**

### **Recommended Conditions of Consent**

#### **GENERAL CONDITIONS**

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land.

For the purpose of these conditions, the term 'applicant' means any person who has the authority to act on or benefit of the development consent.

#### **1. Approved Development**

The development shall take place in accordance with the approved development plans containing Council's approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.

#### **2. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the *Building Code of Australia*. In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

#### **3. Storage of Goods**

Outdoor storage of goods shall be undertaken in accordance with the plan containing Council's approved development stamp. Any external works or storage/display of goods, materials or any other item associated with the development undertaken in accordance with the approved plans, must be adequately screened from the public view at all times.

#### **4. Graffiti Removal**

In accordance with the environmental maintenance objectives of 'Crime Prevention Through Environmental Design', the owner/lessee of the building shall be responsible for the removal of any graffiti which appears on the buildings, fences, signs and other surfaces of the property within 48 hours of its application.

#### **5. Car Parking Spaces**

Fifty-two (52) car parking spaces shall be designed, sealed, line marked and made available to all users of the site in accordance with Australian Standard 2890 (as amended).

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## 6. Deliveries

Vehicles servicing the site shall comply with the following requirements:

- a. All vehicular entries and exits shall be made in a forward direction.
- b. All vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
- c. All deliveries to the premises shall be made to the loading bay/s provided.

A traffic sign shall be placed adjacent to the driveway at the entrance of the property advising drivers of the above information. Should the sign be damaged or removed, it shall be replaced within 48 hours.

## 7. Advertising Signs – Separate DA Required

This consent does not permit the erection or display of any advertising signs.

Most advertising signs or structures require development consent. You should make separate enquiries with Council prior to erecting or displaying any advertising or signage.

## 8. Lighting

Illumination of the site is to be arranged to provide an appropriate level of lighting and in accordance with the requirements of Australian Standard 4282 (as amended) so as not to impact upon the amenity of the occupants of adjoining and nearby premises or traffic.

## 9. Compliance with Australian Standards

The development shall be constructed, installed and maintained in accordance with relevant Australian Standards, including (but not limited to):

Australian Standard 1596 - *LP Gas storage and handling*;  
 Australian Standard 4332 - *The storing and handling of gases in cylinders*; and  
 Australian Standard 1894 - *The storage and handling of non-flammable cryogenic and refrigerated liquids*.

## 10. Storage of Dangerous Goods

Prior to the storage of any 'dangerous goods' on the premises, a licence from the Chemical Safety Branch of *Work Cover* shall be obtained and submitted to Council.

## 11. Unreasonable Noise

The development, including operation of vehicles and cylinder filling apparatus, shall be conducted so as to avoid unreasonable noise and cause no interference to adjoining or nearby occupants.

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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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In the event of a noise problem arising at the time, the person in charge of the premises shall when instructed by Council, cause to be carried out an acoustic investigation by an appropriate acoustical consultant and submit the results to Council. If required by Council, the person in charge of the premises shall implement any or all of the recommendations of the consultant and any additional requirements of Council to Council's satisfaction.

#### 12. Retail Sales

The direct retail sale of goods from the premises is prohibited.

#### 13. Spray Booth Certification

Prior to the use of the spray booth, proof of compliance with the design, construction and testing requirements of *AS/NZS 4114.1* and installation requirements of *AS/NZS 1441.2* shall be demonstrated to Council by way of a certificate of conformity. The certificate shall be issued by a national certification body accredited by the '*Joint Australian and New Zealand Accreditation System*' (JAS-ANZ). A copy of the certificate of conformity shall be submitted to Council for records, prior to the use of the spray booth. Maintenance of the spray booth shall be conducted in accordance with *AS/NZS 4114.2* and the manufacturers specifications.

#### 14. Preparation of Studies

At least one month prior to the commencement of operations at the proposed facility, the applicant shall prepare and submit for the approval of Council the studies set out under subsections (a) to (c).

Operations shall not commence until, with respect to the Fire Safety Study, approval has been given by the Commissioner of the NSW Fire Brigades.

##### (a) Fire Safety Study

A Fire Safety Study shall be prepared for the project. The Study shall cover the relevant aspects of the Department of Planning's Hazardous Industry Advisory Planning Paper No. 2, 'Fire Safety Guidelines' and the NSW Government's 'Best Practice Guidelines for Contaminated Water Retention Treatment Systems'. The study shall also be submitted for approval to the NSW Fire Brigades.

##### (b) Hazard and Operability Study

On completion of the final design and prior to commencement of operations at the site, the whole of the facility and its operations are to be the subject of a comprehensive hazard and operability study (HAZOP). The HAZOP is to include review of the updated operating procedures and among other matters it will address:

- the overflow protection systems for the bulk tanks;
  - the systems to ensure that gases are not sent to the wrong tank or cylinder filling operation;
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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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- the cylinder filling system and operational procedures;
- the detailed design of the underground tank installations including all piping, valving and the pumps and compressors and including the pits and the drive over design for the tanks with a particular focus on the interconnections between the tanks and fill points;
- the tanker fill points and transfer operations;
- the design and operation of the cylinder service booth and stack to enable safe discharge and spray booth for cylinder spraying and ventilation arrangements and other safeguards;
- the ventilation and ignition source protection arrangements for the laboratory;
- the manoeuvring paths and un/loading positions of all truck and tankers;
- the location of the waste skip;
- explosion protection of the drainage system;
- the effective separation of oxygen cylinders from areas where combustible materials might be stored;
- the industrial gas mixing systems;
- ventilation and gas detection in the inert/industrial gas filling area and the cylinder service area;

The Hazard and Operability Study shall be prepared by an independent qualified person. The study shall be carried out in accordance with the Department of Planning's Hazardous Industry Planning Advisory Paper No. 8 'HAZOP' Guidelines. The study report must be accompanied by a program for the implementation of all recommendations made in the report. If the applicant intends to defer the implementation of a recommendation, justification for such deferral shall be supplied.

#### (c) Final Hazard Analysis

A Final Hazard Analysis of the proposed project, prepared in accordance with the Department of Planning's Hazardous Industry Advisory Paper No. 6 'Guidelines for Hazard Analysis' shall be prepared. The Final Hazard Analysis shall specifically discuss the effect of implementation of the recommendations of the preliminary hazard assessment prepared by AECOM Australia Pty Ltd (ref. S7011501, dated 11 January 2010).

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**15. Hazard Protection**

- a) An operating procedure manual shall be prepared in accordance with relevant Department of Planning, NSW Fire Brigades and Australian Standards requirements and submitted to Council not less than 30 days prior to commencing operations on site. The procedure manual shall be kept on the premises at all times for inspection by the Council and NSW Fire Brigades on 24 hours notice.

Existing operating procedures should be carefully and comprehensively reviewed and updated to ensure that they are site and facility specific. Matters to be addressed should include:

- the maintenance of rigorous regimes of regular inspection and maintenance of cylinders according to AS2030 and AS2337;
  - the maintenance of rigorous regimes of regular inspection and, in particular, of replacement of cylinder filling hoses;
  - LPG tank and tanker transfer procedures and the role of site personnel;
  - the venting of flammable gas cylinders only through the extraction unit and stack;
  - the transfers into bulk storage and cylinder filling of industrial gases and oxygen;
  - requirements for safe opening up and entry of the industrial gas filling area when it has not been in use;
  - requirements to ensure that all gas cylinders are empty before being taken into the maintenance compartment with particular attention to oxygen cylinders;
  - arrangements for any vehicle maintenance to be allowed;
  - ensuring that incident reporting procedures cover all relevant events; and
  - arrangements for ensuring procedures are kept up to date;
- b) Before the HAZOP is carried out (see previous condition), a fire safety study (FSS) is to be carried out. This study should consider the number and location of hydrants and hose reels and fire extinguishers to ensure compliance with relevant codes and standards and to ensure that the fire protection arrangements are commensurate with
- c) the hazards. The study should give serious consideration to the provision of an appropriate deluge system covering the loading dock.
- d) Prior the FSS and HAZOP studies being carried out, the hazardous zoning of areas on the site associated with flammable gases is to be reviewed and the requirements for specialised equipment, including any need for explosion proof or protected forklift trucks, established and action taken as warranted.
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- e) Prior to use of the site, the applicant shall demonstrate that arrangements have to be put in place to ensure that, except when being filled or in the course of receipt or despatch, all gas cylinders are kept in their designated storage areas. Appropriate pavement markings and signage etc are to be provided to show the designated storage locations and procedures are to specify their correct usage.
  - f) Prior to operation of the site, a rigorous weekly self inspection system is to be developed and implemented. The system should involve a structured inspection regime and reporting form. Copies of the reporting form shall be kept and issues identified should be noted on the form and followed up. Copies shall also be held for inspection as part of the external audit.
  - g) An annual internal audit shall be undertaken and periodic independent external audits shall be carried out.
  - h) High level alarms and high level shutdown interlocks are to be fitted to the underground tank. These high level sensors are to automatically shut down the whole of the LPG operations if they are tripped.
  - i) Explosion vents are to be installed in the stormwater drains so that pipe runs do not exceed distances as set out in NFPA 68. The explosion vents are to be large open stormwater pits constructed with bottoms flush with the bottom inverts of the pipes and with grated drain covers. There should be no bends or obstructions within the pipes – changes of direction are to only occur within the pits.
  - j) Heater units equipped with self igniter systems should at all times be handled and stored in locations well separated from LPG filling and transfer points should they be stored at the site.
  - k) Protection of the helium store provided by the compressor building is to be extended as necessary to protect these tubes from heat radiation and flame impingement to effectively eliminate the hazard of simultaneous multiple tube failure due to radiant heat or flame impingement.
  - l) Flammable gas detection/alarming at low level shall be installed in the cylinder testing and service compartment and the cylinder filling hall.
  - m) An emergency plan consistent with HIPAP No.1 *Industry Emergency Planning Guidelines* should be developed for the site. In the development of the plan, consideration should be given to the provision of breathing apparatus or other rescue equipment to cover the possibility of the need for prompt rescue of a member of staff who has been affected by an asphyxiant concentration of gas. The site Emergency Plan should also address the actions required in the event of damage to the weatherproofing of the carbide store, stormwater entry and flooding (if this is a credible event).
  - n) The existing training program for Supagas staff at their existing sites shall be reviewed and updated for the new site and should incorporate training for both normal operations and emergencies.
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### 3.5 No. 5 Benson Road, Ingleburn - Use Of Existing Warehouse For The Storage And Distribution Of Gaseous Products

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- o) Strict ignition source controls should be emphasised in training and should include hot work control and prohibition of smoking. It should be made clear in induction training and through signage that smoking except in the designated external area is a sacking offence.
- p) All Materials Safety Data Sheets (MSDS) should be reviewed and brought up to date and new ones prepared for the new materials to be involved in the acetylene plant.
- q) To ensure the validity of the assumptions and conclusions of the PHA, a final hazard analysis (FHA) should be carried out once the HAZOP is complete and the detailed design has been updated to accommodate the HAZOP findings.

#### 16. Construction Certificate

The applicant shall obtain a construction certificate for the erection of the tanks, under ground construction works, roof alterations and internal alterations to the building prior to work being undertaken at the site.

#### PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate by either Campbelltown City Council or an accredited certifier. All necessary information to comply with the following conditions of consent must be submitted with the application for a construction certificate.

#### 17. Section 94A Developer Contribution - Community Facilities and Services

Prior to Council or an accredited certifier issuing a Complying Development Certificate or a Construction Certificate (or where a Construction Certificate is not required, a Subdivision Certificate), the applicant shall provide a receipt for the payment to Council of a community facilities and services contribution in accordance with the provisions of the *Campbelltown City Council Section 94A Development Contributions Plan*.

For the purposes of calculating the required S94A contribution, where the value of the total development cost exceeds \$100,000, the applicant is required to include with the application for the respective certificate, a report setting out a cost estimate of the proposed development in accordance with the following:

- where the value of the proposed development is greater than \$100,000 but less than \$500,000, provide a Cost Summary Report by a person who, in the opinion of the Council, is suitably qualified to provide a Cost Summary Report (Cost Summary Report Template 1). All Cost Summaries will be subject to indexation on a quarterly basis relative to the *Consumer Price Index - All Groups* (Sydney) where the contribution amount will be based on the indexed value of the development applicable at the time of payment; or
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- where the value of the proposed development is \$500,000 or more, provide a detailed development cost report completed by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors (Quantity Surveyors Estimate Report Template 2). Payment of contribution fees will not be accepted unless the amount being paid is based on a Quantity Surveyors Estimate Report (QS Report) that has been issued within 90 days of the date of payment. Where the QS Report is older than 90 days, the applicant shall provide an updated QS Report that has been indexed in accordance with clause 25J(4) of the Environmental Planning and Assessment Regulation 2000 to ensure quarterly variations in the *Consumer Price Index All Group Index Number for Sydney* have been incorporated in the updated QS Report.

Copies of the Cost Summary Report - Template 1 and the Quantity Surveyors Estimate Report - Template 2 are located under "Developer Contributions" on Council's web site ([www.campbelltown.nsw.gov.au](http://www.campbelltown.nsw.gov.au)) or can be collected from Council's Planning and Environment Division during normal business hours.

On calculation of the applicable contributions, all amounts payable will be confirmed by Council in writing.

Payment of Section 94A Developer Contributions will only be accepted by way of Cash, Credit Card or Bank Cheque issued by an Australian bank. Payment by any other means will not be accepted unless otherwise approved in writing by Council.

**Note: This condition is only applicable where the total development value exceeds \$100,000.**

## DEVELOPMENT REQUIREMENTS DURING CONSTRUCTION

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with during the construction of the development on site.

### 18. Construction Work Hours

All work on site shall only occur between the following hours:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No Work.

### 19. Erosion and Sediment Control

Erosion and sediment control measures shall be provided and maintained throughout the construction period, in accordance with the requirements of the manual – *Soils and Construction (2004) (Bluebook)*, the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sedimentation control devices shall remain in place until the site has been stabilised and revegetated.

**Note: On the spot penalties up to \$1,500 will be issued for any non-compliance with this requirement without any further notification or warning.**

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**20. Dust Nuisance**

Measures shall be implemented to minimise wind erosion and dust nuisance in accordance with the requirements of the manual – *'Soils and Construction (2004) (Bluebook)*. Construction areas shall be treated/ regularly watered to the satisfaction of the principal certifying authority.

**21. Public Safety**

Any works undertaken in a public place are to be maintained in a safe condition at all times in accordance with AS 1742.3. Council may at any time and without prior notification make safe any such works Council considers to be unsafe, and recover all reasonable costs incurred from the applicant.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

The following conditions of consent must be complied with prior to the issue of an occupation certificate by either Campbelltown City Council or an accredited principal certifying authority. All necessary information to comply with the following conditions of consent must be submitted with the application for an occupation certificate.

Note: For the purpose of this development consent, any reference to "occupation certificate" shall also be taken to mean "interim occupation certificate".

