

To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway Berrima

Proposal Title :	To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway Berrima		
Proposal Summary :	To amend 'Schedule 1 - Additional permitted uses' of the Wingecarribee Local Environment Plan 2010 to allow a vehicle repair station with consent on Lots 8-17 Section 40 DP758098, 3482 Old Hume Highway, Berrima. An unauthorised vehicle repair station has been operating at the property for nearly 30 years.		
PP Number :	PP_2013_WINGE_007_00	Dop File No :	13/08213

Proposal Details

Date Planning Proposal Received :	10-May-2013	LGA covered :	Wingecarribee
Region :	Southern	RPA :	Wingecarribee Shire Council
State Electorate :	GOULBURN	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	3482 Old Hume Highway		
Suburb :	Berrima	City :	Berrima
		Postcode :	2577
Land Parcel :	Lots 8-17 Section 40 DP758098		

DoP Planning Officer Contact Details

Contact Name :	Lisa Kennedy
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RPA Contact Details

Contact Name :	David Matthews
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DoP Project Manager Contact Details

Contact Name :	
Contact Number :	
Contact Email :	

Land Release Data

Growth Centre :	N/A	Release Area Name :	
Regional / Sub Regional Strategy :	Sydney-Canberra Corridor	Consistent with Strategy :	Yes
	Regional Strategy		

**To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway
Berrima**

MDP Number :		Date of Release :	
Area of Release (Ha)		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	13

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**
If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**
If Yes, comment :

Supporting notes

Internal Supporting Notes : The property is known as "Tyacona", 3482 Old Hume Highway Berrima. It is an irregular shape of 2.7ha and consists of 10 lots ranging in area from 0.19ha to 0.41ha. The land has a gentle slope from the south east to north east which drains to the Wingecarribee River on the western side of the Old Hume Highway.

Development on the site consists of a dwelling, workshop/office, car parking, outbuildings, shed, and landscaping. The workshop/office building and carparking and hardstanding area are used by Berrima Diesel Services. The dwelling is occupied by the owners. There are significant established landscaped buffers on the property boundaries. The site is zoned E3 Environmental Management and has a 40ha minimum lot size for subdivision and erection of a dwelling.

The site is 1km south west of Berrima village on the Old Hume Highway. It is located in a rural landscape with rural residential land uses to both the immediate north and south. The site is in close proximity to the residential suburb of New Berrima to the southeast and Berrima to the northeast. The Moss Vale-Berrima Enterprise Corridor (IN1 General Industrial) is to the south and south east. The site is mapped within the Berrima Landscape Heritage Conservation Area.

Berrima Diesel Services is a specialist modifier of diesel vehicles, involving mostly tuning of vehicles and electronic modifications. Approximately three vehicles are serviced per day. The business minimises noise by only undertaking work within business hours and servicing vehicles within the workshop. Potential impacts from lighting are minimised by maintaining extensive landscaping throughout the site. It commenced operating from the site in 1985. Council's records indicate that no development consents have ever been issued on the site approving a vehicle repair station. The records also indicate that no environmental planning instruments - Interim Development Orders or Local Environmental Plans that have applied to the land in the past, have ever allowed a vehicle repair station as a permissible use. The planning instruments have always prohibited the use of a vehicle repair station on the site.

As the use has always been prohibited and that no development consent has ever been given, or able to be given on the site, 'existing use rights' under the provisions of the EP&A Act can not be claimed by Berrima Diesel Services. However, on the 3rd April 1990, Council issued correspondence noting that the property had been used for a considerable time and that it had existing use rights. Based on this advice, Berrima Diesel Services has

**To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway
Berrima**

continued to operate on the site and expanded its operations, although it should have lodged development applications for any expansions of the use and/or alterations and additions to buildings in the past.

Following a letter of complaint regarding the operation of the business, Council inspected the site in June 2012.

On 1st May 2012 Council served an Order pursuant to Section 121B of the EP&A Act, requiring the owners to cease the use of the premises as a vehicle repair station as there is no development consent for that use, the use is not an existing use as defined under the EP&A Act; the land is zoned E3 Environmental Management under the Wingecarribee LEP 2010, and a vehicle repair station is a prohibited use in the E3 Zone.

