

FURTHER REPORT

JRPP PLANNING REPORT

JRPP NO:	2010 SYW083
DA NO:	704/2011/JP
PROPOSED DEVELOPMENT:	PROPOSED SUPERMARKET AND ASSOCIATED WORKS
SUBJECT SITE:	LOT 1 DP 528019 AND LOT 37 DP 384439 NO. 73 – 75 WINDSOR ROAD, BAULKHAM HILLS
APPLICANT:	TPG NSW PTY LTD
LODGEMENT DATE:	15 NOVEMBER 2010
REPORT BY:	KRISTINE MCKENZIE PRINCIPAL EXECUTIVE PLANNER
RECOMMENDATION:	REFUSAL OF THE DEVELOPMENT APPLICATION

HISTORY

22/06/2011 Council's report to the JRPP finalised and forwarded to the JRPP secretariat by email.

22/06/2011 Email received from the applicant at 5.36pm which included the following information:

1. Cover letter from the applicant (TPG NSW);
2. Stage 2 Environmental Site Assessment and Salinity Assessment;
3. Letter from Golf Club (Country Club) agreeing to proposed easement to drain water and letter from Woolworths agreeing to Golf Clubs terms;
4. Independent Peer Review of Economic Impact Assessment; and
5. Independent Peer Review of Draft Master Plan and Draft DCP for Stone Mason Drive.

This information was reviewed by Council staff prior to the JRPP meeting.

28/06/2011 Three (3) submissions received in support of the proposal.

29/06/2011 Email received from the applicant at 9.47pm with a letter attached regarding the JRPP report. The letter was addressed to the JRPP however a copy was also forwarded to Council.

30/06/2011 JRPP meeting held. At the pre-panel meeting, a memorandum was provided to the JRPP which addressed the additional information submitted by the applicant on 22 June 2011.

At the JRPP meeting the resolution was as follows:

The Panel resolved unanimously to defer the determination of the development application, due to the applicant providing additional supplementary information to Council after Council's assessment report was finalised and forwarded to the Panel Secretariat. The supplementary information has yet to be considered with due process by the Panel. Furthermore, the Panel has requested Council to provide a supplementary report which provides an assessment of the supplementary information provided by the applicant.

A copy of Council's previous report to the JRPP and the memorandum provided to the JRPP on 30 June 2011 are Attachments 1 and 2. The letter submitted by the applicant on 29 June 2011 is Attachment 3.

REPORT

1. Council's Memorandum dated 30 June 2011

As outlined in the history above, following completion of the JRPP report and its referral to the JRPP secretariat, the applicant submitted the following information:

1. Cover letter from the applicant (TPG NSW);
2. Stage 2 Environmental Site Assessment and Salinity Assessment;
3. Letter from Golf Club (Country Club) agreeing to proposed easement to drain water and letter from Woolworths agreeing to Golf Clubs terms;
4. Independent Peer Review of Economic Impact Assessment; and
5. Independent Peer Review of Draft Master Plan and Draft DCP for Stone Mason Drive.

In response to the submission of the additional information, Council staff reviewed the information and a memo was provided to the JRPP members at the pre-panel meeting. A copy of the memo is Attachment 2. The memo included comments from Council's Senior Subdivision Engineer, Acting Senior Environmental Health Officer and Principal Planning Reform and Policy.

In this respect, the information submitted regarding site contamination, salinity and the agreement to the drainage easement was considered satisfactory and was supported. The reasons for refusal in respect to these matters were deleted from the recommendation. However the independent peer reviews of the economic impact assessment and the Draft Master Plan and Draft DCP for Stone Mason Drive were not supported and the reasons for refusal in relation to strategic considerations were not amended or deleted.

As a result of the additional information, the recommendation was amended from that contained within the original report. However, it is noted that the Development Application continued to be recommended for refusal.

2. Flora and Fauna Impact

During the site inspection, at the pre-panel meeting and at the JRPP meeting a number of comments were made by panel members regarding the impact on flora on the site. As detailed within the original report, the site contains Cumberland Plain Woodland which is a critically endangered ecological community. Council's Flora and Fauna Projects Officer has provided the following additional comments:

I have assessed the Ecological Assessment Report of Alison Hunt & Associates (herein referred to as AHA) and the subsequent peer review by Kevin Mills & Associates (herein referred to as KMA) in addition to recent information submitted via email on the 29 June 2011 by TPG NSW and the submission to the JRPP on the 30 June 2011 also from TPG NSW.

The letter by KMA states that a Species Impact Statement (SIS) is not required, however, the statement is missing any reference to the Cumberland Plain Woodland (CPW) on the site. This peer review does not state whether an SIS is required in relation to a Critically Endangered Ecological Community.

The recent submission by TPG NSW reiterates information previously submitted by AHA in relation to ecology. The discrepancy in opinion relates to whether a Species Impact Statement is required to be undertaken for the proposal. The conclusions of AHA's assessment of significance under Section 5A of the EP & A Act stipulates the proposal is unlikely to significantly impact the CPW such that the long-term survival of the CPW within the locality would be at risk of extinction.

The definition of "locality" within the "Threatened Species Assessment Guidelines" is the same as that of local occurrence (ie the subject site). The Guidelines define local occurrence as being the community that occurs within the study area (subject site). The local occurrence may include adjacent areas if the ecological community on the study area forms part of a larger contiguous area of that ecological community and it can be demonstrated that there is genetic transfer within the occurrence. In order to include adjacent areas the future of the occurrence beyond the subject site must be known. In this instance the land adjacent to the site is under separate ownership and may be subject to future development.

The purpose of the Assessment of Significance (AoS) is to determine through a qualitative analysis of the study area whether further assessment needs to be undertaken. All factors must be considered and an overall conclusion must be drawn from all factors in combination.

Summary of Council's assessment of significance:

Under Section 5A of the Environmental Planning & Assessment Act 1979 there are seven (7) parts in the "assessment of significance". The following is relevant:

Factor (c) The local occurrence (ie the CPW in the Study Area) is being removed and/or modified on the site. The removal of the majority of the CPW is deemed to likely place the local occurrence at risk of extinction. Consideration of CPW in the regional context is not applicable for this factor.

Factor (d) The habitat of CPW will be modified over a majority of the study area. The CPW and its habitat to the south of the study area will be fragmented by the proposed action.

Factor (f) The Cumberland Plain Recovery Plan has specifically acknowledged (page 11 and 12) the importance of corridor and small remnants by saying "The identification of regional conservation priorities within this Plan should not be misinterpreted as underrating the significance of remnant vegetation outside the priority conservation lands".

Council's conclusion based on these factors is that the requirement for further investigation is warranted through undertaking a Species Impact Statement (SIS). An SIS assessment must include consideration of the direct and indirect impacts of these activities which may occur both on and off the subject land. In addition, discussion of

both local and regional abundance and distribution can be taken into account as well as their respective tenure and long-term security.

There are three options for proposals deemed likely to have a significant effect on a threatened entity:

- *Prepare an SIS for concurrence of the Office of Environment and Heritage;*
- *Re-design the proposal to reduce the impact on the entity; and*
- *Enter into a biobanking agreement.*

In the absence of any re-design or biobanking agreement, if Council has determined there will be a significant impact through the review of an SIS and have decided to give consent to the development, then the concurrence of the Office of Environment and Heritage is required before consent can be granted. In this regard the role of the Office of Environment and Heritage is one of concurrence.

In summary, an assessment of significance under Section 5A of the EP & A Act relates only to the local occurrence of that entity within the Study Area, a majority of which is being removed and/or modified. The removal and/or modification is to an extent such that the requirement for further investigation is warranted by undertaking an SIS to take account of local and regional impacts.

3. Previous Reasons for Refusal

At the pre-panel meeting a comment was made by one of the panel members that one of the reasons for refusal resolved by the JRPP for Development Application No. 1674/2010/JP in respect to Draft LEP 2010 and potential zone swap had not been included in the current reasons for refusal.

In order to address this matter, an additional reason for refusal has been included in the recommendation (Reason for Refusal No. 7).

4. Applicant's Letter dated 29 June 2011

As detailed in the history above, an email was received from the applicant at 9.47pm on 29 June 2011 with a letter regarding the JRPP report. The letter was addressed to the JRPP secretariat however a copy was forwarded to Council. The following matters were raised by the applicant within their submission (summarised) with a comment addressing each matter:

- (a) Reasons for refusal which relate to biodiversity and vegetation – the applicant has in part stated:

The AHA report includes in its appendices an assessment of significance under the EPBC Act (does not trigger a controlled action) and EP & A Act (Seven Part-test completed advises no need for a Species Impact Statement).

In addition, the applicant sought a peer review of the AHA report by Dr Mills, in which he concurs with the conclusion of the AHA report that a SIS is not required.

The applicant is prepared to accept conditions relating to the mitigation measures outlined in the AHA report during the construction phase.

Comment: Both the Ecological Assessment Report by Alison Hunt & Associates and the subsequent peer review by Kevin Mills & Associates were reviewed by Council's Flora and Fauna Projects Officer. It was concluded that a Species Impact Statement was required based on the significant impact that would result to the Cumberland Plain Woodland.

This matter was addressed within the original report considered by the JRPP (See Attachment 1) and has been further commented on in Section 2 of this report.

- (b) Reasons for refusal which relate to building height plane, setback, landscape provision, soil quality and potential contamination – the applicant stated:
- *The applicant seeks a variation to the 45 degree height plane at the eastern boundary for the portion of the building above 8m in height and where the breach involved is minor at 1.2m in the roof of the loading dock, the variation will not adversely affect the development potential of the adjoining property, undermine its application in the future or result in unacceptable shadowing. As such, a variation of the control could be considered reasonable;*
 - *The applicant provided justifications to the Council's assessment staff in relation to the variations sought under the DCP based on the merits of the proposed development;*
 - *The applicant is prepared to accept Council's standard conditions associated with construction techniques or conditions to implement the recommendations outlined in the EIS Environmental Investigation Services report dated June 2011, materials to be used in construction associated with soil salinity;*
 - *The applicant has undertaken a Stage 2 Investigation which did not identify any specific contamination of the land. The proponent will ensure that during the construction phase all appropriate management techniques will be employed should any contamination be encountered.*

Comment: The variation to the DCP in regard to building height plane was addressed in the previous report where it was stated that:

The proposed variation to the building height plane is considered reasonable in this instance given that the area the subject of the variation adjoins the Business 3(a) area of the site to the east. The proposed building plane will not adversely impact on adjoining residential land in terms of overshadowing, privacy or amenity and will not adversely impact on streetscape.

Accordingly the proposed variation is considered reasonable.

It may also be noted that variations to the setback to Wager Road and the provision of a landscape strip between car spaces was also requested. As the proposed variations to the DCP have been considered reasonable within the original report, the reason for refusal which refers to the DCP non-compliances has been deleted.

As outlined above, the applicant submitted a Stage 2 environmental site assessment and salinity assessment on 22 June 2011. These reports were reviewed by Council's Acting Senior Environmental Health Officer with the comments included in the memo to the JRPP. The comments were as follows:

Council's Acting Senior Environmental Health Officer has reviewed the Environmental Site Assessment and Salinity Assessment which satisfies the requirement to demonstrate that the proposal can be made suitable for the development provided the recommendations of the assessment are put in place. As such the reason for refusal Part 5 as shown in the JRPP report has been amended to delete reference to soil salinity and site contamination.

