

Attachment 2

Council Report dated 8 December 2009

ORDINARY MEETING

Meeting Date: 8 December 2009

Item: 278 **CP - Draft Hawkesbury Local Environmental Plan 1989 (Amendment 154) - Rezoning of land in New Street and Johnston Street, Windsor - (95498)**

REPORT:

Introduction

Council at its Ordinary Meeting of 24 June 2008 resolved to rezone certain land in New and Johnston Streets, Windsor to either Business General 3(a) under Hawkesbury Local Environmental Plan 1989 or B2 Local Centre under the Standard Template LEP.

The purpose of this report is to advise Council of the public authority consultation and public exhibition of Draft Hawkesbury Local environmental Plan 1989 (Amendment 154) and recommend that the Plan be forwarded to the Department of Planning for finalisation and gazettal.

Sections 54 and 62 consultation with government agencies

On 2 July 2008 Council wrote to the Department of Planning (DoP) pursuant to Section 54 of the EP & A Act 1979 advising of Council's 24 June 2008 resolution. The DoP subsequently advised Council on 1 August 2008 that Council may continue with the preparation of the draft LEP and that the LEP was contain provisions for the control of height and floor space ratios.

On 12 January 2009 Council wrote to the following public authorities under Section 62 of the EP & A Act 1979.

- Roads and Traffic Authority
- Department of Tourism Sport and Recreation
- Deerubbin Local Aboriginal Land Council
- Integral Energy
- Telstra
- Telstra Countrywide-Nepean Hawkesbury Macarthur
- Urban Growth, Sydney Water
- NSW Department of Aboriginal Affairs
- Rail Estate
- NSW Department of Primary Industries – Minerals
- NSW Fire Brigade
- NSW State Emergency Service
- Transgrid
- Department of Defence
- NSW Department of Planning - Heritage Office

Replies were received from Transgrid, Telstra, Sydney Water, NSW Department of Primary Industries, NSW Fire Brigades, Department of Defence, Roads and Traffic Authority, and the DoP - Heritage Branch. None of these public authorities raised objection to the rezoning, however some did alert Council to matters to be considered by Council when assessing any subsequent development applications. In general these matters relate to the provision of services, traffic matters, external lighting and reflective surfaces and the potential of these to interfere with pilots and operations of the RAAF Base Richmond. These matters can be readily dealt with at development application stage and need not be addressed in detail at the rezoning stage.

On 26 June 2009 Council forwarded a copy of the draft LEP, copies of public authority submissions and associated material to the DoP and requested permission to publicly exhibit the draft LEP. It was submitted that Council should not be required to include floor space ratio provisions however did include a

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height limit of 10m in the draft plan. This height limit is consistent with the proposed height limit to be adopted in the Standard instrument LEP.

The DoP provided Council with permission to public exhibit the draft LEP on 4 August 2009. A copy of the draft LEP is attached to this report.

Public Exhibition of the draft LEP

The draft LEP was exhibited from 22 October to 23 November 2009. Five submissions were received, two from Sydney Water and Department of Defence who raised no objection to the proposal, and three from the owners of 66, 68 and 70 The Terrace, Windsor who requested that their properties be included in the rezoning.

In the original rezoning application to Council, the proponent requested that 66, 68 and 70 The Terrace, Windsor be rezoned to Business General 3(a). These properties are currently zoned Housing and each contain a single dwelling. The dwellings on 66 and 68 The Terrace present as single storey in height, with 70 The Terrace being a mix of single and two storey building elements. In considering the rezoning, the report to Council on 24 June 2008 stated:

"The application seeks to rezone 3 properties along The Terrace, being No.s 66, 68 and 70. Whilst these properties are not listed as heritage items they contribute significantly to the streetscape and character of The Terrace and represent the inter-war style of housing. The re-development of these properties has the potential to adversely affect the character of Windsor. Adaptive re-use of the dwellings are encouraged and may compliment development on the adjoining site, however this can be achieved under the current provisions of Hawkesbury LEP 1989."