**22. Ongoing Matters***Incident Reporting*

Within 24 hours of any incident or potential incident with actual or potential significant off-site impacts on people or the biophysical environment, a report shall be supplied to the Department of Planning's Major Hazards Assessment Unit outlining the basic facts. A further detailed report shall be prepared and submitted following the investigation of the causes and identification of necessary additional preventative measures. That report must be submitted to Council no later than 14 days after the incident or potential incident.

The applicant shall maintain a register of accidents, incidents and potential incidents. The register shall be made available for inspection at any time by the independent Hazard Auditor, Council and WorkCover.

*Hazard Audit*

Twelve months after the commencement of operations of the proposed project, the applicant shall carry out a comprehensive Hazard Audit of the development.

A duly qualified independent person or team shall carry out the audit at the applicant's expense. Further audits shall be undertaken at three (3) yearly intervals following the initial audit. Hazard Audits shall be undertaken in accordance with the Department of Planning's Hazardous Industry Planning Advisory Paper No. 5 'Hazard Audit Guidelines'. The audit shall include a review of the Safety Management System and review all entries made in the incident register since the previous audit.

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The audit report must be accompanied by a program for the implementation of all recommendations made in the report. If the applicant intends to defer the implementation of a recommendation, justification for that deferral must be included.

#### **23. Completion of External Works Onsite**

Prior to the principal certifying authority issuing an occupation certificate, all external works, repairs and renovations detailed in the application are to be completed to the satisfaction of the principal certifying authority.

#### **24. Public Utilities**

Prior to the principal certifying authority issuing an occupation certificate, any adjustments to public utilities, required as a result of the development, shall be completed to the satisfaction of the relevant authority and at the applicant's expense.

#### **25. Pre Commissioning Requirements**

The applicant shall develop and implement the plans and systems set out under subsections (a) and (b) no later than two months prior to the commencement of commissioning of the project. The applicant shall submit the documentation describing those plans and systems to Council for approval.

##### **(a) Emergency Plan**

A comprehensive Emergency Plan and detailed emergency procedures for the proposed project shall be prepared. The Plan shall include detailed procedures for the safety of all people outside the project who may be at risk from the project. The Plan shall be prepared in accordance with the Department of Planning's Hazardous Industry Planning Advisory Paper No. 1 'Industry Emergency Planning Guidelines'.

##### **(b) Safety Management System**

A document setting out a comprehensive Safety Management System, covering all on-site operations and associated transport activities (including recommended routes for vehicles accessing the site) involving hazardous materials shall be prepared. The document shall clearly specify all safety related procedures, responsibilities and policies, along with details of mechanisms for ensuring adherence to the procedures. Records shall be kept on-site and be available for inspection at Council, WorkCover and NSW Fire Brigades request. The Safety Management System shall be developed in accordance with the Department of Planning's Hazardous Industry Advisory Paper No. 9 'Safety Management'.

#### **ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, other relevant Council Policy/s and other relevant requirements. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

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**Advice 1. Environmental Planning and Assessment Act 1979 Requirements**

The *Environmental Planning and Assessment Act 1979* requires you to:

- a. Obtain a construction certificate prior to the commencement of any construction works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 4645 4608.
- b. Nominate a principal certifying authority and notify Council of that appointment prior to the commencement of any works.
- c. Give Council at least two days notice prior to the commencement of any works.
- d. Have mandatory inspections of nominated stages of the construction inspected.
- e. Obtain an occupation certificate before occupying any building or commencing the use of the land.

**Advice 2. Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, you are not permitted to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the building envelope unless you have obtained prior written consent from Council. Fines may be imposed if you choose to contravene Council's Tree Preservation Order.

A tree is defined as a perennial plant with self supporting stems that are more than 3 metres or has a trunk diameter more than 150mm measured 1 metre above ground level, and excludes any tree declared under the Noxious Weeds Act (NSW).

**Advice 3. Disability Discrimination Act**

Nothing in this consent is to be taken to imply that the development meets the requirements of the *Disability Discrimination Act 1992* (DDA1992). Where a Construction Certificate is required for the approved works, due regard is to be given to the requirements of the *Building Code of Australia* (BCA). However, your attention is drawn to the existence of the DDA1992 and that compliance with the various requirements of the BCA does not provide automatic compliance with the DDA1992. In this regard it is the sole responsibility of the owner, builder and applicant to ensure compliance with the DDA1992.

**Advice 4. Adjustment to Public Utilities**

Adjustment to any public utilities necessitated by the development is required to be completed prior to the occupation of the premises and in accordance with the requirements of the relevant Authority. Any costs associated with these adjustments are to be borne by the applicant.

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**Advice 5. Smoke Free Environment Act**

Nothing in this consent is to be taken to imply that the development meets the requirements of the *Smoke Free Environment Act 2000* (SFEA2000) or the *Smoke Free Environment Regulations 2007* (SFER2007). In the event that the occupier wishes to facilitate smoking within any enclosed public place of the premises (in accordance with clause 6 of the SFER2007), the occupier must first contact NSW Department of Health to ensure that the design and construction of the area proposed to facilitate smoking fully complies with the requirements of the SFEA2000 and the SFER2007.

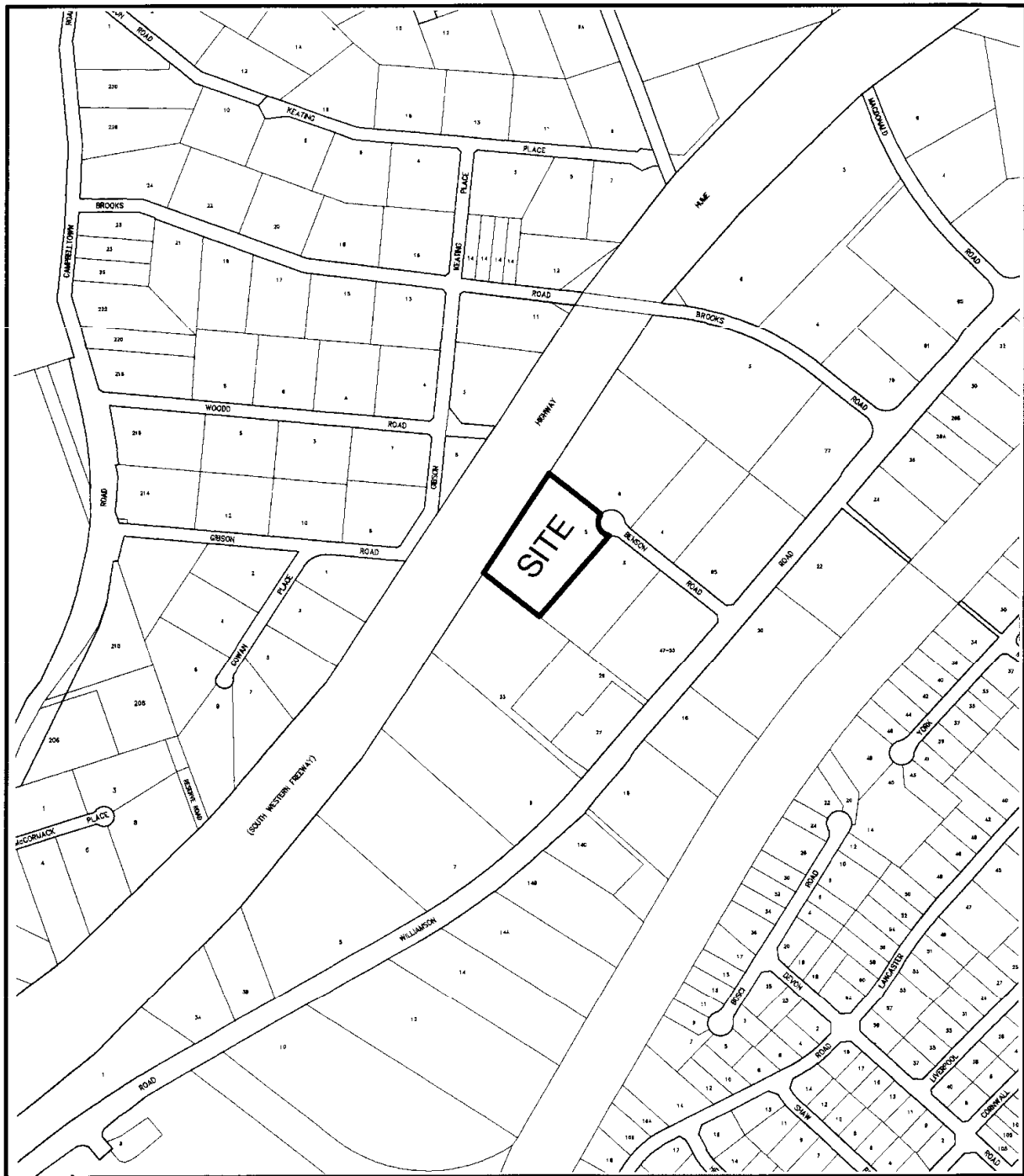
**Advice 6. Dial 1100 Before you Dig**

Underground cable and pipes may exist in the area. In your own interest and for safety, telephone 1100 before excavation or erection of structures. Information on the location of underground pipes and cables can also be obtained by fax on 1300 652 077 or through the following website - [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au)

**END OF CONDITIONS**

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## ATTACHMENT 2



### LOCALITY PLAN



**SUBJECT:**

USE OF EXISTING WAREHOUSE FOR THE STORAGE  
AND DISTRIBUTION OF GASEOUS PRODUCTS.  
LOT 65 DP 263978 - No. 5 BENSON ROAD, INGLEBURN.



### 3.6 No.34 Carlisle Street, Ingleburn - Demolition of Existing Dwelling and Construction of a Four Storey Commercial Building

#### Reporting Officer

Manager Development Services

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#### Attachments

1. Recommended reasons for refusal
2. Architectural Plans

#### Purpose

To assist Council in its determination of the subject development application (Section 96 Modification) in accordance with the provisions of the Environmental Planning and Assessment Act, 1979.

<b>Property Description</b>	Lot 6 Sec 4 DP 2913, No. 34 Carlisle Street, Ingleburn
<b>Application No</b>	2334/2007/DA-C/A
<b>Applicant</b>	Angelo & Nick Skagias (advised by SJB Planning)
<b>Owner</b>	Angelo & Nick Skagias
<b>Statutory Provisions</b>	Campbelltown (Urban Area) Local Environmental Plan 2002 Campbelltown (Sustainable City) Development Control Plan 2009 Development Control Plan No.85 - Business and Comprehensive Centre Zones
<b>Other Provisions</b>	Campbelltown 2025 - <i>Looking Forward</i>
<b>Date Received</b>	22 October 2009

#### History

Council, at its meeting on 7 October 2008 approved an application for the demolition of an existing dwelling and the construction of a four storey commercial building at No. 34 Carlisle Street, Ingleburn. This application was the subject of lengthy discussions between the applicant and Council staff in regard to many aspects of the development, but more specifically in relation to S94 car parking contributions and on-site car parking arrangements. Following the receipt of a number of amended proposals, the application was subsequently approved by Council and generally consisted of the following:

- Demolition of an existing single storey weatherboard dwelling,
  - Construction of a four storey commercial building;
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### 3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

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- The provision of thirty (30) car parking spaces at ground level utilising car stackers; and
- Widening of Boots Lane for the length of the subject property.

An application to modify that consent pursuant to S96(2) of the Environmental Planning and Assessment Act 1979 has since been lodged with Council and that application is the subject of this report.

The application was lodged in October of last year and has been the subject of protracted discussions and the obtaining of legal advice in respect to the issues of road dedication, road construction and the payment of s94 contributions. As the application is yet to be determined, the applicant has acted upon its right pursuant to section 97 of the Environmental Planning and Assessment Act 1979 and has now lodged a Class 1 appeal with the Land and Environment Court against Council's "deemed refusal".

## Report

Council is in receipt of an application to modify Development Consent 2334/2007/DA-C for the demolition of an existing dwelling and the construction of a four storey commercial building at Lot 6 DP 2913, No.34 Carlisle Street, Ingleburn. As stated above, the originally approved development comprised the following:

- Demolition of an existing single storey weatherboard dwelling,
- Construction of a four storey commercial building;
- The provision of thirty car parking spaces at ground level utilising car stackers; and
- Widening of Boots Lane for the length of the subject property

The modifications to the original consent that are sought by this application are as follow:

- Amend Condition 1 to reflect the revised plans;
  - Amend the ground floor plans to show a larger garbage room;
  - Amend the ground floor layout showing an increase to the on-site parking by a total of 48 car parking spaces by way of utilising a combination of additional car stackers and on-grade parking bays;
  - Amend Condition No. 10 to reflect the revised number of additional carparking spaces;
  - Amend the ground floor plans to show two driveways and landscaping over the area zoned for road widening;
  - Delete requirements for the physical road widening in Boots Lane and any other references to that requirement including plans;
  - Delete Condition No. 13 which requires half width road construction in Boots Lane;
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3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

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- Delete Condition No. 20 which relates to the requirement to pay S94 car parking contributions;
- Amend Condition No. 37 to remove the requirement for the construction of a footpath in Boots Lane;
- Delete Conditions No.s 46 and 47 relating to the dedication of land zoned for road widening along Boots Lane.

The application does not seek to modify the height, bulk, scale or any of the setbacks or building footprint approved under the original consent.

**The Proposal**

The proposal involves the construction of a commercial building with ground level car parking and four storeys of commercial space. A total of forty eight (48) parking spaces are proposed on site through the use of a mix of triple-level and double-level vertical car-stacking devices as well as the provision of two on grade car parking spaces nominated as visitor parking.

A breakdown of the proposed building arrangement is as follows:

Level	Components
Ground Level	Two separate internal parking garages/facilities accessed by separate driveways off Boots Lane consisting of forty six (46) parking spaces provided by way of triple stacker and double stacker car lifts plus two (2) (non-stacker) on-grade visitor parking spaces, a garbage room, a service room, commercial floor area of approximately 73sqm, amenities rooms and a foyer area.
Level 1	526.61 square metres of commercial floor area and amenities.
Level 2	526.61 square metres of commercial floor area and amenities.
Level 3	526.61 square metres of commercial floor area and amenities.

The proposed building is to be built flush with the north-western, north-eastern and south-eastern boundaries of the site with a 5 metre setback from the south-western property boundary to cater for the 5 metre wide section of land zoned Special Uses 5(d) Local Roads (set aside for future road widening) along Boots Lane.

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### 3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

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The proposed design of the building has generally remained the same as previously approved by Council and adopts a contemporary style providing a glazed elevation relieved by central vertical masonry features extending from level one to the roof parapet. A wide awning proposed along the footpath on Carlisle Street adds a solid horizontal element to the façade of the building. Along Boots Lane, the proposed building comprises of a masonry façade at ground level, two garage doors with driveways and landscaping at road level and window openings provided on the first floor. The upper two levels are predominantly glazing with horizontal elements such as masonry balustrades and parapets adding visual interest. Along the eastern elevation, a recessed element has been added to reduce the massing of a straight wall as well as providing a vertical band of window openings. The external colours and materials of the building help to visually “break up” a blank wall along the eastern and northern elevations providing a mosaic panel with varying colours.