Berrima Diesel Services appealed the Order and it became a matter for the Land and Environment Court (No. 10470 of 2012). In an effort to resolve the matter, Council initiated negotiations for a three year period for Berrima Diesel Services to relocate their business and invited the owners to submit a planning proposal to permit the continuing use of the property as a vehicle repair station.

However, a neighbour objected to this course of action and joined proceedings, objecting to the terms of the proposed settlement. Berrima Diesel Services subsequently withdrew its appeal.

A planning proposal prepared by GSA Planning on behalf of Berrima Diesel was lodged with Council on 28th November 2012. The owner claims it has expanded the use on the site because it believed that it had legitimate existing use rights resulting from the letter Council issued in April 1990.

Many in the community and Council were aware of the existence of Berrima Diesel Services and assumed that it was a legitimately approved use. It is the elected Councillors' majority view that Berrima Diesel Services should be legitimised on the site.

The Council officer review of the planning proposal identifies that "the technical planning merits do not provide a favourable view of the planning proposal". It "recommended that Council does not prepare a planning proposal for Gateway determination because the proposal is contrary to the objectives of the E3 Environmental Management Zone and Clause 5.10 Heritage Conservation Clause and Landscape Heritage Conservation Area."

Wingecarribee Shire Council resolved at its meeting of 13th March 2013 that Council:

- * recognise that the usage of 3482 Old Hume Highway has been in operation for approximately 25 years;
- * raises no objections to the continuance of the use of the property; and
- * resolves to prepare a planning proposal to allow a vehicle repair station by amending Schedule 1 of Wingecarribee LEP 2010.

A vehicle repair station is defined in the Wingecarribee LEP 2010 as "a building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery but does not include a vehicle body repair workshop or vehicle sales or hire premises."

The GSA planning proposal has been updated and expanded by Council for consideration of a Gateway determination.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The purpose of the planning proposal is to include a vehicle repair station as permissible with consent on Lots 8-17 Section 40 DP758098, 3482 Old Hume Highway Berrima.**

It appears from aerial photographs that the vehicle repair station only occurs on Lots 10-14 and Lot 17. Effluent disposal for both the existing dwelling and the business may occur on some of the other lots.

To prevent further expansion of the business, the planning proposal should only apply to those lots affected by the Berrima Diesel Services' development. The Sydney Catchment Authority in its letter to Council on 2nd May 2013 recommended that Council restrict any further expansion of the vehicle repair station on the site.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The planning proposal seeks to amend Wingecarribee LEP 2010 by inserting in Schedule 1 - Additional permitted uses "Old Hume Highway, Berrima, development for the purposes of a vehicle repair station is permitted with consent" and amending the Map Sheet CL1_007A by adding Schedule 1 red outline around Lots 8-17 inclusive Section 40 DP758098.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

1.5 Rural Lands

2.1 Environment Protection Zones

* May need the Director General's agreement

2.3 Heritage Conservation

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

5.2 Sydney Drinking Water Catchments

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP (Rural Lands) 2008

Drinking Water Catchments Regional Environmental Plan No. 1

e) List any other matters that need to be considered :

None

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

There is no Council strategy supporting the location of a vehicle repair station at the site or within the Landscape Heritage Conservation Area.

The proposal is both consistent and inconsistent with sections of the Sydney-Canberra Regional Strategy. The proposal is consistent in that it is providing economic development and employment growth. However, it is inconsistent in that the development is not planned or strategic. The site is 500m to the north of the Moss Vale - Berrima Enterprise Corridor, a planned industrial estate with reticulated water and sewerage infrastructure and where a vehicle repair station is a permissible use. It is unknown without further studies whether the proposal is consistent with the cultural heritage and natural environmental actions of the Strategy.