Refer to Attachment 2.

- (c) Reasons for refusal which relate to type of centre – the applicant has in part stated:

The proposed form of development is for the purposes of "shops" which is a permissible form of development in the 3(a) zone. Presently, no LEP control restricts the use of the land for the purposes of a supermarket and specialty shops.

Comment: The subject site is currently zoned Business 3(a) Retail and a supermarket is a permissible form of development.

Council's Draft LEP 2010 exhibition material included two (2) options for the location of the B1 zone at RMB 71 -75 Windsor Road, Baulkham Hills. The first option, supported by the Department of Planning, locates the B1 Neighbourhood Centre zone away from the proposed Stone Mason Drive frontage to the Windsor Road frontage with the R3 Medium Density Residential zone applying to the Stone Mason Drive frontage. The second option, Council's preferred approach, retains the location of the B1 Neighbourhood Centre zone on the Stone Mason Drive frontage.

Whilst shops are proposed to be permissible with consent in the B1 Neighbourhood Centre zone, they will be prohibited in the R3 Medium Density Residential zone. Therefore the proposed development for a shop is permissible with consent only if Council's preferred approach to zoning under draft LEP 2010 is adopted.

Under Draft LEP 2010 relevant development standards for the subject land include a minimum allotment size of 3000m², maximum floor space ratio of 0.5:1 and maximum building height of 10 metres.

The Development Application represents a size and scale well beyond what is anticipated for a neighbourhood centre on the subject site. The development is internalised and has no relationship with the site's context, setting or future surrounding residential development or open space. The built form and overall design is considered to be counteractive to the principles of a walkable neighbourhood and the creation of a local identity.

This matter has been addressed in the previous report to the JRPP (See Attachment 1).

- (d) Reasons for refusal which relates to engineering matters – the applicant has stated:

- The downstream property owner supports the development and has provided in writing terms for a downstream easement for which Woolworths accepted in writing and these letters have been supplied to Council;
- The application has included swept paths information and a report from Colston Budd Hunt and Kafes which indicates the car parking and truck loading dock areas comply with the relevant standards. Council can condition this aspect.

Comment: As outlined above, the applicant submitted a letter from the Golf Club (Country Club) regarding the easement on 22 June 2011. This letter was reviewed by Council's Senior Subdivision Engineer with the comments included in the memorandum to the JRPP. The comments were as follows:

Council's has reviewed the correspondence from the Castle Hill Country Club and has advised that the easement agreement is satisfactory. As such the reason for refusal Part 4(a) as shown in the JRPP report can be deleted.

In respect to the carparking design, the applicant was requested to provide plans and details which demonstrate compliance of the proposed car park, vehicular access and circulation in accordance with relevant design standards. Details addressing these standards have not been submitted to demonstrate that the carparking areas are workable and satisfactory.

Refer to Attachment 2.

5. Submissions in Support of the Proposal

On 28 June 2011 three (3) submissions were received in support of the Development Application. The submissions included the following comments:

- *This development will act as a means in providing infrastructure and helping facilitate development of further sites in the Balmoral Road Sector.*
- *In addition to providing a supermarket to serve a growing population, this development will act as a means in providing infrastructure and will be important in accelerating other development schemes in the area.*
- *I believe the development will provide additional infrastructure and services to the Hills District which is continuing to grow at an extremely fast pace.*
- *As an owner of a development site development of this nature is important in leveraging further development projects.*
- *Due to the continuing growth of the Hills District, and at such a considerable rate, I believe this development will be vital in continuing to provide the services and infrastructure needed to support the growth and future development of the area.*
- *This development will also support the growth of the community and help with future developments within the Hills District.*

CONCLUSION

As outlined within the memo prepared to the JRPP dated 30 June 2011, the additional information submitted by the applicant has been reviewed. The additional information submitted addressed some matters identified as reasons for refusal within the original report to the JRPP however the proposal remains unsatisfactory and continues to be recommended for refusal.

In regard to strategic considerations, Council has identified the site as being suitable for neighbourhood shops. The current proposal is considered to be a larger and denser form of retail development than a neighbourhood centre and is therefore inconsistent with the Council's strategic vision. The proposal is also inconsistent with Council's Preferred Draft LEP 2010 which will identify the site as a neighbourhood centre. The proposed development by way of its size, scale and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.

In addition to the above, the proposal is unsatisfactory in broad terms with a number of requirements in respect to impact on flora and fauna and engineering considerations.

Accordingly the proposed development is unsatisfactory and refusal of the application is recommended.

RECOMMENDATION

The Development Application be refused for the following reasons:

1. The proposed development is unsatisfactory in respect to the requirements of Baulkham Hills Development Control Plan Part E Section 17 Balmoral Road Release Area in relation to Section 2.2 and Section 3.1 and the impact on the environment, site characteristic, natural vegetation and bushland and biodiversity in respect to the removal of Cumberland Plain Woodland (Section 79C (a)(iii) of the Environmental Planning and Assessment Act, 1979).
 2. The proposed development is unsatisfactory in respect to the adverse impact upon the environment in regard to the loss of Cumberland Plain Woodland (Section 79C (b) of the Environmental Planning and Assessment Act, 1979).
 3. The proposal is unsatisfactory in respect to strategic considerations as the site is identified as being appropriate for a Neighbourhood Centre development as follows:
 - (a) The proposed development is not consistent with the strategic planning framework adopted by Council, including the Balmoral Road Release Area Structure Plan and the Centres Hierarchy, that identifies the site as a neighbourhood centre.
 - (b) The proposed development is not consistent with exhibited draft The Hills Local Environmental Plan 2010 by way of being a prohibited use within the proposed zone (R3 zone approach). The proposal is also inconsistent with floor space ratio and building height development standards (B1 zone approach).
 - (c) The proposed development by way of its size, scale beyond and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.
 - (d) The proposed development is not consistent with the requirements of a neighbourhood centres as expressed by the Development Control Plan Part C Section 8 Business 2.2 in terms of meeting the daily convenience needs of residents.
 - (e) The proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities in this location and other planned centres in the locality in that it will prevent the ability of a neighbourhood centre from developing on adjoining land and may impact on the ability of the other centres from developing additional retail services and facilities (Draft Competition SEPP).
- (Section 79C (b) of the Environmental Planning and Assessment Act, 1979).
4. The proposed development is unsatisfactory in respect to engineering considerations as follows:
 - (a) The provision of plans demonstrating the compliance of proposed car park, vehicular access and circulation prepared in accordance with relevant design standards including:

- Australian/ New Zealand Standard AS/NZS 2890.1:2004 – Parking facilities – Part 1: Off-street car parking;
- Australian/ New Zealand Standard AS/NZS 2890.6:2009 – Parking facilities – Part 6: Off-street parking for people with disabilities;
- Australian/ New Zealand Standard AS/NZS 2890.2:2002 – Parking facilities – Part 6: Off-street commercial vehicle facilities.
- Baulkham Hills Development Control Plan (BHDCP) Part D Section 1– Parking.

(Section 79C (b) of the Environmental Planning and Assessment Act, 1979).

5. The proposed development is unsatisfactory given the adverse impact upon flora and fauna due to the siting and design of the proposal (Section 79C (c) of the Environmental Planning and Assessment Act, 1979).
6. The proposed development is unsatisfactory and is not in the public interest as it is contrary to the adopted Centres Direction and Centres Hierarchy (Section 79C (d) and (e) of the Environmental Planning and Assessment Act, 1979).
7. The proposed development would be prohibited in the R3 zone that is required as a result of the zone swap in Clause 3(c) of schedule 1 of the Department of Planning's Section 65 Certificate for The Hills Draft LEP 2010.

ATTACHMENTS

1. Council's Previous Report to JRPP
2. Council's Memo dated 30 June 2011.
3. Letter from the applicant dated 29 June 2011.

ATTACHMENT 1 – PREVIOUS REPORT TO JRPP**JRPP PLANNING REPORT**

JRPP NO:	2010 SYW083
DA NO:	704/2011/JP
PROPOSED DEVELOPMENT:	PROPOSED SUPERMARKET AND ASSOCIATED WORKS
SUBJECT SITE:	LOT 1 DP 528019 AND LOT 37 DP 38439 NO. 73 – 75 WINDSOR ROAD, BAULKHAM HILLS
APPLICANT:	TPG NSW PTY LTD
LODGEMENT DATE:	15 NOVEMBER 2010
REPORT BY:	KRISTINE MCKENZIE PRINCIPAL EXECUTIVE PLANNER
RECOMMENDATION:	REFUSAL OF THE DEVELOPMENT APPLICATION

BACKGROUND**MANDATORY REQUIREMENTS**

Owner:	Fabcot Pty Ltd	1.	<u>LEP 2005</u> - Unsatisfactory - see report.
Zoning:	Business 3(a), Special Uses 5(a) (Existing and Proposed Roads) and Residential 2(a2)	2.	Draft LEP 2010 - Unsatisfactory - see report.
Area:	7295m ² (area of site the subject of the DA). 23,340m ² (whole site)	3.	<u>DCP No.</u> - DCP Part C Section 8 - <u>Business</u> - Unsatisfactory.
Existing Development:	Dwelling house on each lot and associated works	4.	<u>DCP Part E Section 17 - Balmoral Road Release Area</u> - Unsatisfactory.
Capital Investment Value:	\$14,404,990.00	5.	<u>Section 79C (EP&A Act)</u> - Unsatisfactory.
		6.	<u>Section 94 Contribution</u> - NA.

SUBMISSIONS**REASONS FOR REFERRAL TO JRPP**

1. Exhibition:	Not required	1.	Capital Investment Value in excess of \$10 Million pursuant to SEPP (Major Development) 2005
2. Notice Adj Owners:	Yes, fourteen (14) days		
3. Number Advised:	Eighteen (18)		
4. Submissions Received:	One (1)		

EXECUTIVE SUMMARY

The Development Application the erection of a supermarket, carparking and associated works. The proposal will have a gross floor area of 3595m² and parking for 186 vehicles.

The report recommends refusal of the Development Application. The areas of concern include inconsistency with the provisions of Draft LEP 2010 and that the proposal is contrary to the adopted Centres Direction and the identified Centres Hierarchy which identifies the site as a neighbourhood centre.

In addition, the proposal also includes removal of Cumberland Plain Woodland which is a Critically Endangered Ecological Community. The removal of the Cumberland Plain Woodland from the site and resultant isolation of Cumberland Plain Woodland on an adjoining site triggers the need for a Species Impact Statement to be undertaken. A Species Impact Statement has not been submitted.

Further to the above, the applicant was also requested to submit information in respect to drainage and carparking design, salinity and soil contamination however this information has not been provided. Variations to Development Control Plans Part C Section 8 Business and Part E Section 17 Balmoral Road Release Area are also proposed however the variations are considered to be reasonable.

The proposal was notified to adjoining property owners. There was one (1) submission received from a retail competitor. The letter raised concerns that the proposal is a 'sham' to assist the rezoning, impact on the planned retail hierarchy, potential adverse impact on facilities and services and appropriateness of the size of the facility.