Council subsequently resolved not to include these properties in the draft LEP. Furthermore, the DoP - Heritage Branch advised via the Section 62 consultations as follows:

"The Heritage Branch also supports the non inclusion of No.s 66, 68 and 70 The Terrace Windsor in the rezoning on the basis that redevelopment of these properties has potential to adversely affect streetscape and character of The Terrace. The Heritage Branch encourages the adaptive reuse of No.s 66, 68 and 70 The Terrace Windsor."

The owners of 66, 68 and 70 The Terrace have requested inclusion in the rezoning to Business General 3(a) for the following reasons:

"To have businesses all around us and not be able to likewise development is in our opinion unjust

The 3 houses in the Terrace would be the only residential properties in the entire block within the boundaries of George, Johnston, New and the Terrace. There would be no buffer between commercial and residential, usually a street or a park.

The Council maintain that they want to retain the streetscape, residential environment, of the Terrace but not that of New St. or Johnston St.

The Terrace has already 2 commercially zoned properties being the 3 storey Professional Retail Centre on the corner of Kable Street and the car park and toilet block on the opposite corner. There is also at least 3 professional premises in The Terrace Physiotherapy with a hydrotherapy pool, Surveyors and a Massage and Aromatherapy business. The Terrace between New and Catherine Street is fully parked out during business hrs by staff from the commercial area. We find this not to be a typical residential environment.

If the properties are re-zoned commercial the council will remain in control of the type and design of the structure. Therefore why is it assumed that any new development would be detrimental to the streetscape."

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Several properties that border the rear of my property have been rezoned to business general and I now face the prospect of having buildings to a maximum of 10 metres high being erected on my back boundary and looking into my property and destroying my privacy.

My property and my two neighbours are now unfairly affected with no proper buffer between our properties and the high rise behind us.

A proper buffer between high rise commercial and residential should be the Terrace itself and Hollands Paddock and New Street.

If my property remains "residential" Council's actions has seriously diminished its value.

Properties along The Terrace in the vicinity of the land proposed to be rezoned can be characterised as having either a low scale residential or park land character. The majority of the dwellings in this area are single storey in height and the park land has an open nature affording views between the river and town centre/residential area. Importantly, due to their elevated and prominent position, the cluster of properties at 66 - 70 and 61 - 67 The Terrace act as a physical and visual transition from the residential area in the south-west to the open park land to the north-east. It is considered that this important physical and visual transition should be maintained and that the 66 - 70 The Terrace should not be rezoned to Business General 3(a) as it would be difficult to maintain or replicate this transition with commercial style re development of these properties.

Finally, it is noted that some properties in The Terrace are being used for medical and surveying services. This is because these activities fall within the definition of "professional and commercial chamber" which are permissible within the Housing zone. As 66 - 70 The Terrace are also zoned Housing these uses would also be permissible subject to Council consent on these properties hence adaptive re-use of these properties is possible.

Conclusion

The submissions received as a result of consultation with public authorities and the community either raise no objection to the draft LEP or raise matters which do not require the draft LEP to be amended or abandoned or a public hearing (as defined by the EP & A Act 1979) to be conducted in respect of the draft LEP. Accordingly, it is recommended that Council forward Draft Hawkesbury Local Environmental Plan 1989 (Amendment 154) to the Department of Planning for finalisation and gazettal.

Conformance to Strategic Plan

The proposal is consistent with the Community Strategic Plan, *Supporting Business and Local Jobs* Direction:

"Help create thriving town centres, each with its own character that attract residents, visitors and business."

The additional commercial zone adjacent to the existing town centre will assist in providing the opportunity for existing and new businesses to expand and add to the existing services of the town.

Funding

There are no funding implications.

Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the *Local Government Act 1993*, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

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AT - 1 Draft Hawkesbury Local Environmental Plan 1989 (Amendment 154)

Written Instrument and Map

**DRAFT HAWKESBURY LOCAL ENVIRONMENTAL PLAN 1989
(AMENDMENT No. 154)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the
Environmental Planning and Assessment Act 1979.

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Minister for Planning

**DRAFT HAWKESBURY LOCAL ENVIRONMENTAL PLAN 1989
(AMENDMENT No. 154)**

under the

Environmental Planning and Assessment Act 1979

1. Name of plan

This plan is *Hawkesbury Local Environmental Plan 1989 (Amendment No. 154)*.