The Berrima Landscape Heritage Conservation Area is mapped in the Wingecarribee LEP 2010 and Clause 5.1 would apply to any development application within the Area. The Landscape Area provides a critical landscape and visual buffer to the significant historic Berrima village as well as providing an appropriate landscape setting for the village. The Wingecarribee Heritage Advisory Working Group (a Council working group comprising Councillors and community heritage representatives) discussed the planning proposal at its meeting on 1st February 2013. The Group advised Council on 4th February 2013 of its "view that the current intensive industrial use is incompatible with and adversely impacts on the special heritage qualities of the village and its landscape setting and accordingly, the group does not support either the planning proposal or any other action that would allow the continuation of the current car repair station use on this site."

The Southern Highlands Branch of the National Trust of NSW has also advised Council on 29th January 2013 that it "considers the style of the Berrima Diesel business, together with its associated engine noise, to be completely out of character with the peaceful aesthetics of the village and its surrounds and any expansion will further impact on the historic and rural nature of the area".

Council's Rural Lands Development Control Plan (DCP) applies to the land, however, it does not contain any specifics to vehicle repair stations as they are a prohibited use in the zones that the DCP currently applies to.

Council's report on the planning proposal identified that "the unlawful use of the site is contrary to many goals of the Wingecarribee Shire Community Strategic Plan 2013+". It does not support such development within the existing town boundaries and identified growth areas. The Moss Vale - Berrima Enterprise Corridor is the appropriate identified growth area for such development.

The planning proposal is consistent with the s117 Directions 6.1 Approval and Referral Requirements and 6.3 Site Specific Provisions as no new concurrence provisions or development standards are being introduced into the LEP.

Council is yet to consult with the NSW Rural Fire Service as required by s117 Direction 4.4 Planning for Bushfire Protection. As such it remains inconsistent with the Direction.

Without further studies on water quality, heritage, and noise assessment, it is unknown whether the planning proposal is consistent or justifiably inconsistent with the s117 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation and 5.1 Implementation of Regional Strategies.

Council has already consulted with the Sydney Catchment Authority as required in s117 Direction 5.2 Sydney Drinking Water Catchments. The SCA advised on 2nd May 2013 that it would normally object to a proposal for a vehicle repair station on an unsewered site adjacent to a watercourse that runs into the Wingecarribee River due to its potential high risk to water quality.

The SCA would prefer that the use be transferred to a sewerage site in an industrial zone where it would be more practical and possible to manage the impacts. If the use cannot be moved, the SCA supports the application of strict environmental regulation and management measures to avoid impacts on water quality. It particularly recommended that the transfer and treatment of industrial wastewater off-site be considered and that on-going monitoring for water quality occur.

Berrima Diesel Services has commissioned an Environmental Management Plan (EMP) which identifies that the existing septic tank is too small and the effluent disposal beds are within the required 100m riparian buffer. The system needs to be decommissioned and a new one implemented.

The planning proposal recommends that if a Gateway determination is supportive of the application, that direction be given requesting the provision of relevant studies to investigate if the site is capable of satisfying the NorBE principles and that the SCA review those studies.

The further water quality studies, particularly on whether the development has a neutral or beneficial effect on water quality, are required to confirm whether the proposal is consistent or justifiably inconsistent with the s117 Direction.

SEPP 44 - Koala Habitat Protection does not apply to the planning proposal as the site is not listed as containing koala habitat and the SEPP only applies to land where a development application has been made.

As identified in the s117 Directions above, until further studies on water quality and heritage are completed it is unknown whether the planning proposal is consistent or justifiably inconsistent with the SEPP Rural Lands 2008 and SEPP Sydney Drinking Water Catchments 2011.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The draft Map Sheet CL1_007A from Wingecarribee LEP 2010 has been produced.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Wingecarribee Council proposes to place the planning proposal on public exhibition for 28 days. It will be advertised in the local newspaper, made available on Council's website and mailed out to Berrima residents and community organisations including the Berrima Resident's Association and Southern Highlands Branch of the National Trust.

Council has already received 4 community submissions objecting to or against the proposal prior to its consideration by Council on 13th February 2013 and 13th March 2013. The Berrima Resident's Association and the Southern Highlands Branch of the National Trust of Australia raised issues on the heritage value of the Berrima Landscape Heritage Conservation Area, impacts on adjoining heritage items, objectives of the E3 Zone and associated noise.