On the basis of the above refusal of the application is recommended.

HISTORY

21/10/2010 Development Application 1674/2010/JP for a supermarket, specialty shops, carparking and associated works refused by the Joint Regional Planning Panel. The reasons for refusal were:

1. *The proposed development is unsatisfactory as the non-provision of public road access does not demonstrate the orderly development of the site (Section 79C (a)(i) of the Environmental Planning and Assessment Act, 1979).*
2. *The proposed development would be prohibited in the R3 zone that is required as a result of the zone swap in Clause 3(c) of schedule 1 of the Department of Planning's Section 65 Certificate for The Hills Draft LEP 2010.*
3. *The proposal is unsatisfactory in respect to strategic considerations as the site is identified as being appropriate for a Neighbourhood Centre development as follows:*
 - (a) *The proposed development is not consistent with the strategic planning framework adopted by Council, including the Balmoral Road Release Area Structure Plan and the Centres Hierarchy that identifies the site as a neighbourhood centre.*
 - (b) *The proposed development by way of its size, scale beyond and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.*

- 15/11/2010** Subject Development Application lodged.
- 17/12/2010** Letter sent to applicant seeking additional information regarding road access, consistency with Centres Direction and strategic planning for the area, compliance with DCP Part C Section 8 – Business, impact on threatened species including the request for either an SIS or redesign of the proposal, soil salinity assessment, site contamination and noise impact.
- 10/01/2011** Further letter sent to the applicant seeking additional information regarding road access and drainage.
- 15/03/2011** Additional information submitted by the applicant.
- 21/03/2011** Flora and fauna information submitted by the applicant.
- 22/03/2011** Email sent to the applicant requesting further information regarding bicycle parking, hours for cleaning, variation to DCP road layout and setback to the ramp adjacent to Wager Road.
- 17/03/2011** Briefing given to Joint Regional Planning Panel.
- 11/04/2011** Further letter sent to the applicant advising that Draft LEP 2010 has been placed on exhibition and is required to be addressed, and that matters relating to site contamination, salinity, impact on flora and fauna, engineering and drainage matters and Council's email of 22 March 2011 (regarding bicycle parking, hours for cleaning, variation to DCP road layout and setback to the ramp adjacent to Wager Road) remain outstanding and are required to be addressed.
- 09/05/2011** Additional information received from the applicant.
- 11/05/2011** Email sent to the applicant which noted that information remained outstanding in relation to site contamination, salinity and the submission of an SIS. Advice was also sought on whether the applicant intends to submit any further information.
- 11/05/2011** Email received from the applicant which requested that the proposal be assessed on the information submitted.

PROPOSAL

The applicant seeks approval for the erection of a supermarket, carparking and associated works. Specifically the works include the following:

- Gross floor area of 3595m².
- Carparking area for 186 vehicles within an at-grade parking area and a lower level carpark;
- Demolition of the existing dwelling at 75 Windsor Road and retention of the existing dwelling at 73 Windsor Road (located in proximity to Windsor Road);

The proposal will be constructed over three (3) levels as follows:

- (i) Basement level – carparking for 150 cars, plant area, store room, lift and travelator;
- (ii) Ground level – supermarket, amenities and at-grade carpark for 36 cars;
- (iii) Upper level plan – loading dock, supermarket office and staff amenities and plant area.

The site is zoned Special Uses 5(a) (Existing and Proposed Roads), Residential 2(a2) and General Business 3(a). The proposed works are located within the portion of the land zoned General Business 3(a).

The proposed hours of operation are 7am to 10pm seven (7) days per week.

The proposed development will employ around 200 persons which includes full-time, part-time and casual staff.

The site contains two (2) proposed roads as part of the overall Balmoral Road Release Area road layout. The applicant proposes to construct the roads where they are located within the subject site. The DCP also shows a road link to Windsor Road (Wager Road) which is located on the adjoining property to the west at 77 Windsor Road. The applicant has proposed to relocate the proposed road to the subject site and undertake construction as part of the proposal. This will ensure that the subject site has appropriate access to the existing public road network. Attachment 6 shows the proposed DCP road layout.

The proposal does not include any subdivision of the site.

ISSUES FOR CONSIDERATION

1. Compliance with SEPP (Major Development) 2005

Clause 13(1) of SEPP (Major Development) 2005 provides the following referral requirements to a Joint Regional Planning Panel:-

"(1) This Part applies to the following development:

- (a) development that has a capital investment value of more than \$10 million,*
- (b) development for any of the following purposes if it has a capital investment value of more than \$5 million:*
 - (i) affordable housing, air transport facilities, child care centres, community facilities, correctional centres, educational establishments, electricity generating works, electricity transmission or distribution networks, emergency services facilities, health services facilities, group homes, places of public worship, port facilities, public administration buildings, public ferry wharves, rail infrastructure facilities, research stations, road infrastructure facilities, roads, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, wharf or boating facilities,*
- (c) Crown development that has a capital investment value of more than \$5 million,*

- (d) *Development for the purposes of eco-tourism facilities that has a capital investment value of more than \$5 million,*
- (e) *Designated development,*
- (f) *Subdivision of land into more than 250 lots."*

The proposed development has a capital investment value of \$14,404,909 thereby requiring referral to, and determination by, a Joint Regional Planning Panel. In accordance with this requirement the application was referred to, and listed with, the JRPP for determination.

On 16 June 2011, the NSW Government introduced a Bill into the Parliament to repeal Part 3A of the Environmental Planning and Assessment Act, 1979 and replace it with an alternative system for the assessment of projects of genuine State significance. The Bill also proposes a number of changes to the operation and make-up of the Planning Assessment Commission and Joint Regional Planning Panels, including providing for additional transparency and greater local government input. The most significant change to the regional panel arrangements will be an increase in the capital investment threshold for most development types assessed by regional panels from \$10 million to \$20 million – returning decision-making powers to local councils for development within the \$10 million to \$20 million range. There has been no details provided to date of any transitional arrangements

2. Previous Refusal of Development Application 1674/2010/JP

As detailed in the history above Development Application 1674/2010/JP was refused by the JRPP on 21 October 2010. The reasons for refusal with the applicant's comments in response (summarised) are as follows:

1. The proposed development is unsatisfactory as the non-provision of public road access does not demonstrate the orderly development of the site (Section 79C (a)(i) of the Environmental Planning and Assessment Act, 1979).

Applicant's comment: *'The applicant no longer seeks a "deferred commencement" development consent for road access to the proposed development, rather the current DA seeks to provide the access road (known as Wager Road) on the subject site. The applicant is prepared to construct and dedicate this access road'.*

Comment: The proposal has been amended the proposal to provide Wager Road within the subject site. Wager Road connects to Windsor Road and accordingly provides public road access. This matter has been further addressed in Section 2 below.

2. The proposed development would be prohibited in the R3 zone that is required as a result of the zone swap in Clause 3(c) of schedule 1 of the Department of Planning's Section 65 Certificate for The Hills Draft LEP 2010.

Applicant's comment: *'It is Woolworths preference to develop the portion of the site at the Windsor Road frontage of the properties (Road Frontage Site) for the purposes of a retail development, thus the applicant lodged a rezoning application with Council to swap the location of the 3(a) Business General Zone to the Windsor Road frontage and approached the NSW Department of Planning to support the zone swap. However, presently the portion of the site on which Woolworths would prefer to locate the retail development (ie the Road Frontage Site) does not permit such a Development Application to be lodged and considered.*

While the Section 65 Certificate issued by the Director-General of the NSW Department of Planning is binding on Council, there is no specific required timeframe in the legislation requiring the Council to exhibit the Draft Local Environmental Plan (Draft LEP). As such, the Draft LEP cannot be considered certain or imminent.

To assist the JRPP in the determination of this DA, the applicant is prepared to offer to enter into a Voluntary Planning Agreement where should the zone swap form part of a gazetted LEP and the applicant was successful in obtaining development consent on the Road Frontage Site for the purposes of a suitable retail centre, any development consent granted as a result of this DA on the subject site would be surrendered. This eliminates any concern that both portions of the site could "end up being developed" for the purposes of a retail development, which is not Woolworth's intent for the land.

To enable the JRPP to have an even greater level of comfort the applicant is prepared to accept a condition which will result in a Section 88E restrictive covenant being registered on the title for the subject land to effectively bring about the surrender of any development consent upon the land if a suitable operational retail centre consent is granted for the Road Frontage Site'.

Comment: Draft LEP 2010 was placed on public exhibition between 29 March 2011 and 13 May 2011. The exhibition included the proposed relocation of the business land from its current location to the Windsor Road frontage. The exhibition also included Council's preferred approach for the neighbourhood centre to remain in its current location. The strategy put forward by the applicant of a Voluntary Planning Agreement is considered to be unworkable as it does not demonstrate there is a material public benefit to be used for an identifiable public purpose. In respect to an 88E restriction, whilst this may give a level of comfort in respect to surrender of any consent the proposal continues to be inconsistent with the Centres Direction and Centres Hierarchy and the proposal is recommended for refusal. In addition, complications may arise if works were to commence on the subject site should there be a delay in finalising the Draft LEP.

3. The proposal is unsatisfactory in respect to strategic considerations as the site is identified as being appropriate for a Neighbourhood Centre development as follows:
 - (a) The proposed development is not consistent with the strategic planning framework adopted by Council, including the Balmoral Road Release Area Structure Plan and the Centres Hierarchy that identifies the site as a neighbourhood centre.
 - (b) The proposed development by way of its size, scale beyond and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.

Applicant's comment (summarised): *The size and scale of the retail development is less than that previously considered by the JRPP as unacceptable. The applicant has obtained an Economic Impact Assessment (EIA) and a review of that EIA to ensure that this proposed retail development will not result in an unacceptable adverse impact on other centres in the Balmoral Road Release Area (BRRA) and existing retail development in the trade area.*

The Council has prepared a number of strategic documents to assist with the DLEP 2010, which includes the Local Strategy and Centres Direction. The Draft Local Strategy states that this document is a broad overview of a number of further investigative reports undertaken for the LGA including the Centres Direction policy to assist in developing the comprehensive LEP as guiding documents which have not been prepared as statutory documents.

This document seeks to implement a hierarchy rather than a network of centres. The policy does include the ability to vary the hierarchy based on the submission of an Economic Impact Assessment (EIA) and includes 'flexibility provisions'.

The applicant engaged Duane Location IQ to prepare in February 2010 an Economic Impact Assessment and to ensure that the information submitted to Council is of the highest standard and capable of receiving support, an independent review of all information available was undertaken by MacroPlan. The EIA and the independent review both being site specific analyses, demonstrate the need for a full-line supermarket capable of development without adversely impacting on other centres.

Council's Centres Policy seeks to impose barriers on competition through the use of a hierarchy, and if strictly applied, will not enable outcomes as sought by the DoP as detailed in their letter dated 23 February 2010. Council has engaged Hill PDA to prepare a report to quantify the floor space demand in the LGA. This report indicates that there is an undersupply of supermarkets in this locality today.

