



Camden Council

Business Paper

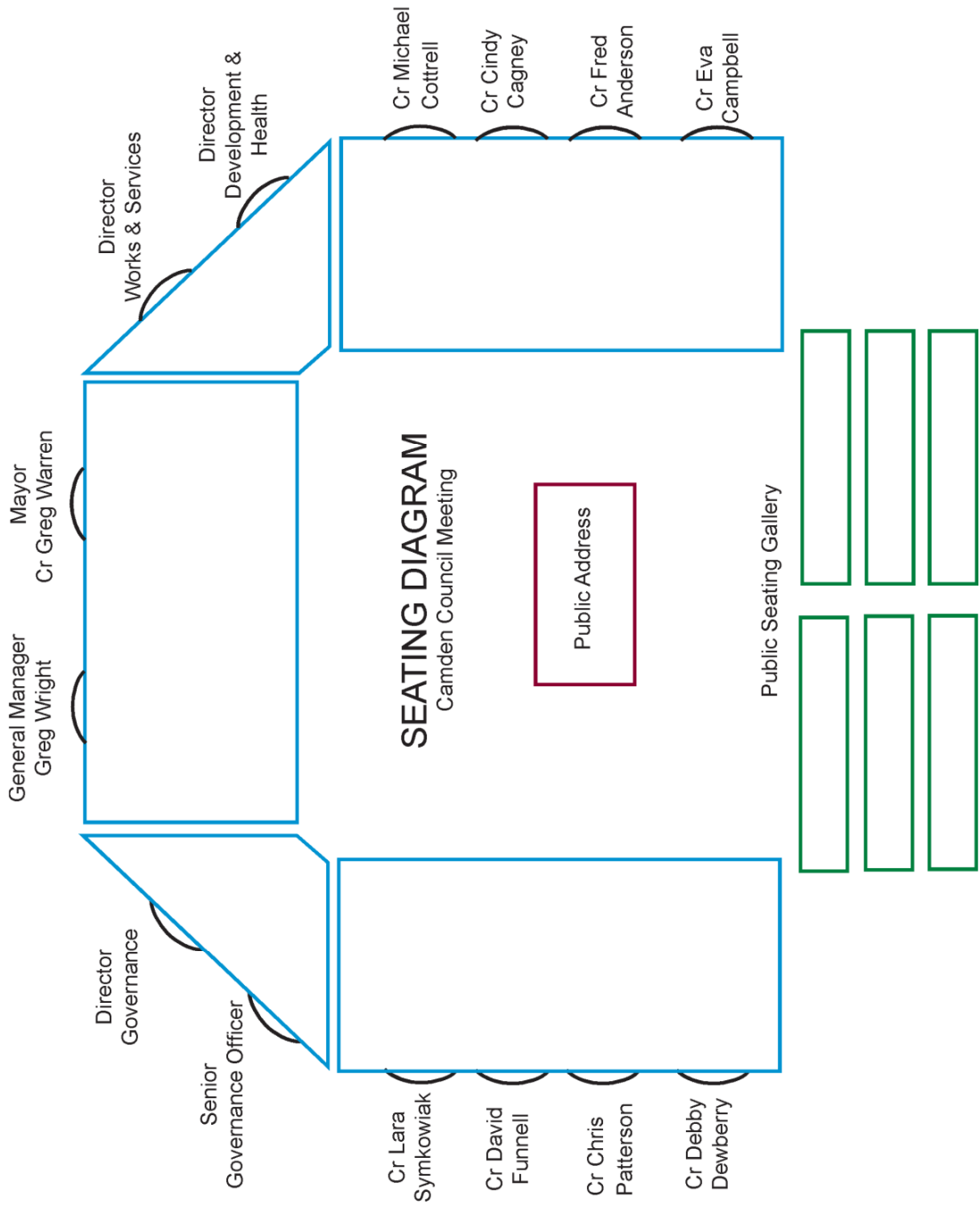
Ordinary Council Meeting
28 June 2011

Camden Civic Centre
Oxley Street
Camden



COMMON ABBREVIATIONS

AEP	Annual Exceedence Probability
AHD	Australian Height Datum
BCA	Building Code of Australia
CLEP	Camden Local Environmental Plan
CP	Contributions Plan
DA	Development Application
DECCW	Department of Environment, Climate Change & Water
DCP	Development Control Plan
DDCP	Draft Development Control Plan
DPI	Department of Planning and Infrastructure
DLG	Division of Local Government, Department of Premier & Cabinet
DWE	Department of Water and Energy
DoH	Department of Housing
DoT	NSW Department of Transport
EIS	Environmental Impact Statement
EP&A Act	Environmental Planning & Assessment Act
EPA	Environmental Protection Authority
EPI	Environmental Planning Instrument
FPL	Flood Planning Level
GCC	Growth Centres Commission
LAP	Local Approvals Policy
LEP	Local Environmental Plan
LGA	Local Government Area
MACROC	Macarthur Regional Organisation of Councils
OSD	Onsite Detention
REP	Regional Environmental Plan
PoM	Plan of Management
RL	Reduced Levels
RTA	Roads & Traffic Authority
SECTION 149 CERTIFICATE	Certificate as to zoning and planning restrictions on properties
SECTION 603 CERTIFICATE	Certificate as to Rates and Charges outstanding on a property
SECTION 73 CERTIFICATE	Certificate from Sydney Water regarding Subdivision
SEPP	State Environmental Planning Policy
SRA	State Rail Authority
SREP	Sydney Regional Environmental Plan
STP	Sewerage Treatment Plant
VMP	Vegetation Management Plan
WSROC	Western Sydney Regional Organisation of Councils



Media



ORDINARY COUNCIL

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ORDINARY COUNCIL

SUBJECT: APOLOGIES

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

RECOMMENDED

That leave of absence be granted.



ORDINARY COUNCIL

SUBJECT: DECLARATION OF INTEREST

NSW legislation provides strict guidelines for the disclosure of pecuniary and non-pecuniary Conflicts of Interest and Political Donations.

Council's Code of Conduct also deals with pecuniary and non-pecuniary conflict of interest and Political Donations and how to manage these issues (Clauses 7.5 -7.27).

Councillors should be familiar with the disclosure provisions contained in the Local Government Act 1993, Environmental Planning and Assessment Act, 1979 and the Council's Code of Conduct.

This report provides an opportunity for Councillors to disclose any interest that they may have or Political Donation they may have received relating to a Report contained in the Council Business Paper and to declare the nature of that interest.

RECOMMENDED

That the declarations be noted.

ORDINARY COUNCIL

SUBJECT: PUBLIC ADDRESSES

The Public Address segment (incorporating Public Question Time) in the Council Meeting provides an opportunity for people to speak publicly on any item on Council's Business Paper agenda or on any matter within the Local Government area which falls within Council jurisdiction.

Speakers must book in with the Council office by 4.00pm on the day of the meeting and must advise the topic being raised. Only seven (7) speakers can be heard at any meeting. A limitation of one (1) speaker for and one (1) speaker against on each item is in place. Additional speakers, either for or against, will be identified as 'tentative speakers' and should only be considered where the total number of speakers does not exceed seven (7) at any given meeting.

Where a member of the public raises a question during the Public Address segment, a response will be provided where Councillors or staff have the necessary information at hand; if not a reply will be provided at a later time. There is a limit of one (1) question per speaker per meeting.

All speakers are limited to 4 minutes, with a 1 minute warning given to speakers prior to the 4 minute time period elapsing.

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

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

RECOMMENDED

That the public addresses be noted.



ORDINARY COUNCIL

SUBJECT: CONFIRMATION OF MINUTES

Confirm and adopt Minutes of the Ordinary Council Meeting held 14 June 2011.

RECOMMENDED

That the Minutes of the Ordinary Council Meeting held 14 June 2011, copies of which have been circulated, be confirmed and adopted.



ORDINARY COUNCIL

SUBJECT: MAYORAL MINUTE - CAMDEN FAMILY DAY CARE - QUALITY ASSURANCE

FROM: Mayor

BINDER: Mayoral Minutes

I am very happy to advise that Camden Family Day Care has successfully completed the Family Day Care Quality Assurance process and has been granted Accreditation status by the National Childcare Accreditation Council (NCAC), again receiving the highest possible rating.

Council's Family Day Care Scheme coordinates placement of children and monitoring and training of 48 Educators, operating as small businesses from their homes, providing care and education for over 400 children.

The five step quality assurance process involves all stakeholders; staff, Educators, parents and children by reviewing the service quality across the following areas:

1. Interactions
2. Physical Environment
3. Children's Experiences, Learning and Development
4. Health, Hygiene, Nutrition and Wellbeing
5. Educators and Coordination Unit staff
6. Management and Administration

The NCAC congratulated the scheme's efforts toward continuing improvement during participation in the Quality Assurance cycle and made particular reference to the scheme's achievements in Quality Area 1- Interactions. The NCAC noted that the Educators provided relaxed and welcoming environments for families and children.

The rating system is graded from unsatisfactory through to high quality. The Camden Family Day Care scheme has consistently demonstrated a commitment to quality outcomes for the children in our community by ranking in the 'High Quality' level across all areas for the fourth consecutive round of the national quality assurance process.

RECOMMENDED

That the information be noted.

ORDINARY COUNCIL

ORD01

ORD01

SUBJECT: CHANGE OF USE FROM AN OFFICE BUILDING TO A SEX SERVICE PREMISE AT NO 1 (LOT 11 DP 834527) KIBBLE PLACE, NARELLAN

FROM: Director Development & Health

BINDER: Binder: Development Applications 2011

DA NO: 27/2011
OWNER: G and S Diesel Pty Limited
APPLICANT: Mr G Hall
ZONING: IN1 General Industrial

PURPOSE OF REPORT

The purpose of this report is to seek Council's determination for a Development Application (DA) for a change of use from an office building to a sex services premise at No 1 (Lot 11 DP 834527) Kibble Place, Narellan. The application is referred to Council in accordance with its delegations as there remains unresolved objections to the proposal.

SUMMARY OF RECOMMENDATION

It is recommended that the DA be approved subject to the attached draft development consent conditions.

BACKGROUND

Council received this Development Application on 11 January 2011. Subsequently, the information submitted was assessed and additional information requested.

Notification of the application was undertaken for a period of 30 days, including newspaper notices and individual mailing to 405 property owners and two community groups. Internal and external referrals were also undertaken and are detailed further in this report. A total of 31 objections were received.

The additional information has now been assessed and submissions received have been considered, and the application is now able to be referred to Council for its determination.

This application was originally considered by Council at the meeting of 14 June 2011. At that meeting, Council resolved to defer the matter to the meeting of 28 June 2011.

THE SITE

The site is located on the corner of Kibble Place and Millwood Avenue. The property address is known as No 1 (Lot 11 DP 834527) Kibble Place. **A location plan is provided at the end of this report.**

The site is approximately 2,313m² and has a vehicle access point from both Millwood Avenue and Kibble Place.

The site is occupied by three buildings being a storage shed, workshop and a single storey office building. These buildings were approved by Development Consent 254/1998 which also approved a fitout for the purpose of a plumbing business. Since then the land use has changed to a vehicle repair station for heavy vehicles.

The building subject to this application is the single storey office building that is located at the northern corner of the site.

The site sits within the Narellan Industrial Area which is predominately zoned General Industrial (IN1). This area is bracketed by various other land use zones such as Light Industrial (IN2), Business Development (B5) and Low Density Residential (R2).

The IN2 and B5 zones are approximately 200m and 450m away from the site respectively, whilst the R2 zone commences approximately 70m away. This residential precinct is known as The Links and the back boundary of the residential allotments adjoin the industrial precinct. There is no pedestrian or vehicle link between the residential and industrial zoned land.

Two (2) industrial properties separate the subject site and the R2 zoned land. One site is used as a truck depot and the other is occupied by an industrial/office building which is used by a civil engineering business.

Immediately surrounding the subject site are various general and light industrial land uses.

A land use analysis plan has been provided with the Business Paper supporting documents for information purposes to Councillors.

Within the vicinity of the industrial estate are three hockey fields and one football field within the same complex. Access to these fields is gained via Millwood Place past the subject site.

THE PROPOSAL

The proposal seeks approval for a change of use from an office building to a sex services premise. This will include alterations and additions to the existing office building that will involve an extension to the ground floor footprint and the construction of an additional floor. As a result there will be an increase in the floor area by 138m², taking the total floor area to 268m². **A copy of the proposed plans is provided at the end of this report.**

The existing car parking area adjacent to the building will be reconfigured to allow eight (8) spaces for the exclusive use of the sex services premise. This parking area will be separated from the existing industrial activity by a 2m high security fence and will be accessed by a second driveway off Millwood Avenue (to be constructed as part of this application).

The original nine spaces within the overall site will be relocated throughout the remainder of the site and away from the parking for the sex services premises.

Within the building, the application proposes to fitout and provide areas such as:

- a reception area;
- waiting rooms;

- five (5) working rooms (one of which has disabled facilities);
- a managers office; and
- laundry facilities.

The proposed hours of operation are 9.00am to 3.00am, 7 days a week.

The application proposes a maximum of five sex workers on the premises at any one time.

No advertisements or advertising structure is proposed within the subject application. The application has stated that there will only be a street number at the front of the premises adjacent to the pedestrian entry to denote the location and entry point.

A plan of management for the operation of the sex services premise has been submitted and is discussed below.

NOTIFICATION

The application was publicly notified via the following methods:

- an exhibition period of 30 days;
- notification placed in the local newspaper;
- neighbourhood notification to 405 properties; and
- notification of two (2) community groups.

During the exhibition period it was determined that given the potentially sensitive nature of the proposal, it would be reasonable to notify each individual owner of each strata unit. As a result, 67 individual units were notified and were provided the statutory 14 day period to make comment on the proposal.

In total, 31 objections were received and a detailed assessment is made in the "Any Submissions" section of this report. **A copy of the submissions is provided with the Business Paper supporting documents.**

PLANNING CONTROLS

The following are relevant planning controls that have been considered in the assessment of this development application:

- Camden Local Environmental Plan 2010
- Camden Development Control Plan 2011.

ASSESSMENT

The following assessment is made in accordance with the requirements of Section 79C of the *Environmental Planning and Assessment Act 1979*:

The provisions of any Environmental Planning Instrument

Camden Local Environmental Plan 2010

The land is zoned IN1 General Industrial. The application defines its use as a sex services premise which, under the LEP, *means a brothel, but does not include home occupation (sex services).*

A 'sex service' is defined as *sexual acts or sexual services in exchange for payment.*

A sex services premise is permitted with development consent in this zone.

Zone Objectives – The relevant objective states *to enable non-industrial land uses that are compatible with and do not detract from the surrounding industrial and warehouse land uses.*

This objective provides opportunity for a sex services premise to be located within the zone. The subject application does not detract from the surrounding land uses in that the business will operate from an existing building within the precinct. The following LEP clauses are relevant to this development:

Clause 4.3 Height of building – The proposal is under the 9.5m maximum height limit.

Clause 4.4 Floor space ratio – The additional floor area will not exceed the maximum floor space ration for this area of 1:1.

Clause 7.6 Sex Services Premises – This Clause states that development consent must not be granted to development for the purposes of a sex services premise if the premise will be located on land that adjoins, is directly opposite, or is separated only by a local road from land:

- (a) in Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone RE1 Public Recreation, or
- (b) used for the purposes of a child care centre, a community facility, a school or a place of public worship.

Officer comment: The site is not located in an area that is described by (a) or (b) above.

Clause 7.6.3 - In deciding whether to grant consent to development for the purposes of sex services premises, the Consent Authority must consider the impact the proposed development would have on any place likely to be regularly frequented by children.

Officer comment: This matter is discussed in other sections of this report.

Any draft Environmental Planning Instrument

There are no draft Environmental Planning Instruments that are relevant to this site or development.

Any Development Control Plan

Camden Development Control Plan 2011

Camden Development Control Plan 2011 (the DCP) came into force on 16 February 2011 and the subject DA was lodged on 19 January 2011.

The DCP states that *"it applies from the date of commencement. However, development applications lodged prior to the commencement date (ie. 16 February 2011) may be assessed under the provisions of the Camden Development Control Plan 2006 (Camden DCP 2006)".*

Unlike strict savings and transitional provisions for new Environmental Planning Instruments, such provision for DCPs can be at the discretion of each Council and is principally based on what the DCP advocates.

In this instance, considerations will be made to the DCP and a general discussion on any different/relevant controls contained within the now superseded Camden DCP 2006 will be provided as well. This approach is considered the most acceptable and thorough. Should the applicant withdraw and again lodge the same application today, then the 2011 DCP only, would apply.

Part D Control applying to specific land uses/activities

Section 5.4 Sex Services Premises

Control 1 - Development for the purpose of a sex service premise must not be carried out if the building or place is adjacent to any property used or partly used for residential purposes.

Officer comment – The subject site is located approximately 70m away from the back boundary of a residential property and is separated by two properties being used for industrial purposes.

Control 2 - Sex services premises must not be located near, or within view from a place of public worship, child care centre, hospital, community facility, school, public open space, residential development or any place regularly frequented by children for educational, recreational or cultural activities.

Officer comment – The building cannot be viewed from any residential property. The site is located 250m from the Macarthur hockey fields and a football field. A further discussion on this is detailed in the "Likely Impacts of the Development" section of this report.

Control 3 - The operation of the sex service premises must not affect the amenity of the surrounding neighbourhood because of its size, operating hours, number of employees or clients.

Officer comment – The operation of the sex services premises is at a scale and within a locality that is likely not to affect the amenity of the surrounding neighbourhood. Notwithstanding, a time trial condition would be imposed to allow Council to reconsider its hours of operation during times that some disturbances may occur. This is discussed further in other sections of this report.

Control 4 - The entrance to, and exit from, a sex service premise is not to be within view of any place regularly frequented by children.

Officer comment –The entrance is located within the site and is not visible from the street.

Control 5 - A suitable waiting area is to be provided in the sex service premise so as to prevent clients loitering outside the building.

Officer comment –The application proposes to provide five waiting areas within the building.

Control 6 - The operator of a sex service premise shall ensure proper conduct of patrons exiting the building.

Officer comment –A Plan of Management has been submitted and it discusses safety and security measures to be implemented for the operation of the business. The application states that a ‘*security guard shall be employed and present on the site between the hours of 8.00pm and until such time as the last staff member has left the premise.*’ It is envisaged that this security guard will monitor patrons entering and leaving the building.

Control 7 - Sex workers must not display themselves in windows or doorways of the sex service premise or outside such buildings.

Officer comment – This requirement is a recommended development consent condition.

Control 8 - The NSW Department of Health should be contacted in regard to relevant health standards for the operation of a sex service premise.

Officer comment - This requirement is a recommended development consent condition.

Control 9 - Advertising signs and structures are to be discreet and inoffensive. No signs may display words or images, which are in the opinion of the Council, sexually explicit, lewd or otherwise offensive.

Officer comment – No advertising signs or structures are proposed as part of this DA.

Control 10 - Any sign should not exceed 0.3m x 0.6m in size (or other dimensions, but of equivalent surface area), and identifies only the name of the person who conducts the business or the registered name of the business.

Officer comment - No advertising sign and structure is proposed as part of this DA

Control 11 - All buildings used as a sex service premise must be fitted with the necessary services and facilities which are currently required for Class 5 buildings (an office building used for professional or commercial purposes) under the *Building Code of Australia*.

Officer comment - This requirement would be a recommended development consent condition.

Control 12 - The development application must specify the name and residential address of the person responsible for operating the sex service premise. If development consent is granted, a condition of any consent will require written notification to Council of a change of name or address of the nominated operator.

Officer comment - This requirement would be a recommended development consent condition.

Control 13 - All proposals must comply with Section B1.8 of this DCP with regard to trial periods. This control states:

- (a) In the event that Council proposes to grant development consent for the use of premises and the use is to be carried out on, in, or adjacent to a residential zone pursuant to LEP 2010, or is to be carried out on, in, or adjacent to any sensitive

land use, and the proposed use is likely to have an adverse impact on surrounding land uses, Council may include as a condition of consent a trial period for a maximum of 12 months from the date of the issue of the Occupation Certificate.

- (b) The imposition of a trial period will enable Council to assess the actual impact of the proposed development on surrounding land uses once the proposed development commences.
- (c) An application for the removal of the trial period condition should be lodged no less than three (3) months before the expiry of the trial period. In determining an application to remove the trial period condition, Council will have regard to the operation of the use within the preceding trial period.

Officer comment –This control was adopted by Council through the adoption of the DCP and stems from a recent Land and Environment Court judgement that Council was subject to.

Relevantly, the proceedings of *Liapis v Camden Council [2010] NSWLEC 1230* was based on whether the development consent required a time trial condition for a development involving a fit-out of a retail unit to be used as a liquor shop.

The appeal was upheld for the following reasons:

- the (then) Camden DCP did not provide for Trial Periods;
- the trial period condition allows for the trial period to extend indefinitely;
- there is “no evidence of likely impacts that warrant the imposition of a trial period.”

During Commissioner Fakes deliberations of findings she states that *‘The fit-out and stocking of the liquor store will require a substantial financial investment. The term of the lease is a minimum of five (5) years. I consider that the degree of uncertainty inherent in the condition....., places the applicant in an unreasonable situation’.*

With the advent of the 2011 DCP, the time trial provides opportunity to review the business in its setting and to monitor certain aspects that during the assessment process cannot be fully understood or even verified. In the case of the subject application, it is considered that this uncertainty would extend only to possible anti-social behaviour during the evening trade and whether the business strictly adheres to the Plan of Management.

On this basis it is recommended that development consent conditions be imposed to allow the operation of the sex services premise in perpetuity, but impose development consent conditions of a trial period of the hours of operation which may cause a disturbance or interfere with the surrounding area.

Therefore the permanency of operating hours between 10.00pm and 3.00am would be subject to a trial period condition. This would require a Section 96 Modification to be lodged to allow Council to reassess, among other things, the impact the business has on the locality during these times.

Control 14 In determining a development application for sex services premise, Council consider:

- (a) whether or not the operation of the sex service premise is likely to cause disturbance in the area when taking into account other sex service premises operating in the area or other land uses within the area involving similar hours of operation;

Officer comment – There are no sex services premises within the area for which Council has issued Development Consent and no disturbance is considered likely.

- (b) the design and external appearance of the building and any associated structure and their impact on the character of the surrounding built environment;

Officer comment – Both the existing building and proposed additions are in character with the surrounding built environment. The addition will be constructed of brick, which is consistent with the surrounding materials both on the subject site and within its vicinity.

- (c) the content, illumination, size and shape or any advertisement and distinctive external lighting;

Officer comment – No advertising signs or structures are proposed as part of this DA.

- (d) the operation of the sex service premise is likely to cause a disturbance in the area because of its size, operating hours, number of employees or clients.

Officer comment – The proposed development consent conditions have been developed in an endeavour to ensure these aspects of the operation do not cause a disturbance in the area.

Camden Development Control Plan 2006

Part F: Site Specific Control: Chapter 2 Brothels

The relevant controls from the now superseded DCP have been considered.

Control 4 Location Parameters – The DCP provided a map illustrating boundaries which a brothel is able to be located within. The subject site is located outside of this area by approximately 80m.

Importantly, Local Environmental Plan 2010 provides considerations for Sex Services Premises and it is taken that the location controls and various planning considerations within the LEP prevail over the above map.

On another parallel point, the newly adopted Development Control Plan 2011 has removed this map. A principal reason for this is that the LEP prevails in its considerations.

Control 6.1.a General - All DA's are reported to a full Council (ie. they are not determined under delegated authority).

Officer comment – This application is before Council for determination.

Control 6.1.b General - Council will refer any DA's to the local Police with a notification period of twenty-one (21) days.