The proposed building is to be used for commercial purposes only, with none of the tenancies proposed to be used for retail purposes.

#### **The Site**

The location of the proposed commercial building is on the corner of Carlisle Street and Boots Lane within the Ingleburn Business Centre with a site area of 975.4 square metres. The site has frontage of 21.3 metres to Carlisle Street and 45.7 metres to Boots Lane. An area 5 metres wide adjacent to Boots Lane is zoned 5(d) Local Roads (future road widening).

The subject site is currently occupied by a single storey dwelling house of weatherboard construction. Situated to the north west of the dwelling on the same land is a single storey garage/shed also of weatherboard construction. Both buildings are proposed to be demolished as part of the development. Adjoining the site to the north-west, north and north-east is a large public car park which provides primary car parking for the northern and eastern section of the Ingleburn Business Centre. Existing development within the vicinity of the subject site is characterised by one and two storey commercial development.

The site is relatively level with a slight slope from south to north. The site contains several trees and shrubs all of which are to be removed as part of the proposed development.

Vehicular access to the site will be via Boots Lane which has a pavement width of approximate 4.0m and is currently operating as a one-way street (running west to east or towards the Carlisle Street intersection). A small number of commercial premises gain access from Boots Lane to private loading zones and private parking areas. Boots Lane also provides a dedicated path of vehicular egress from a portion of the public parking facility adjacent the subject site.

#### **Assessment**

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration.

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### **i. Campbelltown 2025 - Looking Forward**

'Campbelltown 2025 Looking Forward' is a vision statement of broad town planning intent for the longer-term future of the City of Campbelltown. The document establishes a set of strategic directions to guide decision making and development outcomes. These directions are broad in nature and form a prelude to a new statutory town plan (LEP) for the City.

The strategic directions relevant to this application are:

- Growing the Regional City,
- Building a distinctive Campbelltown sense of place, and
- Creating education, employment and entrepreneurial opportunities.

Some of the relevant desired outcomes included in Campbelltown 2025 include:

- Urban environments that are safe, healthy, exhibit a high standard of design, and are environmentally sustainable;
- An impression of architecture that engages its environmental context in a sustainable way;
- An ambience of growth, prosperity and contemporary style; and
- Development and land use that matches environmental capacity and capability.

The proposed development application has been assessed having regard to Campbelltown 2025 *Looking Forward*. It is considered that the development application is generally consistent with the Vision's desired outcomes having regard to the proposed density, design and impact on adjoining development and the locality. However, the application gives insufficient regard to the strategic direction of "Growing the Regional City" or the desired outcome of ensuring "Urban environments that are safe, healthy, exhibit a high standard of design, and are environmentally sustainable".

In this regard, it is considered that for the orderly and efficient operation of both Boots Lane and the proposed parking garages/facilities (now and into the future), the section of road widening along Boots Lane directly to the front of the development should be constructed to provide capacity for:

1. ease of movement of vehicles moving past the site while vehicles are gaining access to/from the building;
  2. vehicles queuing in the roadway while waiting for a vehicle/s to manoeuvre in/out of parking bays;
  3. the reduction of conflict due to vehicles reversing out of the site as a consequence of the parking bays being unavailable; and
  4. the passing of garbage trucks that are standing at the Boots Lane frontage collecting the numerous garbage bins required to adequately service the site.
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**ii. Campbelltown (Urban Area) Local Environmental Plan 2002 (CLEP 2002)****Zone 10(b) - District Comprehensive Centre Zone**

The subject site is zoned 10(b) District Comprehensive Centre zone and 5(d) Special Uses Local Roads Zone under the provisions of Campbelltown (Urban Area) Local Environmental Plan 2002 (CLEP 2002).

The objectives of the 10(b) District Comprehensive Centre zone, of relevance to the proposed development are:

- a) To provide space for a wide range of retail, commercial and like needs to serve the districts within the City of Campbelltown, and
- b) To encourage employment and business activities in order to promote the economic well-being of the community.

A further objective of the zone is to encourage a high quality standard of development which is aesthetically pleasing, functional and relates sympathetically to nearby and adjoining development.

It is a requirement of CLEP 2002 that development must be consistent with at least one of the zone objectives in order that Council can grant development consent should it deem appropriate to do so. It is considered that the development would contribute to economic and employment growth and would provide a development that presents as a high quality architectural outcome which is aesthetically pleasing. It is considered that the development is consistent with some of the zone objectives, and hence Council is able to grant consent to the proposal should it decide to support the development.

However, as discussed previously in this report, it is considered that for the development to respond sympathetically to the surrounding road users of Boots Lane and the users of the subject development, the physical widening of Boots Lane should be provided as part of the development of the site.

**Zone 5(d) - Special Uses Local Roads Zone**

The relevant objective of the 5(d) Special Uses Local Roads Zone is:

- a) *To identify land required for local roads (including the widening of existing roads).*

The subject site has a 5 metre wide strip located along its south-western boundary zoned 5(d) Special Uses Local Roads.

As part of the current consent, two separate Conditions (No.s 46 and 47) required that the strip of land zoned 5(d) Local Road, be dedicated at no cost to Council. As part of this current application, the applicant is contesting those conditions and has requested that Council delete those conditions outright.

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### 3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

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Both the applicant and Council have sought separate legal advice in respect to the limitations of Council's power to require the dedication of the strip of land at no cost to Council via a condition of consent. As a result of this legal advice, it is considered that where Council refused to delete the specific conditions (and others as requested in this application) and the conditions were not able to be supported by way of a genuine planning purpose, it could be agreed that the conditions would either be deemed *ultra vires* or be found "without power" by the Land and Environment Court and as such, Council may be required to purchase the land (as opposed to dedication by the developer).

Giving regard to the above and in consideration of whether or not a genuine planning purpose can be established in support of the requirement for the dedication of land and the construction of the half width road, it is considered that a number of genuine reasons that fairly and reasonably relate to the development including that of the public interest can be established in support of Council's requirements to both construct a half width road for the extent of the properties frontage to Boots Lane as well as the dedication of the 5.0m wide land zoned for road at no cost to Council.

Separate to the above, as the proposed building does not encroach into the 5 metre strip of land zoned for road widening, the Special Uses zone will remain sufficiently protected in respect to its potential ability to satisfy the requirements of maintaining adequate site distance, provision of future pedestrian areas as well as the Council's future road widening needs for this area. As such, in response to the applicant's request to delete condition No.s 46 and 47 which require the dedication of land, in the circumstances where there was no traffic generator or vehicular access point within Boots Lane, it may have been considered reasonable to delete the relevant conditions that require the immediate dedication of land at no cost to Council.

However, as the development is considered to create a genuine need for the construction of the half road widening, for the purpose of reducing the potential for vehicular conflict within the 4.0m wide lane directly adjacent to the development, the requirement for the dedication of the land at no cost to Council is considered reasonable as it is deemed inextricably linked to the requirement for the construction of a half width road. In other words, as the physical road widening is considered essential for the orderly operation of both the subject development and Boots Lane, the dedication of the area zoned for road widening is essential in a practical sense so as to ensure that the physical road widening is contained wholly within public lands and not within private ownership.

So to ensure no adverse affect to the local amenity and the provision of a higher level of access serviceability to the proposed development and those developments gaining access to and from Boots Lane, the physical widening of Boots Lane by the applicant for the limits of the site should remain as a condition of consent. In addition, to enable the orderly operation of the widened area of road (including ongoing maintenance responsibilities and public liability), the land zoned for road widening should be dedicated at no cost to Council to cater for the operation of the constructed road, in accordance with condition No.s 46 and 47.

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**Commercial Premises**

The proposed development is defined as '*commercial premises*' and is permissible with Council's development consent. The definition of 'commercial premises' is as follows:

*'Commercial premises means a building or place used as an office or for other business or commercial premises, but (in Part 2) does not include a business or place elsewhere specifically defined in this Schedule or a building or place used for a land use elsewhere specifically defined in this Schedule.'*

A separate development application is required to be submitted for the use and fit out of individual tenancies. A condition of consent will be included in this regard if Council are of a mind to approve the development.

**iii. Campbelltown (Sustainable City) Development Control Plan 2009 (SCDCP)**

The controls of Campbelltown (Sustainable City) Development Control Plan 2009 apply to the subject land. The aims of the SCDCP are:

- Ensure that the aims and objectives of any relevant EPI including Campbelltown's LEPs and IDOs are complemented by the Plan;
- Ensure that the principles of ecological sustainability are incorporated into the design, construction and ongoing operation of development;
- Facilitate innovative development of high quality design and construction in the City of Campbelltown;
- Ensure that new development maintains or enhances the character and quality of the natural and built environment;
- Ensure that new development takes place on land that is capable of supporting development;
- Encourage the creation of safe, secure and liveable environments;
- Ensure that new development minimises the consumption of energy and other finite resources, to conserve environmental assets and to reduce greenhouse gas emissions; and
- Provide for a variety of housing choices within the City of Campbelltown.

It is considered that the development is generally consistent with the relevant aims of the SCDCP. However, the current 4.0m road width of Boots Lane, is not considered to be of an adequate width to properly service both the needs of a private parking facility with 48 spaces while at the same time providing an adequate level of service to those other users of Boots Lane i.e. the existing 4.0m carriageway is considered inadequate to accommodate the impact of the operation of the proposed development.

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## **Part 5 - Commercial Development**

The proposed development is consistent with the commercial development standards contained within the SCDCP specifically with regard to the built form and height of the commercial building. The design of the proposed commercial building incorporates vertical and horizontal offsets in the wall surfaces as well as using different colours and building materials to break up the overall mass of the building. The proposed building is four storeys which does not exceed the maximum building height for the Ingleburn Business Centre.

The proposed development provides forty eight (48) onsite car parking spaces including four (4) spaces provided specifically for people with disabilities in accordance with the SCDCP. Despite the original application 2334/2007/DA-C being assessed under DCP52, as the application subject of this report was made since the adoption of the SCDCP 2009, an assessment of car parking arrangements in accordance with SCDCP 2009 has been undertaken.

In this regard, the SCDCP 2009 prescribes the following parking requirements for commercial developments:

- Minimum 1 car parking space per 25 square metres of gross leasable floor area for the ground floor.
- Minimum 1 car parking space per 35 square metres of gross leasable floor area for each floor above the ground floor.

Based on the revised proposal, SCDCP 2009 requires that 48 car parking spaces be provided on-site for the total gross leasable floor area of 1,653 square metres. In addition to this, a minimum of 1 space per development plus an additional space for every 20 parking spaces are to be specifically set aside for people with disabilities.

In accordance with these criteria, the proposed modification provides for 48 car parking spaces on the ground floor level utilising a combination of triple and double car stackers and includes two on-grade visitor parking spaces. Two double car stacker spaces (4 of the 48 spaces) will be specifically designed and provided for the use of people with disabilities.

In contrast to the above, the parking policy under which the current consent was granted (DCP52), required 57 spaces to be provided of which the development could only provide 30 spaces (made up of ten triple car stackers). Despite the shortfall of 27 spaces, as the site falls within the area of Ingleburn to which the Section 94 Developer Contributions Plan for Public Car Parking Facilities applies, in addition to the 30 spaces to be provided onsite, a contribution for 27 parking spaces was required in lieu of providing the full 57 spaces. The application was subsequently approved on this basis.

However, in lieu of paying the required contributions, the applicant has now rearranged the internal layout of the building to reduce its gross leasable floor area and has introduced additional car stackers in a similar configuration to that approved under the current consent. It is considered that the proposal now provides for the required amount of car parking space and as such, Section 94 Developer Contributions for the provision of Public Car Parking Facilities can not be applied.

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### 3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

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Under the original approval, the car stackers were to be driver operated by way of a simple button control on each of the car stackers. This required the driver to park/exit the vehicle, operate the stacker and then return to the vehicle to finish parking. Although this was considered acceptable with the original consent, the consent also required the physical widening of Boots Lane to ensure adequate capacity for the standing of vehicles within the lane in the case that vehicles were delayed while drivers were accessing the stackers or waiting for an empty stacker to be returned to ground level. In this regard and to further allay Council's concerns, the traffic report submitted with the current application has suggested that to further reduce the potential for traffic delays, the stackers could be individually allocated to staff working within the building. However, this is not considered the most appropriate or sustainable solution and it is considered that the parking system should be automated so there was less of a need for drivers to leave their vehicles.

In this regard, should Council be of a mind to approve the application, it is deemed appropriate to include conditions of consent which require the following:

1. Stackers are to be designed so that an empty bay is automatically returned to ground level (this would mean that an empty bay would be available for a vehicle entering the parking stations at most times);
  2. A green light shall be attached to the front of each of the car stacker devices or on the roof at the front of each of the devices to indicate whether a bay within the stacker is empty/available. The green light shall be on when there is an empty bay within the respective stacker. The light shall be turned off when no bays in the individual stacker are available.
  3. A minimum of 50% of car spaces are to be made available to the public;
  4. Stackers are to have an emergency backup system in the case of a power failure;
  5. Stackers for disabled access are to be designed to cater for overhead wheelchair storage/roof lifting devices;
  6. Each garage is to have an automated electronic sign located at its entry to notify drivers wishing to park on site of the availability/unavailability of parking spaces (i.e. full or number of spaces available). The availability/unavailability of parking spaces for people with disabilities is to be separately displayed on the electronic sign;
  7. Each parking station is to have a sign that limits the height and weight of vehicles entering each parking garage to that limited by the specifications of the car stackers;
  8. For the purposes of emergency response or maintenance, the stackers are to be fitted with a back to base alarm monitoring system with a call out response time being 24 hours or less;
  9. Both parking garages shall be closed to the public and made secure outside of normal working hours;
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3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

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10. A Plan of Management (PoM) for the management of issues such as operation, maintenance and emergency procedures is to be developed and provided to Council for its approval prior to the release of an Occupation Certificate. The PoM shall be kept on site and in close proximity to the parking area at all times.
11. A large sign shall be attached to the wall at the end of each of the aisles clearly stating (with words to the effect) that the stackers are fully automated and that all empty bays will be returned to ground level.

Despite the fact that Boots Lane will more than likely remain as a one-way lane for many years to come, when incorporating the measures noted above and when giving regard to the requirement for Boots Lane to be physically widened in accordance with the requirements of the current consent, it is considered unlikely that the operation of Boots Lane would be adversely impacted upon as a result of this development.

However, as this application is to modify the current consent by way of removing all requirements for the dedication and physical widening of the area zoned for road widening, it is not considered that the current application upholds the relevant objectives of the SCDCP and as a result, would not provide or maintain an adequate level of service along Boots Lane.

**v. Section 94A Development Contributions Plan**

The original development application was determined to have a shortfall in parking spaces and as such, the consent required the applicant pay a monetary contribution pursuant to s94 of the Environmental Planning and Assessment Act 1979 to cover the shortfall in parking spaces in accordance with Council's s94 Developer Contributions Plan for Public Car Parking Facilities in Ingleburn. As the proposal subject of this application now shows the provision of the required number of parking spaces, s94 contributions for car parking can no longer be applied to the development. However, since the condition requiring s94 payments can no longer be applied to the development, it is deemed appropriate that the development be subject of alternate contributions pursuant to s94A of the Environmental Planning and Assessment Act 1979. A condition to this effect should be included if Council are of a mind to approve the application.