Council's Centres Policy includes provisions which enable consideration of an Economic Impact Assessment (EIA) and variation of the hierarchy of a centre. An EIA has been submitted with the DA which indicates the proposal will not adversely affect other centres and will cater for an unmet demand for supermarkets in the locality. This EIA has been the subject of a peer review, which is also submitted with the DA. This peer review indicates the proposal is acceptable subject to a delay of 1 year in the operation of the retail development which is acceptable to the proponent. The Draft SEPP seeks to remove impositions to competition in the marketplace. It would appear that Council has adopted a policy position so as to create another layer of controls which are not included in the LEP.

Comment: Council's Centres Direction was adopted in 2008 and outlines Council's strategic planning framework for the development and growth of centres in the Shire and includes the Centres Hierarchy. The demand in the Release Area sector to 2021 will be for an additional four (4) supermarkets. Sufficient zoned land for these supermarkets has been provided in Windsor Road village, Wrights Road Town Centre, Rouse Hill major centre, North Kellyville and Box Hill. The Centres Hierarchy identifies the site as a neighbourhood centre. This is further addressed in Section 4 below.

2. Road Access

The subject site is located within the Balmoral Road Release Area. The area was rezoned from rural land to predominantly residential land on 13 April 2006. Development Control Plan Part E Section 17 – Balmoral Road Release Area contains the relevant standards for development within the area and includes a proposed road layout plan. A copy of the proposed road layout plan is Attachment 6.

The proposed road layout plan includes the following future roads:

- (i) proposed road located on the adjoining property (No. 77 Windsor Road) which adjoins the western boundary of the subject site. This road is known as 'Wager Road' and provides a direct link to Windsor Road from development to the east and west;
- (ii) proposed road located on the southern portion of the subject site. This road is known as 'Stone Mason Drive' and provides a major link from the existing Spurway Drive to Fairway Drive;

- (iii) proposed road located centrally on the subject site which forms a 'boundary' around the Business 3(a) site and which also affects Nos. 71 and 69 Windsor Road (half road construction across these lots). This road is known as 'Treffone Avenue'.

The applicant has proposed to relocate Wager Road from No. 77 Windsor Road to the subject site in order to provide public road access. The adjoining property owner was notified of the Development Applicant however made no submission was received either in support of the proposal or against the proposal.

The relocated road access results in a variation to the DCP road layout. The applicant has addressed the variation and has stated the following to support the proposal:

As the access road (Wager Road) from Windsor Road is located wholly on the adjoining property, the applicant wishes to apply for realignment of the Wager Road to the east, so it is wholly located on the subject site, as part of this development application and given the determination of the JRPP it is considered that providing the access road on the subject site is consistent with the intent of Council's DCP Map in that the access road will provide the same outcomes on the subject site despite not being located in the location indicated by the DCP Map. The applicant's traffic engineer has been liaising with the RTA about the access road connecting to Windsor Road.

A variation of the DCP is requested and considered appropriate for the following reasons:

- The adjoining owner at 77 Windsor Road does not want a road on his land and has advised The Planning Group of his position in a meeting held in October 2010 with his consultant planner present, as such the DCP road layout in its current form cannot be implemented;*
- The adjoining owner is not willing to request Council amend the DCP to remove the road from his land;*
- During the JRPP meeting held on 19 October 2010 it was indicated to the applicant by the chair of the panel that it would have been more appropriate to propose the location of the road on the subject site rather than the proposal which was refused as part of the former DA. The applicant listened to the feedback from the chair and now proposes the road on the subject site and to facilitate a sensible outcome seeks support to the minor variation of the DCP road layout;*
- A variation of the DCP will not adversely impact on the adjoining property based on the civil design shown in the concept civil drawings by VDM;*
- A variation of the DCP will bring about the same intention which is to provide for a new access road known as Wager Road to connect Stone Mason Drive to Windsor Road;*
- A variation of the DCP will not impact the design and layout of the proposed development such that a variation cannot be supported given the road widths as required under the DCP and by the RTA have been designed to comply as shown in the architectural drawings by Scott Carver and the concept civil drawings by VDM;*
- A variation to the DCP will enable the orderly and economic development of the land;*

- *It is noted that Council has varied the DCP in other locations within the Balmoral Road Release Area and a variation in this location will not undermine the application of the DCP in the future, as each circumstance has been assessed on its merits.*

Comment:

The proposal to relocate the road to the subject site will ensure that public road access is provided to/from the supermarket development and Windsor Road. The proposal was notified to the adjoining property owner at No. 77 Windsor Road however no submission was received either in support of the proposal or against the proposal. Given that the road access reduces the land available for development it is assumed that the adjoining property owner would benefit from the proposal.

Two (2) objectives of the DCP in relation to roads are:

- (i) *To provide an acceptable level of access, safety and convenience for all street and road users within the release area, while ensuring acceptable levels of amenity, and minimising the negative impact of traffic.*
- (ii) *To provide a legible and permeable movement network for pedestrians and cyclist along streets and paths to points of attraction within and adjoining any development.*

Given that the intent of the DCP is achieved, being public road access to/from Windsor Road, and the relocation of the road does not adversely impact upon adjoining property owners, it is considered that the proposal to relocate the road is satisfactory and can be supported.

3. Baulkham Hills LEP 2005 Considerations

The site is zoned Special Uses 5(a) (Existing and Proposed Roads), Residential 2(a2) and Business 3(a). The proposed works are located within the portion of the land zoned Business 3(a). The proposal is a permissible use within the Business 3(a) zone.

The objectives of the Business 3(a) zone are:

- (a) to encourage appropriate development for accommodating the retail, commercial and social needs of the community, and
- (b) to encourage the development and expansion of business activities that will contribute to the economic growth of, and the creation of, employment opportunities within the local government area, and
- (c) to encourage a wide range of retail, commercial, community, leisure and entertainment facilities in the major business centres of the local government area, and
- (d) to integrate retail and commercial activities within a network of public and civic spaces, and
- (e) to ensure the scale and type of business development within the zone is compatible with the character and amenity of surrounding land, and
- (f) to integrate retail and commercial activities with public transport facilities, and

- (g) to promote development that encourages public transport use and minimises private traffic generation, and
- (h) to provide for mixed use development, including housing, in conjunction with retail, commercial and professional services.

In respect to Objective (e) concerns are raised that the proposed scale and form of the development is unsatisfactory in regard to Council's strategic vision for the development of the area and the relationship to the planning framework which identifies the site as appropriate for neighbourhood shops as detailed in Section 4 below.

4. Strategic Considerations

The proposal was reviewed by Council's Acting Principal Forward Planner who provided the following comments:

(i) Balmoral Road Release Area

In October 2003, the vision and development principles for the release area were articulated in the Balmoral Road Release Area (BRRRA) Structure Plan. The development principles in relation to commercial development were:

- (i) Three major nodes to be supported by residential precincts, being Norwest Marketown (existing), the future transit centre at Burns Road, and the redevelopment of the western side of the existing Kellyville village commercial centre on Windsor Road.
- (ii) Controls to be applied to ensure co-ordinated redevelopment of existing commercial development in Kellyville village.
- (iii) Additional small neighbourhood centres are to be sited in locations to create nodes for "walkable" neighbourhoods.

Accordingly, the Structure Plan identified the sites at Stone Mason Drive and Memorial Avenue for neighbourhood shops. In April 2006 the BRRRA was rezoned for urban development and the subject site was zoned Business 3(a)(Retail). This zone permits all types of retail uses, is the only zone which permits shops and is used to zone all centres in the Shire from major centres like Castle Hill to small groups of shops known as neighbourhood centres.

(ii) The Centres Hierarchy

The Centres Direction (adopted in 2008) outlines Council's strategic planning framework for the development and growth of centres in the Shire and includes the Centres Hierarchy. The Centres Hierarchy classifies centres based on size, location and function and is the basis for the achievement of:

- Orderly and sustainable retail development throughout the Shire;
- Centres that are spatially distributed to meet community needs i.e. retail demand and are appropriate in scale and design for their location;
- A diverse range of centres, from large major centres and town centres to small, walkable and easily accessible neighbourhood centres; and
- Centres that are vibrant and viable, with minimal impacts on surrounding land uses, for example dwellings.

There should be little competition between centres as each centre is planned to operate in different segments of the market. Consistent with the BRRRA Structure Plan, the

Centres Hierarchy identifies Stone Mason Drive centre as a neighbourhood centre. *The Draft North West Subregional Strategy describes a neighbourhood centre as one or a small cluster of shops containing 150 – 900 dwellings.* This allows a neighbourhood centre to be small scale and provide for immediate needs. Windsor Road Village is the nearest village where there is capacity for the development of additional retail to meet weekly shopping needs such as a supermarket. Norwest Market Town is also nearby providing for weekly grocery and fresh food shopping. This centre is identified as a village with the potential to transition to a town centre.

The Stone Mason Drive Neighbourhood Centre falls within the Release Area sector which includes land within the Balmoral Road, Kellyville / Rouse Hill, North Kellyville and future Box Hill release areas. The demand in the Release Area sector to 2021 will be for an additional four (4) supermarkets. Sufficient zoned land for these supermarkets has been provided in Windsor Road village, Wrights Road Town Centre, Rouse Hill major centre, North Kellyville and Box Hill. The timing for the delivery of these supermarkets will be driven by the demand generated by the incoming population over the next ten to twenty years.

It is estimated that the Stone Mason Drive Neighbourhood Centre will be supported by a population of approximately 2,300 persons residing within a 5 to 10 minute walking distance. There is also the expectation that residents using Stone Mason Drive to access further parts of the release area will use the centre. The anticipated population within this area will generate the need for 900 - 1000m² of retail floor space, equating to approximately 10 speciality shops.

(iii) Baulkham Hills Development Control Plan Part C Section 8 Business

2.2 Hierarchy of Business Centre of the DCP states:

"There are a number of neighbourhood centres and shop groups throughout the Shire. These centres primarily provide for the retail convenience and daily shopping needs of local residents. Frequently these centres comprise a small number of shops (such as butcher, green grocer, chemist, newsagent and mixed business) and may include personal and professional services (such as hairdresser, doctor's surgery). Council will not consent to development in neighbourhood centres which does not meet the convenience needs of residents."

The DCP recognises the important role that neighbourhood centres play in meeting residents shopping needs. While a large supermarket in this location may provide a good range of grocery items, it will not provide the full variety of goods and services or a choice or variety of retailers. The hours of opening are proposed to be 7am to 10pm daily which could be construed as convenient; however this is not what is intended when discussing the convenience needs of residents which are more related to location and accessibility.

3.4 Floor Space Ratio

The site is currently zoned Business 3(a)(Retail) which permits all types of retail and is the only retail zone in the Baulkham Hills LEP 2005. The size, height and scale of development is controlled by the provisions of the Baulkham Hills Development Control Plan which provides an FSR of 1:1 and a building height of 12 metres. These are general controls applied to all business land in the Shire.

A Neighbourhood Centre is to incorporate a range of additional uses such as a medium density residential, child care centres, medical centres, recreation facilities such as gyms, restaurants, small scale commercial premises for local businesses and other local activities. The FSR is not an indicator of the extent of retail floor space that is anticipated

or needed. All the different activities anticipated in a centre are to be accommodated within a FSR of 1:1 to ensure that the bulk and scale of the development is in keeping with the site area and its surround, and that the development does not reduce the amenity of adjacent residential or other land uses.