Officer comment – The application was referred to Camden Police for a Safer by Design Evaluation. The Police have rated this development as a Medium Crime Risk and have included a number of recommended development consent conditions. These conditions are recommended for inclusion in any development consent issued. **A copy of this response is provided with the Business Paper supporting documents.**

Part D: Chapter 1 Car parking

The original development approval required nine vehicle spaces to be provided. It is intended to maintain the nine spaces for the industrial use and create an additional eight for the sex services premise.

Whilst the DCP does not specify a parking requirement for a sex services premise, it is considered that the eight spaces are adequate for the five working rooms.

Alternatively, if the lowest common rate was calculated for a business premise (being one space per 30m² of Net Floor Area), the required parking would be 7.5 spaces. Therefore the parking provision is considered satisfactory.

Any planning agreements

There are no planning agreements on the land or the subject development proposal.

The likely impacts of the development

Proximity to sensitive land uses

The Macarthur hockey fields are located 250m away from the subject site. The fields are located at the end of Millwood Avenue and access to the field is gained by passing the subject site.

Council Planners contacted the Macarthur Hockey Association to get a better understanding of the field's usage. The following times were stated which are only for the hockey season (normally between March – September). It was also noted that the weekday sessions were scheduled so that children attend the fields at the earlier times while the night-time sessions were for adults.

- Monday to Thursday: 4.30pm – 9.00pm
- Friday: 5.30pm -10.00pm
- Saturday: 8.00am - 3.30pm
- Sunday: 8.30am - 6.30pm.

It was also noted that during daytime hours, the fields may be used by local schools for gala days or infrequent training sessions. These bookings are not regular and the children are always transported by bus to the venue.

During the assessment process, three inspections took place on various days and included a Saturday between 9.00am and 1.00pm and on a Monday at 4.00pm.

During all times it was observed that all patrons coming into the venue were in vehicles. On the Saturday morning, when competition was on and presumably the busiest period, vehicles were parked along Millwood Avenue but not in any location or proximity that a child may be able to adequately view towards, and into, the sex premises.

There is opportunity for residents in the The Links estate to walk to the hockey fields, however this would occur through land off Valley View Drive. This route is approximately 240m north of the subject site and does not pass by or through either Millwood Avenue or Kibble Place.

Social Impact

The relevant planning considerations on social impact would relate to possible anti-social behaviour.

The applicant has lodged a Social Impact Statement in this regard and provides the following:

"Security measures are designed to supervise the immediate area outside the premises, as well as inside the premises. In the event of an incident, the Narellan Police Station on Camden Valley Way, Narellan would allow a relatively rapid Police response to address any anti-social behaviour and ensure it is dealt with in a timely manner.

It is not expected that patrons of the premises will loiter in the area either before or after attending the premises. As stated above, most patrons are discrete in their nature and will attend the premises by themselves rather than in groups.

The industrial area is well lit, with a reasonably wide road. There are no identified areas where a person could hide in order to commit a crime."

Having regard to the above, point one is able to be effectively managed by the general measures proposed within the Plan of Management, while the latter two points are minimised by specific security provisions within that Plan. As noted above, any anti-social behaviour can be reviewed at the time that Council undertakes any reconsideration of the evening hours of operation.

Similarly, for the workers at the premises, the Plan of Management outlines their roles and responsibilities which include following the premises Code of Conduct and the implementation of several Occupational Health and Safety Policies and Procedures.

Crime Prevention through Environmental Design and Safety

The application states that the following measures have been incorporated within the building and its operation to enhance safety, and to prevent crime and anti-social behaviour:

- management and monitoring of all people entering and leaving the premises via electronic systems;
- entrance to reception, clients' waiting area, service rooms and personal areas are accessible by controlled access;
- external video cameras in car park and at the front of the building (CCTV);
- duress alarms strategically placed in each service room, in the personnel private facilities and at the reception area;
- security lighting; and
- maintenance of incidents and accident/injury registers. Any breach of security or accident or injury is to be entered into the requisite registers. The incident

book is to be provided to Police if and when necessary. Any serious accident, injury or emergency situation will be reported to WorkCover NSW.

The above are incorporated into the recommended development consent conditions which would also include all recommendations suggested by the Police.

The suitability of the site for the development

The site is within an industrial precinct where both vehicle and pedestrian access can only be gained by the spine roads of Camden Valley Way and/or The Northern Road, which therefore limits any thoroughfare from/to nearby residential areas.

The site is located away from any pedestrian and public transport route that may be used by children and therefore in terms of services, vehicular and pedestrian access, lack of visual prominence and advertising or business signage, the site is suitable for the development.

Any submissions made

As mentioned previously, the application was notified widely, and a total of 31 objections were received. The concerns raised are summarised below with a comment.

- Close proximity to hockey field which is frequented by children and visitors who drive or walk to the fields and past the premises.

Officer comment: This matter has been discussed previously in this report. In addressing this submission, on three separate occasions a site inspection was undertaken to determine the frequency of children passing the premise by foot. The time of the site inspections were either during or before any training sessions or during competition. No child passed the premise by foot and it was observed that the children were transported by vehicles.

- Devaluation of nearby properties.

Officer comment: Section 79(C) of the Act does not provide for Council to consider the effect of development proposals on land values given that compliance with relevant legislation and planning controls would ensure that any proposed development is compatible with the local built environment. Further, the site is within an existing industrial area and the building itself will be shielded by two other industrial sites between it and the commencement of the residential area. It is not expected the presence of this use at this site will be identifiable from the residential land to the south.

- Safety of staff who work in the area for businesses that run a 24 hour operation.

Officer comment: The application proposes a number of strategies to avoid anti-social behaviour and is discussed throughout this report. The application states that no alcohol will be available and that intoxicated behaviour, or anyone visibly affected by drugs and alcohol shall not be permitted entry.

If the management of anti-social behaviour is strictly followed as per the Management Plan, then the likelihood of anti-social behaviour is dramatically reduced and subsequently provides for a safer environment for the industrial precinct.

- Proximity to residential area.

Officer comment: The closest residential allotment is located approximately 70m away from the sex services premise and is separated by two industrial lots. No pedestrian or vehicle access is possible between the two areas and the building cannot be seen from the residential allotments.

- General safety concerns for residents within the area.

Officer comment: As noted above, access can only be gained into the industrial precinct via Camden Valley Way and/or The Northern Road. As a result, this does not require potential customers of the sex services premise to move through any residential areas, and therefore they will not be in view of any resident who may feel unsafe by the sex services premises' operation.

- Should not be approved on moral grounds.

Officer comment: In 1995 the Department of Planning issued Councils with a direction that it was no longer a criminal offence to operate a brothel and subsequently deemed it a legitimate land use under the *Environmental Planning and Assessment Act 1979*. This has now been incorporated within CLEP 2010 and brothels are only permitted within industrial areas.

It is considered that the consideration already made within this assessment report and the proposed development consent conditions will ensure that the development will not adversely impact on the local community.

- Increase in crime.

Officer comment: It is unclear if there is a direct link between the operation of the sex services premise and crime and as such cannot be evaluated.

Nevertheless, development consent conditions will be imposed to require the operator to keep a Complaints and Incidents Register which will be required to be submitted upon lodging the Section 96 Modification application. This will allow Council to adequately assess and evaluate the operation of the brothel after one year.

The suggested development consent conditions provided by the NSW Police would also be incorporated into any development consent.

- Traffic and noise concerns.

Officer comment: The traffic generated as a result of the development would be very minimal and most likely outside of the peak hours of the industrial estate.

With respect to noise, the site is within an industrial precinct which is generally noisy. Any potential impact of noise to the residential area outside of the main hours of the industrial precincts is unlikely as the entry/exit point is located away from the residential area.

Notwithstanding, Council is able to review noise impacts of the hours subject to the trial period. The developer will also be subject to the Council's Noise Policy, The Industrial Noise Guidelines (EPA) and the *Protection of the Environmental Operations Act, 1997*.

- Precedent it will set if approved.

Officer comment: As noted above, sex services premises are a legitimate land use under the *Environmental Planning and Assessment Act 1979*. The area where it is permissible is defined by the LEP and is supported by controls within the current DCP.

Each DA is considered strictly on the merits of the proposal and any associated development standards and controls. The matter of precedence does not circumvent these considerations.

The public interest

The Plan of Management submitted by the applicant, together with the implementation of safer by design principles, will help to protect the public interest. The public interest is further protected by the fact the business is not proposing to display any advertising signage and the fact that it will be located approximately 250m away from the nearest community land use (ie. the hockey and football fields).

The public interest will not be adversely affected as pedestrian movements past the premise will be limited, and in any event, given the proposed building design and draft development consent conditions, the site will present as a typical industrial type development.

The public interest will be able to be further tested should the applicant seek to have the hours of operation between 10.00pm and 3.00am made permanent as discussed earlier in this report.

It is also noted that the development fully complies with Council's Development Controls Plan in relation to brothels. Given the above facts, and as assessed in detail throughout this report, it is considered the public interest is not at risk as a result of the proposed development.

CONCLUSION

Council has received a development application for a change of use from an office building to a sex services premise. The application seeks to undertake alterations and additions to the existing building which will result in five working rooms and five sex workers at any one time.

The application was publicly notified to 405 properties and was advertised in a local paper, and as a result 31 letters of objection were received. The objections range from noise, traffic and proximity to sensitive land uses.

Council Planners undertook various inspections to determine if the premise was adjacent to a route frequented by passing children. During these inspections it was observed children passed the premise by vehicles only and were accompanied by an adult.

The proposed hours of operation are 9.00am to 3.00am, Monday to Sunday.

Development consent conditions would be imposed to require the operator to lodge a S96 Modification to review the hours of operation between 10.00pm and 3.00am. Upon lodgment of this application Council is able to consider any likely adverse impacts generated as a result of the premise during these hours.

The application has been assessed in accordance with the relevant considerations contained within Camden Local Environment Plan 2010 and Camden Development Control Plan 2011. No part of the development is inconsistent with the controls and considerations contained within these instruments and therefore is able to be approved by the Council.

Consequently it is recommended that this DA be approved subject to the draft development consent conditions shown below.

DRAFT CONDITIONS OF CONSENT

1.0 - General Requirements

The following conditions of consent are general conditions applying to the development.

- (1) **Approved Plans** – The development must be carried out strictly in accordance with the following approved plans or other documentation:

- Floor Plan; Drawing No. 2895 r.m; Date 28-06-2010; Issue A;
- Site Plan; Drawing No. 2895 r.m; Date 28-06-2010; Issue A;
- Elevations; Drawing No. 2895 r.m; Date 28-06-2010; Issue A.

The development must also comply with the conditions of approval imposed by Council hereunder.

Where there is an inconsistency between the approved plans/documentation and conditions of consent, the conditions of consent take precedence to the extent of the inconsistency.

Amendments or modification of the approved development require the written prior approval of Camden Council.

- (2) **Reviewable Condition for Hours of Operation** – After twelve (12) months of the Occupation Certificate being issued, the sex services premise shall cease operation between the hours of 10.00pm and 3.00am. Should the operator wish to continue trading within these hours, a further S96 Modification application must be lodged not less than three (3) months before the expiration of the twelve (12) months, for Council's consideration and determination that the business can operate within the above additional hours. At the time of the S96 Modification being assessed, Council will review and assess the following:

- (a) the implementation, management and compliance of the Plan of Management approved by condition 6.7;
- (b) the Complaints and Incidents Register required by Condition 6.7.8;
- (c) any comments received by Camden Police (the application will be referred to Camden Police upon lodgement of the S96 Modification);
- (d) any comments received by Council's Compliance and Environment Branch;
- (e) any submissions received during the public notification period for the S96 Modification; and
- (f) any matters required to be considered and assessed for the purpose of the S96 Modification.

- (3) **Building Code of Australia** - All works must be carried out in accordance with the requirements of the *Building Code of Australia*.
- (4) **Change of Management and/or Operator** - Should the operator and/or management of the premise change from that indicated within the Plan of Management, then written notification to Council is required of the change of name and/or address.

2.0 - Construction Certificate Requirements

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Construction Certificate Before Work Commences** - This development consent does not allow site works, building or demolition works to commence, nor does it imply that the plans approved as part of the development consent comply with the specific requirements of *Building Code of Australia*. Works must only take place after a Construction Certificate has been issued, and a Principal Certifying Authority (PCA) has been appointed.
- (2) **New Parking Spaces** – A minimum of eight (8) car parking spaces must be provided as indicated on the approved plans. These spaces and associated access driveways and manoeuvring areas must conform with Camden Council's Car Parking Development Control Plan (DCP) 2010 and Engineering Specifications.

All parking allocation for people with disabilities must be designed and constructed to comply with AS 2980.6 and all line marking shall be in accordance with AS 2890.1.

- (3) **Signposting – Prior to the Occupation Certificate being issued**, car parking spaces No 1 and No 4 shall be signposted in the following way:
 - (a) Space No 1 - to be signposted as staff parking only, and
 - (b) Space No 4 – to be signposted to require rear to fence parking.
- (4) **Existing Parking Spaces** – The existing use on the site shall be provided with nine (9) car parking spaces. These spaces must not be located within any existing manoeuvring, service or driveway areas and must conform to Camden Council's Car Parking Development Control Plan (DCP) 2010. The car parking area must be designed in accordance with AS2890.1 off-street car parking and AS 2890.5. Documentary evidence of compliance from an Accredited Certifier/suitably qualified person must be submitted to the Principal Certifying Authority **prior to the Construction Certificate being issued**.
- (5) **Fire Safety Upgrade** – Pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*, the existing building is to be upgraded, as Camden Council considers that the measures contained in the building are inadequate:
 - to protect persons using the building, and to facilitate their egress from the building in the event of fire; and
 - to restrict the spread of fire from the building to other buildings nearby.

Compliance with the following parts of the *Building Code of Australia* is to be achieved in the fire safety upgrade of the existing building:

- a) Required exit doors shall be upgraded to comply with Part D2.20 and D2.21 of the *Building Code of Australia*.
- b) Doors in the path of travel to an exit shall be upgraded to comply with Part D2.21 of the *Building Code of Australia*.
- c) Doorways and doors to comply with Part D2.19 of the *Building Code of Australia*.

Details on the method of compliance are to be submitted to the Certifying Authority **prior to the issue of a Construction Certificate**.

All work required as part of the Fire Safety Upgrade of the existing building is to be completed **prior to the issue of an Occupation Certificate**.

- (6) **Access For People With Disabilities** - Access for people with disabilities shall be provided in accordance with the requirements of Part D3 of the *Building Code of Australia*. **Prior to the issue of a Construction Certificate** the plans shall be amended to reflect the above.
- (7) **Structural Certification (Existing Building)** - A practising Structural Engineer must certify that the existing building is structurally capable of supporting the loads imposed by the proposed development. A copy of the certificate shall accompany the application for a Construction Certificate.
- (8) **Crime Prevention through Environmental Design** – The applicant is to submit to Council a schedule of measures proposed to be implemented in the construction of the development in order to minimise the risk of crime. Details are to be provided **prior to the release of the Construction Certificate**. Such measures are to be consistent with the conditions outlined in the recommended conditions of consent noted by the NSW Police Camden Local Area Command assessment dated and registered 2 February 2011, attached to this development consent.
- (9) **Section 94 conditions - Prior to the issue of any Construction Certificate**, the following Section 94 contributions shall be paid at Camden Council. Documentary evidence must be provided to the Principal Certifying Authority that the below payments have been made:
 - (a) Pursuant to **Contributions Plan No 3** amended in February 1998, a contribution must be paid to Council of \$54,128.00 per hectare, total \$1,550.00, for Trunk Drainage, Water Quality Facilities and Professional Services.

The contribution must be indexed by the Consumer Price Index and paid **prior to issue of the Construction Certificate**.

The monetary contribution for, may at the sole discretion of Council, be offset by the value of land transferred to Council or by works-in-kind. Such works cannot commence until an agreement is made with Council pursuant to the Contributions Plan. If such an agreement is to be undertaken, it must be signed **prior to the release of a Construction Certificate**.

- (b) Pursuant to **Camden Contributions Plan** amended in July 2004, a contribution must be paid to Council of \$9.10 per square metre, total \$2,606.00, for **Community Facilities**.

The contribution must be indexed by the methods set out in Paragraph 2.4 of the Plan and paid **prior to issue of the Construction Certificate**.

The monetary contribution may at the sole discretion of Council be offset by the value of land transferred to Council or by works-in-kind. Such works cannot commence until an agreement is made with Council pursuant to the Contributions Plan. If such an agreement is to be undertaken, it must be signed **prior to the release of a Construction Certificate**.

- (c) Pursuant to **Camden Contributions Plan** amended in July 2004, a contribution must be paid to Council of \$4,183.00 per hectare, total \$120.00, for **s.94 Administration and Management**.

The contribution must be indexed by the methods set out in Paragraph 2.4 of the plan and paid **prior to issue of the Construction Certificate**.

- (10) **Payment of Long Service Levy** - The Long Service Levy payment must be paid prior to a Construction Certificate being issued. Documentary evidence must be submitted to the Principal Certifying Authority verifying that payment has been made.

3.0 - Prior To Works Commencing

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Notice of Commencement of Work** – Notice in the manner required by Section 81A of the *Environmental Planning and Assessment Act, 1979* and Clause 103 of the *Environmental Planning and Assessment Regulation 2000* shall be lodged with Camden Council at least two (2) days prior to commencing works. The notice shall include details relating to any Construction Certificate issued by a certifying authority, the appointed Principal Certifying Authority (PCA), and the nominated 'principal contractor' for the building works.

4.0 - During Construction

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Site Management** – To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the construction period, the following practices are to be implemented:
- The delivery of material shall only be carried out between the hours of 7.00am - 6.00pm Monday to Friday, and between 8.00am - 4.00pm on Saturday.
 - Stockpiles of topsoil, sand, aggregate, spoil or other material shall be kept clear of any drainage path, easement, natural watercourse, kerb or road surface, and shall have measures in place to prevent the movement of such material off the site.

- Builder's operations such as brick cutting, washing tools, concreting and bricklaying shall be confined to the building allotment. All pollutants from these activities shall be contained on site and disposed of in an appropriate manner.
 - Waste must not be burnt or buried on site, nor should wind blown rubbish be allowed to leave the site. All waste must be disposed of at an approved Waste Disposal Depot.
 - A waste control container shall be located on the development site.
- (2) **Hours of Work** – The hours for all construction and demolition work are restricted to between:
- (a) 7.00am and 6.00pm Monday to Friday (inclusive);
 - (b) 7.00am and 4.00pm Saturday (if construction noise is inaudible to adjoining residential properties), otherwise 8.00am and 4.00pm;
 - (c) work on Sunday and Public Holidays is prohibited.
- (3) **Roofwater to Street** - The roof of the subject building(s) shall be provided with guttering and downpipes and all drainage lines, including stormwater drainage lines from other areas and overflows from rainwater tanks, conveyed to the street gutter.

Connection to the street gutter shall occur at the existing drainage outlet point in the street gutter. Where no existing stormwater kerb outlet is provided, a Public Road Activity application, with the designated fee, must be lodged with and approved by Council, prior to carrying out any drainage work, which includes connection to the gutter, within the Road reserve.

All roofwater must be connected to the approved roofwater disposal system immediately after the roofing material has been fixed to the framing members. The Principal Certifying Authority (PCA) must not permit construction works beyond the frame inspection stage until this work has been carried out

5.0 - Prior To Issue Of Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate** – An Occupation Certificate must be issued by the Principal Certifying Authority (PCA) prior to occupation or use of the development. In issuing an Occupation Certificate, the PCA must be satisfied that the requirements of Section 109H of the *Environmental Planning and Assessment Act 1979* have been satisfied.

The PCA must submit a copy of the Occupation Certificate to Camden Council (along with the prescribed lodgement fee) within two (2) days from the date of determination and include all relevant documents and certificates that are relied upon in issuing the certificate.

The use or occupation of the approved development must not commence until such time as all conditions of this development consent have been complied with.

- (2) **Fire Safety Certificates** – A Fire Safety Certificate is to be submitted to the Principal Certifying Authority (PCA) **prior to the issue of an Occupation Certificate** in accordance with the requirements of the *Environmental Planning*

and Assessment Regulation 2000. The Fire Safety Certificate is to certify that each fire safety measure specified in the current fire safety schedule for the building to which it relates:

- (a) has been assessed by a properly qualified person; and
- (b) was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which the certificate is issued.

As soon as practicable after the Final Fire Safety Certificate has been issued, the owner of the building to which it relates:

- (a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire and Rescue, and
 - (b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.
- (3) **Required Inspection** - Where the Consent Authority is not the Principal Certifying Authority (PCA), an additional inspection of the premises must be undertaken by the Consent Authority **prior to the issuing of the Occupation Certificate**.

6.0 - Operational Conditions

The following conditions of consent are operational conditions applying to the development.

- (1) **Hours of Operation** - The hours of operation for the approved landuse are Monday to Sunday: 9.00am to 3.00am (subject to Condition 1(2)).

All vehicle movements related to deliveries and any other operations associated with the operation of the premise must be restricted to 7.00am and 6.00pm, Monday to Friday.

Any alteration to the above hours will require the prior approval of the Consent Authority.

- (2) **Number of Sex Workers** – The maximum number of sex workers shall not be more than five (5) sex workers at any time.
- (3) **Security Personnel** – Security personnel shall be employed and present on the site between 8.00pm and 3.00am, or until such time as the last staff member has left the premises.
- (4) **Maintenance of Operation** – The premise is to strictly operate in accordance with the WorkCover publication, Health and Safety Guidelines for Brothels 2001 and in addition to the following requirements:
 - (a) The premise must be maintained in a clean, sanitary condition and kept in a satisfactory state of repair at all times.
 - (b) Clean linen and towels must be provided for the use of each client.

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- (c) Adequate receptacles with fitting lids must be provided for the separate storage of used and clean linen.
- (d) All linen, toweling and other bed coverings which come into contact with clients must be changed immediately after each use. While the premise is operating, coverings used on beds, furnishings or the like must be regularly changed.
- (e) Used and clean linen must be stored separately and if laundering is carried out on site, adequate, sealable receptacles are to be used.
- (f) All mattresses used for sex must be fitted with washable mattress covers. It is recommended that covers are made from a waterproof material. Mattresses with minimal linen cover must be waterproof. While the premise is operating, all coverings used on beds, furnishing or the like that are visibly stained with body fluids must be immediately changed.
- (g) Evidence of a commercial contract to launder linen must be provided or a commercial washing machine capable of washing at a temperature of not less than 70°C must be installed.
- (h) All workrooms must be provided with an adequate level of lighting to allow sex workers to conduct health checks on their clients for any visible signs of sexually transmittable diseases.
- (i) An adequate supply of condoms, dental dams and water based lubricant must be supplied free of charge for sex workers and their clients.
- (j) All hazardous waste including sharps waste must be stored in an appropriate container and disposed of in accordance with the DECCW's requirements.
- (k) All required wash hand basins must be provided with an adequate supply of potable warm water under mains pressure, mixed through a common outlet, together with a bactericidal pump action soap and single use towels or electric hand dryers.
- (l) Waterproof waste bins fitted with disposable plastic liners must be provided in all rooms for the disposal of used condoms, soiled paper and other waste products of sexual activity.
- (m) Current written information such as pamphlets, brochures and notice board displays in a variety of languages, on sexually transmitted infectious diseases and occupational health and safety material, must be made available to all sex workers. Sex workers must be given access to health service providers for information and educational activities on disease transmission issues.
- (n) All sex workers must receive appropriate induction, be adequately trained and continually be provided with updated information about how to examine clients for any visible evidence of sexually transmittable disease. Examination of clients must be conducted before any sexual contact.
- (o) The following sign must be displayed on the premise in a prominent position accessible to all sex workers, including but not restricted to the staff notice board and must state the following information in typed print in a clearly legible font not less than 6 millimetres in size; *"Under Section 13 of the Public Health Act 1991, any person who knows that they are suffering from a sexually transmittable disease and then has sexual intercourse with another person is committing an offence, unless the person has been informed of the risk and has voluntarily agreed to accept the risk. Similarly,*

the proprietor is also guilty of an offence if they knowingly permit sex workers suffering from a sexually transmittable disease to have sexual intercourse with other persons at their premises unless the client has been informed of the risk and has agreed to accept the risk."