2. Aims of plan

This plan aims to rezone the land to which the plan applies from:

- a. Housing to Business General;
- b. Special Uses 5(a)-Water Treatment to Business General;
- c. Open Space (Existing Recreation) to Business General.

3. Land to which plan applies

This plan applies to land in Johnston and New Streets, Windsor, as shown on the map marked "Hawkesbury Local Environmental Plan 1989 (Amendment No. 154) deposited in the office of the Council of the City of Hawkesbury.

4. Amendment of Hawkesbury Local Environmental Plan 1989

Hawkesbury Local Environmental Plan 1989 as set out in Schedule 1

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Schedule 1 Amendments

[1] Clause 5 Definitions

Insert in the appropriate order in the definition of *the map* in clause 5(1):

Hawkesbury Local Environmental Plan 1989 (Amendment No. 154)

[2] Clause 58

Insert after Clause 57:

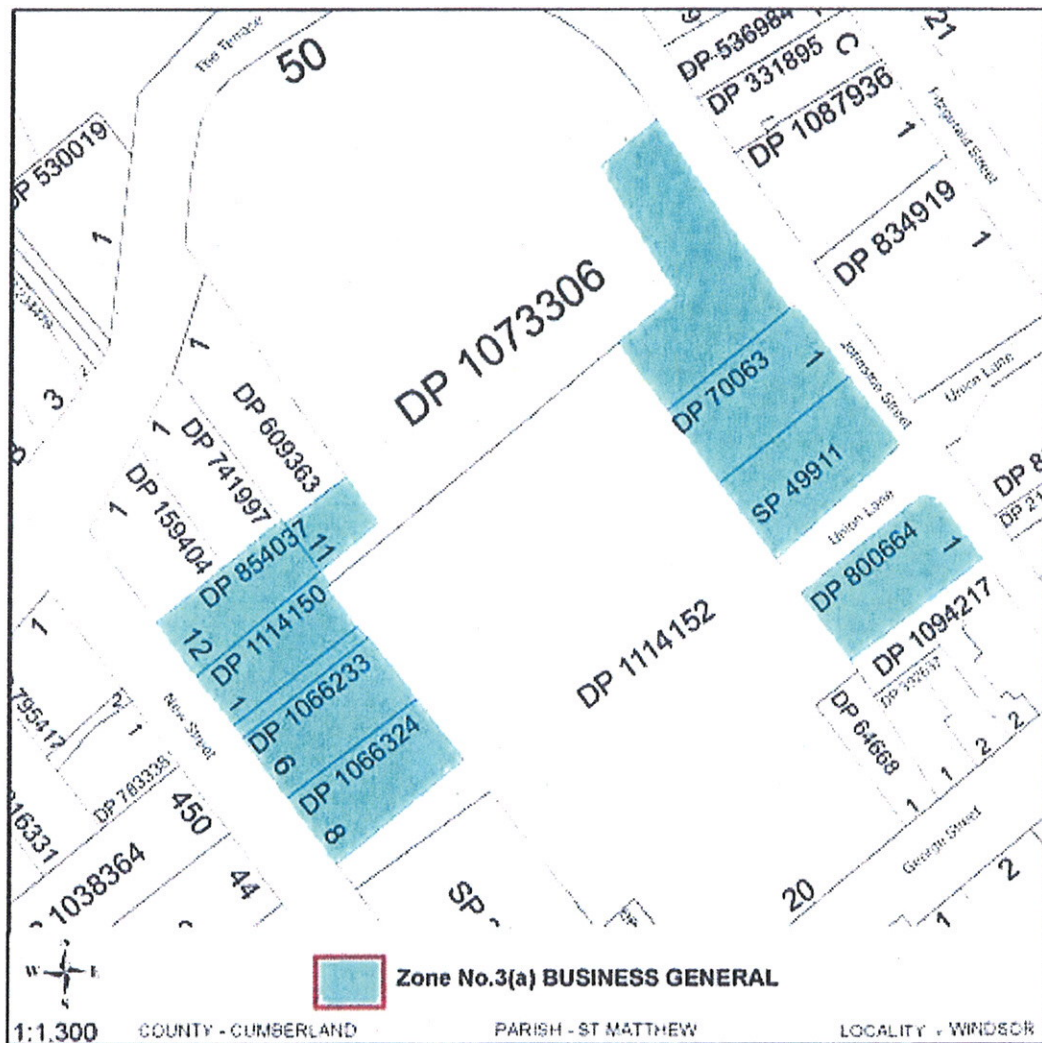
Clause 58 Residential development at Johnston and New Streets, Windsor