(iv) Baulkham Hills Development Control Plan Part E Section 17 Balmoral Road Release Area.

The following objectives apply to land zoned Business 3(a) (Retail) within the BRRA.

- (i) To promote innovation, creativity and an attractive cohesive development in the design of commercial centres.*
- (ii) To create an environment that discourages and prevents crime.*
- (iii) To provide a built form that closely relates to the topography and landscape of the site.*
- (iv) To ensure the bulk and scale of the development does not reduce the amenity of adjacent residential land uses.*

There are no specific development controls currently applying to the site, however the DCP notes that an amendment to Council's DCP Part C Section 8 – Business shall be prepared in respect to each of the three areas within the BRRA zoned Business 3(a) (Retail). This process is currently being undertaken for the subject site through the Stone Mason Drive Neighbourhood Centre Master Plan project. Further comments on the Master Plan and Draft DCP amendments are provided at item (vi) relating to Draft LEP 2010.

(v) The Road Network

The Baulkham Hills Development Control Plan Part E Section 17 Balmoral Road Release Area 4.1 Local Road Hierarchy requires that the street and road network should conform to the pre-planned road layout as shown on the accompanying development control plan map. This plan shows vehicular access to the site via Stone Mason Drive which runs parallel with Windsor Road and connects residents to Windsor Road, Fairway Drive and Memorial Avenue. Wager Road will also provide direct access to the site via Windsor Road however is limited to a left turn entry and exit. Stone Mason Drive is also accessed from Windsor Road by Spurway Drive which is also proposed to be limited to left in / left out access.

The road network is designed to ensure sufficient carriageway and verge widths are provided to allow streets to perform their designated functions within the street network and encourage the use by pedestrians and cyclists. In this regard the street geometry is consistent with the needs of the street function, physical land characteristics and safety. Suitable land uses and their size and scale have also been identified with this in mind.

Whilst Council's Traffic Section have raised no objection to the proposal based on road capacity, the development application represents a much larger, more intrusive development than planned at the location. It has the potential to be a greater attractor than is envisaged and is likely to have an adverse impact on the planned road network and surrounding development.

(vi) Draft LEP 2010 and Proposed Development Controls

Background

The zoning and development controls for a neighbourhood centre at RMB 71-75 Windsor Road, Baulkham Hills is one of the outstanding matters that required further consultation with the Department of Planning prior to placing Council's Standard Instrument LEP on public exhibition. Therefore the following background is provided to assist consideration of the current application:

- | | |
|------------|--|
| 13/07/2010 | Council considered a report on the Draft Principal Local Environmental Plan 2010 and resolved to seek a section 65 certificate to exhibit the draft plan from the Department of Planning. |
| 19/10/2010 | <p>Section 65 Certificate received from the Department of Planning certifying that the draft plan may be publicly exhibited subject to a number of terms and conditions.</p> <p>In relation to the subject site the terms included a requirement to amend the Draft LEP maps to change the zoning of land at RMB 71-75 Windsor Road to swap between the R3 Medium Density Residential and the B1 Neighbourhood centre zone i.e. the B1 zone is to be moved to the Windsor Road frontage.</p> |
| 19/10/2010 | Correspondence sent from Council to the Director General raising concern as to the conditional nature of the certificate with several matters considered contrary to Council's strategic direction. An urgent meeting was sought with the Director General to discuss these matters. |
| 14/12/2010 | Following receipt of a response from the Department of Planning, Council considered a report on draft LEP 2010 and resolved in part to advise the Department that the approach for exhibition of zoning options for RMB 71-75 Windsor Road is agreed and a re-issued section 65 certificate is urgently sought. It was also resolved that the draft Baulkham Hills Development Control Plan Part E Section 17 – Balmoral Road Release Area with amendments be exhibited concurrent with the draft LEP. |
| 07/05/2011 | <p>Re-issued section 65 certificate received from the Department of Planning certifying that the draft plan may be publicly exhibited subject to a requirement that the draft LEP Minimum Lot Size (MLS) maps and Floor Space Ratio (FSR) maps be amended to ensure that all land zoned B1 Neighbourhood Centre have the following development controls applying:</p> <ul style="list-style-type: none">a. FSR 1:1b. Minimum lot size 600 square metres <p>The Department's letter at this time enabled Council to also exhibit its preferred development controls (zoning, height, FSR and MLS maps) for the subject site, provided justification for the preferred approach was also exhibited.</p> |
| 29/03/2011 | Draft The Hills Local Environmental Plan 2010 was placed on public exhibition until 13 May 2011. |

B1 Neighbourhood Centre Zone

In recognition of the need to distinguish between different types of centres within the Shire in accordance with the Centres Hierarchy, the Draft LEP uses a number of different business zones for the existing Business 3(a) land including the B1 Neighbourhood Centre zone. Under the draft LEP the B1 zone has been applied to existing and planned neighbourhood centres in the Shire including land at RMB 71-75 Windsor Road within the Balmoral Road Release Area.

The objectives of the B1 zone are:

- *To provide a range of small - scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure the scale and type of development is compatible with the character and amenity of a neighbourhood centre.*
- *To allow for residential development that contributes to the economic and social vitality of the neighbourhood centre and does not detract from the primary function of the zone.*
- *To promote activities in accessible locations that encourage walking and cycling.*

The LEP exhibition material included two (2) options for the location of the B1 zone at RMB 71 -75 Windsor Road, Baulkham Hills. The first option, supported by the Department of Planning, locates the B1 Neighbourhood Centre zone away from the proposed Stone Mason Drive frontage to the Windsor Road frontage with the R3 Medium Density Residential zone applying to the Stone Mason Drive frontage. The second option, Council's preferred approach, retains the location of the B1 Neighbourhood Centre zone on the Stone Mason Drive frontage. Attachments 3, 4 and 5 show the existing zoning, DOP Proposed Zoning and Council's preferred zoning of the site.

Whilst shops are proposed to be permissible with consent in the B1 Neighbourhood Centre zone, they will be prohibited in the R3 Medium Density Residential zone. Therefore the proposed development for a shop is permissible with consent only if Council's preferred approach to zoning under draft LEP 2010 is adopted. Concern is raised that favourable determination of the development application undermines the process currently in place for determining the location of the neighbourhood centre zone as well as the intended outcome for the Stone Mason Drive site.

In order to overcome this situation the applicant has suggested a restrictive covenant condition could be imposed on any consent, linked to the title for the land, should the zone swap be gazetted. This approach could work but would not allay other concerns with respect to commencement of works on the site and broader issues regarding suitability of the site for development of this form.

Proposed LEP Development Standards

Under Draft LEP 2010 relevant development standards for the subject land include a minimum allotment size of 3000m², maximum floor space ratio of 0.5:1 and maximum building height of 10 metres. It is understood that the proposed development FSR is 0.59:1 and the height will exceed 10 metres. By letter dated 11 April 2011 the applicant was requested to address the Draft LEP provisions, however justification for variation of the proposed development standards has not been forthcoming.

Proposed Master Plan and Draft DCP Amendment

Council's preferred approach for the subject site includes the Stone Mason Drive Neighbourhood Centre Master Plan and amendment to the DCP to guide the development of Stone Mason Drive Neighbourhood Centre. The master plan creates a

vision and framework for the development of a high quality functional and sustainable neighbourhood centre. There is a focus on ensuring the retail provision is of a scale that is viable and meets daily convenience needs of the future population.

It is envisaged that the Stone Mason Drive Neighbourhood Centre will provide a range of local services and have a strong relationship and connectivity with the future local park located opposite the site, creating a unique place where local residents will be able to socialise and recreate. The built form will play an important role in how the centre is used and in the character it contributes to the area. Key principles in achieving the desired outcome include:

- Ensuring the development responds to the existing natural environment including the slope of the land, to create a sympathetic visual appearance.
- Ensuring the bulk and scale of the built form is sympathetic to the future two storey surrounding residential development.
- Clearly and consistently defining the street edge through use of appropriate setbacks and active street fronts.
- Ensuring the design makes use of views from the site to the south and west to local and district landmarks.
- Providing convenient parking preferably in a highly visible, 'on-street' type scenario.
- Contributing to the creation of a unique local identity through the provision of quality public domain and the use of high quality and consistent materials, landscaping, signage etc.

The draft DCP articulates Council's policy for the neighbourhood centre site. It includes an Indicative Layout Plan and a range of development controls relating to function and uses, built form, parking and access and public domain including:

- Provision for a maximum of 1000m² gross leasable floor area for retail premises.
- Provision for supporting commercial uses to cater for daily needs of the population.
- Location of retail uses on ground level and fronting the street to activate the Stone Mason Drive frontage.
- Built form and design to promote a 'sense of place' and character for the centre.
- Pedestrian connection through the development between Treffone Ave and Stone Mason Drive and pedestrian connection to the adjacent future park.
- Incorporation of a central space in the design to encourage social interaction.

The development application represents a size and scale well beyond what is anticipated for a neighbourhood centre on the subject site. The development is internalised and has no relationship with the site's context, setting or future surrounding residential development or open space. The built form and overall design is considered to be counteractive to the principles of a walkable neighbourhood and the creation of a local identity.

The applicant was requested to address the proposed Master Plan and draft DCP requirements, however this has not been forthcoming. Whilst the applicant's comment that the DCP is in draft format is acknowledged, this DCP provides for implementation of previous strategic work that has established the need for development that is of neighbourhood scale and compatible with the surrounding area.

(vii) Draft Competition SEPP

Following a review undertaken last year by the NSW Department of Planning and the Better Regulation Office into how economic growth and competition were impacted by the planning system, a new draft State Environmental Planning Policy (SEPP) was prepared and placed on public exhibition.

The draft SEPP proposes that:

- the commercial viability of a proposed development may not be taken into consideration by a consent authority, usually the local council, when determining development applications;
- the likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered; except
 - if the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and
 - any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.

In this regard, it is considered that the proposed development by its size, scale, and built form will prevent the ability of a neighbourhood centre from developing on adjoining land, or that the envisaged local services and facilities being able to be provided. If the development was to proceed, it also may impact on the ability of the other centres such as Windsor Road, Kellyville from developing additional retail services and facilities. This will impact on the achievement of the spatial distribution of centres and their identified role and function.

Based on the above comments the proposal is considered unsatisfactory and should be refused on the following strategic considerations:

- (a) The proposed development is not consistent with the strategic planning framework adopted by Council, including the Balmoral Road Release Area Structure Plan and the Centres Hierarchy, that identifies the site as a neighbourhood centre.
- (b) The proposed development is not consistent with exhibited draft The Hills Local Environmental Plan 2010 by way of being a prohibited use within the proposed zone (R3 zone approach) or inconsistent with floor space ratio and building height development standards (B1 zone approach).
- (c) The proposed development by way of its size, scale beyond and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.
- (d) The proposed development is not consistent with the requirements for neighbourhood centres as expressed by the Development Control Plan Part C Section 8 Business 2.2 in terms of meeting the daily convenience needs of residents.
- (e) The proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities in this location and other planned centres in the locality in that it will prevent the ability of a neighbourhood centre from developing on adjoining land and may impact on the ability of the other centres such as Windsor Road, Kellyville from developing additional retail services and facilities (Draft Competition SEPP).