- (p) A cleaning register is to be kept on the premise at all times and must be made available for inspection to the Consent Authority. The register must include but not be restricted to: date/time of all cleaning activities, printed name and signature of the employee(s) conducting the cleaning and notation of specific areas requiring spot cleaning attention.
 - (q) Provisions must be made for the storage of trade waste bins within the premise. The operator must enter into a commercial contract for the removal of waste and hazardous waste, with a copy of the receipts kept on the premise.
- (5) **Selling and Preparation of Food** – The preparation and selling of food on the premises is prohibited. Where there is a requirement to prepare and sell food on the premise, a separate Development Application must be lodged with the Consent Authority.
- (6) **Selling or offering of alcohol** – The selling or offering of alcohol on the premise is prohibited.
- (7) **Plan of Management** - Notwithstanding any other condition of this development consent, the operation of the sex services premise must be strictly in accordance with the approved Plan of Management at all times (titled Plan of Management, Sex Services Premise, 11 Millwood Road, Narellan). The Plan of Management shall be submitted to Council prior to the opening of the business with the following amendments to be included:
- (a) a section for the handling of incidents or complaints associated with the operation of the premise. This shall include a separate Complaints and Incidents Register which includes:
 - i. complaint or incident date and time;
 - ii. nature of complaint or incident;
 - iii. name, contact and address details of person(s) making the complaint;
 - iv. action taken by the operator to resolve the complaint or incident.
 - (b) Section 2.4 of the Plan to be amendment to also include the Police, should they require access to the files;
 - (c) include that no food or alcohol is to be served/sold at the premise.

The premises' operator and manager must ensure compliance with the approved Plan of Management.

- (8) **Lighting** - To ensure the safety of all staff and visitors as they arrive, use and leave the premise, adequate lighting must be provided to all entrances and exits of the sex services premise.
- (9) **Public Display** – The premise must not display sex related products, sex workers or nude or semi-dressed staff from windows, doors or outside of the premise.

The interior of the premise must not be visible from any place in the public domain.

- (10) **Security Measure for the Premise** – The following safety and surveillance systems shall be incorporated within the building:
- (a) secure entry and controlled internal and external access points that have a remote door release mechanism;
 - (b) the design of the working rooms must include entry doors that do not lock and intercoms and duress alarm systems which are linked to a central base and monitored at all times; and
 - (c) a mechanical surveillance system (i.e. CCTV) to be installed on the exterior walls of the building which provide surveillance around the entire perimeter of the building and all entry and exit points.

The operator of the premise is responsible for the good working order of the system at all times which must be in operation during all times of the premises' opening hours.

- (11) **Swimming Pools** - No swimming pool or spa pool is permitted without development consent.
- (12) **Amenity** - The business shall be conducted and patrons controlled at all times so that no interference occurs to the amenity of the area, adjoining occupations, and residential premises.
- (13) **Signs** – Any proposal for an advertising sign or advertising structure requires development consent.
- (14) **Offensive Noise** - The use and occupation of the premise including all plant and equipment installed thereon, must not give rise to any offensive noise within the meaning of the *Protection of the Environment Operations Act 1997*.

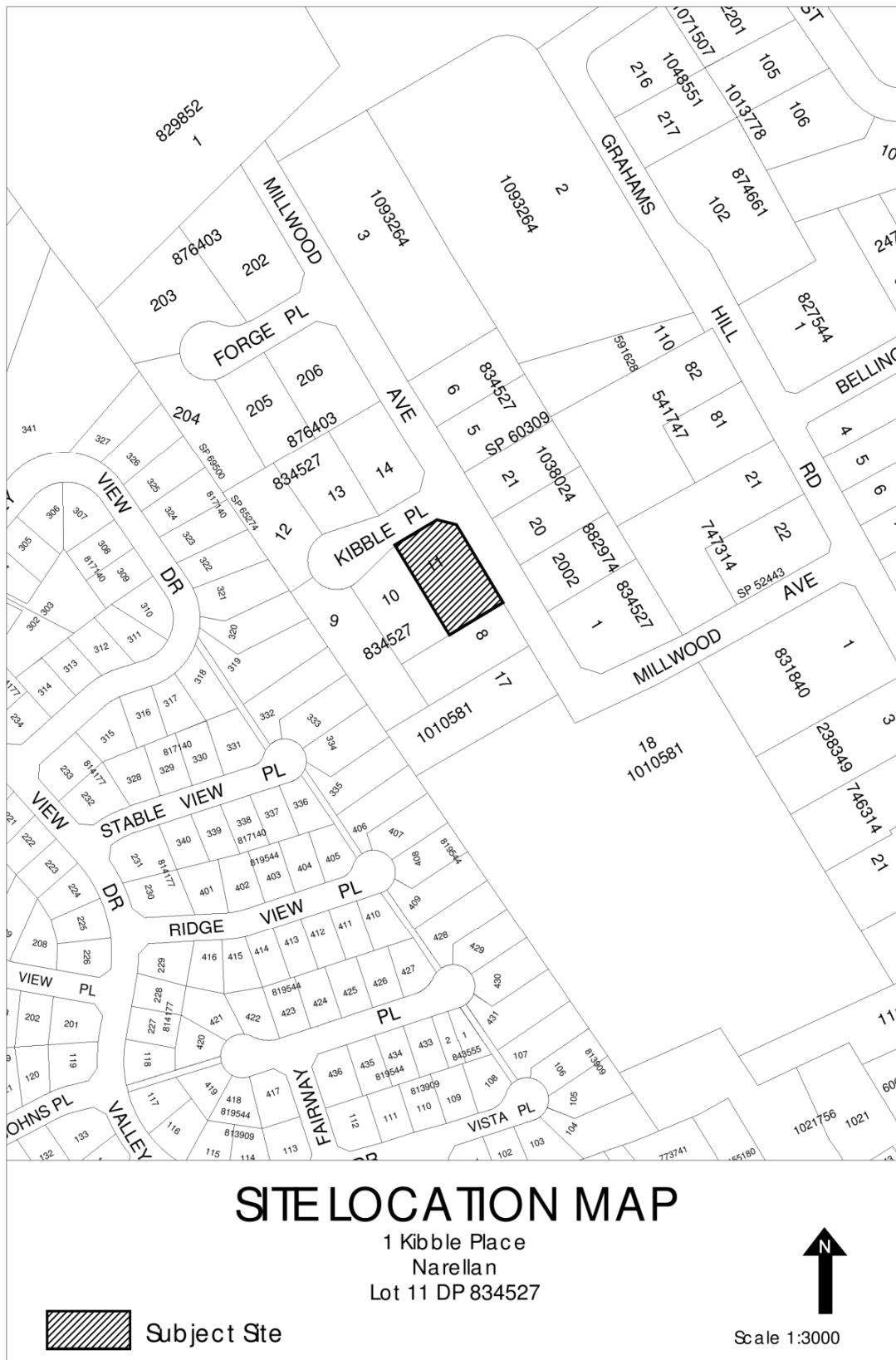
END OF CONDITIONS

RECOMMENDED

That Council approve Development Application 27/2011 for a change of use from an office building to a sex services premise at No 1 (Lot 11 DP 834527) Kibble Place, Narellan, subject to the draft development consent conditions provided above.

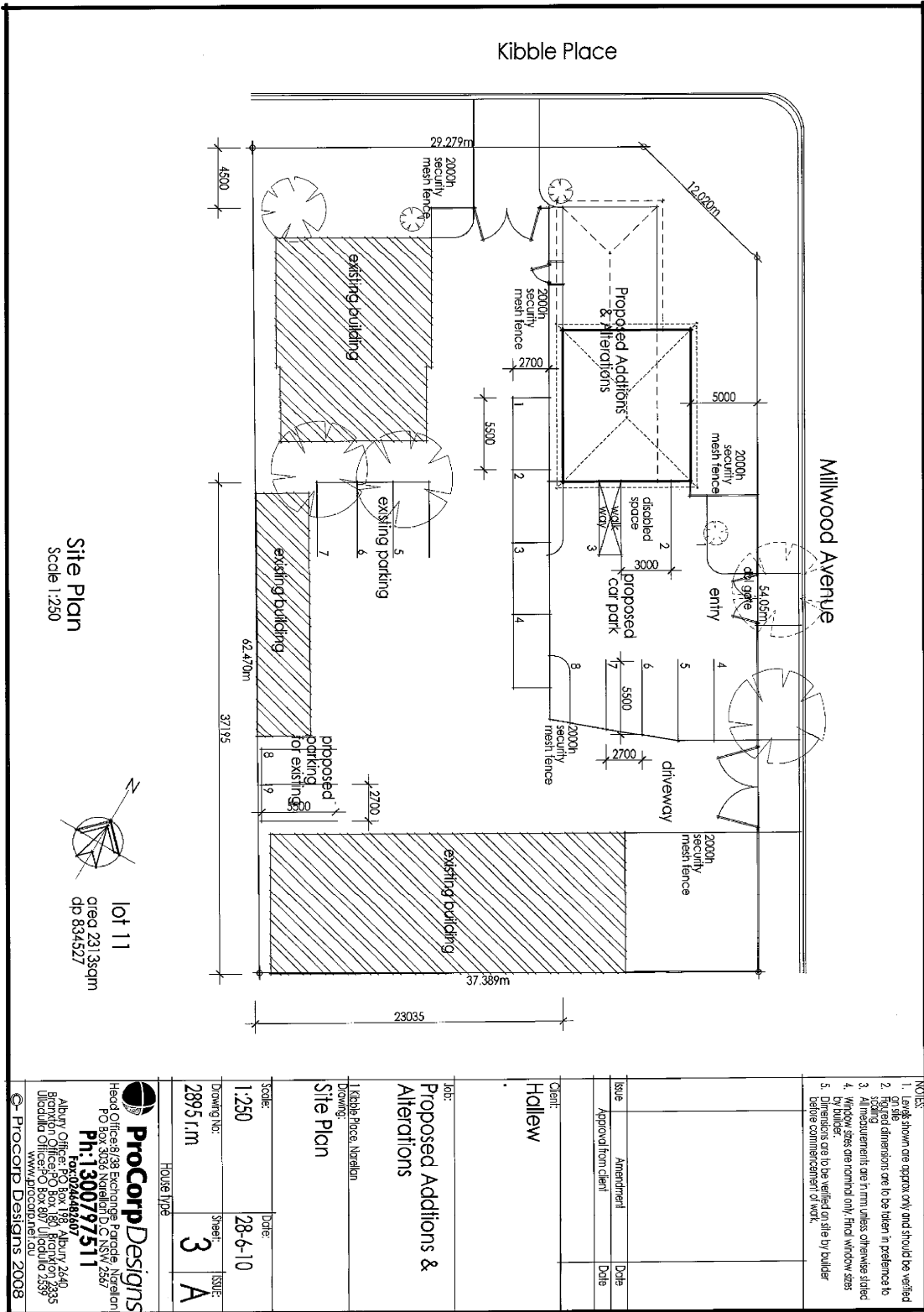
ATTACHMENTS

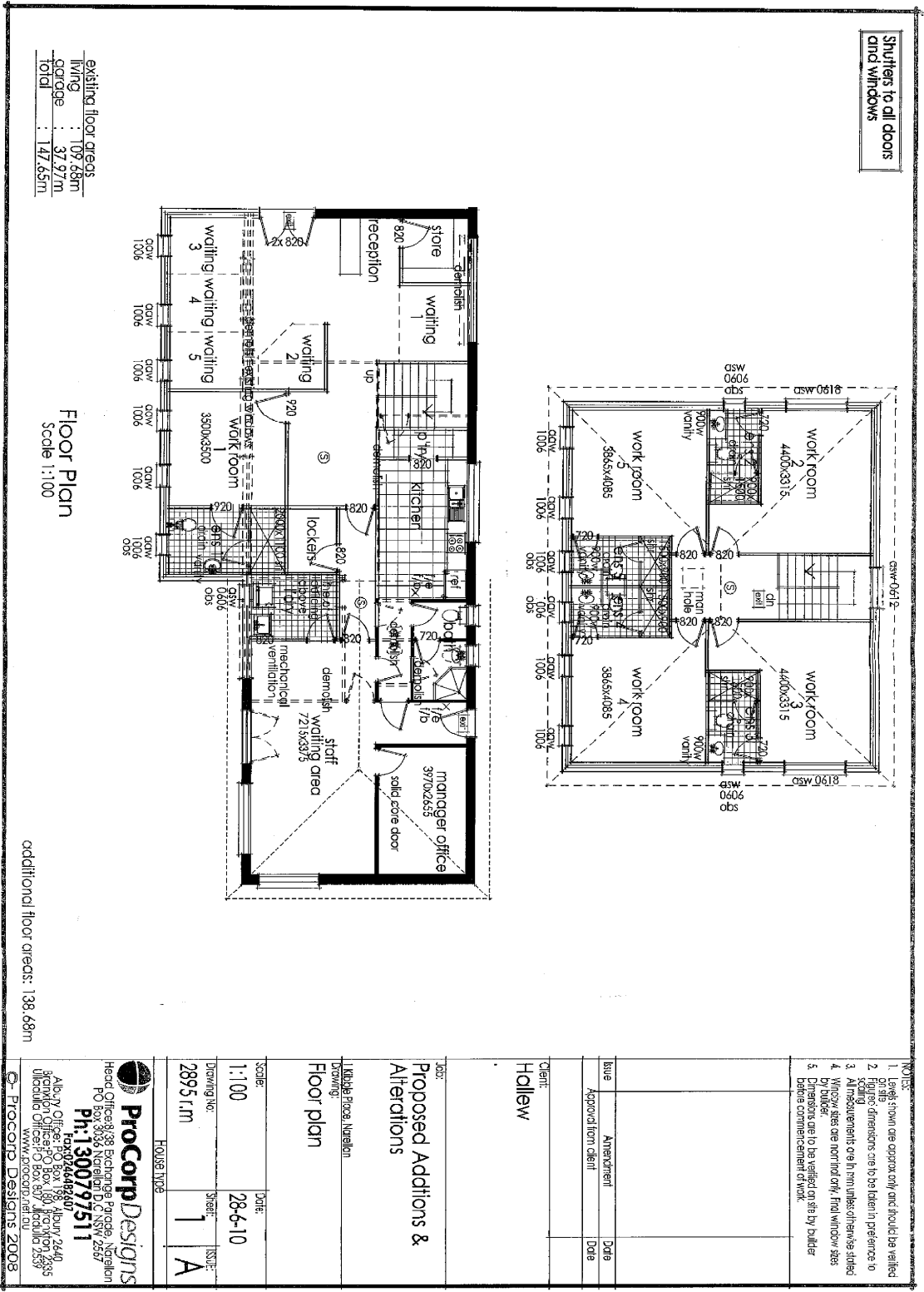
1. Location Plan
2. Development Plans
3. Land Use Analysis Plan - *Supporting Document*
4. Submissions - *Supporting Document*
5. Police Submission - *Supporting Document*

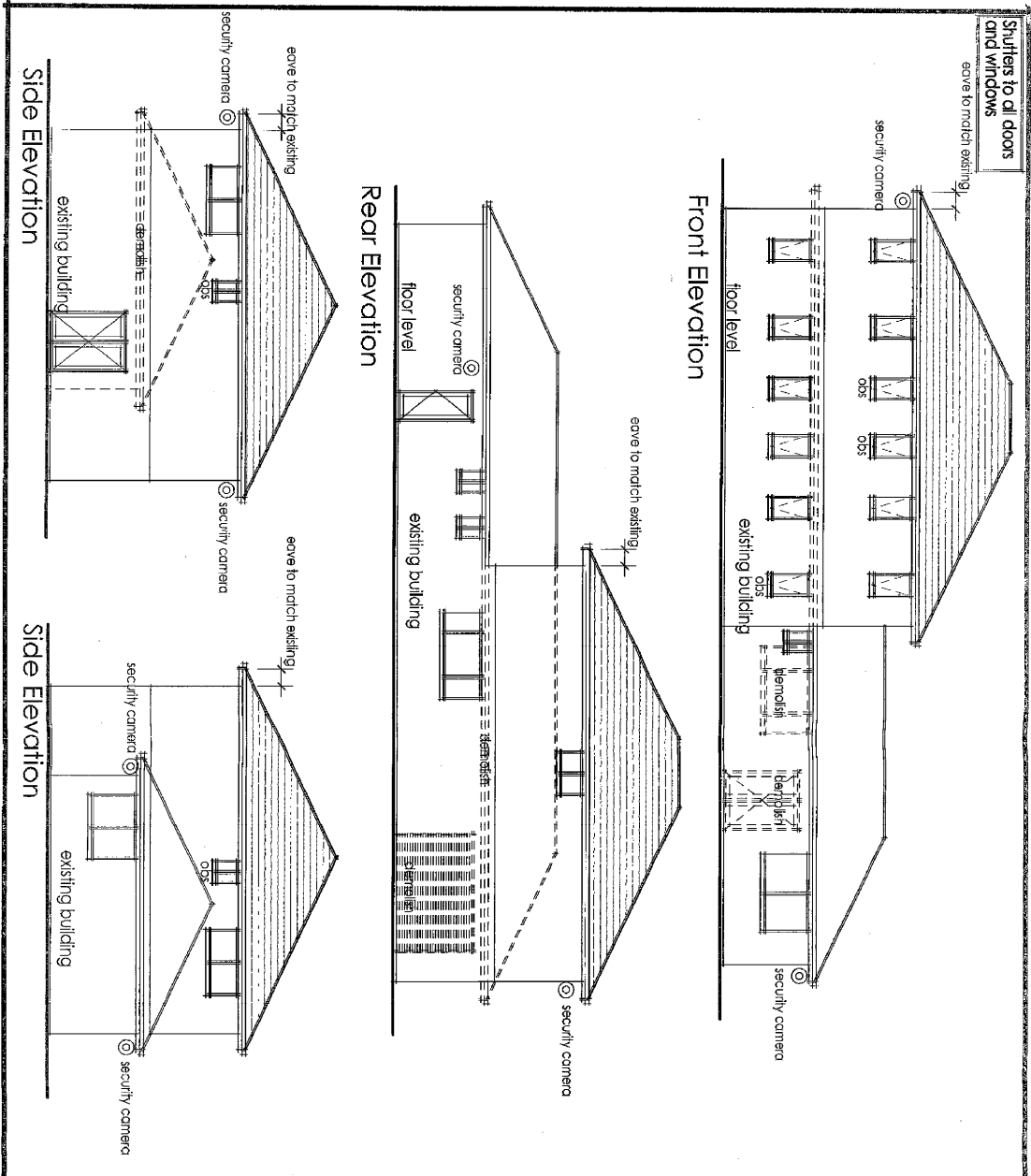


ORD01

Attachment 2







- NOTES
1. Levels shown are approx only and should be verified on site
 2. Required dimensions are to be taken in preference to
 3. All measurements are in mm unless otherwise stated
 4. Window sizes are nominal only. Final window sizes by builder
 5. Dimensions are to be verified on site by builder before commencement of work.

Issue	Amendment	Date
Approval from client		

Client: **Hollow**

Proposed Additions & Alterations

Drawing: **1 Little Place, Norellon Elevations**

Scale:	Date:
1:100	28-6-10
Drawing No:	Sheet:
2895.r.m	2
	ISSUE:
	A

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ORD01

Attachment 2

ORDINARY COUNCIL

ORD02

ORD02

SUBJECT: CONTINUED USE OF ALFRESCO AREA, NO 13 (LOT 102 DP 260494)
GREENHILL STREET, SPRING FARM
FROM: Director Development & Health
BINDER: Development Applications 2011

DA NO: 464/2011
OWNER: Ms SM Nowland
APPLICANT: Ms SM Nowland
ZONING: R1 General Residential

PURPOSE OF REPORT

The purpose of this report is to seek Council's determination of a Development Application at No 13 (Lot 102 DP 1142381) Greenhill Street, Spring Farm.

The application seeks consent for the continued use of an addition (alfresco area) to an existing dwelling.

The application is referred to Council in accordance with its delegations as the application seeks a variation to a control provided in Camden Development Control Plan 2011 (the DCP).

SUMMARY OF RECOMMENDATION

It is recommended that the application be approved subject to draft conditions of consent which are provided at the end of this report.

BACKGROUND

In April 2011 Council staff responded to two submissions from neighbours of the subject property raising noise and privacy concerns arising from an extension under construction.

Following investigation by Council staff it was determined that construction work had been carried out for an open, roofed alfresco area which did not have development consent, nor would it comply as 'exempt development'. Council staff advised the owner to stop work and submit a Development Application (DA).

A DA was received by Council on 19 April 2011.

The development was notified to surrounding neighbours on 21 April 2011. No submissions were received from any neighbours upon completion of the notification period.

The work has already been carried out and Council is unable to approve a DA for the structure in retrospect. As a result, it is the use of the structure that is the subject of this report. The owner of the property is able to separately apply to Council for a Building Certificate in relation to the extension.

THE SITE

The subject site is identified as No 13 (Lot 102 DP 1142381) Greenhill Street, Spring Farm, and is surrounded by single storey residential development. The property area is 300m² and currently contains a single storey dwelling. **A location plan is provided at the end of this report.**

THE PROPOSAL

The applicant seeks consent for the continued use of an existing dwelling addition intended as an alfresco area. The structure is similar to a flat roofed, timber frame awning, however a wall has been constructed along the rear of the building partially enclosing the area. The building work has been completed subject to painting. **Photos and plans are provided at the end of this report.**

NOTIFICATION

As the applicant seeks a variation from the controls of DCP 2011, the application was notified to surrounding residents on 27 April 2011. No submissions were received on conclusion of the notification period.

PLANNING CONTROLS

The following planning plans and policies have been considered in the assessment of the development application:

- Camden Local Environmental Plan 2010
- Camden Development Control Plan 2011.

ASSESSMENT

The application has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act, 1979. The following comments are made with respect to the critical aspects of the application.

(1)(a)(i) The provisions of any Environmental Planning Instrument

Camden Local Environmental Plan 2010

The land is zoned R1 General Residential under Camden Local Environment Plan 2010 (LEP 2010). Under the provisions of the LEP the use is permissible with consent.

(1)(a)(ii) The provisions of any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority

There are no draft environmental planning instruments that are applicable to this site.

(1)(a)(ii) The provisions of any Development Control Plan

Camden Development Control Plan 2011

The awning-like structure complies with the DCP with the exception of the rear setback which the DCP control specifies should be 4.0m for single storey dwellings. The new work is setback 2.75m from the rear boundary. Hence, the applicant's request for a 1.25m rear setback variation.

The structure is intended for use as a covered outdoor area and has been professionally designed and constructed. A wall with fixed, louvered openings is located along the rear of the building and the sides are designed to remain open.

The objectives of the control, in relation to rear setbacks, are to:

- minimise the impacts of development on neighbouring properties with regard to view, privacy and overshadowing; and
- ensure buildings are sited to make efficient use of the land and provide 'breathing space' between buildings.

Site inspections of the property have established that the rear wall of the alfresco area effectively reduces the impact on the visual and acoustic privacy of surrounding neighbours, especially when compared to an open uncovered entertainment area.

The flat roofed, single storey design in conjunction with the level topography of the location, ensures that the building is visually low key and maintains solar access for neighbours.

The space between the alfresco area and the rear boundary has been landscaped with low level plants and thereby also maintains the 'breathing space' between buildings.

It is considered that the development meets the objectives of the DCP and in particular that it maintains the amenity of surrounding neighbours.

(1)(a)(iii) The provisions of any planning agreement

There are no relevant planning agreements applicable to this site.

(1)(a)(iv) The provisions of the Regulations

The Regulations do not specify any matters that are relevant to this site.