The Department and Minister for Planning and Infrastructure have received letters from a local resident and lawyers acting for residents objecting to the proposal.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : The planning proposal addresses the Department's "A guide to preparing planning proposals" and is considered adequate for a Gateway determination with conditions.

A project timeframe has been included in the planning proposal. The timeframe anticipates 12 months to complete the further studies and complete the rezoning process.

Council is not applying to use its delegations to complete the planning proposal due to the political nature of the proposal. It is considered appropriate that the delegation of

**To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway
Berrima**

plan making functions be given to Council due to the matter being of local significance and it is a spot rezoning to address an unauthorised existing land use.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Wingecarribee Principal LEP was notified on the 16th June 2010. This planning proposal would be an amendment to the LEP.

Assessment Criteria

Need for planning proposal : Council considers that the planning proposal is the only method available to allow for the continued operation of the site for a vehicle repair station as it is currently a prohibited use. The scale of the operation on the site is too large to meet the definition of a Home Occupation which would be permitted without consent in the E3 Zone.

Council's options were to:

- * amend Schedule 1 of the Wingecarribee LEP 2010 - preferred option;
- * amend the land use table under E3 Zone to include vehicle repair stations as a use that is permissible with consent. Not favoured as this would permit this type of development elsewhere in the Shire under the E3 Zone which applies to a significant proportion of the LGA;
- * rezone the site to a zone that allows vehicle repair stations as permissible with consent. This could have a significant impact on the the site as other uses not currently permitted on the site would then be permissible; and
- * the business relocates to an appropriately zoned site, subject to appropriate development approvals.

As previously identified, the Sydney Catchment Authority has stated that it would prefer that the use be transferred to a sewered site in an industrial zone. This is also the Department's preference should the further studies confirm the site is unsuitable due to water quality, heritage and noise issues.

Consistency with strategic planning framework : The consistency of the planning proposal within the strategic planning framework has been addressed previously and will be confirmed by Council following the completion of additional studies.

Environmental social economic impacts : The current unapproved use on the site has been developed without any assessment of its environmental, social and economic impacts. The planning proposal includes an Environmental Management Plan (EMP) but Council has identified that further studies are required to confirm the recommendations of the Plan and other issues such as water quality, heritage and noise.

There is an Endangered Ecological Community - Southern Highlands Shale Woodland on the site. No studies have been conducted on the impact of the vehicle repair service on the EEC.

No water quality studies have been undertaken to assess impacts on the nearby watercourse and Wingecarribee River. The Sydney Catchment Authority has undertaken a Strategic Land and Water Capability Assessment (SLWCA) of the site, however, further studies are required to confirm the results and address the neutral or benefit effect on water quality.

The site is mapped within the Berrima Landscape Heritage Conservation Area in the Wingecarribee LEP 2010. The Landscape Area provides a critical landscape and visual buffer to the significant historic Berrima village as well as providing an appropriate landscape setting for the village. Council has identified that a Heritage Impact Report

**To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway
Berrima**

should be undertaken to assess the impacts of the vehicle repair station on the heritage values of the area.

The land has been mapped as bushfire prone and as such an assessment is required to ensure the planning proposal has been prepared with regard to Planning for Bushfire Protection 2006.

Three neighbours from an adjoining property have prepared statutory declarations identifying that the revving of engines at an extremely high pitch sound can be heard from inside their home. The business operates Monday to Friday for 9 hours a day. A noise assessment report should be prepared to determine whether the operation of the business is impacting on neighbours.

The business has a positive economic impact on the local Berrima economy. It contributes to the local community by generating 13 jobs and by bringing customers to the locality who in turn support other local businesses. No details have been provided by either Berrima Diesel Services or Council on whether it is economically feasible for the business to relocate to the Moss Vale - Berrima Enterprise Corridor.

The Council officer report raised concerns with the precedent this planning proposal may set for other long standing non-conforming uses within the Shire. The precedent could encourage other uses, prohibited in such locations, to seek exemptions and result in the proliferation of inappropriate development.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 Month** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Sydney Catchment Authority
Hawkesbury - Nepean Catchment Management Authority
Office of Environment and Heritage
NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Flora

Fauna

Heritage

Bushfire

Other - provide details below

If Other, provide reasons :

A noise assessment report should also be prepared to determine whether the operation of the business is impacting on adjoining neighbours and/or the Berrima Landscape Heritage Conservation Area.