5. Compliance with DCP Part C Section 8 – Business

The following table details the proposal's compliance with the provisions of DCP Part C Section 8 – Business.

Development Standard	BHDCP Part C Section Requirements	Proposed Development	Compliance
3.1 Precinct Plan Maps	Consistency with the planned character and development of the area	Satisfactory	Yes
3.2 Site Analysis	Submission of a site plan addressing social and environmental issues and a site analysis	Satisfactory	Yes
3.3(b) Site Frontage	Minimum 18m	Approx. 101m along western boundary, 125m along northern boundary, 95m along eastern boundary and 92m along southern boundary (development site).	Yes
3.4 Floor Space Ratio	For all commercial and retail development within 3(a) & 3(b) – Maximum 1:1	Based on a GFA of 3595m ² and a site area of 6120m ² (subject 3(a) development area less the public road) is 0.49:1.	Yes
3.5 Setbacks	<p>Single and two storey retail/commercial development located along a public road may utilize a zero setback, other than in those site specific areas specified on the precinct plan maps.</p> <p>For buildings greater than two storeys or 8 metres in height, the remaining storeys are to be setback within a building height plane of 45° starting from a height of 8 metres.</p> <p>6m if opposite or adjacent to Residential, Special Uses or Open Space zones or as specified on the precinct plan maps.</p>	<p>Applies to east boundary – see below.</p> <p>Variation proposed.</p> <p>The site adjoins residential land to the north and west, business land to the east and open space land to the south and as such the building is required to be set</p>	<p>Yes</p> <p>No</p> <p>No</p>

	<p>back 6m to the north, south and west boundaries and a nil setback to the east. The applicant has proposed a nil setback to the east and 6m setback to the building from the north, south and west boundaries with the exception of the ramp access to the open air carpark which has a setback of approx. 2 metres.</p> <p>Redevelopment of any commercial/retail development, operating under existing use rights in a residential zone shall comply with the residential setback applying to the locality.</p> <p>Minimum 40m from the top of the bank of the creek or otherwise to the requirements of the NSW Office of Water.</p> <p>Development affected by a road widening proposal, minimum setback is measured from the new alignment.</p>	<p>NA</p> <p>NA</p> <p>NA – the site as a whole is effected by road widening adjacent to Windsor Road however the development site is not effected,</p>	
3.6 Building Height	3(a) Zone – max. 12m or 3 storeys or as specified on the precinct plan maps.	The proposal is in part 3 storey in height and has a height of 11.7m.	Yes
3.7 Building Design and Materials	<p>Comply with EP&A Act 1979 and BCA.</p> <p>External walls shall be constructed of brick, glass, pre-cast exposed aggregate panels of similar material. Under no</p>	<p>The proposed materials of construction are considered satisfactory and utilises a variety of materials. The design is modern in appearance and will</p>	Yes

	<p>circumstances will masonry block work be permitted on external walls.</p> <p>Balconies/terraced areas adjacent to residential zones to be suitably screened to prevent overlooking and privacy impacts on adjoining properties.</p> <p>Roof ventilators, exhaust towers, hoppers and the like shall not be visible from any public place or residential area.</p> <p>Materials:</p> <ul style="list-style-type: none"> ➤ Use low reflectivity materials on facades. ➤ Avoid materials that contribute to poor internal air quality. ➤ Preference should be given to materials derived from renewable sources or those that are sustainable and generate a lower environmental cost, recycled material or materials with low embodied energy, better lifecycle costs and durability. ➤ Designed in accordance with "Designing Safer Communities Guidelines" with visible entrances, no entrapment spaces and utilise anti-graffiti surfaces. Lighting should be unobstructed, appropriate and vandal proof. ➤ Schedule of external finishes, perspective and landscaping details to be submitted with the 	<p>be in keeping with the future development of the BRRA.</p> <p>NA</p> <p>Enclosed air conditioning and plant on roof and a condenser deck. Location considered satisfactory.</p> <p>Satisfactory.</p>	
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	DA.		
3.8 Signage	<p>Shall be designed in accordance with BHDCP Part D Section 2 – Signage (refer to Compliance Table for Signage).</p> <p>Should be legible and safe access routes identified.</p>	No signage is proposed as part of this application.	NA
3.9 Hours of operation	<p>Must be compatible with adjoining land uses.</p> <p>Must take into account the operation of loading docks, waste collection services and use of cleaning/maintenance vehicles out of hours.</p>	<p>The proposed hours of operation are 7am to 10pm seven (7) days per week.</p> <p>Deliveries are proposed between the hours of 6am to midnight daily.</p>	The proposed delivery hours are considered excessive given the residential context of the site.
3.10 Energy Efficiency	Minimum 4 star Building Greenhouse Rating.	Satisfactory energy efficient measures used however does not address 4 star BGR. The applicant has commented that Council may wish to impose a condition. Appropriate conditions could be imposed.	Yes.
3.11 Biodiversity	<p>Significant flora and fauna species, ecological communities and their habitats to be preserved.</p> <p>Retain existing bushland and fauna habitats, including identifiable corridors and linkages.</p>	Unsatisfactory impact – see Sustainability comments.	No – see comments from Council's Ecologist.
3.12 Erosion and Sediment Control	DA to be accompanied with a Sediment and Erosion Control Plan prepared in accordance with "Managing Urban Stormwater - Soils and Construction" produced by the NSW Department of	Appropriate conditions could be imposed.	Yes

	Housing.		
3.13 Landscaping and Tree Preservation	<p>All landscaped areas to have a minimum width of 2 metres.</p> <p>Grassed embankments not to exceed a 1:6 slope.</p> <p>Shall incorporate natural surveillance, good sightlines, lighting and active use of open space.</p> <p>Endangered ecological communities to be preserved and maintained in accordance with a Vegetation Management Plan.</p> <p>DA to be accompanied with:</p> <ul style="list-style-type: none"> ➤ Landscaping Plan (prepared in accordance with BHDC Part D Section 3 – Landscaping) ➤ Tree Management Details/Arborist Report ➤ Vegetation Management Plan if endangered ecological communities exist. 	2m landscape strip provided between ramp access and boundary adjacent to western boundary.	Yes
3.14 Road Widening	Applies to development sites on the eastern side of Old Northern Road, Baulkham Hills. No consent to be granted in this area unless so much of the site area required for road widening as identified by the RTA has been transferred, without cost, to Council.	NA	NA
3.15 Terminus Street Car Park	Existing car parking provision within the public car park	NA	NA

		located between Terminus Street and McDougal Lane, Castle Hill, identified on map sheet No.11 of the Precinct Plan maps shall not be reduced through any site redevelopment.		
3.16 Access	Vehicular	<p>Vehicular access to main roads shall not be permitted where alternative access is available or can be acquired.</p> <p>Adequate vehicular entry and exit from the development is to be provided.</p> <p>Vehicular ingress and egress to the site must be in a forward direction at all times.</p> <p>Driveways from public roads to be:</p> <ul style="list-style-type: none"> ➤ perpendicular to the road within the building setback; ➤ separated or divided at the property boundary for ingress and egress movements; ➤ sight distances are to be in accordance with Part D Section 1 – Parking and Council's Design Guidelines for Subdivisions / Developments. <p>For developments within 3(a) zone located:</p> <ul style="list-style-type: none"> ➤ on the western side of Post Office Road, Glenorie, vehicular access shall be restricted and future access roads provided, as specified 	<p>Vehicle access will be provided from proposed future roads as part of the development of the BRRA. The proposed access will be satisfactory.</p> <p>Vehicle access is unsatisfactory. See section 1 and Subdivision comments.</p>	<p>Yes</p> <p>No – see comments from Council's Engineer.</p>

	<p>on Map Sheet No.5.</p> <p>➤ on the northern side of Windsor Road. Kellyville, provision shall be made for rights of carriageway as specified on Map Sheet No. 6.</p> <p>➤ Located on the northern side of Wrights Road, Kellyville, vehicular access shall be provided as per Map Sheet No. 12 to align with entry/exit from Wrights Road Reserve.</p>		
3.17 Car Parking	<p>1 space 18.5m² of net floor space for general business and retail</p> <p>All driveway and parking areas to be screened by a min. of 2m wide landscaped strips.</p> <p>External parking areas to be provided with 2m wide landscaping strips at a rate of 1 every 10 car parking spaces.</p> <p>Stacked car parking will not be included in the assessment of the number of car parking spaces.</p> <p>Parking provision for parents with prams is to be provided in accordance with the requirements of BHDCCP Part D Section 1 – Parking.</p>	<p>NB: DCP Part D Section 1 – Parking requires a rate of 1 space per 18.5m² of GLFA. The proposal has a GLFA of 3385m² which requires 183 spaces (182.9 spaces). 186 spaces are provided.</p> <p>2m landscape strip provided between ramp access and boundary adjacent to western boundary.</p> <p>Not provided.</p> <p>No stacked parking provided.</p> <p>1 space per 100 spaces are required to be parents with pram spaces ie: 2 spaces required – 2 spaces provided.</p>	<p>Yes</p> <p>Yes</p> <p>No.</p> <p>NA</p> <p>Yes</p>

	<p>Disabled parking provision is to be provided in accordance with the requirements of Part D Section 1 – Parking and Council policy entitled “Making Access for All 2002”.</p> <p>Motorcycle Parking: 1 space per 50 car spaces.</p>	<p>2% of spaces are required to be disabled spaces ie: 4 spaces (3.6 spaces) required – 4 spaces provided.</p> <p>Based on 183 spaces, 4 motorcycle spaces are required – 10 provided.</p>	<p>Yes</p> <p>Yes</p>
3.18 Bicycle Parking	<p>Applicable to any new commercial/retail development exceeding 5,000m² in floor area and any extensions to existing commercial/retail developments which will increase the size of the total development to greater than 5,000m².</p> <p>➤ Min. 2 spaces plus 5% of the total number of car parking spaces required for the abovementioned development.</p> <p>➤ Located in close proximity to the building entrance and clustered in lots not exceeding 16 spaces.</p> <p>Consideration should be given to the provision of undercover facilities</p>	<p>The development does not exceed 5000m² and as such bicycle parking is not required, however 12 bicycle spaces are provided.</p>	<p>Yes</p>
3.19 Loading Facilities	<p>➤ 1 loading dock space per development suitable to the size of proposal.</p> <p>➤ Turning provisions per AUSTROADS</p> <p>➤ To be commensurate with the size and nature of proposal.</p> <p>➤ Not visible from</p>	<p>Loading dock provided for supermarket which is satisfactory in respect to its location, size and usability.</p>	<p>Yes</p>