**vi. Development Control Plan No.85 - Business and Comprehensive Centre Zones**

The original development application was assessed having regard to Council's Development Control Plan No.85 – Business and Comprehensive Centre Zones (DCP 85) and was found to satisfy the relevant requirements of DCP.

In respect to the current application, despite the fact that DCP 85 has since been repealed, it is considered that the proposed modifications to the previously approved development would not contradict the aims of DCP 85 and as such is considered that the proposed modifications satisfy the requirements of the DCP.

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## **vii. Impacts on the Natural and Built Environment**

### **Size, Bulk, Scale and Visual Impact**

If constructed, the subject development could be viewed from within a localised area of the Ingleburn Business Centre due to the proposed height of the building. The design of the development and the proposed external materials, colours and finishes and landscaping would create an attractive and visually interesting development.

The proposed development is consistent in the size, bulk and scale of the future desired streetscape as reflected by the four storey height limit recently adopted in the commercial part of the Campbelltown (Sustainable City) Development Control Plan 2009. As a result of the addition of a second parking station, brought about by the current application, a second roller door is also introduced to the external façade of the building along Boots Lane. However, as both roller doors present to Boots Lane, they are not expected to have an adverse impact on the visual amenity of the Ingleburn Business Centre. The roller doors and masonry walls at ground level should be treated so as to facilitate the quick removal of graffiti. This can be addressed by a condition of consent should Council decide to approve the application.

### **Public Participation**

The application to modify the development consent was not required to be re-notified to nearby and adjoining owners given that the submissions raised in the original development application only relate to the potential impacts during construction of the building as well as noise concerns during the construction of the building. Measures to minimise impacts on surrounding lands could be incorporated as a condition of consent where Council was of a mind to approve the application.

### **Conclusion**

The proposal involves modifications to an approved development for the demolition of an existing dwelling and the construction of a four storey commercial building at the subject site. The proposed modifications do not propose to substantially change the built form or scale of the approved building.

However, despite the case that the proposed development is in keeping with the desired built form of the commercial development within the locality and that of the desired future built form of the Ingleburn Business Centre, the proposal to removal of the condition requiring half width road construction along the Boots Lane frontage does not show adequate regard has been given to the need to adequately cater for the needs of traffic generated by the development as well as the competing needs of the traffic generated by other users of the lane.

Despite this however, the proposed development is a permissible use under the provisions of CLEP 2002 and apart from not providing the extended road width in Boots Lane, the development generally complies with the objectives and development standards contained with SCDCP and DCP 85(repealed).

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3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

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Following the above and having regard to the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979; the issues discussed in this report and in particular the applicant's objection and request to remove the requirement for the construction of a half road in Boots Lane, it is recommended that the proposed application to modify consent 2334/2007/DA-C be refused.

**Officer's Recommendation**

That development application 2334/2007/DA-C/A for the modification of Council's original consent (2334/2007/DA-C) for the demolition of an existing dwelling and the construction of a four storey commercial building lot 6 DP 2913, No.34 Carlisle Street, Ingleburn be refused.

**Committee's Recommendation: (Bourke/Oates)**

That development application 2334/2007/DA-C/A for the modification of Council's original consent (2334/2007/DA-C) for the demolition of an existing dwelling and the construction of a four storey commercial building lot 6 DP 2913, No.34 Carlisle Street, Ingleburn be refused for the reasons outlined in Attachment 1.

**CARRIED**

Voting for the Committee's Recommendation were Councillors: Bourke, Greiss, Kolkman, Matheson, Oates, Rowell and Thompson.

Voting against the Committee's Recommendation: nil

**Council Meeting 6 April 2010 (Chanthivong/Bourke)**

That the Committee's Recommendation be adopted.

**Council Resolution Minute Number 53**

That the Committee's Recommendation be adopted.

Voting for the Council Resolution were Councillors: Borg, Bourke, Chanthivong, Dobson, Glynn, Greiss, Hawker, Kolkman, Lake, Matheson, Oates, Rowell, Rule, Thomas and Thompson.

Voting against the Council Resolution: nil.

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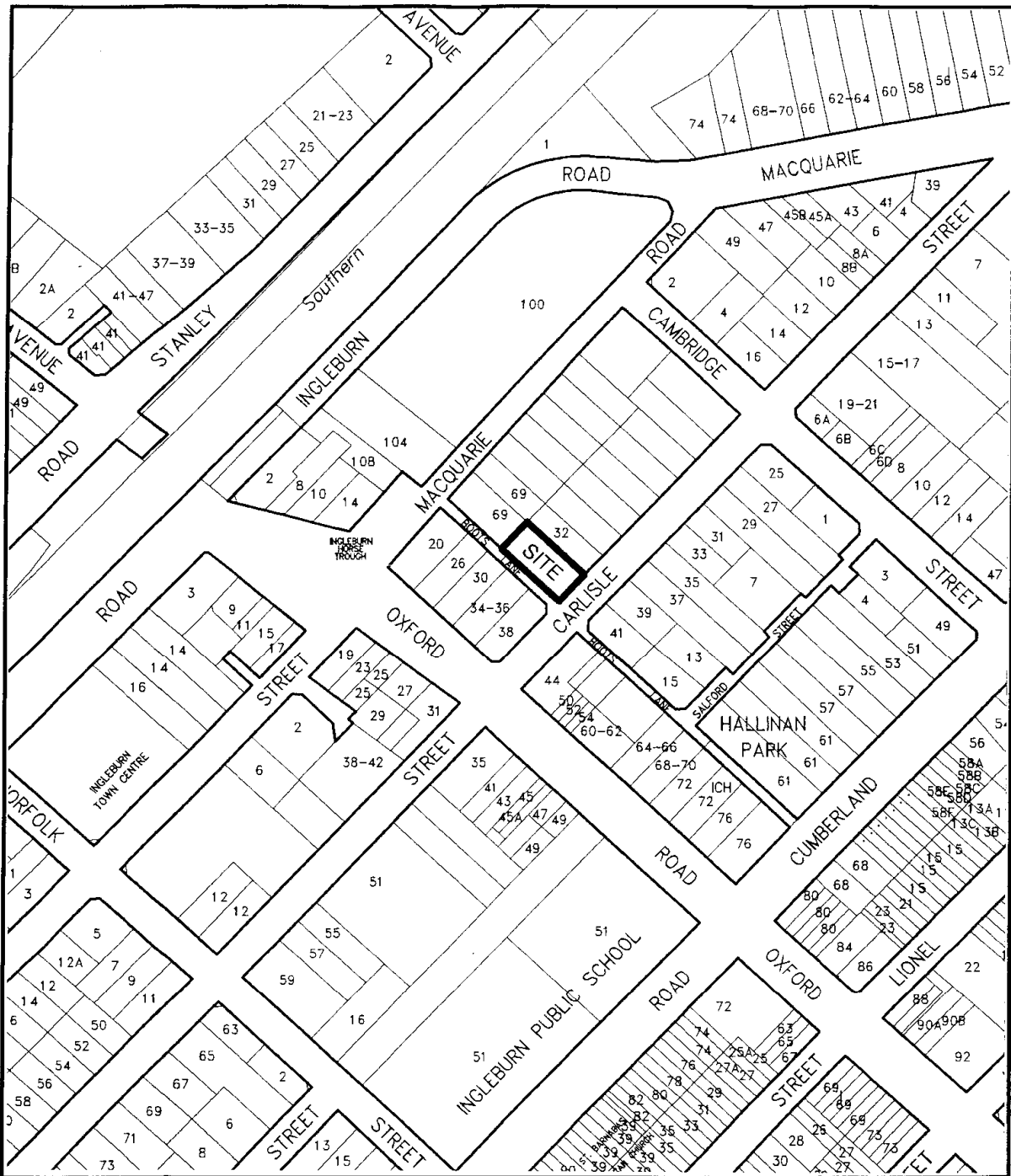
## ATTACHMENT 1

### RECOMMENDED REASONS FOR REFUSAL

1. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the objectives of Campbelltown (Sustainable City) Development Control Plan with respect to the objective of clause 5.9 to “ensure that appropriate facilities are provided for the storage and collection of commercial waste”. In this regard, the proposal does not provide appropriate facilities for the separate collection of garbage and recyclable waste by garbage trucks, as Boots Lane is not considered to be of sufficient width to cater for both the standing of garbage trucks and the safe passing of vehicles moving along Boots Lane.
  2. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Campbelltown (Sustainable City) Development Control Plan with respect to clause 5.4(c)(iii) in that it has not been adequately demonstrated that the development as proposed will not cause interference to the flow of traffic within Boots Lane.
  3. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate that the 4.0m width of Boots Lane is sufficient to allow vehicles travelling along Boots Lane to pass trucks collecting garbage and recycling refuse from the service area of the development in Boots Lane.
  4. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate that the 4.0m width of Boots Lane is sufficient to allow vehicles travelling along Boots Lane to pass vehicles queued while waiting for another driver within the parking area of the subject development to operate the car stackers within the car parking area.
  5. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the development would have an adverse impact upon the environment with respect to the orderly movement of vehicles and pedestrians along Boots Lane.
  6. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.
-

3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

**ATTACHMENT 2**



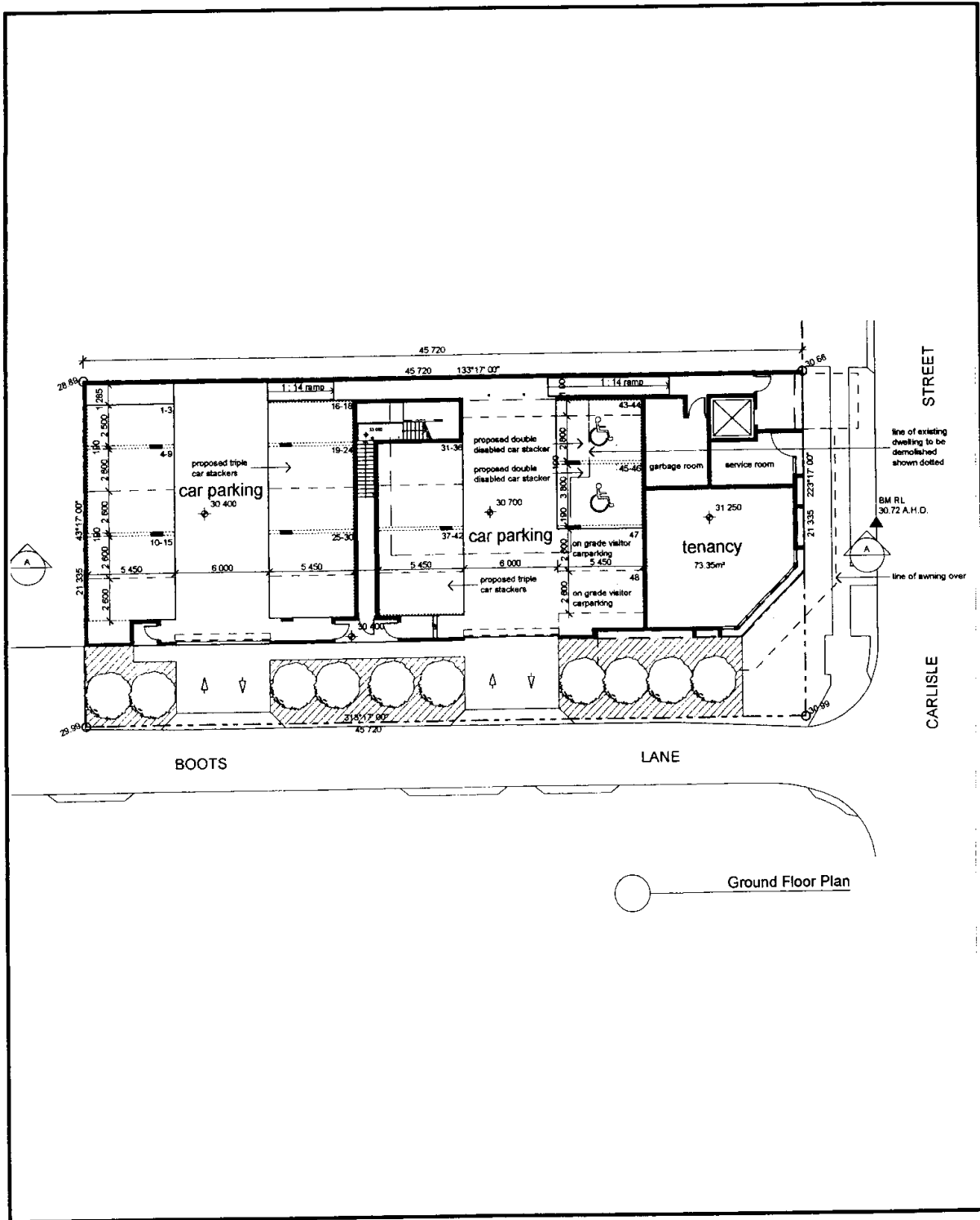
**LOCALITY PLAN**



**SUBJECT:**

DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION  
OF A FOUR STOREY COMMERCIAL BUILDING.  
LOT 6 SECTION 4 DP 2913 - No. 34 CARLISLE STREET, INGLEBURN.