(1)(b) The likely impacts of the development

The main consideration of this development relates to the potential effect on the amenity of neighbouring properties. Assessment of the alfresco area has established that the rear wall of the building effectively provides acoustic and visual screening for neighbours, thereby reducing any negative impact on surrounding land.

(1)(c) The suitability of the site for the development

The site is located in an established residential area and the alfresco structure integrates well with existing development. The main concerns regarding impact on neighbours' visual and acoustic privacy have been considered and are not considered to be significant. The land lends itself well to the existing development in terms of efficient drainage and lack of overshadowing.

(1)(d) Any submissions

No submissions were received upon completion of neighbour notification.

CONCLUSION

Council has received a DA for the use of an existing dwelling addition (alfresco area) which requires a variation to a rear setback control at No 13 Greenhill Street, Spring Farm.

The development application has been assessed in accordance with the relevant legislation and found to meet the objectives of both the LEP and DCP. The existing work meets the development controls of the DCP with exception to the rear boundary setback.

Council staff have carried out several site inspections and suggest that due to the low profile of the structure, existing boundary fencing and the screening rear wall, the alfresco area is unlikely to have an adverse impact on the amenity of neighbours.

The proposed development is considered to have merit and is able to be recommended to Council for approval, subject to the conditions of consent shown below.

DRAFT CONDITIONS OF CONSENT

1.0 - General Requirements

The following conditions of consent are general conditions applying to the development.

(1) **Approved Plans** – The development must be carried out strictly in accordance with the following approved plans or other documentation:

- Plans submitted by S Nowland.
- Statement of Environmental Effects.

The development must also comply with the conditions of approval imposed by Council hereunder.

Amendments or modification of the approved development require the written prior approval of Camden Council.

2.0 - Prior to Issue of Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

(1) **Building Certificate** – A Building Certificate issued under the Environmental Planning & Assessment Act, 1979, Section 149B, shall be obtained prior to the issue of any Occupation Certificate.

(1) **Sydney Water Approval** – Prior to occupation commencing, the approved development plans must also be approved by Sydney Water.

3.0 - Operational Conditions

The following conditions of consent are operational conditions applying to the development.

- (1) **Use Limitations** – The alfresco area must not be further enclosed or converted without the prior approval of Camden Council.

END OF CONDITIONS

RECOMMENDED

That development application 464/2011 for the use of an existing dwelling addition (alfresco area) at No 13 (Lot 102 DP 1142381) Greenhill Street, Spring Farm, be approved subject to the draft conditions of consent.

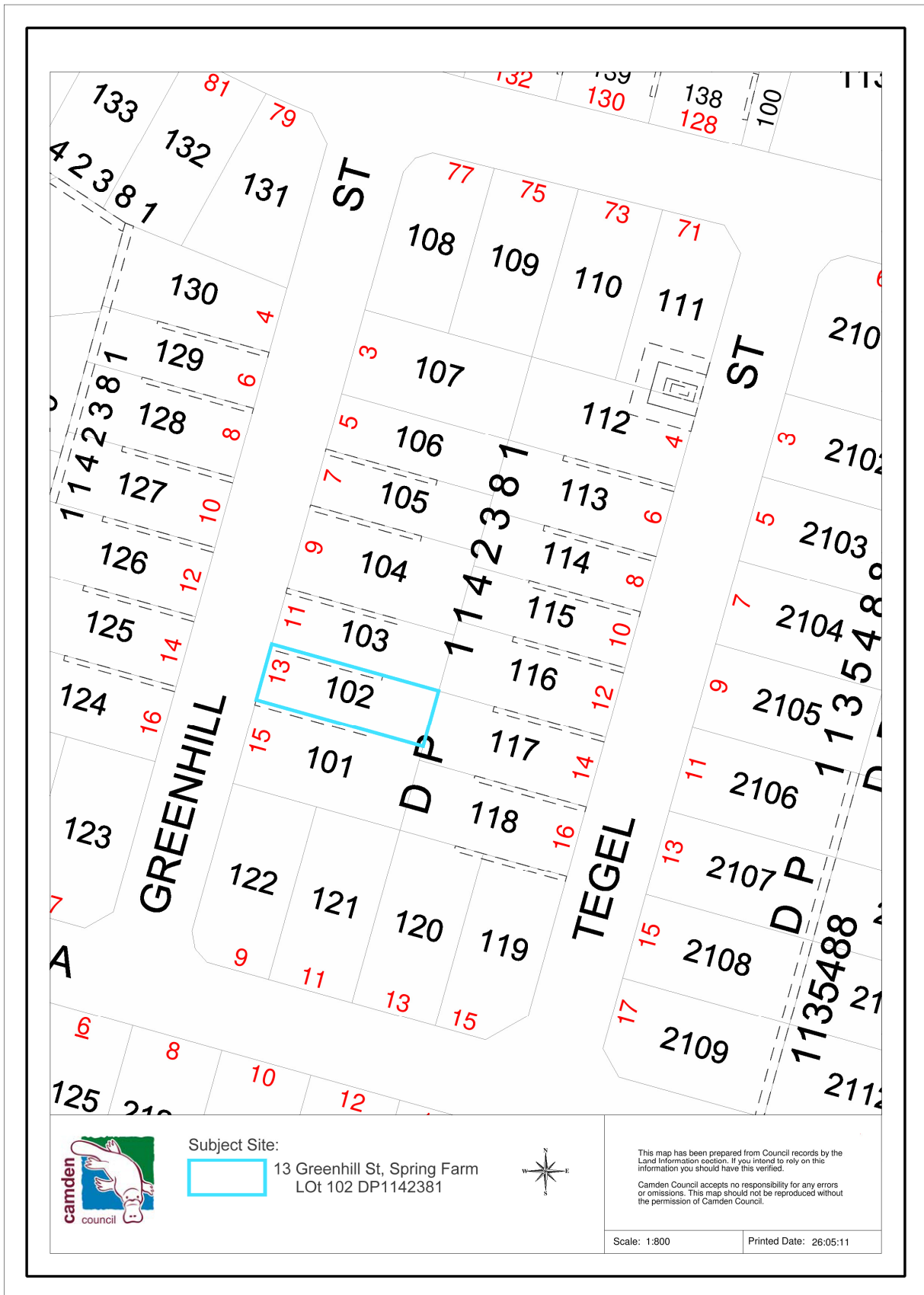
ATTACHMENTS

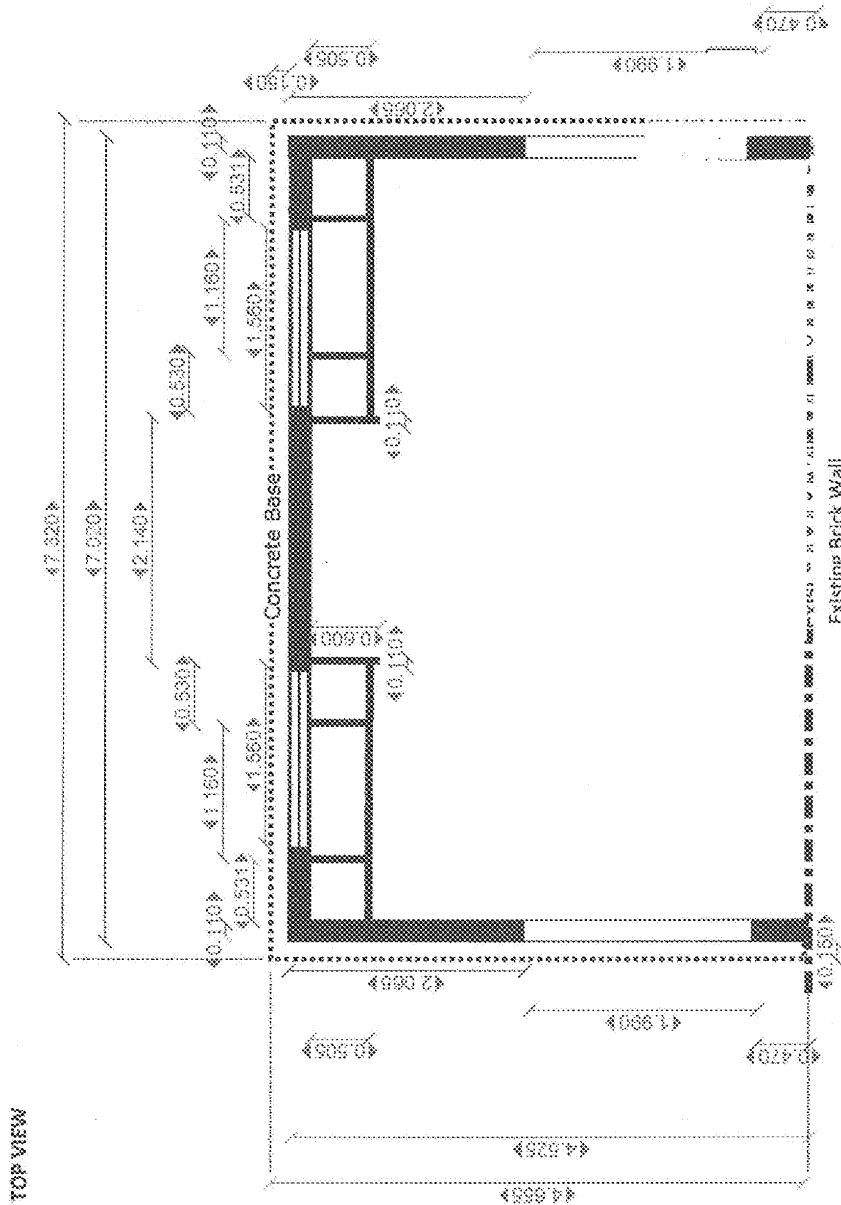
1. Location Plan
2. Proposed plans
3. Photos of Development

ORD02

ORD02

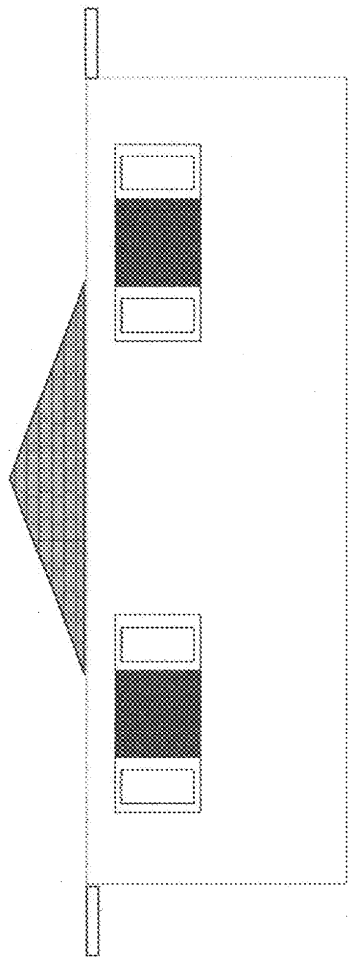
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Attachment 2

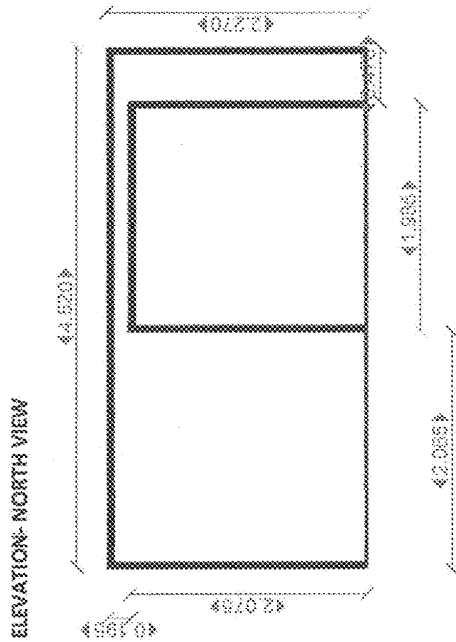


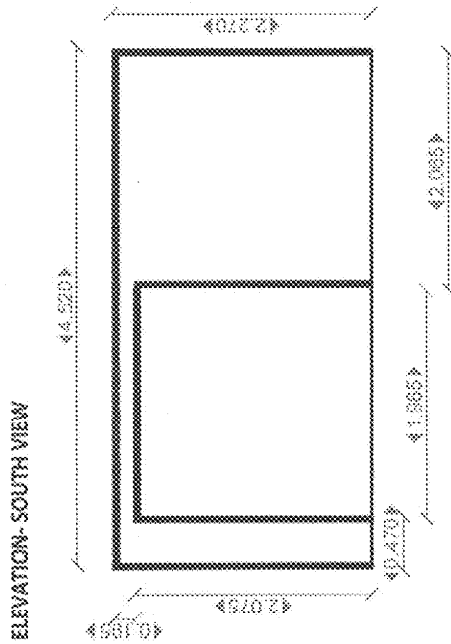
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Attachment 2





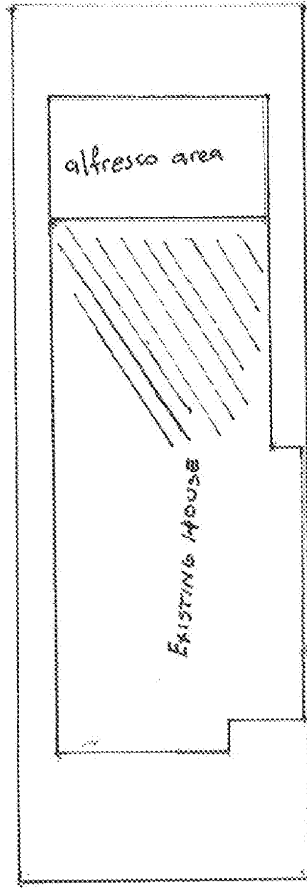
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Attachment 2

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Attachment 2

SITE PLAN Lot 102





ORD02

Attachment 3

ORD02

Attachment 3





ORD02

Attachment 3

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Attachment 3



ORDINARY COUNCIL

ORD03

ORD03

SUBJECT: KIDS OF MACARTHUR HEALTH FOUNDATION - REQUEST FOR WAIVING OF DEVELOPMENT APPLICATION AND ASSOCIATED FEES

FROM: Director Development & Health

BINDER: Development & Building Controls/Information Requests/Development Enquiries 2011

PURPOSE OF REPORT

The purpose of this report is to seek a determination from Council on a request from Kids of Macarthur Health Foundation (the Foundation) on the waiving of Development Application and associated fees associated with the construction of its charity house at Gregory Hills.

BACKGROUND

The Foundation is in the process of purchasing land at Gregory Hills, with Fairmont Homes offering to build a dwelling on the site at cost price. The Foundation plans to auction the house to the public with all profits from the sale to be donated to the Kids of Macarthur Health Foundation.

The Foundation has requested that Council waive the Development Application and associated fees required by Council to approve the construction of this dwelling.

MAIN REPORT

Council received the application for the waiving of Development Application fees from the Kids of Macarthur Foundation on 14 April 2011.

It has been determined that the cost of lodging a Development Application for the construction of a dwelling with a cost estimate of \$335,500 is \$5,296.84. This fee includes the Development Application, Construction Certificate, Occupation Certificate, public notification and archiving fees.

At the Council meeting of 13 June 2006, Council considered an investigation into fee waiving for community based development. Council resolved to reaffirm that all fees associated with the assessment of Development Applications are payable by the applicant.

It is important that the fees be paid as costs are incurred by Council in providing the assessment, including a \$1,174 Long Service Leave levy, which must be paid by Council irrespective of the source of funding.

Subject to this Council resolution the fees could be sourced from Councillor Ward Funds. This would provide for an outcome which is consistent with the 2006 resolution.

The balance of Councillor Ward Funds as of 16 June 2011 is \$19,122.

CONCLUSION

The Foundation provides financial support in purchasing medical equipment to Camden and Campbelltown Hospitals and community health centres. The Foundation operates to help assist and develop medical services throughout the region.

The Foundation is considered to do extremely valuable work for and on behalf of the community. Accordingly Council staff have assessed this request for the refund of the Development Application and associated fees as having significant merit and as a result are able to recommend that Council pay the required fees.

Further, it is recommended that Council source these funds from Councillor Ward Funds.

RECOMMENDED

That:

- i. the Development Application and associated fees of \$5,296.84 be funded from Councillor Ward Funds;**
- ii. the applicant be advised of the outcome of its request.**

ORDINARY COUNCIL

ORD04

ORD04

SUBJECT: REPEAL OF PART 3A OF THE ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979
FROM: Director Development & Health
BINDER: Development Procedures

PURPOSE OF REPORT

The purpose of this report is to advise Councillors of the NSW Government's repeal of Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act), and its replacement with an alternative system for the assessment of projects of State significance.

BACKGROUND

On 16 June 2011 the NSW Government passed a Bill to repeal Part 3A of the Act and replace it with alternative legislation.

This new legislation is known as the Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011 (the Bill). The Department of Planning and Infrastructure (the Department) advise that this legislative change will result in a large reduction in the number of projects dealt with by the State. Those that do not qualify as State significant are to go to the local council for assessment.

The Bill also proposes a number of changes to the operation and make-up of Joint Regional Planning Panels, which will provide for a greater level of Local Government input.

MAIN REPORT

The changes that will occur as a result of this legislation will be significant and will return to Local Government a significant level of decision-making that was not available to it under the previous legislation.

Classes of development still to be determined by the Department

When compared with the previous Part 3A system, there has been a reduction in the number of classes and the number of sites that will be assessed as State Significant Development (SSD) or State Significant Infrastructure (SSI). The thresholds within a number of remaining classes have also been raised, with the overall result being an almost 50% reduction in the number of projects the State will now assess.

In particular, residential, commercial and retail projects which were previously accepted for assessment under Part 3A purely on the basis of their capital investment value will no longer be considered to be of State significance, and instead will be assessed by the relevant local Council. **A copy of the classes of SSD and SSI that will now be considered under the Bill is provided as an attachment to this report.**

These classes of development will be set out in a subsequent State Environmental Planning Policy (SEPP).

Call-in powers available to the Minister for Planning and Infrastructure

The Bill also provides a reserve power for the Minister for Planning and Infrastructure (the Minister) to call in a proposal that is not listed in the proposed SEPP and for it to be considered by the Department. This reserve power ensures that genuinely State significant proposals which are not listed in the proposed SEPP to be assessed by the Department, can still be assessed and determined at the appropriate level by the Department, should that be required.

Under proposed s.89C(3) of the Bill, the Minister may call in a development as SSD after he/she:

- receives advice from the Planning Assessment Commission (PAC) regarding the State or regional significance of the proposal; and
- makes that advice publicly available.

The call in power may be used at any time prior to the determination of a Development Application for SSD or lodgement by an applicant of a deemed refusal appeal to the Land and Environment Court.

Importantly, it is not possible under the proposed Bill to approve wholly prohibited development unless it is called in under this proposed provision.

Transitional Arrangements

The Bill includes saving and transitional provisions for the repeal of Part 3A. These include:

- existing Part 3A projects that fall within the one of the SSI classes will be dealt with under the new SSI regime;
- other existing Part 3A projects will continue to be dealt with under Part 3A as long as Director General's Requirements (DGRs) have been issued for the project before the repeal of Part 3A;
- if DGRs have not been issued, these projects will be assessed as SSD (or by Council if they don't fall within one of the SSD classes).

In the case of Camden Council, there is only one current Part 3A application that is yet to be determined. It is a Section 96 Modification Application to a previous consent for sand extraction. The applicant has been advised by the Department that it will continue to determine that application. Consequently, Council will not receive any current Part 3A applications which would have been determined by the Department, but for the Bill.

Joint Regional Planning Panels

With a large number of projects which would previously have been dealt with by the State under Part 3A now being returned to Local Government for assessment, the Bill also proposes to change and update the arrangements relating to Joint Regional Planning Panels (JRPPs).

The most significant change to the JRPP arrangements will be an increase in the capital investment threshold for most development types assessed by regional panels from \$10 million to \$20 million. The effect of this will be to return decision making powers to local councils for development within the \$10 million to \$20 million range.

This change, in combination with other JRPP amendments, will result in approximately 55% of those Development Applications that would have previously been determined by a JRPP, now being determined by the local council.

Other changes include:

- the membership of the JRPPs will be changed so that one of the three State-appointed members will be appointed by the Minister as an independent chairperson with the concurrence of the Local Government and Shires Associations (LGSA);
- it is proposed to establish a panel with representatives from the LGSA, the development industry, the Department of Planning and Infrastructure and the new Public Service Commission, to advise the Minister on suitable candidates for appointment as chairpersons to regional panels; and
- JRPPs will no longer be the consent authority for Development Applications for certain types of subdivisions, certain coastal development and some designated development.

It is also proposed to require regular three-monthly reporting from local councils on their performance in processing these additional applications within the \$10 million to \$20 million range to ensure timeliness and rigour of assessment.

CONCLUSION

On 16 June 2011 the NSW State Government introduced a new Bill to repeal Part 3A of the Act. The Bill seeks to reduce the number of types of development that will be determined by the Department and increases the value of some classes of development beyond that are determined by the Department. In addition, the Bill will change the current JRPP system.

The combined effect of the new Bill will be to cut by half the number of Development Applications that are currently determined by the Department, while preserving the ability for the Minister to call-in those applications for which it is considered necessary to be determined by the Department.

The changes to the JRPP system will mean more equity for Local Government representation on the Panels. It will also ensure fewer applications are referred to the Panel. These applications will be determined by the local council instead.

The Bill is considered to be a positive development for local council representation and decision making and provides an opportunity for significantly improved development outcomes for our community.

RECOMMENDED

That Council note the NSW Government's repeal of Part 3A of the Environmental Planning and Assessment Act 1979 (the Act) and its replacement with the Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011.



ATTACHMENTS

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1. Classes of State Significant Development

CLASSES OF STATE SIGNIFICANT DEVELOPMENT (SSD)

The proposed classes of development for SSD and the criteria for development to be considered as SSD is provided below, subject to the finalisation of the SEPP.

Class	Description
1. Intensive Livestock Agriculture	Development that has a capital investment value of more than \$30 million for the purpose of intensive livestock agriculture.
2. Aquaculture	<p>(1) Development that has a capital investment value of more than \$30 million for the purpose of aquaculture.</p> <p>(2) Development for the purpose of aquaculture located in an environmentally sensitive area of State significance.</p> <p>(3) This clause does not apply to development for the purpose of oyster aquaculture.</p> <p>Note: Subclause (3) is affected by clause 19 of <i>State Environmental Planning Policy No. 62 – Sustainable Aquaculture</i>, which relates to applications under the Act with respect to oyster aquaculture that were made but not finally determined prior to 1 August 2005.</p>
3. Agricultural Produce Industries and Food and Beverage Processing	<p>Development that has a capital investment value of more than \$30 million for any of the following purposes:</p> <p>a) abattoirs or meat packing, boning or products plants; milk or butter factories; fish packing, processing, canning or marketing facilities; animal or pet feed; gelatine plants; tanneries; wool scouring or topping; rendering plants, or</p> <p>b) cotton gins; cotton seed mills; sugar mills; sugar refineries; grain mills or silo complexes; edible or essential oils processing; breweries; distilleries; ethanol plants; soft drink manufacture; fruit juice works; canning or bottling works; bakeries; small goods manufacture, cereal processing or margarine manufacturing; wineries, or</p> <p>c) organic fertiliser plants or composting facilities or works.</p>
4. Timber Milling, Timber Processing, Paper and Pulp Processing	<p>Development that has a capital investment value of more than \$30 million for any of the following purposes:</p> <p>a) milling plants, sawmills, log processing works, wood-chipping or particle board manufacture, or</p> <p>b) manufacture of paper, pulp, cardboard or newsprint, or</p>

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Class	Description
	<ul style="list-style-type: none"> c) paper recycling, or d) wood preservation, or e) charcoal plants, but not including development for the purpose of plantations (unless it is ancillary to other development).
5. Mining	<ul style="list-style-type: none"> (1) Development for the purpose of mining that: <ul style="list-style-type: none"> (a) is coal or mineral sands mining, or (b) is in an environmentally sensitive area of State significance, or (c) has a capital investment value of more than \$30 million. (2) Extracting a bulk sample as part of resource appraisal or a trial mine of more than 20,000 tonnes of coal or of any mineral ore. (3) Development for the purpose of mining related works (including primary processing plants or facilities for storage, loading or transporting any mineral, ore or waste material) that: <ul style="list-style-type: none"> (a) is ancillary to or an extension of another State Significant Development project, or (b) has a capital investment value of more than \$30 million.
6. Petroleum (oil, gas and coal seam gas)	<ul style="list-style-type: none"> (1) Development for the purpose of petroleum production (including associated pipelines). (2) Development for the purpose of drilling of petroleum exploration or appraisal wells (including associated pipelines): <ul style="list-style-type: none"> a) excluding sets of five or less wells where the well set is: <ul style="list-style-type: none"> (i) more than 3 kilometres from any other petroleum well (other than an abandoned petroleum well) in the same exploration licence area; and (ii) more than 200 metres from two or more habitable dwellings which is a place of residence, or b) is located in an environmentally sensitive area of State significance, c) excluding stratigraphic wells and monitoring wells. (3) Development for the purpose of underground coal gasification.