- (1) This clause applies to the following lots as shown coloured blue on the map marked Hawkesbury Local Environmental Plan 1989 (Amendment No. 154):

<i>Property Description</i>	<i>Address</i>
<i>Lot 8 DP1066324</i>	<i>8 New Street</i>
<i>Lot 6 DP1066233</i>	<i>6 New Street</i>
<i>Part Lot 51 DP1073306</i>	<i>Walkway to New Street</i>
<i>Lot 1 DP804295</i>	<i>4 New Street</i>
<i>Lot 11&12 DP854037</i>	<i>2 New Street</i>
<i>Part Lot 51 DP1073306</i>	<i>Land on the south western side of Johnston Street</i>
<i>Lot 1 DP70063</i>	<i>17 Johnston Street</i>
<i>SP49911</i>	<i>19 Johnston Street</i>
<i>Lot 1 DP800664</i>	<i>23-27 Johnston Street</i>

- (2) In this clause, **commencement day** means the day on which *Hawkesbury Local Environmental Plan 1989 (Amendment No 154)* commenced.
- (3) Notwithstanding Clause 9, a dwelling that was lawfully situated on any land before the commencement day may, with the consent of the Council, be extended, altered, added to or replaced however the number of dwellings on the land shall not be increased. Where no dwelling existed on any land before the commencement day, the Council may consent to the erection of one but no more than one dwelling.
- (4) The height of a building on any land shall not exceed 10 metres.

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ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

CITY OF **HAWKESBURY**

**DRAFT HAWKESBURY LOCAL ENVIRONMENTAL PLAN 1989
(AMENDMENT NO. 154)**

DRAWN BY T JOHNSON	DATE 9/8/2009	STATEMENT OF RELATIONSHIP WITH OTHER PLANS THIS PLAN AMENDS HAWKESBURY LOCAL ENVIRONMENTAL PLAN 1989
SUP DRAFTSPERSON	T JOHNSON	
PLAN OFFICER		
COUNCIL PLAN NO		
DEPT FILE NO		CERTIFICATE IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 AND REGULATIONS GENERAL MANAGER DATE
GOVT GAZETTE OF		

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AT - 2 Locality Plan



oooO END OF REPORT Oooo

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MINUTES: 8 December 2009

453 RESOLUTION:

RESOLVED on the motion of Councillor Whelan, seconded by Councillor Reardon.

That:

1. Council forward the Draft Hawkesbury Local Environmental Plan 1989 (Amendment 154) to the Department of Planning requesting that the plan be finalised and made.
2. Council resolve to rezone the following properties from Housing to Business General 3(a)/B2 Local Centre

Lot 1 DP159404	70 The Terrace, Windsor
Lot 1 DP741997	68 The Terrace, Windsor
Lot 1 DP609363	66 The Terrace, Windsor

3. A Planning Proposal be prepared, at the landowner's expense, to support the rezoning of the properties.
4. Prior to the finalisation of the draft LEP, a Development Control Plan be prepared for Windsor, in accordance with the principles of the Windsor Master Plan, to assist in the guidance of development on these properties in relation to setbacks, height and heritage matters.
5. The Draft LEP and the draft Standard Template LEP be consolidated prior to sending to the Minister for gazettal if the progress and timing of the two draft plans becomes aligned.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

For the Motion	Against the Motion
Councillor Mackay	Councillor Calvert
Councillor Porter	Councillor Williams
Councillor Rasmussen	Councillor Paine
Councillor Reardon	
Councillor Stubbs	
Councillor Tree	
Councillor Whelan	

Councillors Bassett and Conolly declared a significant non-pecuniary conflict of interest in this matter and were not in the Chamber when the vote was taken.

Councillor Basset assumed the Chair as Mayor.