3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

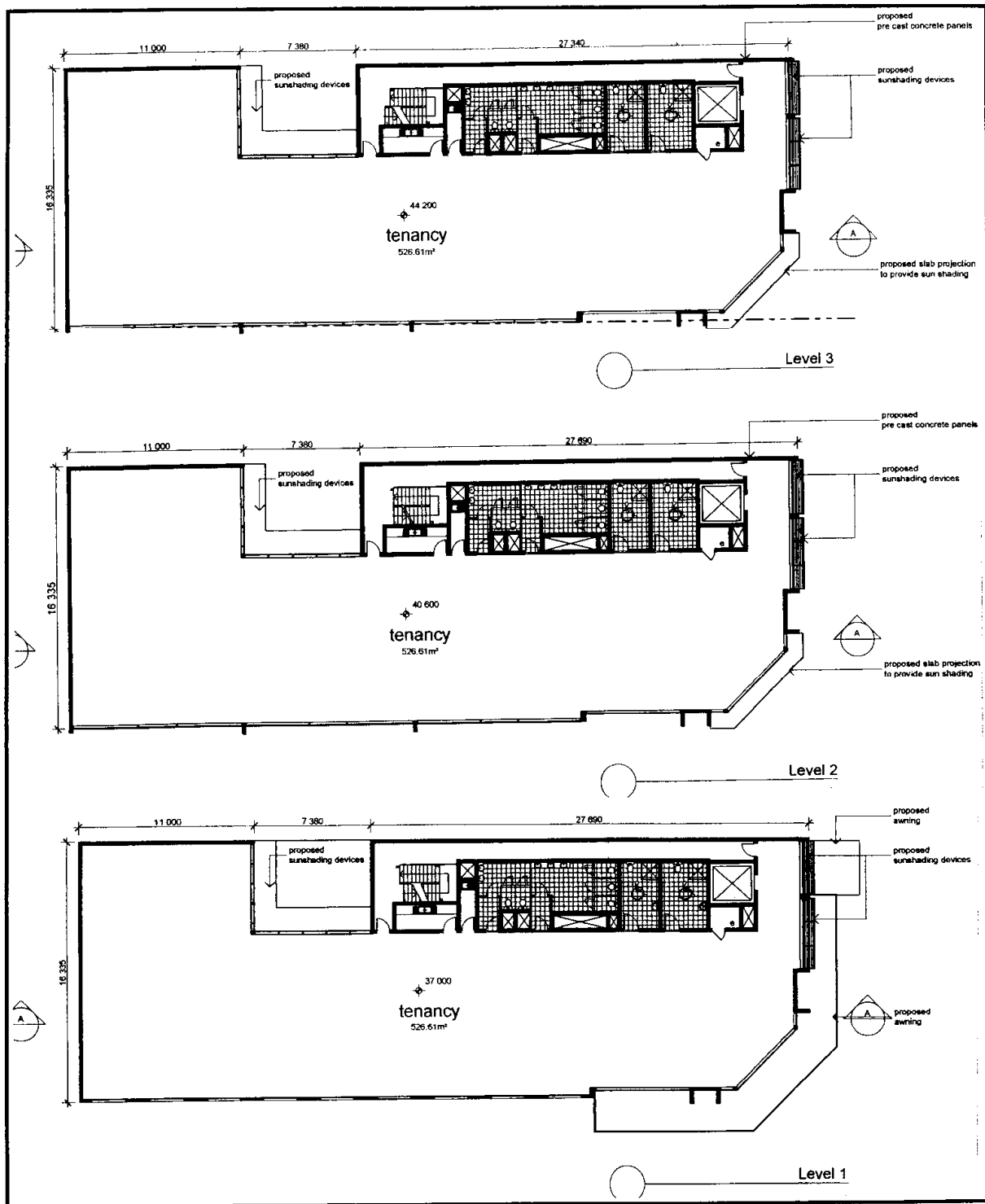


### SITE & GROUND FLOOR PLAN

**SUBJECT:**

DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION AND DISTRIBUTION OF GASEOUS PRODUCTS.  
LOT 6 SECTION 4 DP 2913 - No. 34 CARLISLE STREET, INGLEBURN.

3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

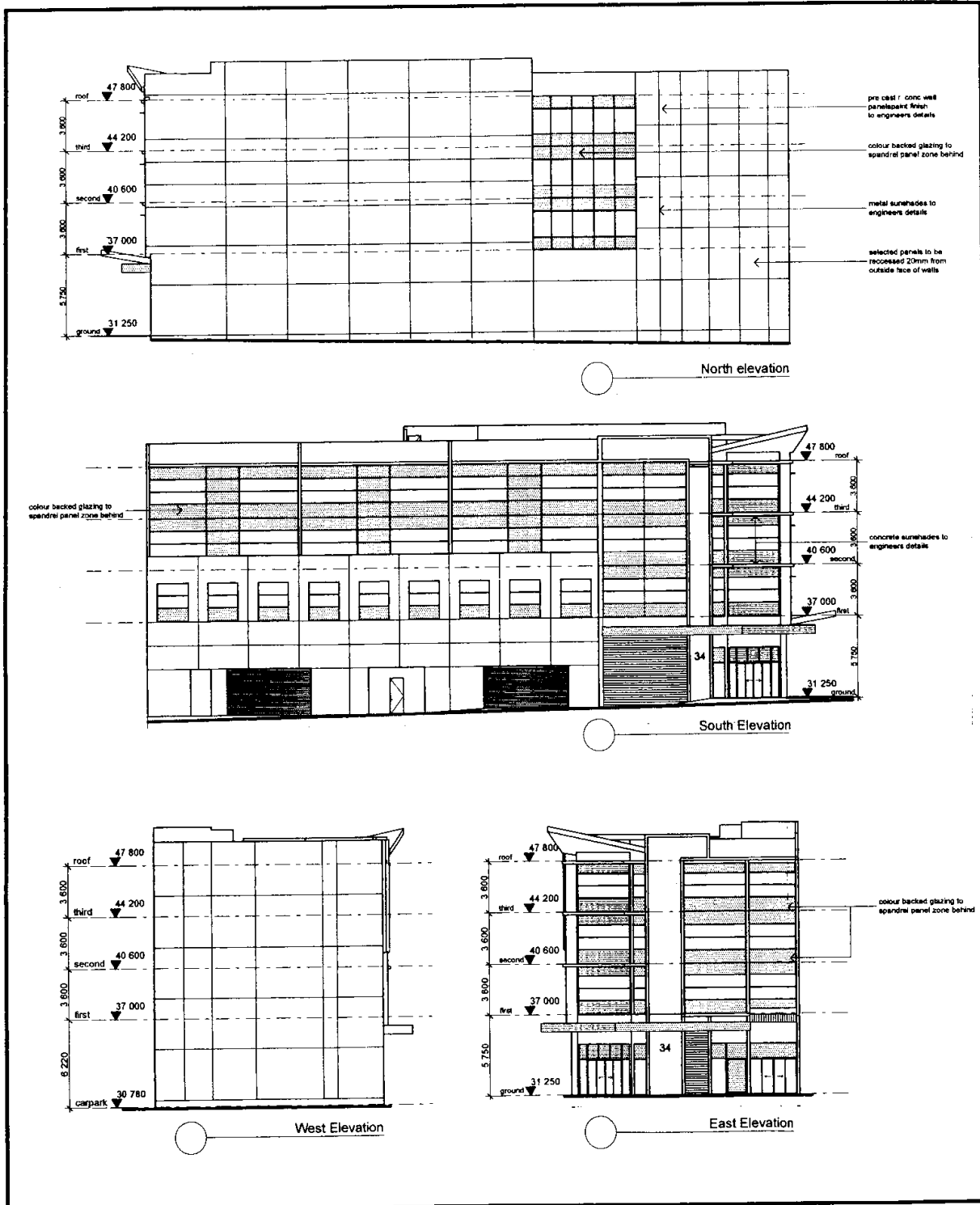


### FLOOR PLAN

**SUBJECT:**

DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION AND DISTRIBUTION OF GASEOUS PRODUCTS. LOT 6 SECTION 4 DP 2913 - No. 34 CARLISLE STREET, INGLEBURN.

3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building

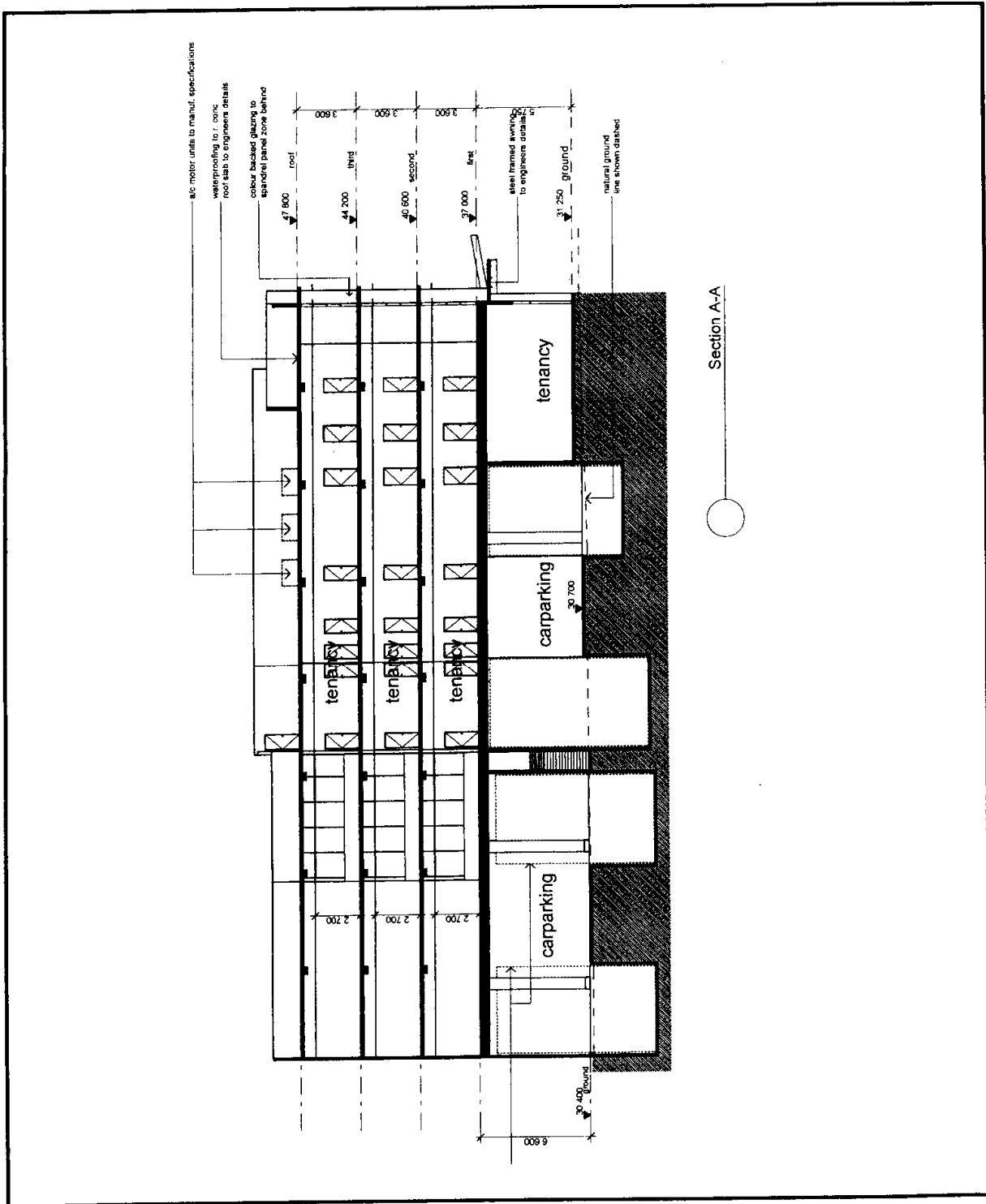


## ELEVATIONS

**SUBJECT:**

DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION  
AND DISTRIBUTION OF GASEOUS PRODUCTS.  
LOT 6 SECTION 4 DP 2913 - No. 34 CARLISLE STREET, INGLEBURN.

3.6 No.34 Carlisle Street, Ingleburn - Demolition Of Existing Dwelling And Construction Of A Four Storey Commercial Building



**SECTION**

**SUBJECT:**

DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION AND DISTRIBUTION OF GASEOUS PRODUCTS. LOT 6 SECTION 4 DP 2913 - No. 34 CARLISLE STREET, INGLEBURN.

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## 4. COMPLIANCE SERVICES

### 4.1 Legal Status Report

#### Reporting Officer

Manager Compliance Services

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#### Attachments

Nil

#### Purpose

To update Council on the current status of the Planning and Environment Division's legal matters.

#### Report

This report contains a summary of the current status of the Division's legal matters relating to:

- The Land and Environment Court;
- The District Court;
- The Local Court; and
- Matters referred to Council's Solicitor for advice.

A summary of year-to-date costs and the total number of actions are also included.

<b>1. <i>Land and Environment Court Class 1 Matters – Appeals Against Council's Determination of Development Applications</i></b>
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<b>Total ongoing Class 1 DA Appeal Matters (as at 16/03/2010)</b>	<b>4</b>
<b>Total completed Class 1 DA Appeal Matters (as at 16/03/2010)</b>	<b>4</b>
<b>Costs from 1 July 2009 for Class 1 DA Appeal Matters:</b>	<b>\$134,879.10</b>

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**1 (a)**

#### **Pope Shenouda III Coptic Christian Centre**

**Issue:**

Refusal of Development Application 3263/2005/DA-C for the demolition of existing buildings, alterations to church and construction of stadium, two residences, dormitory hall, playing field and carparking

**Property:**

Lots 315 - 318 DP 260797 No 2 Wills Road, Long Point.

**Property owner:**

Coptic Orthodox Church Property

**File No:**

3263/2005/DA-C (Court File 10700 of 2008)

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**Court Application filed:** 21 July 2008  
**Applicant:** Pope Shenouda III Coptic Christian Centre  
**Costs Estimate:** \$25,000.00 (exclusive of Barristers, Court Appointed Experts or disbursements fees)  
**Costs to date:** \$94,915.33  
**Status:** Ongoing – Appeal upheld and Development Consent granted. Awaiting Solicitors final tax invoice.

---

**Action Since Last Meeting** The Court confirmed its Judgement in this matter on 19 March 2010, upholding the applicants appeal and granting conditional consent for the modified Development Application 3263/2005/DA-C.

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**1 (b) John Galluzzo**

**Issue:** Refusal of Development Application 1972/2007/DA-C for the extensions to childcare centre.  
**Property:** Pt Lot 101 DP 602622 No.1 Bloomfield Road, Denham Court.  
**Property Owner:** John Galluzzo  
**File No:** 1972/2007/DA-C (Court File 11218 of 2008)  
**Court Application Filed:** 1 December 2008  
**Applicant:** John Galluzzo  
**Costs Estimate:** \$20,000.00 (exclusive of Barristers, Court Appointed Experts or disbursement fees)  
**Final Costs:** \$35,188.94  
**Status:** Completed – appeal dismissed.

---

**Action Since Last Meeting** The Court handed down its Judgement on 18 December 2009 dismissing the appeal and refusing Development Application 1972/2007/DA-C. See item 1(d) for further information concerning this matter.

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**1 (c) Gabriel Vella and Betty Vella**

**Issue:** Deemed refusal of Development Applications 2406/2009/DA-DW (erection of a dwelling house) and 2873/2009/DA-SP (construction of an inground swimming pool).  
**Property:** Lot 8 DP 285774 No. 22 Macquarie Links Drive, Macquarie Links.  
**Property Owner:** Mr. Gabriel Joseph Vella and Mrs. Betty Vella  
**File No:** 2406/2009/DA-DW and 2873/2009/DA-SP (Court File 10086 of 2010)  
**Court Application Filed:** 12 February 2010  
**Applicant:** Gabriel Vella and Betty Vella  
**Hearing date:** 12 April 2010

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**Costs Estimate:** \$20,000.00 (exclusive of Barristers, Court Appointed Experts or disbursement fees)  
**Costs to date:** No invoices submitted to date  
**Status:** Ongoing - listed for hearing.

---

**Action Since Last Meeting** On 12 March 2010 the Court adjourned the proceeding to 12 April 2010 for Hearing.

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**1 (d)**

**John Galluzzo**

**Issue:** Appeal under Section 56A of the Land and Environment Court Act 1979 against Commissioner Bly's decision of 18 December 2009 to dismiss the applicant's appeal against Council's refusal of Development Application 1972/2007/DA-C for the extensions to a childcare centre.  
**Property:** Pt Lot 101 DP 602622 No.1 Bloomfield Road, Denham Court.  
**Property Owner:** John Galluzzo  
**File No:** 1972/2007/DA-C (Court File 10/10099)  
**Court Application Filed:** 17 February 2010  
**Applicant:** John Galluzzo  
**Direction hearing:** 9 April 2010  
**Costs Estimate:** \$20,000.00 (exclusive of Barristers, Court Appointed Experts or disbursement fees)  
**Costs to date:** No invoices submitted to date  
**Status:** New Matter

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**Action Since Last Meeting** Listed for first direction hearing on 9 April 2010.