Class	Description
	<p>(4) Development for the purpose of petroleum related works (including processing plants) that:</p> <ul style="list-style-type: none"> a) is ancillary to or an extension of another State Significant Development project, or b) has a capital investment value of more than \$30 million.
<p>7. Extractive Industries</p>	<p>(1) Development for the purpose of extractive industry that:</p> <ul style="list-style-type: none"> (1) extracts more than 500,000 tonnes of extractive materials per year, or (2) extracts from a total resource (the subject of the development application (or other relevant application under the Act)) of more than 5 million tonnes, or (3) is located in an environmentally sensitive area of State significance. <p>(2) Subclause (1) (c) does not apply to extraction:</p> <ul style="list-style-type: none"> a) by a local council, county council or public authority in maintenance dredging of a tidal waterway, or b) in maintenance dredging of oyster lease areas, or adjacent areas, in Wallis Lake. <p>(3) Development for the purpose of extractive industry related works (including processing plants, water management systems, or facilities for storage, loading or transporting any construction material or waste material) that:</p> <ul style="list-style-type: none"> a) is ancillary to or an extension of another State Significant Development project, or b) has a capital investment value of more than \$30 million.
<p>8. Geosequestration</p>	<p>Development for the purpose of geosequestration of carbon dioxide.</p>
<p>9. Metal, Mineral and Extractive Material Processing</p>	<p>Development that has a capital investment value of more than \$30 million for any of the following purposes:</p> <ul style="list-style-type: none"> a) metal or mineral refining or smelting; metal founding, rolling, drawing, extruding, coating, fabricating or manufacturing works; metal or mineral recycling or recovery, b) brickworks, ceramic works, silicon or glassworks or tile manufacture,

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Class	Description
	<ul style="list-style-type: none"> c) cement works, concrete or bitumen pre-mix industries or related products, d) building or construction materials recycling or recovery.
10. Chemical, Manufacturing and Related Industries	<ul style="list-style-type: none"> (1) Development that has a capital investment value of more than \$30 million for the purpose of the manufacture or reprocessing of the following (excluding labelling or packaging): <ul style="list-style-type: none"> (a) soap, detergent or cleaning agents, (b) paints, ink, dyes, adhesives, solvents, (c) pesticides or inorganic fertiliser, (d) pharmaceuticals or veterinary products, (e) ammunition or explosives, (f) oils, fuels, gas, petrochemicals or precursors, (g) polymers, plastics, rubber or tyres, (h) batteries or carbon black. (2) Development with a capital investment value of more than \$30 million for the purpose of: <ul style="list-style-type: none"> (a) liquid fuel depots, or (b) gas storage facilities, or (c) chemical storage facilities. (3) Development for the purpose of the manufacture, storage or use of dangerous goods in such quantities that constitute the development as a major hazard facility under the Control of Major Hazard Facilities National Standard [NOHSC: 1014 (2002)].
11. Other Manufacturing Industries	<p>Development that has a capital investment value of more than \$30 million for the purpose of:</p> <ul style="list-style-type: none"> (a) laboratory, research or development facilities, or (b) medical products, or (c) printing or publishing, or (d) textile, clothing, footwear or leather manufacturing, or (e) furniture manufacturing, or (f) machinery or equipment manufacturing, or (g) the vehicle, defence or aerospace industry, or (h) vessel or boat building and repair facility (excluding marinas).

Class	Description
12. Warehouses and Distribution Centres	Development that has a capital investment value of more than \$50 million, for the purpose of warehouses or distribution centres (including container storage facilities), excluding those which are not part of an integrated operation or those not on contiguous land.
13. Cultural, Recreation and Tourist Facilities	<p>(1) Development that has a capital investment value of more than \$30 million for the purpose of:</p> <ul style="list-style-type: none"> (a) film production, the television industry or digital or recorded media, or (b) convention centres and exhibition centres, or (c) entertainment facilities, or (d) information and education facilities, including museums and art galleries, or (e) major recreation facilities, or (f) zoos, including animal enclosures, administration and maintenance buildings, and associated facilities. <p>(2) Development for other tourist related development, but excluding any commercial premises, residential accommodation, retail premises and serviced apartments whether separate or ancillary to the tourist related component, that:</p> <ul style="list-style-type: none"> (a) has a capital investment value of more than \$100 million, or (b) has a capital investment value of more than \$10 million and is located in an environmentally sensitive area of State significance or a sensitive coastal location.
14. Hospitals and Health Research Facilities	Development that has a capital investment value of more than \$30 million for the purpose of:
15. Educational Establishments	Development for the purpose of educational establishments that has a capital investment value of more than \$30 million.

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Class	Description
16. Correctional Centres	Development for the purpose of correctional centres that has a capital investment value of more than \$30 million.
17. Air Transport Facilities	Development that has a capital investment value of more than \$30 million for the purpose of air transport facilities.
18. Port Facilities and Wharf or Boating Facilities	Development for the purpose of port facilities or wharf or boating facilities (excluding marinas) that has a capital investment value of more than \$30 million.
19. Road, Rail and Related Transport Facilities	<p>(1) Development that has a capital investment value of more than \$30 million for the purpose of:</p> <ul style="list-style-type: none"> (a) heavy railway lines associated with mining, extractive industries or other industry, or (b) railway freight terminals, sidings and inter-modal facilities, or (c) roads (including bridges) by private developers. <p>(2) Development within a railway corridor or associated with railway infrastructure that has a capital investment value of more than \$30 million for the purpose of:</p> <ul style="list-style-type: none"> (a) commercial, residential or retail development, or (b) container packing, storage or examination facilities, or (c) public transport interchanges.
20. Electricity Generating Works and Heat or Co-Generation	<p>Development for the purpose of electricity generating works or heat or their co-generation (using any energy source, including gas, coal, bio-fuel, distillate and waste and hydro, wave, solar or wind power), being development that:</p> <ul style="list-style-type: none"> (a) has a capital investment value of more than \$30 million, or (b) has a capital investment value of more than \$10 million and is located in an environmentally sensitive area of State significance.
21. Water Supply Systems	<p>(1) Development for the purpose of water supply systems (excluding desalination plants) that has a capital investment value of more than \$30 million.</p> <p>(2) Development for the purpose of desalination plants that has a capital investment value of more than \$10 million.</p>

Class	Description
22. Sewerage Systems	<p>(1) Development for the purpose of sewerage systems, that:</p> <ul style="list-style-type: none"> (a) handles more than 10,000 EP (equivalent population), or (b) has a capital investment value of more than \$30 million, or (c) is located in an environmentally sensitive area of State significance. <p>(2) This clause does not apply to development if the applicant is a local council or county council.</p>
23. Waste and Resource Management Facilities	<p>(1) Development for the purpose of regional putrescible landfills or an extension to a regional putrescible landfill that:</p> <ul style="list-style-type: none"> (a) has a capacity to receive more than 75,000 tonnes per year of putrescible waste, or (b) has a capacity to receive more than 650,000 tonnes of putrescible waste over the life of the site, or (c) is located in an environmentally sensitive area of State significance. <p>(2) Development for the purpose of waste or resource transfer stations in metropolitan areas of the Sydney region that handle more than 100,000 tonnes per year of waste.</p> <p>(3) Development for the purpose of resource recovery or recycling facilities that handle more than 75,000 tonnes per year of waste.</p> <p>(4) Development for the purpose of waste incineration that handles more than 1,000 tonnes per year of waste.</p> <p>(5) Development for the purpose of hazardous waste facilities that transfer, store or dispose of solid or liquid waste classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste that handles more than 1,000 tonnes per year of waste.</p> <p>(6) Development for the purpose of any other liquid waste depot that treats, stores or disposes of industrial liquid waste and:</p> <ul style="list-style-type: none"> (a) handles more than 10,000 tonnes per year of liquid food or grease trap waste, or (b) handles more than 1,000 tonnes per year of other aqueous or non-aqueous liquid industrial waste.

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Class	Description
24. Remediation of Contaminated Land	<p>(1) Development for the purpose of remediation of land that is category 1 remediation work on a remediation site.</p> <p>(2) In this clause, category 1 remediation work, remediation and remediation site have the same meanings as in <u>State Environmental Planning Policy No 55—Remediation of Land</u>.</p>

SITES WITH IDENTIFIED STATE SIGNIFICANT DEVELOPMENT

A list of the proposed sites where some or all development is to be identified as SSD is provided below:

Sites
<p>1. All development within the land identified on the following maps to this Schedule:</p> <p>(a) Map 1 – Sydney Opera House</p> <p>(b) Map 2 – Sydney Olympic Park</p> <p>(c) Map 3 – Luna Park</p>
<p>2. Development that has a capital investment value of more than \$10 million within the land identified on the following maps to this Schedule:</p> <p>(a) Map 4 – Barangaroo</p> <p>(b) Map 5 – Darling Harbour</p> <p>(c) Map 6 – Fraser Broadway (CUB) site</p> <p>(d) Map 7 – Honeysuckle (Newcastle)</p> <p>(e) Map 8 – Redfern-Waterloo Authority sites</p> <p>(f) Map 9 – Royal Randwick Racecourse</p> <p>(g) Map 10 – Western Sydney Parklands</p> <p>(h) Map 11 – Taronga Zoo</p>
<p>3. Development within the land identified on Map 12 – The Rocks that:</p> <p>(a) has a capital investment value of more than \$10 million; or</p> <p>(b) does not comply with the approved scheme within the meaning of clause 27 of Schedule 6 to the Act.</p>
<p>4. All development within the land identified on Map 13 – Bays Precinct, excluding:</p> <p>(a) business identification signs, and</p> <p>(b) any use of existing premises or approved premises, or any change of use of those premises, and</p> <p>(c) fitouts and internal alterations of existing premises or approved premises, and</p> <p>(d) strata subdivisions of existing premises.</p>

Attachment 1

Sites	
5.	Development within the land identified on Map 14 – Fox Studios, Moore Park Showgrounds and the Sydney Sports Stadiums, that: <ul style="list-style-type: none"> (a) has a capital investment value of more than \$10 million, or (b) is for the purposes of development for the purpose of a non-sporting event (such as a concert) in that part of the area that is land described in Part 1 of Schedule 2 to the <i>Sydney Cricket and Sports Ground Act 1978</i>.
6.	Development within land identified on Map 15 – Penrith Lakes, for the purpose of extraction, rehabilitation or lake formation (including associated infrastructure located in or outside that area).
7.	Development within land identified on Map 16 – Warnervale Town Centre, for the purposes of retail premises within the Warnervale Town Centre that has a capital investment value of more than \$20 million and a floor space area of more than 5,000 square metres.

CLASSES OF STATE SIGNIFICANT INFRASTRUCTURE (SSI)

The proposed classes of development for SSI and the criteria for development to be considered as SSI is provided below, subject to the finalisation of the SEPP:

Class	Description
1. General Public Authority Activities	Development that but for Part 5.1 of the Act (and within the meaning of Part 5 of the Act) would be an activity for which the proponent is also the determining authority and would, in the opinion of the proponent, require an environmental impact statement to be obtained under Part 5 of the Act.
2. Port Facilities and Wharf or Boating Facilities	Development for the purpose of port and wharf or boating facilities (excluding marinas) by or on behalf of a public authority that: <ul style="list-style-type: none"> a) is permissible without consent, and b) has a capital investment value of more than \$30 million.
3. Rail Infrastructure	Development for the purpose of rail infrastructure by or on behalf of the Australian Rail Track Corporation that: <ul style="list-style-type: none"> a) is permissible without consent, and b) has a capital investment value of more than \$30 million.

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Class	Description
4. Water Supply Systems	<p>(1) Development for the purpose of water supply systems (excluding desalination plants) by or on behalf of a public authority that:</p> <ul style="list-style-type: none"> a) is permissible without consent, and b) has a capital investment value of more than \$30 million. <p>(2) Development for the purpose of desalination plants by or on behalf of a public authority that:</p> <ul style="list-style-type: none"> a) is permissible without consent, and b) has a capital investment value of more than \$30 million.
5. Pipelines	<p>Development for the purpose of a pipeline in respect of which:</p> <ul style="list-style-type: none"> a) a licence is required under the <u>Pipelines Act 1967</u>, or b) an application for a licence is made under that Act on or after the commencement of this clause, or c) a licence was granted under that Act before the commencement of this clause. <p>Note: The <u>Pipelines Act 1967</u> enables a person to apply for and be granted a licence under that Act although a licence is not required by the Act for the pipeline concerned. Also, see Part 3 of Schedule 1 to the <u>Pipelines Act 1967</u>, which affects the operation of the <u>Environmental Planning and Assessment Act 1979</u> with respect to pipelines.</p>
6. Submarine Telecommunication Cables	<p>Development for the purpose of submarine telecommunication cables (and any attached devices) laid on or under the seabed beneath the coastal waters of the State and below the mean high water mark, being cables used for communications between Australia and other countries.</p>

ORDINARY COUNCIL

ORD05

ORD05

SUBJECT: AMENDMENTS TO MATER DEI (WIVENHOE) VOLUNTARY PLANNING AGREEMENT

FROM: Director Governance

BINDER: Harrington Park 2 & Mater Dei

PURPOSE OF REPORT

The purpose of this report is to provide feedback to Council from the public exhibition of the proposed amendments to the Mater Dei (Wivenhoe) Voluntary Planning Agreement (VPA).

BACKGROUND

At its meeting on 10 May 2011, Council resolved to exhibit proposed amendments to the Mater Dei VPA. These amendments include minor changes to Schedule 2 of the VPA to accommodate the rezoning of one of the residential precincts to R2 Low Density Residential zone to allow a seniors living village. It also includes a 'Variation to Contributions Works' clause to facilitate minor amendments to the VPA in the future in a timely manner.

MAIN REPORT

The Mater Dei VPA was exhibited for a four week period from 18 May 2011 to 14 June 2011 at the Narellan Customer Service Centre and Library, the Camden Customer Service Centre and Library, and Council's website.

Exhibition material consisted of an 'edited' copy of the VPA including Schedule 2, the Council report and resolution to exhibit the draft VPA amendments. The amended VPA is **provided in Attachment 1 to this report**. No submissions have been received.

These amendments were required as a result of the rezoning of one of the residential precincts (Precinct D) to R2 Low Density Residential zone to allow a seniors living village and consist of:

- Changes to the monetary contributions to reflect the seniors living contribution rate. This is based on a 1.5 occupancy rate per dwelling rather than the 3.1 occupancy rate used for residential dwellings;
- Addition of a new park (Park I) in Precinct C which compensates for the removal of a park (Park F) in Precinct D;
- New communal recreation space and facilities for the seniors living village in Precinct D. Park F is offset by the creation of this communal recreation space.
- A new clause (Clause 4.7) to facilitate minor changes to the VPA works in a timely manner has been added. This clause allows for minor variations to the VPA without the need for formal variation and public exhibition provided that Council is satisfied that they do not change the intent or objectives of the agreement.

CONCLUSION

Council has publicly exhibited the draft amended Voluntary Planning Agreement in accordance with the Council resolution of 10 May 2011. The amendments to the Mater Dei VPA provide for necessary changes to the Agreement to facilitate the new zoning of Precinct D to R2 Low Density Residential to allow a seniors living village. The intent and objectives of the VPA remain the same and will ensure a good level of community facilities within the development, including the seniors living village and the wider community.

RECOMMENDED

That:

- i. Council adopt the amended Mater Dei (Wivenhoe) Voluntary Planning Agreement; and**
- ii. Council's General Manager and Mayor be delegated to sign the amended Voluntary Planning Agreement and affix the Common Seal of Council.**

ATTACHMENTS

1. attachment 1 Amended VPA

Planning Agreement
229 Macquarie Grove Road, Kirkham (Wivenhoe)

The Council of Camden (ABN 31 117 341 764) (**Council**)

Trustees of the Sisters of the Good Samaritan (ABN 42 062 542 036) (**Developer**)

Prepared by:

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Attachment 1

Planning Agreement

229 Macquarie Grove Road, Kirkham (Wivenhoe)

Parties

Council	Name	The Council of Camden
	Address	37 John Street CAMDEN NSW 2570
	ABN	31 117 341 764
Developer	Name	The Trustees of the Sisters of the Good Samaritan
	Address	1A Harris Road FIVE DOCK NSW 2046
	ABN	42 062 542 036

Background

- A** The Developer is the registered proprietor of the land contained in certificate of folio identifier 1/217570 and known as 229 Macquarie Grove Road, Kirkham (**Land**).
- B** The Developer has lodged the Development Application with Council.
- C** The Developer has offered to provide the Contributions in accordance with this agreement if the Development Consent is granted.

Operative Provisions

1 Agreement

The agreement of the parties is:

- (1) made in consideration of, amongst other things, the mutual promises contained in this agreement; and
- (2) set out in these Operative Provisions.

2 Definitions

2.1 Defined terms

In this agreement, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this agreement.

3 Application and operation of agreement

3.1 Planning agreement

The parties agree that this agreement is a planning agreement:

- (1) within the meaning set out in section 93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3.2 Application

This agreement applies to the Development.

3.3 Operation

- (1) Unless set out in paragraph (2) this agreement operates upon the Developer obtaining any Construction Certificate with respect to the Development Consent, within the meaning set out in clause 109C(1)(b) of the *Environmental Planning and Assessment Act 1979* (NSW).
- (2) This agreement does not operate to require the Developer to make any Contributions unless and until the Council grants the Development Consent.

3.4 Heads of Planning Agreement

The parties agree that on the date that this agreement is entered into the Heads of Agreement is terminated.

4 Provision of Contributions

4.1 Provision

The Developer acknowledges that if this agreement were not entered into, the Council would have been entitled to impose conditions in the Development Consent pursuant to section 94 of the Act.

4.2 Contribution Works

The Developer must, at its cost:

- (1) obtain development consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
- (2) carry out and complete the Works to the satisfaction of the Council by the time specified in Part B of **Schedule 2**;
- (3) carry out and complete the Works:
 - (a) in accordance with any relevant development consent;
 - (b) in accordance with the requirements of any consent or approval required for the Works by any Authority;
 - (c) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (d) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

4.3 Embellishment

As soon as possible after the date of this agreement the parties will negotiate in good faith concerning any embellishments to be carried out by the Developer in the proposed parks set out in Part B of **Schedule 2**.

4.4 Financial Contributions

The Developer must pay the Financial Contributions by the time specified in Part A of **Schedule 2**.

4.5 Indexation of amounts

The Financial Contributions are to be adjusted (with the calculation to be made as from the date any such amount is due to be paid under this agreement) in accordance with the following formula:

$$A = B \times C/D$$

where:

A = the adjusted amount;

B = the relevant amount as set out in this agreement;

C = the CPI most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the CPI most recently published before the date of this agreement.

4.6 Public Facilities

- (1) The Developer must allow public access to the:
 - (a) sporting field in the general proximity of Wivenhoe (set out at Item 4 of Part B in **Schedule 2**) (**Sportsground**) at reasonable times:
 - (i) on weekdays outside normal school hours (which are agreed to be between 8am and 4pm); and
 - (ii) on weekends; and
 - (b) multipurpose community facilities being the Wivenhoe stables (set out at Item 5 of Part B in **Schedule 2**) (**Stables**) as a minimum during 9am to 6pm from Monday to Friday (by appointment and for approved uses only),
(Public Facilities).
- (2) If required by the Council, the Developer will do all things necessary to register a public positive covenant on the title of that part of the Land that contains the Public Facilities that will provide for:
 - (a) the Developer providing public access to the relevant facility at reasonable times; and
 - (b) the Developer undertaking the care and maintenance of the relevant facility. For the purpose of clarity the Developer will bear all risk associated with the relevant facility.
- (3) Council will include the Sportsground and the Stables in its schedule of fees and charges to make the public aware of the availability of these facilities. Fees need to be negotiated with Council.
- (4) If access to the Sportsground by the public is hindered to a substantial degree after the Sportsground is Complete, Council may, by notice in writing to the Developer, require the Developer to pay a financial contribution of \$165,317 (to be indexed as per Clause 4.5) on account of the failure of the Developer to provide the relevant material public benefit required by Council under this agreement. Any such payment must be made within sixty (60) days of the date the relevant notice is served.
- (5) If access to the Stables by the public is hindered to a substantial degree after the Stables are Complete, Council may, by notice in writing to the Developer, require the

Developer to pay a financial contribution of \$72,477 (to be indexed as per Clause 4.5) on account of the failure of the Developer to provide the relevant material public benefit required by Council under this agreement. Any such payment must be made within sixty (60) days of the date the relevant notice is served.

- (6) The Developer may at any time and at its discretion:
- (c) pay Council the amount referred to in paragraph 0, in which case it will be relieved of its obligation to make the Sportsground publicly available; or
 - (d) pay Council the amount referred to in paragraph 0, in which case it will be relieved of its obligation to make the Stables publicly available.
- (7) If the Developer pays an amount referred to in paragraph 0 or 0 (either of its own accord or if required to do so by the Council) then the Council must do all things necessary to remove of any public positive covenant registered under paragraph (2) affecting the relevant facility from the title of the Land as and from the date the payment is made.

4.7 Variation to Contribution Works

The Contribution Works may be varied without the need for variation to this agreement provided that the Council is satisfied that the variations to scope of the Contributions Works are consistent with the intent and objective of this agreement.

5 Application of s94 & s94A

For the purposes of section 93F(3)(d) of the Act, this agreement excludes the application of sections 94 & 94A of the Act to the Development.

6 Heritage Works

6.1 Heritage CMP and Scope of Works

The Developer warrants that it:

- (1) has lodged the Heritage CMP and Scope of Heritage Works with Council as part of the Development Application;
- (2) will be bound by the terms of the Heritage CMP and Scope of Heritage Works; and
- (3) will carry out the Heritage Conservation Works in accordance with the terms of the Heritage CMP and Scope of Heritage Works.

6.2 Maintenance prior to commencement of Heritage Conservation Works

- (1) Prior to the commencement of the Heritage Conservation Works the Developer will carry out any works on Wivenhoe that are necessary to ensure that it is maintained in its condition at the date the Development Consent is issued.
- (2) Within one (1) month of the Development Consent being issued, the Developer will prepare and submit to Council a condition report detailing the condition of Wivenhoe as at the date the Development Consent is issued.

6.3 Timing of Heritage Conservation Works

- (1) The Developer must commence the Heritage Conservation Works prior to the receipt of a Subdivision Certificate for the 81st Final Lot in that part of the Land zoned 7(d)(4) on the areas shown on the Indicative Plan.
- (2) The Developer will complete the Heritage Conservation Works prior to the issue of the final Subdivision Certificate for the Development.
- (3) Until the Developer complies with paragraph (1):

- (a) the Developer undertakes to the Council not to make an application for; and
- (b) Council may refuse to issue,

a Subdivision Certificate for any lots in the Development in excess of the first eighty (80) Final Lots in that part of the Land zoned 7(d)(4) on the areas shown on the Indicative Plan.