	adjoining residential areas and no excessive noise transmission.		
3.20 Pedestrian access and movement	<ul style="list-style-type: none"> ➤ Compliance with min. dimensional requirements of AS 1428.1 – 2001 Design for Access & Mobility. ➤ Street furniture and obstructions be kept clear of pathways ➤ Overhanging objects not lower than 2100mm above pathways. ➤ Access symbols to be provided as per Council's "Making Access for All" document. ➤ Pathways to be in accordance with "Designing Safer Communities Guidelines". 	Applicant has confirmed that all access will be in accordance with AS 1428.1 – 2001. Disabled spaces are located in convenient locations. A travelator and lift are provided from the lower carpark to the entrance.	Yes
3.21 Parenting facilities	To be provided for new retail development exceeding 3,000m ² or extensions which will exceed total floor area greater than 3000m ² .	The plans indicate that a parenting room will be provided in accordance with the DCP. Appropriate conditions could be imposed.	Yes.
3.22 Stormwater Facilities	Employ two (2) Water Sensitive Urban Design (WSUD) principles from the list in the DCP.	The proposal will utilise three (3) measures being rainwater utilisation, on-site infiltration and stormwater utilisation.	Yes
3.23 & 3.24 Waste Management	Waste Management Plan to have regard to development controls 3.22(a) to (d) and 3.23 A & B	Satisfactory – conditions provided by Waste Officer.	Yes
3.25 Heritage	Address provisions of BHDCP Part D Section 5 – Heritage.	NA. The site is not in proximity to any heritage items.	NA
3.26 Developer Contributions	<ul style="list-style-type: none"> ➤ Refer to relevant Contributions Plan ➤ Council may seek contributions for: <ul style="list-style-type: none"> - open space 	NA to retail development in BRRA.	NA

		embellishment; - roads, traffic management and drainage facilities; - community facilities; and - any specialist studies or investigations		
3.27 investigation	Site	Submission of Contamination Report for DAs within Wrights Road Precinct and a validation report upon completion of works.	NA	NA
3.28 Wrights Road Town Centre		Have regard to development controls relating to: <ul style="list-style-type: none"> ➤ civic amenity and urban design; ➤ Site identity through gateway architectural elements; ➤ Articulations in elevations visible from public view; ➤ Views to open space; ➤ Provision of a central space; ➤ Convenient and direct pedestrian links with no vehicle conflict; ➤ Pedestrian access provision: <ul style="list-style-type: none"> - in at least one location along the eastern boundary from adjoining cycleway; - in at least one location along the western boundary to facilitate ease of movement to/from adjacent existing retail development; - along the Wrights Road frontage ➤ Loading areas to 	NA	NA

	be located with minimum pedestrian/vehicle conflicts, streetscape impact and relationship with adjoining land; ➤ Bulk of parking at basement level with some at-grade parking for patrons' access convenience.		
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Variations to the DCP are considered below:

a. Building Height Plane

The DCP requires that for buildings greater than two storeys or 8 metres in height, the remaining storeys are to be setback within a building height plane of 45° starting from a height of 8 metres. The applicant has sought a variation to the DCP requirements and has stated the following as justification:

- The building has been designed substantially in accordance with this control.
- The breach involved is minor at 1.2m in the roof of the loading dock.
- The variation will not adversely impact on the development potential of the adjoining property, undermine its application in the future or result in unacceptable shadowing.

Comment:

The objectives of the DCP are:

- (i) *To provide an attractive streetscape and substantial areas for landscaping and screen planting.*
- (ii) *To ensure adequate sight distance is available for vehicles entering and leaving the property.*
- (iii) *To minimise overshadowing of adjoining properties.*
- (iv) *To protect privacy and amenity of any adjoining land uses.*
- (v) *To provide a desirable and aesthetically pleasing working environment.*
- (vi) *To ensure endangered ecological communities are protected.*

The proposed variation to the building height plane is considered reasonable in this instance given that the area the subject of the variation adjoins the Business 3(a) area of the site to the east. The proposed building plane will not adversely impact on adjoining residential land in terms of overshadowing, privacy or amenity and will not adversely impact on streetscape.

Accordingly the proposed variation is considered reasonable.

b. Setback to Wager Road

The DCP requires a 6m setback for sites opposite or adjacent to Residential, Special Uses or Open Space zones or as specified on the precinct plan maps. In this respect the development area of the site adjoins residential land to the west (across the future Wager Road) and north which comprises part of the subject site (across future Treffone Avenue), Open Space land to the south (across future Stonemason Drive) and General Business 3(a) land to the east. As such the DCP requires a 6 metre setback to the north, south and west. A 6 metre setback has been proposed to the north and south. To the west a 6 metre setback is proposed along part of the frontage however the ramp access is located within the setback and has a setback varying from 2 metres to a nil setback.

The applicant has sought a variation to the DCP requirement and has stated the following as justification:

- *The area of non-compliance is in relation to the car ramp from the upper level to the lower level parking areas and does not involve a wall of the building encroaching the setback zone, as such the area of non-compliance is unique as the structure which encroaches is unlikely to be repeated in other developments as a ramp, the ramp is of an open construction and does not involve a wall element of the building;*
- *the setback of the proposed development in relation to the proposed road infrastructure will still enable the provision of adequate perimeter landscaping;*
- *the portion of the development which has a zero setback is below ground level and at the extreme north-east corner of the down-ramp from the open deck parking area to the level below for approximately 50 centimetres;*
- *the location of Wager Road is off-set some 4m from its northern boundary to provide to afford an increased level of amenity to the adjoining property;*
- *the proposed built form of the development provides for a setback of 6m to the building at the corner of Wager Road with Stone Mason Drive which meets the intent of the control which is to ensure walls of proposed buildings achieve a 6m setback; and*
- *It is noted that Council has varied the DCP in other locations within the Balmoral Road Release Area and a variation in this location will not undermine the application of the DCP in the future, as each circumstance has been assessed on its merits.*

As such, the applicant requests a variation of the control which in the circumstances of the case involves a design will still meet the intentions of the control.

Comment:

The objectives of the DCP are:

- (i) *To provide an attractive streetscape and substantial areas for landscaping and screen planting.*
- (ii) *To ensure adequate sight distance is available for vehicles entering and leaving the property.*

- (iii) *To minimise overshadowing of adjoining properties.*
- (iv) *To protect privacy and amenity of any adjoining land uses.*
- (v) *To provide a desirable and aesthetically pleasing working environment.*
- (vi) *To ensure endangered ecological communities are protected.*

The proposed variation is considered satisfactory as adequate landscape works have been proposed to soften the appearance of the proposed access ramp. The ramp, due to its location and structure, will remain a visible component of the development however is considered to be an ancillary structure in respect to the main building works.

Accordingly the proposed variation is considered reasonable.

c. Variation to Landscape Strips between Carspaces

The DCP requires the provision of a 2 metre wide landscape strip between every 10 carspaces for external carparking areas. The proposed external carparking area does not provide any landscape strips with the exception of two (2) planter boxes adjacent to the ramp access to the lower carpark. Based on the DCP requirement a landscape strip is required to be provided within both the eastern and western strip of carspaces in the open air carpark.

The applicant has sought a variation to the DCP requirement and has stated the following as justification:

'It is requested that this provision be varied as the provision of landscape strips within the at-grade parking area as it is located over a basement car parking level below and it is difficult to ensure planting bed depths are adequate as this may reduce clearances in the level below. However, if this matter is a requirement that Council does not see appropriate to vary, Council has the ability to recommend the imposition of a condition on any development consent granted'.

Comment:

The objectives of the DCP are:

- (i) *To ensure the safety of all road users in commercial/retail areas.*
- (ii) *To ensure that all carparking demands generated by the development are accommodated within the development site.*
- (iii) *To ensure the free flow of traffic into and out of the development and the surrounding network.*
- (iv) *To ensure that the provision of off-street parking facilities does not detract from the overall visual amenity and character of the neighbourhood in relation to streetscape in accordance with ESD objective 7.*

The open carparking area will cater for 36 spaces and is adjacent to the supermarket entry. Due to the slope of the site the parking area is at a raised level and as such is not considered to be highly visible from either Treffone Avenue or Wager Road. Landscape works will be undertaken along the site frontages to screen the carpark.

The proposal is considered satisfactory in regard to the objectives of the DCP in that the non-provision of landscape strips will not adversely impact on road safety, does not adversely impact on carparking provision and does not adversely impact on traffic flow. In respect to the visual amenity and character, the surrounding area is zoned for predominantly resident use. The Balmoral Road Release Area is one which is undergoing change and redevelopment from its previous low-scale rural use to a developing area and will undergo substantial changes in the coming years.

Whilst it would be preferable to provide screening within the carpark, it is considered that in this instance the planting within the setback is adequate and will provide an effective screen to the carparking area.

Accordingly the proposed variation is considered reasonable.

6. RTA and Police Comments

(i) RTA Comments

Under the requirements of Schedule 3 of the State Environmental Planning Policy – Infrastructure 2007, the application required referral to the RTA as the proposal is for 'shops' which exceed 2000m² in floor area.

The RTA made the following comments regarding the proposal (summarised):

- The RTA has provided 'in principle' support for the provision of traffic signals at the intersection of Windsor Road and Wager Road. Preliminary traffic modelling indicates that dual right turns into and out of Wager Road need to be constructed prior to full occupation of the site to ensure a satisfactory operation of the intersection under a signalised configuration.
- A minimum 22 metre wide road reservation along Wager Road (excluding splays at the mouth of the intersection) up the Treffone Avenue intersection is required to satisfactorily accommodate future traffic volumes at the intersection of Windsor Road and Wager Road.
- The proposed traffic signals and civil works at the intersection of Windsor Road and Wager Road are to be to the satisfaction of the RTA.
- The developer will be required to provide an upfront 10 year operational fee for the traffic controls signals at the intersection of Windsor Road and Wager Road.
- The developer shall be responsible for all public utility adjustments/relocations.
- Council, with advice from the Local Traffic Committee, should ensure the provision of a 'No Stopping' zone along both sides of Wager Road for its entire length.
- All access in and out of Treffone Avenue shall be restricted to left in/left out to improve traffic efficiency and safety.
- The proposed carparking areas shall be in accordance with AS 2890.1:2004.
- The RTA raises safety concerns regarding the car park entry and exit driveway off Treffone Avenue. The access to this carpark should be modified so that the entry is via Stone Mason Drive and exit via Treffone Avenue.
- All vehicles are to enter and exit the site in a forward direction.

- Car parking provision to Council's satisfaction.
- The required sight lines to pedestrians, vehicles and entrance are not to be compromised by landscaping, signage, fencing or display materials.
- All loading/unloading shall occur on site.
- All demolition and construction vehicles are to be contained wholly within the site as no parking will be permitted on Windsor Road.
- A Road Occupancy Licence should be obtained from the RTA for any works that may impact on traffic flows on Windsor Road during construction activities.
- All works/regulatory signage associated with the proposed development are to be at no cost to the RTA.

(ii) Police Comments

The proposal was also referred to the NSW Police Service having regard to the Protocol between the Police and Council. The Police raised no objection in principle to the proposal.

7. Issues Raised in Submissions

The proposal was notified to the adjoining property owners for a period of fourteen (14) days. There was one (1) submission received from a retail competitor raising concerns that the proposal is a 'sham' to assist the rezoning, impact on the planned retail hierarchy, potential adverse impact on facilities and services and appropriateness of the size of the facility.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

Council's Environmental Health Officer has reviewed the proposal. In respect to the revised information the following matters have not been appropriately addressed:

- (i) A soil salinity assessment was not submitted to Council in accordance with the request for additional information. In this regard the Balmoral Road Release Area has been identified as an area of moderate to high potential for soil salinity. A soil salinity assessment is required that is consistent with the advice contained in the Department of Water and Energy publication entitled "Site Investigations for Urban Salinity" and "Building in a Saline Environment" dated 2002.
- (ii) A preliminary contamination assessment was submitted however it was not conducted in accordance with the referenced guideline documents as requested and it triggered the need for further soil sampling due to previous uses of the subject sites including a small orchard. The additional soil sampling was not provided.