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**1 (e)**

**Angelo Skagias and Nick Skagias**

**Issue:** Deemed refusal of a Section 96 application to modify Development Applications 2334/2007/DA-C for the demolition of existing dwelling and construction of a four storey commercial building.  
**Property:** Lot 6 SEC 4 DP 2913 No. 34 Carlisle Street Ingleburn.  
**Property Owner:** Mr. Gabriel Joseph Vella and Mrs. Betty Vella  
**File No:** 2334/2007/DA-C (Court File 10156 of 2010)  
**Court Application Filed:** 9 March 2010  
**Applicant:** Mr. Angelo Skagias and Mr. Nick Skagias  
**Callover date:** 7 April 2010  
**Costs Estimate:** \$20,000.00 (exclusive of Barristers, Court Appointed Experts or disbursement fees)  
**Costs to date:** No invoices submitted to date  
**Status:** New matter.

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**Action Since Last Meeting** Listed for first callover on 7 April 2010.

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**2. Land and Environment Court Class 1 Matters – Appeals Against Council's Issued Orders/Notices**

<b>Total ongoing Class 1 Order/Notice Appeal Matters (as at 16/03/2010)</b>	<b>1</b>
<b>Total completed Class 1 Order/Notice Appeal Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Costs from 1 July 2009 for Class 1 Order/Notices Appeal Matters:</b>	<b>\$0.00</b>

**2 (a) Anthony Powell**

<b>Issue:</b>	Appeal against the terms of Council's Order No's. 1 and 12 served under Section 121B of the Environmental Planning and Assessment Act 1979, requiring the applicant to cease use of a garage being used for habitable purposes and reinstate the garage for its approved use.
<b>Property:</b>	Lot 105 DP 544373 No. 9 Aubrey Street, Ingleburn.
<b>Property Owner:</b>	Mr. Anthony Powell and Ms. Christine Lamont
<b>File No:</b>	1359/2009/N-EPA (Court File 10138 of 2010)
<b>Court Application Filed:</b>	2 March 2010
<b>Applicant:</b>	Mr. Anthony Powell
<b>Callover date:</b>	31 March 2010
<b>Costs Estimate:</b>	\$10,000.00 (exclusive of Barristers, Court Appointed Experts or disbursement fees)
<b>Costs to date:</b>	No invoices submitted to date
<b>Status:</b>	New matter.

**Action Since Last Meeting** Listed for first callover on 31 March 2010.

**3. Land and Environment Court Class 4 Matters – Non-Compliance with Council Orders / Notices or Prosecutions**

<b>Total ongoing Class 4 Matters (as at 16/03/2010)</b>	<b>4</b>
<b>Total completed Class 4 Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Costs from 1 July 2009 for Class 4 Matters</b>	<b>\$4,561.37</b>

**3 (a) Khaled Alameddine**

<b>Issue:</b>	Non-compliance with Orders to rectify structurally inadequate outbuildings.
<b>Property:</b>	Lot 14 DP 740774 No. 329 Wedderburn Road, Wedderburn
<b>Property owner:</b>	Ms Susanna Rossi
<b>File No:</b>	Court File No. 40778 of 2007

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**Applicant:** Khaled Alameddine  
**Costs Estimate:** \$20,000 (exclusive of Barristers, Court Appointed Experts or disbursements fees)  
**Costs to Date:** \$9,859.71  
**Status:** Ongoing – Council's Orders upheld and proceedings completed, cost recovery being pursued.

---

**Action Since Last Meeting** Resolution of costs in this matter has not been settled. Council is consulting with its solicitors as to the options for recovery of those costs.

---

**3 (b) George Habra, Renee Habra and Trustees of the Estate of the Late Elia Habra**

**Issue:** Non-compliance with Orders to rectify excavated and subsiding earth embankment located on either side of the common boundary of adjoining residential premises.  
**Property:** Lot 1451 DP 703487 No. 2 Brownlow Place, Ambarvale  
**Property owner:** George Habna Habra, Renee Habra and Elia Habra  
**File No:** Court File No. 40024 of 2008  
**Respondent:** George Habna Habra, Renee Habra and Elia Habra  
**Costs Estimate:** \$20,000 (exclusive of Barristers, Court Appointed Experts or disbursements fees)  
**Costs to date:** \$14,075.11  
**Status:** Ongoing – Amended Orders made by the Court. Cost recovery Ongoing

---

**Action Since Last Meeting** Notice of Motion to amend the previous Orders of the Court to confirm the proposed remediation works that incorporate a retaining wall was made by the Court on 8 February 2009.

---

**3 (c) Simon Simo and Emilia Simo**

**Issue:** Non-compliance with Orders to rectify excavated and subsiding earth embankment located on either side of the common boundary of adjoining residential premises.  
**Property:** Lot 1450 DP 703487 No. 4 Brownlow Place, Ambarvale  
**Property owner:** Simon Simo and Emilia Simo  
**File No:** Court File No. 40025 of 2008  
**Respondent:** Simon Simo and Emilia Simo  
**Costs Estimate:** \$20,000 (exclusive of Barristers, Court Appointed Experts or disbursements fees)  
**Costs to date:** \$12,586.07  
**Status:** Ongoing – Amended Orders made by the Court. Cost recovery Ongoing

---

**Action Since Last Meeting** Notice of Motion to amend the previous Orders of the Court to confirm the proposed remediation works that incorporate a retaining wall was made by the Court on 8 February 2009.

**3 (d) Inderjit Singh T/as Multi Furniture**

**Issue:** Non-compliance with Orders to cease use of premises for furniture manufacture and vacate the premises.  
**Property:** Lot 2 DP739179, Unit 2 Erica Lane, Minto and Pt Lot 6 DP 703617 Unit 1 Erica Lane, Minto  
**Property owner:** GLP Developments Pty Ltd and A and M Stavros respectively  
**File No:** Court File No. 49166 of 2008  
**Respondent:** Inderjit Singh T/as Multi Furniture  
**Costs Estimate:** \$20,000 (exclusive of Barristers, Court Appointed Experts or disbursements fees)  
 \$12,751.21  
**Costs to Date:** Ongoing – Council's Orders upheld and proceedings completed, cost recovery being pursued.  
**Status:**

**Action Since Last Meeting** Resolution of costs in this matter has not been settled. Council is consulting with its solicitors as to the options for recovery of those costs.

**4. Land and Environment Court Class 5 - Criminal enforcement of alleged pollution offences and various breaches of environmental and planning laws.**

<b>Total ongoing Class 5 Matters (as at 16/03/2010)</b>	<b>3</b>
<b>Total completed Class 5 Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Costs from 1 July 2009 for Class 5 Matters</b>	<b>\$21,853.78</b>

**4 (a) Cvetko Josevski**

**Issue:** Development carried out (wilfully poison 6 mature eucalyptus trees) in contravention of the planning instruments that applied in respect of the property.  
**Property:** Lot 4 DP 238982 No.74 Hansens Road, Minto Heights.  
**Property owner:** Cvetko Josevski and Snezana Josevski  
**File No:** Court File No. 50076 of 2008  
**Court Application Filed:** 9 October 2008  
**Defendant:** Cvetko Josevski  
**Costs Estimate:** \$20,000 (exclusive of Barristers, Court Appointed Experts or disbursements fees)  
 \$24,163.37  
**Costs to Date:**  
**Status:** Ongoing – Prosecution successful and Court proceedings completed; cost recovery being pursued.

**Action Since Last Meeting** Negotiations with the Defendant regarding costs settlement are ongoing.

**4 (b)**

**John Mhanna**

**Issue:** Development carried out without the issue of a construction certificate and contrary to the conditions of development consent No. 2340/2005/DA-M comprising the demolition of three dwellings and the construction of fifteen dwellings and strata subdivision.

**Property:** Lot 2 DP 520114, Lot 9 DP 233072 and Lot 8 DP 2233072, No's 18 to 20 Myee Road, Macquarie Fields.

**Property owner:** Westcity Developments Pty Ltd

**File No:** 2340/2005/DA-M (Court File No's. 50050 of 2009 and 50051 of 2009)

**Court Application Filed:** 10 September 2009

**Defendant:** John Mhanna

**Judgement date:** 18 March 2010

**Costs Estimate:** \$25,000 (exclusive of Barristers, Court Appointed Experts or disbursements fees)

**Costs to Date:** \$18,328.49

**Status:** Ongoing – Court proceedings completed - cost and penalty recovery ongoing.

**Action Since Last Meeting** The matter was before the Court on 19 February 2010 for plea/mention where Counsel for the defendant appeared and entered a guilty plea in respect of Case No. 50050 of 2009. Council advised the Court that Case No. 50051 of 2009 was withdrawn (agreement reached following the defendants request that Council withdraw the secondary charge of 'development carried out contrary to the conditions of development consent' subject to an early guilty plea being entered in the principle charge of 'development carried out without the issue of a construction certificate'). The Court adjourned the proceedings to 18 March 2010 for judgement where the defendant was fined \$3,000 and ordered to pay Councils costs.

**5. Land and Environment Court Class 6 - Appeals from convictions relating to environmental matters**

<b>Total ongoing Class 6 Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Total completed Class 6 Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Costs from 1 July 2009 for Class 6 Matters</b>	<b>\$0.00</b>

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**6. Land and Environment Court Tree Dispute Matters – Applications filed under the Trees (Disputes Between Neighbours) Act 2006**

<b>Total ongoing Tree Dispute Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Total completed Tree Dispute Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Costs from 1 July 2009 for Tree Dispute Matters</b>	<b>\$0.00</b>

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**7. District Court – Matters on Appeal from lower Courts or Tribunals not being environmental offences.**

<b>Total ongoing Appeal Matters (as at 16/03/2010)</b>	<b>1</b>
<b>Total completed Appeal Matters (as at 16/03/2010)</b>	<b>0</b>
<b>Costs from 1 July 2009 for District Court Matters</b>	<b>\$0.00</b>

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**7 (a) Michael Bruce Hall**

<b>Issue:</b>	Appeal against decision in Consumer, Trader and Tenancy Tribunal Case No GEN:08/45487 of BUILDINGPLANS.COM.AU (Michael Bruce Hall) v Ameerul Nisha Hussein.
<b>File No:</b>	2593/2007/DA-DW (Court File No. 08/10/2008)
<b>Court Application filed:</b>	9 October 2008
<b>Appellant:</b>	Michael Bruce Hall
<b>Costs Estimate:</b>	\$5,000 (exclusive of Barristers, Court Appointed Experts or disbursements fees)
<b>Costs to date:</b>	\$5,031.63
<b>Status:</b>	Ongoing – appeal dismissed and proceedings completed, cost recovery being pursued.

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**Action Since Last Meeting**      Awaiting determination of costs assessment.

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**8. Local Court Prosecution Matters**

The following summary lists the current status of the Division's legal matters before the Campbelltown Local Court.

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<b>Total ongoing Local Court Matters (as at 16/03/2010)</b>	<b>29</b>
<b>Total completed Local Court Matters (as at 16/03/2010)</b>	<b>93</b>
<b>Costs from 1 July 2009 for Local Court Matters</b>	<b>\$17,798.58</b>

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<b>File No:</b>	LP 101/09 - Penalty Notice Court Election
<b>Offence:</b>	Unregistered Dog - not dangerous dog
<b>Act:</b>	Companion Animals Act
<b>Costs to date:</b>	\$0.00
<b>Status – Ongoing:</b>	The matter was before the Court for first mention on 8 December 2009 where the accused entered a not guilty plea. The Court adjourned the proceedings to 9 February 2010 for hearing where due to the priority of other matters at the end of the day, the matter was not commenced. The Court re-listed the proceedings for hearing on 19 April 2010.

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<b>File No:</b>	LP 102/09 - Penalty Notice Court Election
<b>Offence:</b>	Uncontrolled Dog in a public place - not dangerous dog
<b>Act:</b>	Companion Animals Act
<b>Final Costs:</b>	\$0.00
<b>Status – Completed:</b>	The matter was before the Court for first mention on 23 February 2010 where the accused, Kevin Mathis made no appearance. The Court granted an application to have the matter proceed in the absence of the accused and after considering the facts the Magistrate found the offence proven and imposed a \$220 fine and an Order for \$76 Court Costs.

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<b>File No:</b>	LP 105/09 - Penalty Notice Court Election
<b>Offence:</b>	Uncontrolled Dog in a public place - not dangerous dog
<b>Act:</b>	Companion Animals Act
<b>Final Costs:</b>	\$780.00
<b>Status – Completed:</b>	The matter was before the Court for hearing on 19 March 2010 where the accused maintained a not guilty plea. After hearing the evidence and submissions the Magistrate found the offender proved and dismissed the conviction under Sect 10 of the Crimes (Sentencing Procedure) Act. An order for costs in sum or \$356 was made.

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**File No:** LP 10/10 - Penalty Notice Court Election  
**Offence:** Deposit litter (cigarette butt) from vehicle  
**Act:** Protection of the Environment Operations Act  
**Costs to date:** \$0.00  
**Status – Ongoing:** The matter was before the Court for first mention on 2 March 2010 where the accused entered a not guilty plea. The matter has been adjourned to 14 May 2010 for hearing

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**File No:** LP 11/10 - Penalty Notice Court Election  
**Offence:** Uncontrolled Dog in a public place - not dangerous dog  
**Act:** Companion Animals Act  
**Final Costs:** \$0.00  
**Status – Completed:** The matter was before the Court for first mention on 23 February 2010 where the accused, Dario Susnjara made no appearance. The Court granted an application to have the matter proceed in the absence of the accused and after considering the facts the Magistrate found the offence proven and imposed a \$220 fine and an Order for \$76 Court Costs.

---

**File No:** LP 12/10 - Penalty Notice Court Election  
**Offence:** Not register 6-month old companion animal (dog)  
**Act:** Companion Animals Act  
**Costs to date:** \$0.00  
**Status – Ongoing:** The matter was before the Court for second mention on 23 March 2010 where by consent an adjournment was granted to 7 April to allow Council time to consider submissions made by the accused.

---

**File No:** LP 13/10 - Penalty Notice Court Election  
**Offence:** Not register 6-month old companion animal (dog)  
**Act:** Companion Animals Act  
**Final Costs:** \$0.00  
**Status – Completed:** The matter was before the Court for first mention on 9 March 2010 where the accused entered a not guilty plea with explanation. After considering the evidence and submissions the Magistrate found the offence proved and directed that under Section 10 of the Crimes (Sentencing Procedure) Act no conviction be recorded and made an Order for \$76 Court Costs.