6.4 Certification of Completion of Heritage Conservation Works

- (1) For the purpose of this clause a **Heritage Consultant** is a “qualified practising heritage consultant” appointed by the Developer and approved by Council.
- (2) The Developer must serve a notice (**Heritage Works Completion Notice**) on the Council advising that, in the opinion of the Developer, the Heritage Conservation Works have been Completed.
- (3) As soon as possible after a Heritage Works Completion Notice is served, Council must ensure that the Heritage Consultant inspects the Heritage Conservation Works to assess if they have been Completed.
- (4) Within seventy two (72) days of the date a Heritage Works Completion Notice is served, Council must provide notice in writing to the Developer that the Heritage Conservation Works set out in the Heritage Works Completion Notice have, in the opinion of the Heritage Consultant:
 - (a) been Completed; or
 - (b) not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Heritage Conservation Works which have not been Completed; and
 - (ii) the work the Council requires the Developer to carry out in order to rectify the deficiencies in those Heritage Conservation Works (**Rectification Notice**).
- (5) If Council does not provide the Developer with a notice in accordance with paragraph (4), the Heritage Conservation Works will be deemed to have been Completed.
- (6) Where Council serves a Rectification Notice on the Developer, the Developer must:
 - (a) rectify the Heritage Conservation Works in accordance with that notice within three (3) months from the date it is issued by Council; or
 - (b) serve a notice on Council that it disputes the matters set out in the Rectification Notice.
- (7) Where the Developer:
 - (a) serves notice on Council in accordance with paragraph (6)(b), the dispute resolution provisions of this agreement apply; or
 - (b) rectifies the Heritage Conservation Works in accordance with paragraph (6)(a), it must serve upon Council a new Heritage Works Completion Notice for the Heritage Conservation Works it has rectified.
- (8) The costs incurred in connection with the Heritage Consultant under this clause must be met by the Developer.

6.5 Ongoing Maintenance of Wivenhoe

After Completion of the Heritage Conservation Works, the Developer must continue to maintain and conserve Wivenhoe so as to ensure the continuity of outcomes set out in the Heritage CMP.

7 Bushland Conservation

7.1 Bushland CMS & Bushland CMP

The Developer warrants that it:

- (1) has lodged the Bushland CMP with Council as part of its Development Application;
- (2) will be bound by the terms of the Bushland CMS & Bushland CMP; and
- (3) will carry out the Bushland Conservation Works in accordance with the terms of the Bushland CMS, the Bushland CMP and this agreement.

7.2 Maintenance prior to commencement of Bushland Conservation Works

- (1) Prior to the commencement of the Bushland Conservation Works the Developer will carry out any works on the Bushland Areas that are necessary to ensure that those areas are not further degraded from their condition at the date the Development Consent is issued.
- (2) The works referred to in paragraph (1) must not be inconsistent with the Bushland CMS and the Bushland CMP.

7.3 Timing of works

The Developer will adhere to the program for the completion of the Bushland Conservation Works set out in the Bushland CMP.

7.4 Annual reports

- (1) The Developer must provide Council with a report on each anniversary of the date on which the Development Consent is issued by Council that sets out:
 - (a) the Bushland Conservation Works carried out in the preceding twelve (12) month period;
 - (b) any matters that may impact upon the Developer's ability to carry out further Bushland Conservation Works in accordance with the Bushland CMS and the Bushland CMP; and
 - (c) the extent to which the desired outcomes set out in the Bushland CMS and the Bushland CMP were achieved in the preceding twelve (12) months.
- (2) The Developer will be discharged from its obligation under paragraph (1) upon completion of the Bushland Conservation Works.

7.5 Completion of the Bushland Conservation Works

- (1) The Bushland Conservation Works are Complete when they have been completed in accordance with the Bushland CMP.
- (2) Upon Completion of the Bushland Conservation Works, the Developer must ensure that it complies with any obligations imposed on it under the CMP in respect of the maintenance of the Bushland Areas retained in its ownership by the establishment of a National Heritage Trust or similar conservation trust (**Trust**).
- (3) Once it is established, the Trust will:
 - (a) facilitate the funding requirements of the obligations imposed on the Developer pursuant to paragraph (2); and
 - (b) discharge any ongoing responsibility imposed on the Developer in respect of the maintenance of the Bushland Areas retained in the ownership of the Developer.

- (4) For the purpose of clarity, nothing in this clause 7.5 relieves the Developer from any liability for the obligations referred to in paragraph (2), however the Council acknowledges and agrees that those obligations will be discharged by the Trust.

7.6 Alternative strategies

Council will give full and proper consideration to any proposal by the Developer to alter the methods by which the desired outcomes of the Bushland CMS and/or the Bushland CMP can be achieved.

8 Completion of Works

8.1 Issue of Completion Notice

If the Developer considers that any particular Item of Work is Complete it will serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular Item of Work to which it relates; and
- (3) specifies the date on which, the Developer believes the relevant Item of Work was Completed;

(Completion Notice).

8.2 Inspection by Council

Council must inspect each Item of Work set out in a Completion Notice within fourteen (14) days of the receipt of that notice.

8.3 Rectification Notice

- (1) Within twenty eight (28) days of the end of the time period referred to in clause 8.2, Council must provide notice in writing (**Rectification Notice**) to the Developer that the Items of Work set out in the Completion Notice:
 - (a) have been Completed; or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Items of Work which have not been Completed; and
 - (ii) the work the Council requires the Developer to carry out in order to rectify the deficiencies in those Items of Work.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the Items of Work set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Developer the Developer must:
 - (a) rectify the relevant Items of Work in accordance with that notice within three (3) months from the date it is issued by the Council; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
 - (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this agreement apply; or
 - (b) rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified.

8.4 Works-As-Executed-Plan

No later than sixty (60) days after an Item of Work is Complete, the Developer will submit to the Council a copy of a full Works-As-Executed-Plan in respect of that Item of Work.

8.5 Public Access

- (1) The parties will do all things reasonably necessary to procure that public positive covenants (**Covenants**) are registered on the title of those parts of the Land:
 - (a) upon which an Item of Work set out in items 2, 6 and 7 of Part B of **Schedule 2** is erected; or
 - (b) which is zoned 7(d) under the New LEP,
as soon as possible after the relevant part of the Land is created as a separate lot.
- (2) The parties will do all things reasonably necessary to procure that easements (**Easements**) are registered on the title of those parts of the Land upon which an Item of Work set out in item 3 of Part B of **Schedule 2** is erected as soon as possible after the relevant part of the Land is created as a separate lot.
- (3) The terms of any Covenant or Easement will provide for:
 - (a) the Developer to provide public access to the relevant Item of Work or part of the Land at all reasonable times; and
 - (b) the Developer will undertake the care and maintenance of the relevant Item of Work or part of the Land. For the purpose of clarity the Developer will bear all risk associated with the relevant Item of Work or Part of the Land.

9 Defects Liability**9.1 Defects Notice**

- (1) Where any Item of Work has been Completed but that item contains a defect which adversely affects the ordinary use and/or enjoyment of the relevant item (**Defect**) Council may issue a defects notice (**Defects Notice**) concerning that item but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

9.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 8 in respect of the satisfaction of the Defects Notice.

9.3 Right of Council to Step-In

Council may, at its absolute discretion, enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice of its intention to do so.

9.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 9.3 then:

- (1) Council may:
 - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

9.5 Costs of Council

Where Council exercises its step-in rights all, costs incurred by Council in rectifying the relevant Defects may recover those costs as a debt due in a court of competent jurisdiction.

10 Indemnity and Insurance

10.1 Indemnity

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen against all Claims that arise in connection with the carrying out of the Contribution Works and any other obligation under this agreement except to the extent that any such Claim arose as a result of an act or omission of Council.

10.2 Insurance

- (1) The Developer will take out and keep current the following insurances during the following periods in relation to the Works:
 - (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works until those works are Complete,
 - (b) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party until those works are Completed and thereafter during any period that the Developer is required to provide public access to the relevant Work under this agreement,
 - (c) workers compensation insurance as required by law for any employee involved in the construction or maintenance of the Works until those works are Complete, and
 - (d) any other insurance required by law until those works are Complete.
- (2) If the Developer fails to comply with paragraph (1), the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - (a) by calling upon the Security provided by the Developer to the Council under this Agreement, or
 - (b) recovery as a debt due in a court of competent jurisdiction.
- (3) The Developer must not commence the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in paragraph (1).

11 Force Majeure

11.1 Definition

In this clause 11, **Force Majeure** means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, and industrial disputes.

11.2 Delay by reason of Force Majeure

- (1) If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this agreement (except an obligation to pay money), it must:
 - (a) give to the other party prompt notice of the Force Majeure with reasonably full particulars; and
 - (b) suggest an alternative method, if any, of satisfying its obligations under this agreement.
- (2) If a party is unable to satisfy its obligations under this agreement by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.
- (3) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.

11.3 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 14.

12 Security

12.1 Prohibition

Neither party may Assign their rights under this agreement without the prior written consent of the other party.

12.2 Assignment of Land

The Developer must not Assign its interest in the Land, other than a Final Lot, unless:

- (1) Council consents to the Assignment, acting reasonably; and
- (2) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement in relation to that part of the Land to be assigned.

12.3 Registration of this agreement

- (1) This agreement will be registered on the title of the Land pursuant to s 93H of the Act.
- (2) Council must do all things necessary to allow the Developer to remove this agreement from the title of any part of the Land:
 - (a) with respect to which the Developer has complied with its obligations to provide the Contributions; or
 - (b) upon the issue of a Subdivision Certificate for a plan that, when registered, would create Final Lots with respect to which the Developer has complied with its obligations to provide the Contributions.

12.4 Obligations of the Developer

The Developer must:

- (1) do all things necessary to allow the registration of this agreement to occur under clause 12.3; and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

12.5 Bond or Bank Guarantee

- (1) The Developer will, within fourteen (14) days of being requested to do so by the Council, provide to Council a bank guarantee in an amount of thirty five thousand dollars (\$35,000) to secure the obligations of the Developer under this Agreement.
- (2) The parties acknowledge that the amount of the bond referred to in paragraph (1) has been requested by the Council on the basis that it will secure the payment of any legal costs incurred by the Council in instituting legal proceedings against the Developer as a result of any breach of this Agreement by the Developer.

13 Review & amendment

13.1 Negotiation of review

If either party requests a review of the whole or any part of this agreement then the parties must use their best endeavours, acting in good faith, to review this agreement in accordance with that request.

13.2 Amendment to be in writing

If the parties agree to amend this agreement as a result of a review conducted under clause 13.1 then any such amendment will only have effect if it:

- (1) is in writing and signed by both parties; and
- (2) complies with any requirements set out in the Act.

14 Dispute resolution

14.1 Notice of Dispute

If a party believes that there is a dispute in respect of this agreement (**Dispute**) then:

- (1) that party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
- (2) the Dispute Notice must outline:
 - (a) what the party believes the dispute to be; and
 - (b) what the party wants to achieve; and
 - (c) what the party believes will settle the Dispute; and
 - (d) who will be the party's representatives to negotiate the dispute.

14.2 Consultation between the Representatives

Within fifteen (15) business days of a notice served in accordance with clause 14.1(1) the representatives (**Representatives**) of each of the parties must meet in order to resolve the Dispute.

14.3 Settlement of Dispute and mediation

- (1) If the Dispute cannot be resolved by the Representatives within a further fifteen (15) business days of a meeting between the Representatives in accordance with clause 14.2 then the Dispute must be submitted to mediation by a mediator selected:

- (a) by the parties; or
 - (b) if the parties cannot agree on a mediator, by the President of the Australian Commercial Disputes Centre.
- (2) The parties are to appoint a mediator who is appropriately qualified and have practical experience in the area of the Dispute.
- (3) Any costs incurred in the mediation of the Dispute are to be borne equally by the parties.

14.4 Exclusivity of dispute resolution procedure

- (1) Both parties must adhere to the dispute resolution procedure set out in this agreement.
- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this agreement.

15 Default

15.1 Events of default

The Developer commits an "Event of Default" if it:

- (1) breaches a term of this agreement;
- (2) fails to comply with the terms of the Heritage CMP;
- (3) fails to comply with the terms of the Bushland CMP; or
- (4) fails to comply with the terms and conditions of the Development Consent.

15.2 Consequences of Events of default

Where the Developer commits an Event of Default the Council may serve a notice on the Developer requiring the relevant breach to be rectified within a reasonable time (which must be no less than seventy two (72) days) of the date of the notice.

15.3 No restriction on rights

The rights vested in the Council pursuant to clause 15.2 do not prevent Council from exercising any other rights that it may possess at law.

16 Termination

16.1 Termination

This agreement terminates in the following events:

- (1) the parties agree in writing to terminate the operation of this agreement at any time; or
- (2) the Council serves notice on the Developer terminating this agreement where the Developer has failed to comply with a notice issued in accordance with clause 15.2.

16.2 Consequence of termination

Upon termination of this agreement:

- (1) all future rights and obligations of the parties are discharged;
- (2) the Council must do all things necessary to remove this agreement from the title of the Land;
- (3) any security held under this agreement will be released; and
- (4) all pre-existing rights and obligations of the parties continue to subsist.

17 Position of Council

17.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

17.2 Agreement does not fetter discretion

This agreement is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion, (Discretion).

17.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied; and
 - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the Law.

17.4 No Obligations

Nothing in this agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

18 Confidentiality

18.1 Agreement not confidential

The parties acknowledge that this agreement:

- (1) is not confidential;
- (2) may be treated as a public document by the Council; and
- (3) may be publicly exhibited and reported without restriction by either party.

18.2 Non-disclosure

- (1) A party must not disclose Confidential Information disclosed to it by the other party except:
 - (a) with the prior written consent of the disclosing party; or
 - (b) in accordance with the terms of this agreement.

- (2) A party may not unreasonably withhold its consent to disclosure in accordance with paragraph 18.2(1)(a) where:
- (a) the requested disclosure is made for the purpose of facilitating the proper performance of a party's obligations under this agreement; and
 - (b) the disclosure is to be made to persons who:
 - (i) reasonably require the disclosure of the information; and
 - (ii) are subject to a duty of confidentiality on the same or similar terms to that contained in this clause.

18.3 Use of Confidential Information

A party may use, copy, reproduce or otherwise deal with the Confidential Information disclosed to it only:

- (1) during the term of this agreement; and
- (2) in accordance with the terms of this agreement; and
- (3) in a manner that is related to the proper and lawful conduct and performance of its obligations under this agreement.

18.4 Exceptions to non-disclosure

A party may disclose Confidential Information that has been disclosed to it:

- (1) where such disclosure is made to those of its employees, advisers, related bodies corporate and shareholders who:
 - (a) have a need to know (and only to the extent each has a need to know); and
 - (b) are aware and agree that the information that is to be disclosed must be kept confidential; or
- (2) which, at the time of disclosure, is within the public domain or after disclosure comes into the public domain other than by a breach or breaches by any party (whether the party to this agreement or a third party) of any obligation owed to the other party; or
- (3) where:
 - (a) required by law or any order of any court, tribunal, authority, regulatory body or the rules of any securities exchange (whether in Australia or elsewhere) to be disclosed; and
 - (b) the party ensures that information is disclosed only to the extent reasonably and lawfully required.

18.5 Duration of confidentiality obligations

Unless otherwise agreed by the parties in writing the obligation of confidentiality set out in this agreement operates indefinitely and does not terminate on the expiry or earlier termination of this agreement.

19 GST

19.1 Defined GST Terms

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

19.2 GST to be added to amounts payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this agreement are exclusive of GST.

19.3 GST obligations to survive termination

This clause 19 will continue to apply after expiration of termination of this agreement.

20 Change of Laws

If, at the time a Contribution is required to be made by the Developer under this agreement a New Law is in force that requires the Developer to make a monetary contribution, carry out work or provide a material public benefit;

- (1) to any Authority;
- (2) for a Public Purpose (as defined in the Act);
- (3) that is the same as, or satisfies the same Public Purpose as, part of the Contributions, (**New Contribution**) then the Developer's obligation to provide that part of the Contributions is discharged if it provides the New Contribution.

21 Miscellaneous

21.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to the rights and obligations of the parties set out in this agreement; and
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of it; and
- (3) make approvals or decisions that are required of it in good faith; and
- (4) be just and faithful in its activities and dealings with the other parties.

21.2 Consultation concerning development applications

If the Developer is required to lodge an application for development consent for any matter required to be carried out by it under this agreement then it will consult with Council in good faith in relation to the relevant works before lodging any such application.

21.3 Legal costs

Each party must bear its own legal costs in respect of the negotiation, preparation and execution of this agreement.

21.4 Taxes

The Developer must pay all taxes, duties and other governmental fees and charges payable in respect of this agreement.

22 Administrative provisions

22.1 Notices

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address; or

- (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

22.2 Entire agreement

This agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

22.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

22.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

22.5 Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

22.6 Unenforceability

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

22.7 Power of Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

22.8 Governing law

The law in force in the State of New South Wales governs this agreement . The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement ; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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Execution page

Executed as an agreement

Dated:

Executed by **CAMDEN COUNCIL** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with a resolution of the Council dated

General Manager (Signature)

Mayor (Signature)

Name of General Manager (Print Name)

Name of Mayor (Print Name)

Executed by the Developer.

Trustee (Signature)

Trustee (Signature)

Name of Trustee (Print Name)

Name of Trustee (Print Name)

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Schedule 1 Defined Terms and Interpretation

Part 1 - Definitions

Act	means the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none"> (1) federal, state or local government; or (2) department of any federal, state or local government; or (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Bushland Areas	means those areas of the Development that are subject to the Bushland CMP.
Bushland CMP	means the Bushland Conservation Management Plan attached as Annexure 1 , or otherwise as approved by the Council from time to time.
Bushland CMS	means the Bushland Conservation Management Strategy attached as Annexure 2 , or otherwise as approved by the Council from time to time.
Bushland Conservation Works	means the works required to be carried out under the Bushland CMP.
Claim	means against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Confidential Information	means: <ol style="list-style-type: none"> (1) intellectual property: any and all intellectual property relating to the Development; and (2) financial information: information regarding costs, profits, markets, sales and other financial information; and (3) business information: information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers; and (4) personal information: any personal information relating

to the officers (as defined in s9 of the *Corporations Act 2001* (Cth)), partners, employees, agents, contractors or clients of the disclosing party; and

- (5) **information obtained through performance:** all information which becomes known to a party as a consequence of it performing the obligations under this agreement including (without limitation) all records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party; and
- (6) **technical information:** information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical information; and
- (7) **disclosed information:** any other information disclosed by a disclosing party that:
 - (a) is identified as being confidential; or
 - (b) would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.

Complete

means, in relation to an Item of Work, that the item has been completed in accordance with this agreement.

Contribution Works

means the:

- (1) the Works; and
- (2) the Bushland Conservation Works; and
- (3) the Heritage Conservation Works.

Contributions

means the Contribution Works and the Financial Contributions.

CPI

means the Consumer Price Index (All Groups – Sydney) as published by the Australian Bureau of Statistics

Defects Liability Period

means a period with respect to each Item of Work of six (6) months commencing on the date that the item is Completed.

Development

means the subdivision and development of the Land in accordance with:

- (1) the Development Consent (including any development consent under the Act giving effect to the Development Consent); and
- (2) the Indicative Plan.

Development Application

means the development application under the Act for the Development Consent and being application No DA 192/2008 lodged with the Council on 29 February 2008.

Development Consent	means the development consent within the meaning of the Act granted for the Development Application, as modified from time to time.
Final Lot	means: <ol style="list-style-type: none"> (1) a lot in the Development that is capable of being occupied for residential purposes and which cannot be subdivided further under the New LEP; or (2) any other lot that the parties agree is a Final Lot, but excluding a lot that is required to be dedicated or transferred to the Council, either under this agreement or as a condition of the Development Consent.
Financial Contributions	means the monetary contributions set out in Part A of Schedule 2 .
GST	means goods and services tax payable in accordance with the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and all incidental and ancillary legislation and regulations.
Heritage CMP	means the conservation management plan in relation to the restoration and maintenance of Wivenhoe attached as Annexure 3 , or such other plan approved by Council from time to time.
Heritage Conservation Works	means the works the Developer will undertake to Wivenhoe in accordance with the Heritage CMP and the Scope of Heritage Works.
Heads of Planning Agreement	means the Heads of Planning Agreement – Mater Dei entered into between the parties.
Indicative Plan	means the plan attached as Annexure 5 .
Item of Work	means an individual item of the Works.
Land	means the land contained in certificate of title folio identifier 1/217570 and known as 229 Macquarie Grove Drive, Kirkham.
Law	means all legislation, plans, regulations, by-laws, common law and other binding order made by any Authority.
New Law	means an amendment, variation or change made to a Law in force at the date of this agreement, or a Law that comes into force on or after the date of this agreement.
New LEP	means the Camden Local Environmental Plan 74 (as amended).
Planning Legislation	means the Act and the <i>Local Government Act 1993</i> (NSW).
Scope of Heritage Works	means the scope of heritage works attached as Annexure 4 .

Subdivision Certificate	has the meaning ascribed to that term in the Act.
Wivenhoe	means the building and curtilage defined as “Wivenhoe” in the Heritage CMP.
Works	means the works set out in Part B of Schedule 2 .

Part 2 – Interpretational Rules

Clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
Reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
Singular includes plural	the singular includes the plural and vice versa.
Person	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
Executors, administrators, successors	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
Dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
Calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
Reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
Accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
Reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
Meaning not limited	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
Next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
Next Business Day	if an event must occur on a stipulated day which is not a

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	Business Day then the stipulated day will be taken to be the next Business Day.
Time of day	time is a reference to Sydney time.
Headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
Agreement	a reference to any agreement, agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

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Schedule 2 Contributions

Calculation of contributions per Final Lot – Residential Lots

Calculation	Base rate	Indexed to December 2008 – time of signing of VPA
Plan administration	\$297	\$342
Community and recreation land acquisition	\$2,157	\$2,486
Community and recreation facilities	<u>\$3,192</u>	<u>\$3,679</u>
Total contribution per Final Lot	\$5,646	\$6,507

Calculation of contributions per Final Dwellings – Seniors Living Dwellings

Calculation	Base rate	Indexed to December 2008 – time of signing of VPA
Plan administration	\$144	\$166
Community and recreation land acquisition	\$1,044	\$1,203
Community and recreation facilities	<u>\$1,545</u>	<u>\$1,780</u>
Total contribution per Final Lot	\$2,732	\$3,149

Summary of Contributions

Column 1	Column 2	Column 3
Item No.	Public Facility	Timing of Completion
Part A – Financial Contributions		

Item 1. Monetary contribution in the amount of \$6,507 per Residential Final Lot. The amount for each Final Lot must be paid prior to the issue of a Subdivision Certificate for the plan that, when registered at the NSW Department of Lands, will create that Final Lot.

Item 2. Monetary contribution in the amount of \$3,149 per final Seniors Living Dwelling. The amount for each dwelling must be paid prior to the issue of the Occupancy Certificate for the relevant dwelling.