Further details and justification for the additional studies have been addressed above.

**To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway
Berrima**

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons : **No additional demand to state infrastructure is proposed. The site has reticulated town water supply but reticulated sewerage is not available. Waste generated on the site must be dealt with on-site and by waste collection services.**

Documents

Document File Name	DocumentType Name	Is Public
130401 Planning Proposal Berrima Diesel Version 2.pdf	Proposal	Yes
130401 Planning Proposal Berrima Diesel Version 2	Proposal	Yes
Appendix 4 - Planning Proposal by GSA.pdf		
130401 Planning Proposal Berrima Diesel Version 2	Proposal	Yes
Appendix 5 - Part 1 - Letters.pdf		
130401 Planning Proposal Berrima Diesel Version 2	Proposal	Yes
Appendix 5 - Part 2 - Letter Heritage Advisory Working Group 130204.pdf		
130401 Planning Proposal Berrima Diesel Version 2	Proposal	Yes
Appendix 6 - Letter SCA 130502.pdf		
130510 Planning Proposal Berrima Diesel letter WSC to DoPI seeking Gateway Determination.pdf	Proposal Covering Letter	Yes
130401 Planning Proposal Berrima Diesel Map Sheet CL1_007A.pdf	Map	Yes
130401 Planning Proposal Berrima Diesel Aerial Photograph.pdf	Photograph	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.2 Sydney Drinking Water Catchments
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Additional Information : **The Executive Director, Rural and Regional Planning, as delegate of the Minister for Planning and Infrastructure, determine under section 56(2) of the EP&A Act that an amendment to the Wingecarribee Local Environmental Plan 2010 to enable a vehicle repair station on Lots 8-17 Section 40 DP758098, 3482 Old Hume Highway, Berrima should proceed subject to the following conditions:**

- 1. Council is to confirm, prior to public exhibition, that the planning proposal will only apply to those lots which have existing development associated with Berrima Diesel Services constructed upon them. This appears to be Lots 10-14 and 17 Section 4 DP758098.**
- 2. Further studies on water quality, heritage and noise assessment of Berrima Diesel Services' operations are to be completed. The results of these reports will need to demonstrate that the development can be achieved and is consistent with or justifiably inconsistent with relevant s117 Directions. The reports are to form part of the planning proposal for public exhibition.**
- 3. Community consultation is required under sections 56(2)(c) and 57 of the**

**To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway
Berrima**

Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal is to be made publicly available for 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Infrastructure 2012).

4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- * NSW Rural Fire Service;
- * Office of Environment and Heritage;
- * Sydney Catchment Authority; and
- * Hawkesbury Nepean Catchment Management Authority.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that it will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

5. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

7. The Director General can be satisfied that the planning proposal is consistent with s117 Directions 6.1 Approval and Referral Requirments and 6.3 Site Specific Provisions.

8. In accordance with the s117 Direction 4.4 Planning for Bushfire Protection, the RPA is to consult with the Commissioner of the NSW Rural Fire Service and take into account any comments. When this consultation is completed the Director-General can then be satisfied that the planning proposal is consistent with s117 Direction 4.4 Planning for Bushfire Protection.

9. Following completion of the further studies, Council will need to confirm in the planning proposal whether the proposal is consistent with the s117 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 5.1 Implementation of Regional Strategies and 5.2 Sydney Water Drinking Catchments. Any inconsistencies will need to be justified.

10. The Director General can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are only of minor significance.

11. No further referral is required for any other s117 Directions whilst the planning proposal remains in its current form.

11. Council be offered the Minister's plan making delegations under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

Supporting Reasons :

The conditions are necessary to ensure that the proposed land use is acheiveable without environmental, heritage and social impacts and that the level of development is contained to the existing footprint and no further expansion occurs.

To permit a vehicle repair station on Lots 8-17, Section 40 DP758098, Old Hume Highway
Berrima

Signature:



Printed Name:

MARK PARKER
Local Planning Manager

Date:

21st June 2013