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**File No:** LP 14/10 - Penalty Notice Court Election  
**Offence:** Uncontrolled Dog in a public place - not dangerous dog  
**Act:** Companion Animals Act  
**Final Costs:** \$0.00  
**Status – Completed:** The matter was before the Court for first mention on 9 March 2010 where the accused entered a not guilty plea with explanation. After considering the evidence and submissions the Magistrate found the offence proved and directed that under Section 10 of the Crimes (Sentencing Procedure) Act no conviction be recorded.

---

**File No:** LP 15/10 - Penalty Notice Court Election  
**Offence:** Owner have dog in prohibited place - not dangerous dog  
**Act:** Companion Animals Act  
**Final Costs:** \$0.00  
**Status – Completed:** The matter was before the Court for first mention on 9 March 2010 where the accused entered a not guilty plea with explanation. After considering the evidence and submissions the Magistrate found the offence proved and directed that under Section 10 of the Crimes (Sentencing Procedure) Act no conviction be recorded and made an Order for \$76 Court Costs.

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**File No:** LP 16/10 - Penalty Notice Court Election  
**Offence:** Uncontrolled Dog in a public place - not dangerous dog  
**Act:** Companion Animals Act  
**Final Costs:** \$0.00  
**Status – Completed:** The matter was before the Court for first mention on 9 March 2010 where the accused, Kevin Hyett made no appearance. The Court granted an application to have the matter proceed in the absence of the accused and after considering the facts the Magistrate found the offence proven and imposed a \$220 fine and an Order for \$76 Court Costs.

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**File No:** LP 17/10 – Enforcement Order Court Election  
**Offence:** Stop on/near children's crossing – school zone  
**Act:** Road Rules 2008  
**Costs to date:** \$0.00  
**Status – New Matter:** The matter is listed for first mention on 20 April 2010.

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**File No:** LP 18/10 - Penalty Notice Court Election  
**Offence:** Uncontrolled Dog in a public place - not dangerous dog  
**Act:** Companion Animals Act  
**Costs to date:** \$0.00  
**Status – New Matter:** The matter is listed for first mention on 16 March 2010 where the accused entered a not guilty plea. The proceedings have been adjourned to 18 May 2010 for hearing.

---

**File No:** LP 19/10 - Enforcement Order Court Election  
**Offence:** Deposit litter (cigarette) from vehicle  
**Act:** Protection of the Environment Operations Act  
**Costs to date:** \$0.00  
**Status – New Matter:** The matter is listed for first mention on 13 April 2010.

**File No:** LP 20/10 – Penalty Notice Court Election  
**Offence:** Disobey no stopping sign – school zone  
**Act:** Road Rules 2008  
**Costs to date:** \$0.00  
**Status – New Matter:** The matter is listed for first mention on 6 April 2010.

**File No:** LP 21/10 – Penalty Notice Court Election  
**Offence:** Stop on path/strip in built-up area – school zone  
**Act:** Road Rules 2008  
**Costs to date:** \$0.00  
**Status – New Matter:** The matter is listed for first mention on 6 April 2010.

**9. Matters Referred to Council’s Solicitor for Advice**

The following summary lists the status of matters referred to Council’s Solicitors for advice on questions of law, the likelihood of appeal or prosecution proceedings being initiated, and/or Council liability.

**Total Advice Matters (as at 16/03/2010)** **6**  
**Costs from 1 July 2009 for Advice Matters** **\$27,852.06**

**10. Legal Costs Summary**

The following summary lists the Planning and Environment Division’s net Legal Costs for the 2009/2010 period.

<b>Relevant Attachments or Tables</b>	<b>Costs Debit</b>	<b>Costs Credit</b>
Class 1 Land and Environment Court - appeals against Council's determination of Development Applications	\$134,879.10	\$0.00
Class 1 Land and Environment Court - appeals against Orders or Notices issued by Council	\$0.00	\$0.00

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Class 4 Land and Environment Court matters - non-compliance with Council Orders, Notices or Prosecutions	\$4,561.37	\$0.00
Class 5 Land and Environment Court - Pollution and Planning prosecution matters	\$21,853.78	\$0.00
Class 6 Land and Environment Court - appeals from convictions relating to environmental matters	\$0.00	\$0.00
Land and Environment Court tree dispute between neighbours matters	\$0.00	\$0.00
District Court Appeal matters	\$0.00	\$0.00
Local Court Prosecution matters	\$17,798.58	\$1,650.00
Matters referred to Council's Solicitor for Legal Advice	\$27,852.06	\$0.00
Miscellaneous costs not shown elsewhere in this table	\$0.00	\$0.00
Costs Sub-Total	\$206,944.90	\$1,650.00
<b>Overall Net Costs Total (GST exclusive)</b>	<b>\$205,294.90</b>	

### **Officer's Recommendation**

That the information be noted.

### **Committee's Recommendation: (Oates/Kolkman)**

That the Officer's Recommendation be adopted.

**CARRIED**

### **Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

### **Amendment: (Greiss/Matheson)**

1. That the information be noted.
2. That a report be presented detailing all the Court cases that Council has lost over the last three years and also detailing the total cost to Council.

### **Council Resolution Minute Number 49**

That the above amendment be adopted.

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## **4.2 Compliance Services Section Quarterly Activity Summary Report October to December 2010**

### **Reporting Officer**

Manager Compliance Services

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### **Attachments**

Compliance Services Quarterly Activity Summary Table.

### **Purpose**

To provide Council with a quarterly report of activities for the Compliance Services Section.

### **Report**

This report summarises key section activities and operational results for the reporting period October to December 2009.

#### **1. Regulated Premises Inspections**

Regulated premises inspection statistics presented in the Activity Summary Statistics Table in the Attachment are divided into Food, Public Health and Wastewater Management System inspections.

All regulated premises are placed in a risk category. The frequency of inspections varies according to the risk classification. Additional inspections (i.e. reinspections) are sometimes undertaken when premises are found to be unsatisfactory and there is an identified need to follow up on outstanding matters.

##### **a. Food Premises**

Within Campbelltown there are approximately 683 regulated food premises separated into three categories requiring 1,032 scheduled inspections per annum as follows:

**Low Risk Premises** (inspected when necessary) – includes food businesses such as pre-packaged catering outlets, variety stores, confectionary shops, chemists, video stores and newsagents.

**Category 1 Premises** (medium risk – inspected once per year) – includes fruit and vegetable stores, service stations, convenience stores, health food shops and general grocery stores

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**Category 2 Premises** (high risk – inspected twice per year) – includes restaurants, takeaway shops, bakeries, cafes, clubs, pubs, child care centres, supermarkets, juice bars, fish shops, delicatessens, institutions and hospitals.

Food Premises Category	No. of Premises	No. of Annual Inspections
Low Risk	133	Complaints only
Category 1	68	68
Category 2	482	964
<b>TOTAL</b>	<b>683</b>	<b>1032</b>

Amendments to the Food Act 2003 and the establishment of the Food Regulation Partnership between the NSW Food Authority and NSW Councils in 2008 resulted in a mandated and more consistent role for Local Government in food regulation.

As a result Council reviewed its food premises categories and inspection frequency in order to be consistent with other NSW Councils.

A total of 140 food premise inspections were conducted for the reporting period. Of the 140 inspections undertaken, 41 (29%) food premise inspections were recorded as unsatisfactory. Follow up (reinspections) are undertaken where premises are found to be unsatisfactory at the time of initial inspection, to ensure they reach a satisfactory standard. In certain situations, Food Act Improvement Notices or Penalty Notices are issued when necessary to encourage compliance.

**b. Public Health**

Within Campbelltown there are approximately 201 regulated premises separated into three risk categories requiring 208 scheduled inspections per annum.

- **Category 1 Premises** (inspected once per year) – Beauty Salons (low risk), Boarding Houses, Funeral Parlours, Skin Penetration (low risk procedure, i.e. waxing), Hairdressers, Nail Artists, Solariums.
- **Category 2 Premises** (inspected twice per year) – Brothels, Skin Penetration (high risk procedure - body piercing).
- **Category 3 Premises** (inspected once per year) – Legionella Microbial Control (Air-Conditioning Cooling Towers).

Health Premises Category	No. of Premises	No. of Annual Inspections
Category 1	130	130
Category 2	7	14
Category 3	64	64
<b>TOTAL</b>	<b>201</b>	<b>208</b>

The number of health premise inspections undertaken (98) was above the quarterly average. The increase was attributed to Council's involvement in a Skin Penetration Survey conducted by NSW Department of Health that required a large number of skin penetration premises be inspected during the quarter that would otherwise have been undertaken later in the year.

Of the 98 regulated health premise inspections conducted during the reporting period, 11 (11%) of the premises inspected were recorded as unsatisfactory.

Follow up (reinspections) are undertaken where premises are found to be unsatisfactory at the time of initial inspection to ensure the premises reach a satisfactory standard.

### **c. Wastewater Management Systems**

The effective regulation and management of on-site wastewater management systems is necessary to ensure these systems operate properly and as a consequence do not cause a threat to the environment or human health.

As part of its effort to more effectively manage and regulate wastewater management systems, Council has revised its Wastewater Management Strategy which was formally adopted by Council on 7 July 2009.

The implementation of the revised strategy has commenced and is to be staged, with various unsewered locations throughout the City being addressed progressively.

Staff have commenced seeking applications for an approval to operate from system owners on an area by area basis. This has resulted in 16 system inspections to date.

## **2. Notices/Orders Issued**

Food Act Notices are usually issued where there is repeated failure by a proprietor to meet appropriate standards or where serious breaches are identified. A total of 18 Food Act Notices were issued during the reporting period, which compares to four Notices for the previous quarter.

Local Government Act Notices and Orders are issued for a range of matters including overgrown, unhealthy, unsafe or unsightly conditions. The number of Local Government Act Notices and Orders issued during the reporting period was 120, which was more than the number (114) issued for the previous reporting period.

The number of Swimming Pools Act Directions issued (14) requiring the erection of pool fencing or fencing repairs was less than the number of Directions (15) issued in the corresponding quarter in the previous year.

Environmental Planning and Assessment Act Notices and Orders are issued by Land Use and Environmental Compliance staff, primarily to ensure that premises comply with conditions of development consent and to regulate unauthorised land use. A total of 45 Notices and Orders were served during the reporting period compared to 46 in the previous quarter.

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### **3. Customer Service Requests**

The Compliance Services Section receives a significant number of customer service requests across a broad range of issues as represented in Attachment 1. A total of 656 customer service requests were received for the reporting period. Significant complaint categories were barking dogs (105 requests), rubbish dumping/litter (56 requests), illegal construction/development (78 requests), Pollution (72 requests), Health (other) (44 requests), overgrown land (46 requests), abandoned motor vehicles (78 requests), and parking, (including heavy vehicles) (66 requests).

### **4. Applications**

Building Certificate Applications relate to certificates issued under section 149A of the Environmental Planning and Assessment Act and provide assurance to applicants upon issue that Council will not take action to require the demolition or upgrade of the respective structure for a period of seven years after the date of issue of the certificate. These certificates are generally sought upon sale of property.

The number of Building Certificate Applications (27) received during the reporting period was below quarterly averages (35).

Section 68 (Local Government Act) Event Approvals were issued for Fishers Ghost Festival and Family Fun Day Events, Combined Churches Carols in the Park, New Years Eve and Australia Day.

### **5. Impounding**

The number of dogs impounded during this reporting period was 427, being less than the historical quarterly average (600). The reason for this reduction was due primarily to two staff vacancies during the quarter. The percentage of dogs microchipped at the time of impounding was 55% which is consistent with quarterly averages.

A total of 284 cats were impounded throughout the reporting period being more than the previous reporting period (147) which is consistent with seasonal trends. The number of cats that are microchipped at the time they were impounded is typically lower than for dogs and for this reporting period 2% were microchipped.

The number of abandoned vehicles impounded for this quarter was 10 with all of these vehicles being disposed of by recycling. Council is currently holding no abandoned vehicles.

### **6. Penalty Notices**

Council issues a range of penalty notices relating to various matters including parking offences (on street, Council car parks, school zones), companion animal registration, dog straying, littering, fail to comply with orders, food safety and fail to obtain or comply with development consent.

The number of penalty notices issued for parking offences in Council car parks (489) decreased in comparison with the previous quarter (1,101). The number issued for on-street offences (714) decreased in comparison with the previous quarter (1,786).

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The statistics for parking fines for the current reporting period reflect a significant decrease when compared to the prior quarter. This variation is primarily due to a data transfer anomaly which resulted in a significant number of penalty notices (relating to earlier quarters) being uploaded onto the State Debt Recovery Office (SDRO) database during the July to September quarter. This created an artificial "spike" in the results for the July to September quarter.

## **7. Compliance/Education Programs**

Compliance programs are an integral component of the Section's activities and represent a coordinated proactive approach to targeting specific community concerns. Resources are deployed strategically on a local or citywide basis as an alternative to addressing complaints on an individual basis.

A summary of Compliance Programs undertaken during the reporting period follows:

### **a. Illegal Parking in School Zones**

During the reporting period, 20 school locations were patrolled resulting in the issue of 50 penalty notices.

### **b. Illegal Sign Statistics**

A summary of sign statistics for the quarter can be located in Attachment 1.

### **c. Illegal Trail Bike Riding**

During the reporting period two joint patrols with Police were undertaken resulting in no bikes being seized, 19 penalty notices issued, three charges laid with two cautions issued.

A number of single agency (Council) patrols were undertaken in response to the 20 complaints received during the reporting period.

### **d. Litter from Vehicles**

For the reporting period no operations were undertaken however 14 penalty notices for littering were issued. These penalty notices were issued based upon independent staff observations and other Ranger patrols.

### **e. Shopping Trolleys**

This program resulted in the impounding of no trolleys during the reporting period, however 10 trolleys were reported to contractors for collection.

### **f. Truck Parking**

Four truck parking patrols were undertaken during the reporting period resulting in the issue of 22 parking penalty notices.

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## **8. Other Activities**

A summary of other activities or initiatives implemented within the reporting period are listed below:

- Council continues to conduct surveillance of construction sites for sediment and erosion control compliance.
- Continued participation in an inter-divisional working group to develop improved procedures for approval and enforcement associated with occupancy of Council land (i.e. Road Occupancy, Work Zones and Standing Plant)
- Continued participation in an inter-Divisional working group to develop improved procedures and coordination across Council for maintaining restricted access to parks and reserves.
- Continued participation in an inter-Divisional working group to develop improved procedures and coordination in respect of assessing applications to conduct non-Council events on Council land.
- Patrols (by way of formalised agreement) of disabled parking at Campbelltown Mall continued through the reporting period.
- Council re-established Alcohol Free Zones in Airds, Ambarvale, Bradbury, Campbelltown, Minto and Rosemeadow.
- Standard Operating Procedures were developed for the following functions - Food Premises Inspections, Public Health Inspections, Environmental Compliance Audits, Abandoned Motor Vehicle Investigations and Inspection of Dilapidated Buildings.

### **Officer's Recommendation**

That the information be noted.

### **Committee's Recommendation: (Bourke/Kolkman)**

That the Officer's Recommendation be adopted.

### **CARRIED**

### **Council Meeting 6 April 2010 (Matheson/Bourke)**

That the Officer's Recommendation be adopted.