Part B – Works

Column 1	Column 2	Column 3
Item No.	Public Facility	Timing of Completion
Item 3.	District open space (passive component)	
	Park G (11,200 sqm)	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct A (as shown on the Indicative Plan).
	Park H (9,200 sqm)	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct C (as shown on the Indicative Plan).
Item 4.	District cycleway/pedestrian paths	
	Shared cycleways (2.5m wide) – Approx 4,700m ²	Simultaneously with the development of the Precinct (as shown on the Indicative Plan) that the cycleway, or the relevant part of it, passes through or adjoins.
	Concrete footpaths (1.5m wide) – Approx 3,200m ²	Simultaneously with the development of the Precinct (as shown on the Indicative Plan) that the footpath, or the relevant part of it, passes through or adjoins.
	Informal trails (1.5m wide) – Approx 4,500m ²	In accordance with the Bushland CMP.
Item 5	Sporting ground access	Currently public access is available and will continue to be available.
Item 6.	Multi purpose Community Centre (Stables access)	Currently public access is available and will continue to be available subject to Heritage Conservation Works being carried out.
Item 7.	Local open space	
	Park A – 5,500m ²	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct A (as shown on the Indicative Plan).
	Park B – 1,280m ²	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct A (as shown on the Indicative Plan).
	Park C – 1,280m ²	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct A (as shown on the Indicative Plan).
	Park D – 1,900m ²	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct A (as shown on the Indicative Plan).
	Park E – 760m ²	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct B (as shown on

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Column 1	Column 2	Column 3
Item No.	Public Facility	Timing of Completion
		the Indicative Plan).
	Park I – 3,408m ²	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct C (as shown on the Indicative Plan).
Item 8	Local recreation Children's play ground within Park D	Prior to the release of Subdivision Certificates for the creation of all Final Lots within Precinct A (as shown on the Indicative Plan).
Item 9	Communal recreation Communal grounds (27,000 m ²) and facilities building for Seniors Housing Village	Prior to the issuing of the Occupancy Certificate for the final dwelling within the development.

Annexure 1
Bushland CMP

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Attachment 1

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**Annexure 2
Bushland CMS**

**Annexure 3
Heritage CMP**

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**Annexure 4
Scope of Heritage Works**

Annexure 5
Indicative Plan

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ORDINARY COUNCIL

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SUBJECT: CONSTRUCTION OF LINK ROAD BETWEEN LODGES ROAD AND RICHARDSON ROAD – PRELIMINARY ACTIONS TO DELIVER THE INFRASTRUCTURE PACKAGE

FROM: Director Governance

BINDER: Elderslie/Spring Farm

PURPOSE OF REPORT

The purpose of this report is to seek the endorsement of Council to proceed with the preliminary negotiations with the Department of Planning and Infrastructure (DPI) and various land owners to facilitate the construction of Liz Kernohan Drive from Lodges Road in Elderslie to Richardson Road in Spring Farm, and including the Camden Bypass Intersection. A locality map is **provided as Attachment 1 to this report**.

BACKGROUND

Currently, development growth within the Elderslie and Spring Farm residential release is limited by lot yield thresholds presently in place for these release areas.

In 2006, traffic engineering consultants were commissioned by the Developers/Consortiums of both Elderslie and Spring Farm to determine the maximum lot threshold for lots to be developed before the levels of service of intersections and public amenity became unstable for the respective communities.

The basis upon which the lot thresholds were determined was based on the local residential amenity and the forecast traffic conditions in the Elderslie locality, in particular the impacts on Southdown Road. The lot threshold was determined to be 627 lots for the Elderslie release area before the residential amenity was disturbed and the local traffic conditions are compromised.

In the case of Spring Farm, the lot threshold was determined based upon the traffic capacity and level of service for the Macarthur Road/Camden Bypass on/off ramp intersection. This threshold was determined to be a total of 1,226 lots before the level of service of the intersection would fail.

Upon submission of the reports, Council adopted the recommendations and would only relinquish these thresholds should the following solutions be operational:

- Elderslie – Construction of a link between Lodges Road and Camden Bypass to divert traffic off Lodges Road, Hilder Street and Richardson Road;
- Spring Farm – Construction of a link from Richardson Road to the Camden Bypass to allow traffic to be diverted from Richardson Road to the Camden Bypass.

The following table demonstrates the thresholds and current lot production, current as of the date of this report:

	Lot Threshold	Lots Released (With Subdivision Certificate)	Difference	Lots Approved (Without Subdivision Certificate)	Total
Elderslie	627	581	46	299	880
Spring Farm	1226	554	672	379	933

In line with Council's current policy, Subdivision Certificates will be withheld from release once the lot threshold has been reached in the respective release area. Whilst the Spring Farm release has been developed to 45% of the lot threshold, it is evident in the table above that the Elderslie release is threatening the lot threshold. Therefore, in keeping with policy, it is imminent that further development within the Elderslie release will cease.

In order for development to progress, the lot threshold needs to be removed and it is Council's position that this should not be altered until there is some reassurance that the proposed Liz Kernohan Drive is constructed and operational between Lodges Road and Richardson Road, together with a signalised intersection at the Camden Bypass. **Refer to Attachment 1 at the end of this report.**

Council has been in consultation with the DPI for several years regarding the construction of the Camden Bypass intersection. Significant progress has been made in recent months with the DPI proposing to enter into a Voluntary Planning Agreement with Council to secure the construction of the work and provide funding assistance to top up the funds available from development contributions levied by the Council.

MAIN REPORT

The ongoing subdivision of land within the Elderslie and Spring Farm residential release areas is governed by lot thresholds. It has been Council's position that the construction of the Camden Bypass intersection, Liz Kernohan Drive (from Lodges Road to Richardson Road) and the Liz Kernohan Drive/Richardson Road intersection will connect the Spring Farm and Elderslie release areas to the Camden Bypass, alleviating pressures on the local amenity, and trigger the removal of the lot thresholds.

The DPI are offering to enter into a Voluntary Planning Agreement with Council which would:

- I. define the scope of works;
- II. provide an agreed timeframe for the delivery of the works; and
- III. contain provisions for the shared funding of the works between the DPI and Council (from development contributions levied in Spring Farm and Elderslie).

Spring Farm

The proposed construction of this portion of road includes the Camden Bypass intersection and the construction of Liz Kernohan Drive to Richardson Road, including the construction of the Liz Kernohan Drive/Richardson Road intersection. The total length of this portion being approximately 550m.

The following is a list of the key elements for this portion of road:

- Construction of a signalised intersection and its tail-outs at the Camden Bypass/Liz Kernohan Drive intersection, which will include relevant street signposting, street lighting, and utility adjustment;
- Construction of a roundabout and its tail-outs at the Richardson Road/Liz Kernohan Drive intersection;
- Construction of a two-way dual lane carriageway, which will widen on the approach from all directions to the Camden Bypass/Liz Kernohan Drive intersection. The widening will include the provision of right-hand turning lanes on the approach and merging slip lanes on the exit of the intersection; and
- Construction of central median islands along the stretch of proposed road.

Due to Liz Kernohan Drive and its intersections being identified as a critical piece of infrastructure within the locality, Council could proceed with facilitating the construction of the Camden Bypass/Liz Kernohan Drive/Richardson Road infrastructure package. Council has been in consultation with the DPI for several months discussing the regional significance for this connection both from a traffic perspective and more importantly the need to facilitate lot production within the Elderslie and Spring Farm developments. The DPI has acknowledged the regional significance of this section of road and the need to facilitate further development within the region. Accordingly, the DPI is offering to provide financial and project management support to Council to deliver this major piece of infrastructure.

The DPI will coordinate the delivery of the Camden Bypass/Liz Kernohan Drive/Richardson Road infrastructure package. **Refer to Attachment 2 at the end of this report.** The terms relating to the DPI delivering this package is that Council will enter into negotiations for a Voluntary Planning Agreement (VPA) between DPI (Funding Authority), Council (Land Owner and Funding Authority) and the DPI's nominated Developer. In making the VPA offer, the DPI is delivering the coordination of the design and construction of the Camden Bypass/Link Road/Richardson Road infrastructure package against a specific, agreed program and supported by appropriate security for that delivery. In return, Council is to consider the provision of the following outcomes:

1. Payment of Section 94 monies to the DoPI which is levied in accordance with the current Section 94 Contributions Plan 2004 (adopted on 28 June 2004) being approximately \$5,000,000 (in partial instalments) for the delivery of the Camden Bypass/Liz Kernohan Drive/Richardson Road Intersections and associated roads;
2. Remove the lot thresholds currently restricting the subdivision release within Elderslie and Spring Farm. These thresholds will be lifted on the date which the VPA is signed and a program of works is agreed to by all relevant parties.

If Council resolves to proceed with negotiations with the DPI regarding the delivery of the infrastructure package, then a draft VPA will be prepared. A further report will be submitted for Council to consider the draft VPA, which will include the scope of works, the timeframe for delivery and cost sharing arrangements. If Council resolves to enter the VPA, then it would be appropriate for Council to also resolve to remove the lot thresholds applying to the Elderslie and Spring Farm release areas as the timeframes for construction of the Camden Bypass intersection and associated works will be secured.

Elderslie

A link is required to be provided between Lodges Road in Elderslie to the Camden Bypass intersection (being the construction of Liz Kernohan Drive west of the Camden Bypass) to coincide with the construction schedule of the Camden Bypass/Liz Kernohan Drive/Richardson Road infrastructure package. Council will manage the construction process for the delivery of this portion of road within Elderslie, which is to be funded by Section 94 Development Contributions. This portion extends between Lodges Road, south toward the Camden Bypass, joining up with the Camden Bypass intersection road works. The provision of this piece of infrastructure will redirect and alleviate traffic impacts currently experienced along Southdown Road, Richardson Road and its intersection with Camden Valley Way.

The following is a list of the key elements for this portion of road:

- Construction of a two-way single lane carriageway, which will widen at either end to form a two-way dual lane carriageway on the approach to intersections of the Camden Bypass and Lodges Road;
- Construction of two (2) roundabouts for traffic control at Lodges Road and at the four-way intersection of Liz Kernohan Drive and Proposed Road No. 110;
- Construction of two (2) culverts to bridge the road over riparian land; and
- Construction of central median islands along a majority of the stretch of road.

In light of the above, the construction of the link between Richardson Road and Lodges Road will be carried out under two project schedules. Attachment 2 of this report indicates the limits and responsibilities of the construction of Liz Kernohan Drive east and west of the Camden Bypass intersection and the Bypass intersection.

In order to facilitate the construction of Liz Kernohan Drive between Lodges Road and Richardson Road, it is necessary for Council to acquire relevant portions of land and dedicate these as public road from the current land owners. The portions of land earmarked for acquisition are currently under the ownership of six (6) separate owners. **Refer to Attachment 3 at the end of this report.** Council is currently collecting Section 94 development contributions from developers in the Elderslie and Spring Farm release areas to fund land acquisitions for the purposes of public roads.

In this regard, Council has commenced the process and is currently undertaking valuations of the subject land. As further information comes to light, a detailed report will be submitted to Council in the near future detailing in depth, the parameters and processes to be undertaken for the acquisition of the subject land.

CONCLUSION

It is essential to construct the link between Lodges Road and Richardson Road providing a connection to the Camden Bypass in order to facilitate the ongoing development of both the Elderslie and Spring Farm residential release areas. This critical piece of infrastructure will enable removal of the current lot thresholds which are constraining development in these areas.

Through financial and project management assistance, the DPI will deliver the Camden Bypass/Liz Kernohan Drive/Richardson Road intersections and associated roads. Council is to enter into negotiations for a Voluntary Planning Agreement which will result in the payment of Council's Section 94 development contributions for this portion of road to the DPI.

ORD06

Furthermore, Council is to fund and project manage the link between Lodges Road and the Camden Bypass intersection noted above. This will be constructed concurrently with the Camden Bypass/Liz Kernohan Drive/Richardson Road infrastructure package which together will alleviate current traffic pressures presently experienced on Richardson Road and Southdown Road.

RECOMMENDED

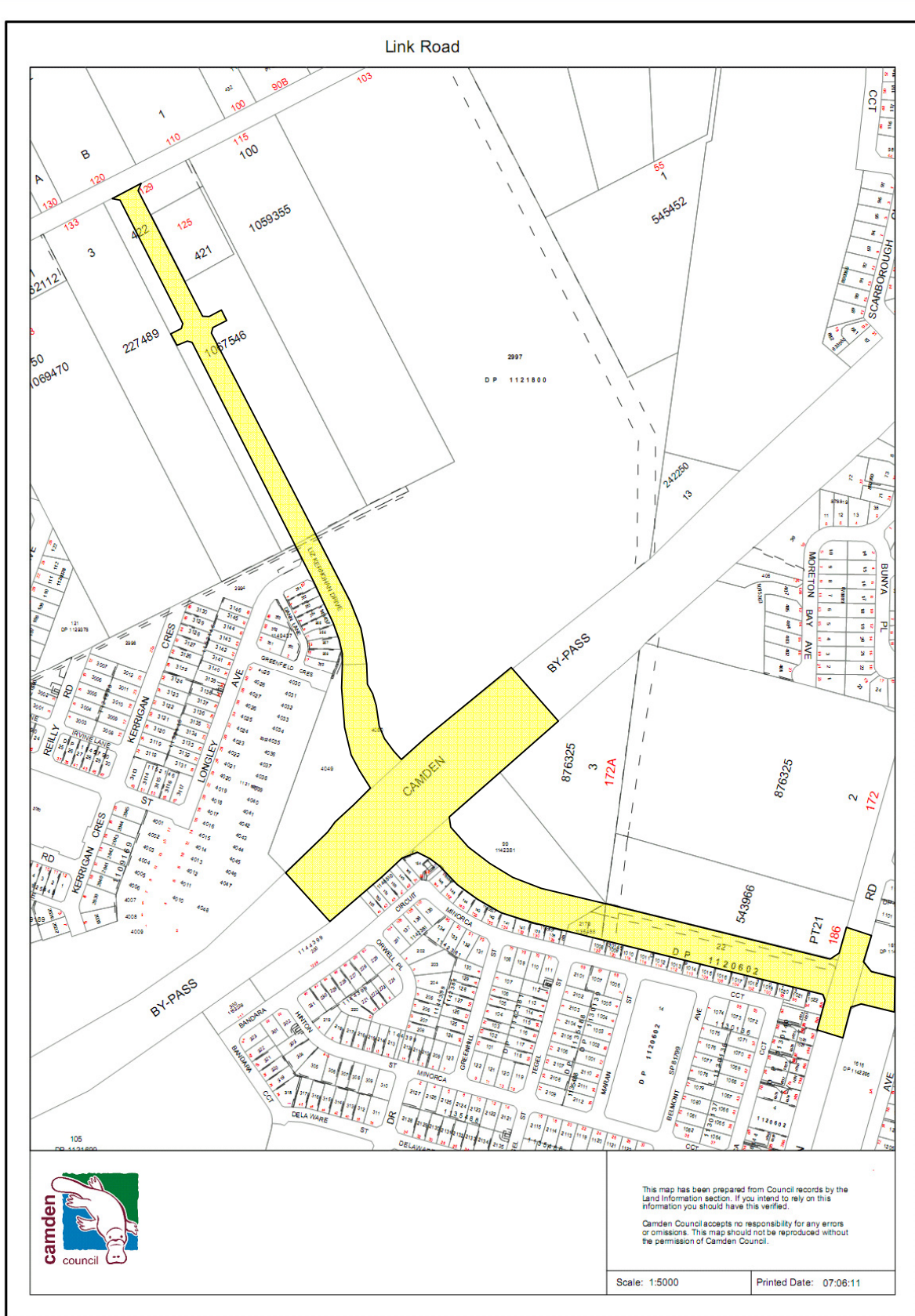
That Council:

- i. enter into negotiations for a Voluntary Planning Agreement with Department of Planning and Infrastructure to deliver the construction of Camden Bypass/Link Road/Richardson Road infrastructure package. The Agreement will include:
 - a. payment of Section 94 monies to the Department of Planning and Infrastructure, being Council's contribution to the cost of the design and construction of the Camden Bypass/Liz Kernohan Drive/Richardson Road infrastructure package; and**
 - b. agreement to the removal of the lot thresholds for the Elderslie and Spring Farm residential release upon entering into the Voluntary Planning Agreement.****
- ii. proceed with the valuation of land and commence discussions with the relevant land owners for the acquisition of portions of land as shown in Attachment 3, for the purpose of the construction of Liz Kernohan Drive between Richardson Road and Lodges Road, and associated intersections.**

ATTACHMENTS

1. Attachment 1 Link Road
2. Attachment 2 Link Road
3. Attachment 3 Link Road

Attachment 1 – Location Map



This map has been prepared from Council records by the Land Information section. If you intend to rely on this information you should have this verified.

Camden Council accepts no responsibility for any errors or omissions. This map should not be reproduced without the permission of Camden Council.

Scale: 1:5000 Printed Date: 07:06:11

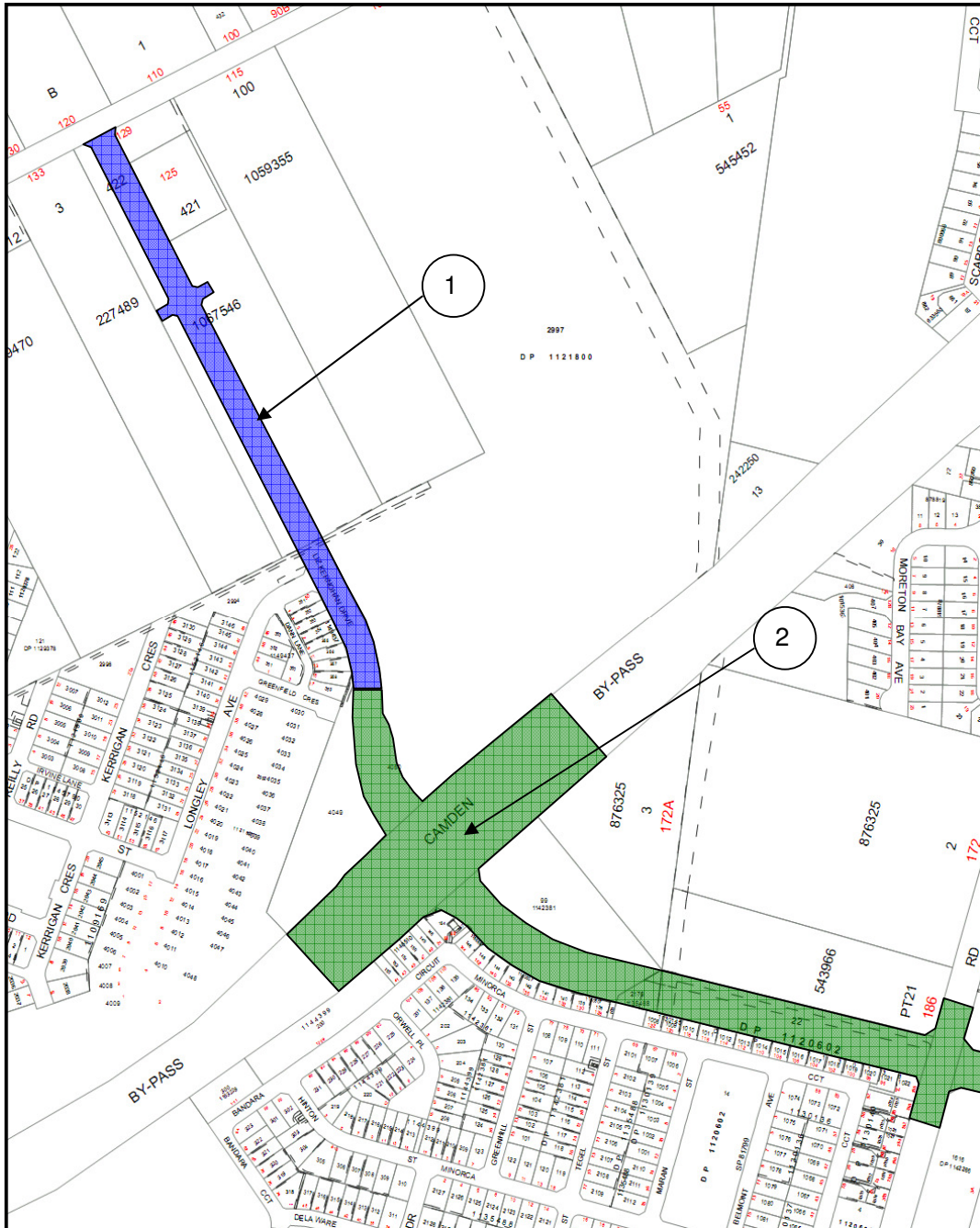
Attachment 2 – Contribution and Responsibility Map

ORD06

Attachment 2

Link Road Delivery

1. Camden Council – Local Significance
2. Department of Planning and Infrastructure & Camden Council – Regional Significance



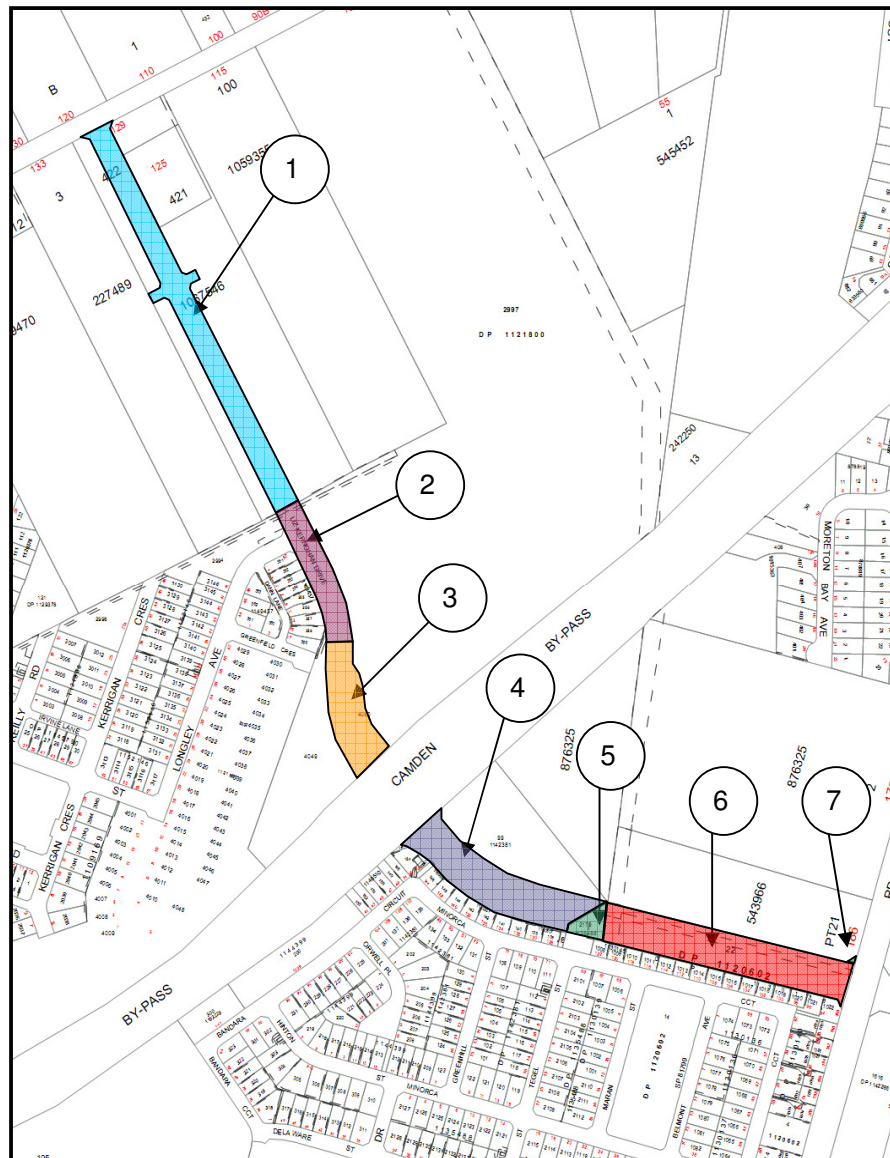
Attachment 3 – Ownership Map

Link Road – Elderslie

1. Lot 422 DP 1067546 – AV Jennings
2. Lot 2997 DP 1121800 – AV Jennings

Camden Bypass/Link Road/Richardson Road – Spring Farm

3. Lot 2997 DP 1121800 – AV Jennings
4. Lot 99 DP 1142381 – Mirvac Homes & Cornish Group
5. Lot 2179 DP 1135488 – Cornish Group
6. Lot 22 DP 1120602 – Mirvac Homes
7. Part Lot 21 DP 543966 – Messrs WL & FR Adams & Ms NM True



ORD06

Attachment 3



ORDINARY COUNCIL

ORD07

ORD07

SUBJECT: 2011/12 RATING INCOME
FROM: Director Governance
BINDER: Rates & Charges

PURPOSE OF REPORT

The purpose of this report is to inform Council of the need to amend the ad-valorem for the 2011/12 rating year.

In accordance with the Local Government Act, Council is required to "make" the rates and annual charges before Council can levy those rates and annual charges. Council does this by adopting the base charge and ad-valorem.

MAIN REPORT

Council at its meeting 14 June 2011 adopted the 2011/12 Delivery Program and Budget. The report also advised that Council would need to re-adopt the ad-valorem, the result of new land valuations being received from the Valuer General. These new land valuations pertain to large subdivisions being received at the time of writing the report.

The addition of new lots change the total value of land Council rates. To ensure properties are correctly rated for 2011/12 an adjustment is required to the ad-valorem.

Council adopted the following ad-valorem and base charges for the 2011/12 rating year:

Rate Category	Base Charge	Ad-Valorem Rate
Residential	\$600.00	0.221786
Business	\$600.00	0.598822
Farmland Intensive	\$600.00	0.199607
Farmland Ordinary	\$600.00	0.110893

The revised ad-valorem for the 2011/12 rating year is proposed as follows:

Rate Category	Base Charge	Ad-Valorem Rate
Residential	\$600.00	0.222313
Business	\$600.00	0.600245
Farmland Intensive	\$600.00	0.200082
Farmland Ordinary	\$600.00	0.111157

CONCLUSION

Given Council was recently advised of new land valuations pertaining to a number of large subdivisions it is appropriate to recalculate the ad-valorem related to 2011/12 rates and annual charges.



Where new land valuations are received pertaining to large subdivisions before the rates and annual charges have been levied, it is prudent to re-adopt the ad-valorem to ensure equity for all ratepayers.

RECOMMENDED

That Council:

- i. in accordance with Section 537(b) of the *Local Government Act, 1993*, note the percentage of base amount to total yield for the 2011/12 rating year for each class of rate is:

Rate Category	%
Residential	49.36%
Business	12.57%
Farmland Intensive	25.08%
Farmland Ordinary	19.85%

- ii. adopt the following ad valorem rates to be levied on the land value of all rateable assessments for 2011/12 rating year:

Rate Category	Ad-Valorem Rate
Residential	0.222313
Business	0.600245
Farmland Intensive	0.200082
Farmland Ordinary	0.111157

- iii. adopt a base amount of \$600.00 to be levied for each rateable assessment for the 2011/12 rating year.

ORD07



ORDINARY COUNCIL

ORD08

ORD08

SUBJECT: LOAN BORROWINGS 2010/2011
FROM: Director Governance
BINDER: Loan Borrowings

Council's adopted 2010/2011 Program Budget made provision for loan income of \$1,600,000 to be utilised for infrastructure assets.

Following a call for quotations from six Banks and one Credit Union, a recommendation to accept the offer from the Westpac Bank is proposed. The term of the offer is based on a ten (10) year loan with bi-annual principal and interest repayments at a fixed interest rate of 7.70% per annum.

RECOMMENDED

That:

- i. **the offer of loan funds of \$1,600,000 from Westpac Bank for a period of ten (10) years with bi-annual principal and interest payments at a fixed rate of 7.70% per annum be accepted; and**
- ii. **the seal of Council be authorised to be affixed to the necessary loan documents.**



ORDINARY COUNCIL

ORD09

ORD09

SUBJECT: INVESTMENT MONIES
FROM: Director Governance
BINDER: Investment Business Papers

PURPOSE OF REPORT

In accordance with Part 9, Division 5, Section 212 of the Local Government (General) Regulation 2005, a list of investments held by Council as at 31 May 2011 is provided.

MAIN REPORT

It is certified that all investments have been made in accordance with Section 625 of the *Local Government Act 1993*, the relevant regulations and Council's Investment Policy.

It should be noted that a recent change to the Minister's Investment Order no longer authorises Councils to invest funds with Local Government Financial Services (LGFS). Council currently has \$5.7 million with LGFS which will be re-invested with other institutions upon maturity. Council's last investment with LGFS matured 16 June 2011.

The removal of LGFS from the Minister's Order is not the result of any change in the financial health of the Institution. LGFS was removed from the Order as a result of its sale by the Local Government and Shires Association to Local Government Super. The sale means that LGFS is no longer considered a Local Government owned enterprise and therefore should not qualify for special inclusion within the Minister's Investment Order.

The weighted average return on all investments was 5.88% p.a. for the month of May 2011.

The Principal Accounting Officer is the Manager Corporate Services.

RECOMMENDED

That:

- i. **Council note that the Principal Accounting Officer has certified that all investments held by Council have been made in accordance with the *Local Government Act*, Regulations, and Council's Investment Policy.**
- ii. **the list of investments for May 2011 be noted.**
- iii. **the weighted average interest rate return of 5.88% p.a. for the month of May 2011 be noted.**

ATTACHMENTS

1. Investment Monies Report

ORD09

Attachment 1

CAMDEN COUNCIL

Investments as at 31st May 2011

INSTITUTION (Long term / short term credit ratings)	TYPE	IBD NO.	TERM	MATURITY DATE	INTEREST RATE (p.a.)	PORTFOLIO %	INVESTMENT AMOUNT
WESTPAC	TD	2388	210	15-Jun-11	6.50%		1,000,000
AA / A-1+	TD	2385	210	1-Jun-11	6.50%		2,000,000
						5%	<u>3,000,000</u>
CITIBANK	TD	2408	244	20-Sep-11	6.25%		3,000,000
A+ / A-1						5%	<u>3,000,000</u>
BANK WEST	TD	2419	117	28-Jun-11	5.85%		1,500,000
AA / A-1+	TD	2427	91	20-Jul-11	5.80%		2,500,000
	TD	2416	182	23-Aug-11	6.00%		2,000,000
	TD	2420	112	29-Jun-11	5.85%		1,000,000
	TD	2426	118	9-Aug-11	5.90%		2,000,000
	TD	2435	142	20-Oct-11	6.22%		1,000,000
						16%	<u>10,000,000</u>
NAB	TD	2405	180	11-Jul-11	6.17%		3,000,000
AA / A-1+	TD	2421	117	19-Jul-11	5.82%		2,000,000
	TD	2424	118	27-Jul-11	5.81%		1,000,000
	TD	2432	120	14-Sep-11	5.85%		2,000,000
						15%	<u>8,000,000</u>
ING DIRECT	TD	2417	113	21-Jun-11	5.94%		1,300,000
A+/A1-	TD	2422	90	28-Jun-11	5.82%		1,000,000
	TD	2423	180	27-Sep-11	6.16%		2,000,000
						8%	<u>4,300,000</u>
SUNCORP METWAY	TD	2410	125	7-Jun-11	6.00%		2,000,000
A / A-1	TD	2413	120	8-Jun-11	6.00%		1,000,000
	TD	2428	126	31-Aug-11	5.98%		1,500,000
	TD	2429	126	7-Sep-11	6.04%		3,000,000
	TD	2431	125	15-Nov-11	6.26%		1,500,000
	TD	2425	121	3-Aug-11	5.98%		2,000,000
	TD	2433	140	5-Oct-11	6.11%		1,000,000
	TD	2434	142	13-Oct-11	6.14%		2,000,000
						25%	<u>14,000,000</u>
ST GEORGE	TD	2415	182	17-Aug-11	6.00%		1,500,000
AA / A-1+	TD	2418	112	22-Jun-11	5.80%		2,000,000
	TD	2430	61	5-Jul-11	5.67%		1,500,000
						9%	<u>5,000,000</u>
LOCAL GOVERNMENT	TD	2411	125	8-Jun-11	6.10%		1,700,000
FINANCIAL	TD	2412	120	8-Jun-11	6.20%		1,000,000
SERVICES	TD	2414	121	16-Jun-11	6.10%		3,000,000
BBB/ A-2						10%	<u>5,700,000</u>
CBA	CALL			Call	5.25%	3%	1,370,000
TOTAL INVESTMENTS HELD						100%	<u>54,370,000</u>

CAMDEN COUNCIL
Investments as at: 31st May 2011

SEC 94 DEVELOPER CONTRIBUTIONS	22,510,604
RESTRICTED GRANT INCOME	1,712,291
EXTERNALLY RESTRICTED RESERVES	14,648,338
INTERNALLY RESTRICTED RESERVES	11,093,481
GENERAL FUND	4,405,276
TOTAL	54,370,000

Council's investment portfolio has increased by \$2,500,000 since the April reporting period. The increase primarily relates to the receipt of the final rates instalment for the 2010/11 financial year, and an increase in Section 94 Development Contributions revenue through continued development within the Elderslie and Spring Farm areas.

NUMBER OF INVESTMENTS	30
AVERAGE DAYS HELD	136
AVERAGE PERCENTAGE	6.03% p.a.
WEIGHTED PORTFOLIO RETURN	5.88% p.a.
CBA CALL ACCOUNT *	5.25% p.a.
HIGHEST RATE	6.50% p.a.
LOWEST RATE	5.67% p.a.
BUDGET RATE	5.75% p.a.
AVERAGE BBSW (30 Day)	4.83% p.a.
AVERAGE BBSW (90 Day)	5.02% p.a.
AVERAGE BBSW (120 Day)	5.07% p.a.

***Note: LGFS call account is not included in the investment performance calculations**

TD - Term Deposit - This is a secure investment with a fixed interest rate for the term of the investment.

BB - Bank Bills - This is a negotiable security that is sold at a discount to face value with the full face value paid on maturity.

NCD/TCD - Negotiable/Transferable Certificate of Deposit - Very similar to Bank Bills but often have a higher minimum investment and can have longer maturity dates.

CRI - Committed Rolling Investment - For terms of 1-3 years. The interest rate is set at a margin above the bank bill swap rate for the term of the investment. The investment rolls monthly or quarterly and the BBSW is reset at roll date.

FRN - Floating Rate Note - Generally have 5-10 year terms but are tradable securities that can be bought & sold at prevailing market rates. The interest rate is set at a margin above the bank bill swap rate. Interest coupon is paid quarterly and the rate is reset on coupon date.

BBSW - Bank bill swap rate

LONG-TERM AND SHORT-TERM CREDIT RATINGS AS ISSUED BY STANDARD & POOR'S

A credit rating is a current opinion of an obligor's overall financial capacity (its creditworthiness) to pay its financial obligations.

Long-Term Issuer Credit Ratings

AAA - An obligor rated 'AAA' has an extremely strong capacity to meet its financial commitments. 'AAA' is the highest issuer credit rating assigned.

AA - An obligor rated 'AA' has very strong capacity to meet its financial commitments. It differs from the highest-rated obligors only to a small degree.

A - An obligor rated 'A' has a strong capacity to meet its financial commitments but is somewhat more susceptible to the adverse effects of changes in circumstance and economic conditions than obligors in higher rated categories.

BBB - An obligor rated 'BBB' has adequate capacity to meet its financial commitments. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitments.

Short-Term Issuer Credit Ratings

A-1 - An obligor rated 'A-1' has strong capacity to meet its financial commitments. It is rated in the highest category.

A-2 - An obligor rated 'A-2' has satisfactory capacity to meet its financial commitments. However, it is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligors in the highest rating category.

Plus (+) or Minus (-)

Both long-term and short-term ratings may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the rating categories.



ORD10

ORDINARY COUNCIL

ORD10

SUBJECT: DETERMINATION OF COUNCILLOR FEES - 2011/2012 - LOCAL GOVERNMENT REMUNERATION TRIBUNAL

FROM: Director Governance

BINDER: Councillor Fees

PURPOSE

To advise Councillors of a determination by the Local Government Remuneration Tribunal for the level of Councillor fees payable for the 2011/2012 financial year.

MAIN REPORT

The Local Government Remuneration Tribunal sets the range of fees for all Councillors and Mayors in NSW each year. The Tribunal has concluded its annual review and, having regard to key economic data and the views of the assessors, it has determined that an increase of 4.2% in fees for Councillors is appropriate. The increases are effective on and from 1 July 2011.

Camden Council is a Category 2 (Metropolitan) Council and the revised fees payable for a Category 2 Council are as follows for 2011/2012:

COUNCILLORS	MAYOR
Minimum \$7,550 - Maximum \$16,640	Minimum \$16,080 - Maximum \$36,320

In the 2010/11 financial year, the current Councillor fees are \$15,573.60 per annum for Councillors and \$34,000.30 per annum for the Mayor.

Based on the present level of fees payable to the Mayor and Councillors as above, a 4.2% increase would amount to an increase of \$654.09 per annum for each Councillor, bringing the total to \$16,227.69 per annum and \$1,428.01 for the Mayor, totalling \$35,428.21 per annum. Alternatively, Council may adopt the maximum amount payable in each case which would incur an additional cost of \$11,917.30.

A 4.2% increase to Councillors fees would result in additional expenditure totalling \$7,314.82. The 2011/12 Adopted Budget includes a provision for an increase of expenditure of 4.0%, which represents an additional amount of \$7,038.00. If Council elects to increase fees by 4.2%, the budget will be adjusted accordingly.

RECOMMENDED

That Council determine the level of fees payable to Councillors and Mayor for the 2011/2012 financial year.

ORDINARY COUNCIL

ORD11

ORD11

SUBJECT: REQUEST FOR ADDITIONAL SPONSORSHIP - MACARTHUR COLLEGIANS CYCLING CLUB INC

FROM: Director Governance

BINDER: Sponsorship Requests/Donations Request

PURPOSE OF REPORT

To consider a request from Macarthur Collegians Cycling Club Inc for additional sponsorship and donations for the 2011 Goulburn to Sydney (Camden) Cycle Classic and related events, including a lifestyle street fair.

BACKGROUND

The Goulburn to Sydney Cycle Classic is New South Wales' oldest cycling race and continues to be a major event on the Australian Cycling calendar.

The event attracts approximately 300 cyclists and thousands of spectators en route through to the finish. Since 2005 the Race Ambassador, Simon Poidevin, (International Rugby identity) has conducted a 150km Corporate Charity Challenge which has preceded the elite race into Camden and to date has raised hundreds of thousands of dollars for charities such as Odyssey House, Kids of Macarthur, Starlight Children's Foundation, Bear Cottage and the Ben Mikic Foundation.

This year the event is again expected to attract some of the best riders from across the country. The goal for the finish is to create a cycling and healthy living carnival atmosphere, emulating a stage of the "Tour de France" and raising funds for charities.

Council provides either monetary or in-kind assistance to individuals, not for profit community groups and organisations for charitable purposes through Council's Donations Policy.

Requests greater than \$500 or when the distribution of funds extends outside the Camden LGA require the request to be referred to Council for consideration.

As at 1 June 2011, there was \$1,124 remaining in the Donations Expenses budget, with no other outstanding requests to be processed. The balance of uncommitted Councillor Ward funds is \$19,122 as at 14 June 2011 (however, a separate request for \$5,296.84 has been considered earlier at this Council meeting - refer ORD 03).

MAIN REPORT

The Macarthur Collegians Cycling Club Inc. (the Club), a non-profit incorporated organisation, has written to Council requesting consideration of an increase in the level of financial support for the 2011 Goulburn to Sydney Cycle Classic. **Copies of the letters are provided in Supporting Documents.**

Council currently supports the event by way of a cash contribution of \$1,500 and an 'in kind' allocation of \$1,500 specifically for advertising the cycling race. The Club has requested that the level of cash financial support be increased by \$3,500 to \$5,000 plus a donation to cover Council fees normally levied for temporary road closures.

The Club has advised that if successful in obtaining the \$5,000 funding from Council, the money will be allocated to promoting Camden and the event locally and nationally through several mediums including television, radio and print, and help maximise the amount available for distribution to charities.

This year the event will be held on Saturday 17 and Sunday 18 September, starting in Goulburn and again finishing in Camden on 18 September 2011 in conjunction with a lifestyle street fair and festival entertainment, requiring part closure of Argyle Street from 8am to 5pm.

A Special Event Transport Management Plan application has been received from the Club to run the race on public roads in Camden LGA and finishing in Argyle Street. This requires a temporary closure of Argyle and John Streets for the race finish.

In considering the requests for road closures, Council's Fees and Charges indicate that Council would levy the following fees:

• Special Event Application Fee -	\$87
• Review of Traffic Management Plan -	\$70 (per hour)
• Public Road Event Fee -	\$1,378
Estimated Fees Total	\$1,535

These fees are levied because of the amount of time and effort which needs to be applied to the consideration of temporary road closures and the impact on the community and, potentially, on Council's assets. In the case of these series of events, the interaction of the events and their implications makes consideration more complex.

However, the events are primarily designed to raise funds for charities and also attract people and positive media attention on Camden and its surrounds. Hence, the Club has requested Council to waive the fees in order to maximise the benefit for the charities being supported.

On the other hand, it is considered that it remains important for the Council to be able to track and report upon its contributions to the development of community events which are part of the community's expectation of Council. One of the Key Directions in the Community Strategic Plan (Camden 2040) is to develop an Enriched and Connected Community, through, among other actions, linking in with events and organisations, celebrating our history and promotion of healthy lifestyles.

It is therefore proposed that any assistance Council provides be by way of a donation rather than through simply waiving fees.

Donation Assessment Criteria

Applications for donations are assessed under the following criteria:

1. Purpose of donation;
2. Previous donations made to applicant;
3. Annual budget allowance;
4. Amount requested; and
5. Applicant's access to alternative sources of funding.

Considerations are as follows:

1. Donation would be to offset the costs so as to maximise the contribution to the supported charities. From a Council viewpoint, making a donation rather than simply a fee waiver will allow Council to track better the contribution to a community event.
2. A donation was made from Ward funds in 2010. The value of this donation was \$1,500, together with \$1,500 'in kind' support. The fees related to Traffic Management Plans indicated above were not levied in previous years.
3. As at 1 June 2011, the uncommitted balance of the Donations budget was \$1,124. However, the traffic approvals are not expected to be completed until after 30 June 2011, hence the donation, if approved, would not be made until next financial year.
4. While no specific amount was requested, the Club has requested that Council waive the Public Road Event Fee "and any other associated fees". Based on the above, it is estimated that the fee total is \$1,535.
5. The applicant utilises its corporate sponsors to help offset the costs of the event, so as to maximise the donations to charity. While Council is also providing a sponsorship, it is considered appropriate that Council's donation, if made, should also be acknowledged.

CONCLUSION

The Club has submitted two requests for financial assistance for the Goulburn to Sydney Cycle Classic and related events. These requests are for increased sponsorship and waiving fees for Traffic related approvals.

It should be noted that no money has been allocated in the 2010/11 budget for the additional sponsorship requested. Council may wish to utilise monies to respond to the Club's request from their Councillor Ward Funds, of which \$19,122 is available for use as at 14 June 2011 for additional sponsorship.

In addition, Council's Donation Policy provides a valuable opportunity for Council to support individuals and community groups and organisation in charitable causes to promote and enhance community well being for residents of the Camden LGA.

The Goulburn to Sydney Cycling Classic and associated events, including the proposed street fair, is a series of concurrent events which contribute to charities which are active within and beyond the Macarthur area. At the same time, the proposed rides and street fair provide an opportunity to celebrate a race event which is part of Camden area's history, while promoting healthy lifestyles.

This request fits within the Council's Donations Policy parameters, and is line with the Community Strategic Plan key directions.

Subject to approval for the events being processed through Traffic Committee and Council, it is considered that a donation by Council to cover the cost associated with Council's consideration of Traffic Management Plans and temporary road closures would make a valuable contribution to these events.

RECOMMENDED

That:

- i. **Council make a donation totalling \$1,535.00 under Council's Donations Policy, to offset the costs of the Public Road Event fee and associated fees**

ORD11

- related to the Goulburn to Sydney Cycling Classic and concurrent events, subject to approval for traffic related plans being given by Council;
- ii. this donation consist of a re-vote of \$1,124 from the 2010/11 donations expense budget and the balance of \$411 be funded from the 2011/12 donations expense budget;
 - iii. the donation be made in the 2011/12 financial year;
 - iv. Council's consideration for increasing the level of cash sponsorship support from Consolidated Ward Funds to assist the Macarthur Collegians Cycling Club Inc with their 2011 Goulburn to Sydney Cycling Classic be a matter for Council; and
 - v. Council write to the applicant to advise it of the outcome.

ATTACHMENTS

1. Macarthur Collegians Cycling Club - *Supporting Document*
2. Letter to Waive Fees - *Supporting Document*



ORDINARY COUNCIL

ORD12

ORD12

SUBJECT: PROPOSED INCREASE IN ANNUAL SUBSIDY - SENIORS PROGRAM COMMITTEE

FROM: Director Works & Services

BINDER: Community Planning and Development\Committees\Community Management Committees

PURPOSE OF REPORT

To seek an increase in the annual subsidy that is given to the Camden Council Seniors' Program Committee.

BACKGROUND

Camden Council's Seniors' Program Committee is a Community Management Committee formed under Section 355 of the Local Government Act. Their primary role is to organise events to assist residents to be involved in broad based community events for seniors residing in the LGA. Events include Spring Lunch, Christmas Lunch, Seniors' Week Concert at the Civic Centre and Seniors Bus Trip. Demand for each of these events has been growing over recent years.

The Committee has, up until 2011, also held a Seniors Expo which provided information and access to services targeted at senior citizens.

MAIN REPORT

Following a recent budget meeting of the Committee, the Committee has written to Council seeking an increase in Council's subsidy of \$1,400 per annum, to bring the total subsidy to \$5,000. If approved, the new annual subsidy would be based on \$5,000 per annum.

The Committee is a pro-active committee and has always sought to reduce costs in organizing events for Seniors in our LGA. As the last subsidy increase was back in 2003, and coupled with inflation, the Committee is experiencing difficulties in meeting the costs associated with holding the normal allocated number of events for the year.

RECOMMENDED

That:

- i. Council increase the subsidy to Camden Seniors' Program Committee to \$5,000 for 2011/12, and thereafter in accordance with Council's Long Term Financial Plan parameters; and**
- ii. the increase in subsidy for the 2011/12 budget be funded from the uncommitted surplus identified at the 2010/11 March Quarterly Review.**

ORDINARY COUNCIL**ORD13****NOTICE OF MOTION**

SUBJECT: NOTICE OF MOTION - SEX SERVICES PREMISES
FROM: Councillor Campbell
BINDER: Development Applications 2011

"I, Councillor Eva Campbell, hereby give notice of my intention to move the following at the Council Meeting of 28 June 2011:"

That a report be prepared and submitted to the next available Council meeting that provides Councillors with information and a recommendation on the introduction of an inspection and compliance regime associated with the regulation of Sex Service Premises.

The report should establish whether a fee is able to be charged by Council for inspections of Sex Service Premises, whether those inspections are initiated by Council itself or by Council in response to a complaint received.

If such a fee is possible, a recommendation on an appropriate inspection regime for health and compliance inspections by Council officers, and setting of a fee on a cost-neutral basis is to be included in the report.

RECOMMENDED

That a report be prepared and submitted to the next available Council meeting that provides Councillors with information and a recommendation on the introduction of an inspection and compliance regime associated with the regulation of Sex Service Premises.

The report should establish whether a fee is able to be charged by Council for inspections of Sex Service Premises, whether those inspections are initiated by Council itself or by Council in response to a complaint received.

If such a fee is possible, a recommendation on an appropriate inspection regime for health and compliance inspections by Council officers, and setting of a fee on a cost-neutral basis is to be included in the report.