### **Council Resolution Minute Number 49**

That the Officer's Recommendation be adopted.

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# ATTACHMENT 1

## Compliance Quarterly Activity Summary Statistics

Activity	2009/10 Quarter Result				YTD
	1	2	3	4	
<b>Regulated Premises Inspections</b>					
Food	303	140			443
Public Health	12	98			110
Wastewater Management Systems	10	16			26
<b>Total</b>	<b>325</b>	<b>254</b>			<b>579</b>
<b>Notices/Orders Issued</b>					
Food Act	4	18			22
Local Government Act	114	120			234
Swimming Pool Act	16	14			30
Protection of Environment Operations Act	8	12			20
Environmental Planning and Assessment Act	46	45			91
Companion Animals Act	6	4			10
<b>Total</b>	<b>194</b>	<b>213</b>			<b>407</b>
<b>Customer Requests</b>					
Abandoned Motor Vehicles	60	78			138
Animals (other)	20	17			37
Barking Dogs	120	105			225
Dog Attacks	25	24			49
Dog Straying	52	36			88
Food/Health (regulated)	1	1			2
Footpath Obstruction	4	7			11
Health (other)	47	44			91
Heavy Vehicle Parking	30	16			46
Illegal Construction/Development	60	78			138
Overgrown Land	40	46			86
Parking (General)	49	50			99
Pollution	67	72			139
Rubbish Dumping/Litter	13	56			69
Trail Bikes	45	20			65
Tree Removal/Dangerous	15	6			21
<b>Total</b>	<b>648</b>	<b>656</b>			<b>1304</b>

**Compliance Quarterly Activity Summary Statistics**

Activity	2009/10 Quarter Result				YTD
	1	2	3	4	
<b>Applications</b>					
Building Certificates	54	27			81
Approval to Operate Effluent Disposal System Section 68 (Local Government Act)	0	40			40
Event Approvals Section 68 Local Government Act	1	5			6
<b>Total</b>	<b>53</b>				
<b>Impounding</b>					
Abandoned Vehicles	11	10			21
Shopping Trolleys	3	0			3
<b>Total</b>	<b>14</b>	<b>10</b>			<b>24</b>
<b>Impounding Animals</b>					
<b>Dogs (Incoming)</b>					
Impounded	428	427			855
Surrendered	160	152			312
<b>Total</b>	<b>588</b>	<b>579</b>			<b>1167</b>
<b>Dogs (Outgoing)</b>					
Released to Owner	219	190			409
Sold	130	98			228
Euthanaised - Surrendered by Owner	95	103			198
Euthanaised - Restricted Dog	14	7			21
Euthanaised - health/temperament	6	3			9
Euthanaised - Unable to re-home	138	136			274
<b>Total</b>	<b>602</b>	<b>537</b>			<b>1139</b>
<b>Cats (Incoming)</b>					
Impounded	147	284			431
Surrendered	26	96			122
<b>Total</b>	<b>173</b>	<b>380</b>			<b>553</b>

4.2 Compliance Services Section Quarterly Activity Summary Report October To December 2010

Activity	2009/10 Quarter Result				YTD
	1	2	3	4	
<b>Cats (Outgoing)</b>					
Released to Owner	14	4			18
Sold	18	23			41
Euthanaised - Surrendered by Owner	15	58			73
Euthanaised - health/temperament	7	20			27
Euthanaised - Unable to re-home	117	274			391
<b>Total</b>	<b>171</b>	<b>379</b>			<b>550</b>
<b>Penalty Notices</b>					
Companion Animals	285	267			552
Environmental - includes litter and waste dumping	41	45			86
General - includes Public Health and Food Safety	22	27			49
Land Use	8	5			13
Parking (car parks)	1101	489			1590
Parking (on street)	1786	714			2500
<b>Total</b>	<b>3243</b>	<b>1547</b>			<b>4790</b>
<b>Compliance Programs</b>					
<b>Illegal Parking in School Zones</b>					
Patrols	50	20			70
Warnings	0	4			4
Penalty Notices	123	50			173
<b>Illegal Signs</b>					
Complaints - Council property	4	4			8
Complaints - private property	0	0			0
Letters sent	4	2			6
Cautions issued	0	0			0
Fines issued	0	0			0
Removed	256	89			345
<b>Illegal Trail Bike Riding</b>					
Joint Patrols	2	2			4
Bikes Seized	4	0			4
Penalty Notices (Police)	29	17			46

4.2 Compliance Services Section Quarterly Activity Summary Report October To December 2010

Activity	2009/10 Quarter Result				YTD
	1	2	3	4	
Penalty Notices (Council)	3	2			5
Charges	9	3			12
Juvenile Cautions	8	2			10
<b>Litter From Vehicles</b>					
Patrols	1	0			1
Penalty Notices	3	14			17
<b>Shopping Trolleys</b>					
Patrols	0	0			0
Trolleys Tagged	0	0			0
Trolleys Impounded	0	0			0
Contractor Notified	60	10			70
<b>Truck Parking</b>					
Patrols	4	4			8
Penalty Notices	32	22			54

## **4.3 Bradbury Inn Hotel - Application to Amend Licence conditions**

### **Reporting Officer**

Director Planning and Environment

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### **Attachments**

1. Application and Supporting Documentation to the Casino, Liquor and Gaming Control Authority to Amend Licence Conditions (under separate cover).
2. Submission by Council to the Casino, Liquor and Gaming Control Authority (under separate cover).

### **Purpose**

To resubmit for Council's consideration a report concerning a request to amend the licence conditions for the Bradbury Inn Hotel.

### **History**

Council at its meeting of 2 March 2010 considered a report relating to an application by the Bradbury Inn Hotel to the Casino, Liquor and Gaming Control Authority to amend its licence conditions where it resolved:

*"That a decision in this matter be deferred pending the receipt of further legal advice."*

The legal advice has been received and is subject of a report to Council as Item 13.2 in Council's Corporate Governance Agenda. Accordingly, the previous report is submitted for Council's further consideration.

### **Report**

Previous report submitted to Council 23 February 2010.

### **Purpose**

To advise Council of an application by Bradbury Inn Hotel to the Casino, Liquor and Gaming Control Authority to amend its licence conditions and to seek Council's endorsement of a submission lodged with the Authority.

### **History**

Councillors received a briefing on this matter at the briefing session held on 16 February 2010, where the issues raised in this report were discussed prior to Council receiving a report to confirm its direction on this matter.

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On 13 November 2009 the Bradbury Inn Hotel was granted a conditional 24 hour (7 days per week) licence to trade, following a 12 month trial period. The trial period included a consultation group with representatives of the local community, Police and Council staff. Notwithstanding the 24 hour trading licence, Council understands that the Hotel currently closes at 4am and as required by its licence has a 'lock-out' (the time after which persons are not permitted to enter the hotel) commencing at 1am.

The Hotel lodged an application to the Casino, Liquor and Gaming Control Authority on 27 January 2010 to amend a number of its licence conditions. The application proposes to; move the 1am lock-out back to 3am lock-out on a 6 month trial basis, to assess the impact on this variation and to remove conditions relating to the Bradbury Shopping Centre once the boundary fencing approved by the Land and Environment Court on 29 May 2009 is erected.

Council has until 26 February 2010 to make a submission to the Authority should it wish to do so.

## **Report**

A copy of an application lodged with the Authority on 27 January 2010 by the licensee of the Bradbury Inn Hotel to amend a number of its licence conditions has been received by Council.

The significant proposal included in the application is a request to vary the existing lock-out from 1 am to 3 am on a six month trial basis, to assess the impact of this variation.

The other conditions forming part of the application are conditions involving the adjoining Bradbury Shopping Centre. Once the dividing fence, approved by the Land and Environment Court, is erected between the two premises, it will not be technically possible to comply with a number of conditions on the current hotel licence, which requires the hotel to conduct certain activities on the shopping centre land. The application seeks to vary these conditions effective from the construction of the fence.

The request to vary the conditions that will not be technically possible to comply with once the dividing fence is installed are logical and it is suggested that Council not raise objection to these. Consequently they will not be discussed in further detail in this report. However, the request to vary the existing lock-out from 1 to 3 am on a six month trial basis requires further discussion to address the likely impacts, should this variation be approved.

The supporting documentation attached to the application indicates that the licensee previously held discussions with the Acting Local Area Commander of Police and the Licensing Coordinator who have expressed some concerns about altering the lock-out time for the hotel, due to perceived problems with what is termed "Patron Migration".

In defence of the perceived problems with patron migration the application makes the following comments:

- There is already occurring (with the 1.00 am lock-out) "patron migration" to the Bradbury Hotel from other venues with the LGA.
  - Patron migration is being successfully managed by hotel staff and security.
  - No disturbances have occurred in the turning away of patrons after 1.00 am.
-

- The Hotel has not been informed by the Police or Council of any disturbances.
- The Hotel conducts a courtesy bus for patrons living in the local area which is also available for people who have been turned away from the hotel.
- The extent of the migration is minimal as the approximate population counts for the hotel on Thursday, Friday and Saturday evenings suggests that the patrons in the hotel at 1.00 am on each of these evening is only 60 people.
- Migration would mainly be by car due to limited public transport available at this time of night and also as the venues that patrons may migrate from are considered not to be within walking distance.
- The existing closing times of the venues that the patrons may migrate from also restrict the number of persons that may migrate as these venues primarily close at the same time as the Bradbury Hotel as detailed below:
  - Campbelltown City Tavern - 3 am
  - Court Tavern - 3 am
  - Leumeah Club Hotel - 3 am
  - Campbelltown Club Hotel - 24 hours
  - Campbelltown Catholic Club - 4 am
  - Campbelltown RSL - 3 am
  - Club 209 - 3 am

The application suggests that the Community Consultation Group used to monitor the previous trial of the extended trading hours be re-established to consider and discuss the application.

As part of the assessment of the application, Council officers contacted Campbelltown Licensing Police to determine the closing and lock out times for a number of venues within proximity to the Bradbury Inn Hotel including those on the above list provided by the licensee. This information is summarised in the table below:

Premises	Closing Time as Per Licence	Actual Closing time	Lock Out Time
City Hotel	3 am	1 or 1.30am	1.30am (1am voluntary lock out)
Court Tavern,	3 am	Mon - Wed 12 am Thu - Sat 1 am Sun 8 pm	1 am
Leumeah Club Hotel	5 am	Thu - Sat 4 am Sun - Wed 3 am	3 am
Campbelltown Club Hotel	5 am	Sun - Thu 3 am Fri - Sat 6 am	No lockout
Campbelltown Catholic Club	Not specified	Mon - Thu 4 am Fri - Sat 6 am Bar closes 3 am	2 am (non members only)
Campbelltown RSL Club	3 am	3 am	1 am (non members only)



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Premises	Closing Time as Per Licence	Actual Closing time	Lock Out Time
Club 209	3 am	3 am (last drinks 2.30 am)	1.30am
Wests	3 am	6 am	11.30pm (non-members only)

By comparing the information in the above table to the current 1 am lock-out time at the Bradbury Inn Hotel, the only premises with either a consistent closing or lock-out time prior to the 1am lock-out at the Bradbury Inn Hotel where patron migration could occur would be Wests. As Wests would be the furthest premises (on the list) from Bradbury Inn Hotel, the level of patron migration would be minimal. Also as there are other closer venues with later lock-out times it is expected that patrons would migrate to these closer premises.

However comparing the information to the proposed 3am lock-out shows that 2 premises (City Hotel and Court Tavern) currently close before the 3 am lock-out and a further 3 premises (Campbelltown Catholic Club, Campbelltown RSL and Club 209) have a lock-out time prior to the proposed 3am lock-out.

Therefore the proposed 3 am lock-out provides the potential for future patron migration that currently does not exist from these premises to the Bradbury Inn Hotel. Given the suburban setting of the Bradbury Inn Hotel this may cause disturbance to the peace and good order of the neighbourhood by way of noise or antisocial behaviour.

It should also be noted that at the time of the original application for 24 hour trading the Bradbury Inn Hotel made a commitment to 3 key points in support of their application which were; the 1 am lock-out, the staggered departure of patrons and the provision of a courtesy bus for patrols. While the last two issues are not to be altered by the amended application the 1 am lock-out approved on 13 November 2009 is now requested to be amended.

A review of Council's records indicates that Council has not received any complaint from members of the public in relation to the operation of the Bradbury Inn Hotel since the 24 hour trading licence was issued on 13 November 2009. Also the Bradbury Inn Hotel is currently not listed on the Authority's Declared Premises Schedule.

Council staff met with members of the Licensing Unit of Campbelltown Local Area Command on 17 February 2010 to discuss the application. Police at the meeting raised concerns over potential patron migration to the Bradbury Inn Hotel should the 3am lock-out be approved. Police were also concerned that this impact may be exacerbated as many of the premises were currently closing earlier than their maximum permitted closing time which appears on their licence. It was the intention of the Police at the meeting, to make a submission to the Casino, Liquor and Gaming Control Authority opposing the application.

It is acknowledged that the application seeks to alter the time of the lock-out from 1am to 3am is for a 6 month trial only and at present the operation of the premises is not causing a disturbance to the peace and good order of the neighbourhood. However, there is potential for increased patron migration from other licensed venues within proximity to the Bradbury Inn Hotel which may impact on the peace and good order of the neighbourhood by way of noise and possible anti social behaviour.

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As the timeframe for comment on the application meant that it was not possible for Council to consider a report on this matter prior to the deadline for submissions closing, the matter was discussed at a briefing on 16 February 2010. Council's officers review of the amendments to the Licence has indicated that a 3am lockout proposal is not in the public interest and therefore should not be supported. A submission (Attachment 2) expressing the above concerns and objecting to the proposed extension of the lock out provision to 3am will be referred to the Casino, Liquor and Gaming Control Authority prior to the closing date for submissions date on behalf of Council. A copy of that submission is attached to this report and it is recommended that it be endorsed by the Council.

### **Officer's Recommendation**

That Council endorse the submission to the Casino, Liquor and Gaming Control Authority contained in Attachment 2

Having declared an interest in this Item Councillor Matheson vacated the Chair, left the Chamber and did not take part in discussion nor debate on this matter.

In the absence of the Chairperson Councillor Rowell assumed the Chair during discussion of this Item.

**Committee Note:** Mr Lidis, Town Planning Consultant and Mr Nellies, Licensee addressed the Committee in support of the application.

### **Committee's Recommendation: (Greiss/Thompson)**

That a decision in this matter be deferred to allow for further community consultation.

### **CARRIED**

Following discussion of this Item Councillor Matheson returned to the Chamber and reassumed the Chair.

### **Council Meeting 6 April 2010 (Kolkman/Oates)**

That the Officer's Recommendation be adopted.

### **Council Resolution Minute Number 42**

That the Officer's Recommendation be adopted.

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## **5. GENERAL BUSINESS**

Nil.

## **10. CONFIDENTIAL ITEMS**

### **10.1 Confidential Information Relating to Various Items on the Planning and Environment Agenda 30 March 2010**

#### **Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
-