In respect to the matters above the proposal remains unsatisfactory and cannot be supported.

FLORA AND FAUNA COMMENTS

The proposal has been reviewed by Council's Ecologist who has provided the following comments:

The vegetation on the site has been identified as *Cumberland Plain Woodland*, a Critically Endangered Ecological Community, in particular within the north-west corner of the block.

No attempt has been made to retain any portion of this ecological community and the development is proposed to result in complete removal of this entity from the site. Furthermore, the stand within Lot 37 DP 38439, is connected with 1.4ha of identified *Cumberland Plain Woodland* in the adjoining blocks.

The peer review by Kevin Mills & Associates (March 2011) (referred to as KMA (2011)) states "...neither threatened species (plants and animals), endangered populations nor critical habitat are present or fundamentally associated with the site and therefore could not trigger the need for an SIS." The object under question however, is not for a species, population or critical habitat but rather a community. The legislation is clear that these entities are separate and not to be confused. The peer review by KMA (2011) does not state whether a SIS is required for effects on the Cumberland Plain Woodland (CPW) critically endangered community as a result of the proposal. This peer review does not adequately comment on the factors within the assessment of significance under section 5A of the EP&A Act and so makes no comment as to whether an SIS is required for the proposal.

Page 17 of the Alison Hunt & Associates (March 2011) report (referred to as AHA (2011)) states "*in 2003 this patch of vegetation was dominated by Eucalyptus crebra and Eucalyptus moluccana and although severely degraded was considered to be a patch of CPW*". While the site has a disturbed understorey which contains weeds species there are a number of characteristics of the site which are attributed to Cumberland Plain Woodland and these are outlined in Table 4 on page 18 of AHA (2011). On page 18 and 19 of AHA (2011) it states "*In the south-western corner of No. 75, there is a group of six Forest Red Gum trees, several Blackthorn shrubs, one Hickory Wattle and seven native groundcover species all of which are diagnostic species of CPW and would qualify as inclusion into the Cumberland Plain Woodland in the Sydney Basin Bioregion under the TSC Act*". While the patch may be degraded by weed infestation, it nonetheless is considered to be Cumberland Plain Woodland under the Threatened Species Conservation Act 1995.

In undertaking an assessment of significance under part 5A of the Environmental Planning & Assessment Act, 1979 the proposal as it stands would remove the CPW on the subject site and further would isolate the attached CPW patch in the adjacent golf course. These two factors trigger the need to prepare a Species Impact Statement for the proposal.

The complete removal of the CEEC from the site is deemed to constitute a significant impact and as such, the development does not pass the Seven-Part Test and will require a Species Impact Statement ('SIS') to be prepared for the concurrence of the Director General of the DECCW

The applicant has not addressed the requirements for a Species Impact Statement. Based on the ecological information received to date, the application is recommended for refusal due to the complete removal of Cumberland Plain Woodland on site being deemed a Significant Impact on this Endangered Ecological Community. Council cannot grant development consent to a development that is likely to significantly affect a critically endangered ecological community without obtaining the concurrence of the NSW Office of Environment and Heritage.

FORWARD PLANNING COMMENTS

See comments provided in Section 4 above.

SUBDIVISION ENGINEERING COMMENTS

The following information has not been provided for assessment:

- (i) An agreement from the downstream property owner supporting the drainage disposal and the location and construction measures agreed to the affected property owner.
- (ii) Plans demonstrating the compliance of proposed car park, vehicular access and circulation prepared in accordance with relevant design standards including:
 - Australian/ New Zealand Standard AS/NZS 2890.1:2004 – Parking facilities – Part 1: Off-street car parking;
 - Australian/ New Zealand Standard AS/NZS 2890.6:2009 – Parking facilities – Part 6: Off-street parking for people with disabilities;
 - Australian/ New Zealand Standard AS/NZS 2890.2:2002 – Parking facilities – Part 6: Off-street commercial vehicle facilities.
 - Baulkham Hills Development Control Plan (BHDCP) Part D Section 1– Parking.

TRAFFIC MANAGEMENT COMMENTS

a. Existing Traffic Environment

This application proposes to construct a 3595m² supermarket with parking for 186 cars comprising 36 at grade and 150 undercoft to cater for 200 permanent, part time and casual staff and customers at RMB 75 & 73 Windsor Road, Kellyville. This property forms part of the proposed Balmoral Road Release Area.

A traffic impact statement prepared by Colston Budd Hunt & Kafes has been submitted in support of the application. The application has also been referred to the SRDAC at its meeting of 16 December 2010 with comments received by Council on 22 December 2010.

The Balmoral Road Release Area DCP shows a 16.5m wide collector road (Wager Road) to be fully constructed within the adjoining northern property at RMB 77 Windsor Road with a left in/left out intersection providing a link between Windsor Road and a 16.5m wide collector road (Stonemason Drive) running parallel with Windsor Road between Fairway Drive and Spurway Drive. A 16.5m wide local access street (Treffone Avenue) traversing the site is also shown linking Wager Road and Stonemasons Drive.

b. Proposed Development - Traffic Generation

This application proposes to build the proposed supermarket as detailed above and also seeks to modify the DCP and fully construct Wager Road adjacent to the northern boundary totally within RMB 75 Windsor Road. It also seeks to provide a fully signalised intersection with Windsor Road incorporating a 60m long single right turn storage lane on Windsor Road and 100m left turn slip lane from Windsor Road into Wager Road.

The Roads and Traffic Authority Guide to Traffic Generating Developments provides specific traffic generation rates for shopping centres and by applying the guideline rates the traffic consultant indicates the proposed development should generate in the vicinity of 525 two way peak hour vehicle trips.

The traffic consultant has applied this rate of traffic generation to the proposed surrounding road network and analyzed intersection performance under SIDRA resulting in all intersections performing at a "Good Level of Service A" with the exception of the

signalised intersection Windsor Road and Wager Road at a "Satisfactory Level of Service C".

The SIDRA modeling of the Windsor Road intersection was carried out with a configuration of two through east/southbound lanes on Windsor Road and a single 60m right turn lane into Wager Road. As referred to in the RTA SRDAC response, preliminary modeling requires dual right turn lanes into Wager Road to improve Service Levels and reduce the incidence of vehicles queuing back into the through lanes blocking southbound traffic on Windsor Road.

c. Need for Traffic Improvements in the Locality

According to the Balmoral Road Release Area DCP the intersection of Wager Road and Stone Mason Drive is under roundabout control. Accordingly the applicant will also be required to construct this roundabout to enable access to the carpark access off Stone Mason Drive.

d. Traffic egress/ingress to arterial/sub-arterial roads

As indicated above the collector road (Wager Road) is proposed to be constructed as part of this development providing signalised access to the arterial road network of Windsor Road.

As referred in the RTA comments the proposed configuration of this intersection requires amendment to incorporate dual right turn lanes from Windsor Road into Wager Road.

e. Sight distance and other safety issues

All proposed driveways are located to provide sufficient sight distance complying with the minimum requirements of 80m of Safe Intersection Sight Distance as specified in AS 2890.1.2004 and the Austroad's Guidelines for vehicles travelling at 50km/h.

f. Parking Provision

The proposed development provides for a total of 186 off street parking spaces complying with the minimum requirement of 1 space per 18.5m² GLFA as specified in Council's DCP.

g. Recommendations

There are no substantial objections raised from a traffic engineering perspective to the proposed development provided the applicant fully addresses all of the traffic related issues raised in the RTA's SRDAC response letter dated 22 December 2010 with the exception of the carpark entry/exit. In this regard the RTA's request to restrict normal vehicle (i.e. excluding trucks) access to entry only off Stonemason Drive and exit only via Treffone Ave seems onerous. However it is agreed that the Treffone Avenue access should be restricted to left in left out by means of a 30m long central concrete median island in Treffone Avenue due to the proximity of the driveway location to the intersection of Wager Road.

TREE MANAGEMENT COMMENTS

No objection raised to the proposal.

WASTE MANAGEMENT COMMENTS

No objection raised to the proposal.

CONCLUSION

The proposed supermarket development has been assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979 and Development Control Plan Part E Section 17 – Balmoral Road Release Area and Part C Section 8 – Business and is considered unsatisfactory.

As detailed above, a previous Development Application for a similar development was refused partly on the basis that no public road access was provided to the development. The applicant has sought to address this concern through the relocation of the DCP road to the subject site. This would allow public road access to be available to Windsor Road.

In regard to strategic considerations, Council has identified the site as being suitable for neighbourhood shops. The current proposal is considered to be a larger and denser form of retail development than a neighbourhood centre and is therefore inconsistent with the Council's strategic vision. The proposal is also inconsistent with Council's Preferred Draft LEP 2010 which will identify the site as a neighbourhood centre. The proposed development by way of its size, scale and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.

In addition to the above, the proposal is unsatisfactory in broad terms with a number of Council requirements in respect to impact on flora and fauna, engineering and drainage considerations, salinity and site contamination.

Accordingly the proposed development is unsatisfactory and refusal of the application is recommended.

IMPACTS:

Financial

Refusal of this application may be subject to a Class 1 Appeal which will require legal cost to defend such appeal.

Hills 2026

The social and environmental impacts have been identified and addressed in the report. The proposed supermarket development is considered to be inappropriate development given that the proposal is inconsistent with strategic considerations and is considered to be an inappropriate form of development for this location.

RECOMMENDATION

The Development Application be refused for the following reasons:

1. The proposed development is unsatisfactory in respect to the requirements of Baulkham Hills Development Control Plan Part E Section 17 Balmoral Road Release Area in relation to Section 2.2 and Section 3.1 and the impact on the environment, site characteristic, natural vegetation and bushland and biodiversity in respect to the removal of Cumberland Plain Woodland (Section 79C (a)(iii) of the Environmental Planning and Assessment Act, 1979).
2. The proposed development is unsatisfactory in respect to the adverse impact upon the environment in regard to the loss of Cumberland Plain Woodland (Section 79C (b) of the Environmental Planning and Assessment Act, 1979).

3. The proposal is unsatisfactory in respect to strategic considerations as the site is identified as being appropriate for a Neighbourhood Centre development as follows:
- (a) The proposed development is not consistent with the strategic planning framework adopted by Council, including the Balmoral Road Release Area Structure Plan and the Centres Hierarchy, that identifies the site as a neighbourhood centre.
 - (b) The proposed development is not consistent with exhibited draft The Hills Local Environmental Plan 2010 by way of being a prohibited use within the proposed zone (R3 zone approach). The proposal is also inconsistent with floor space ratio and building height development standards (B1 zone approach).
 - (c) The proposed development by way of its size, scale beyond and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.
 - (d) The proposed development is not consistent with the requirements of a neighbourhood centres as expressed by the Development Control Plan Part C Section 8 Business 2.2 in terms of meeting the daily convenience needs of residents.
 - (e) The proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities in this location and other planned centres in the locality in that it will prevent the ability of a neighbourhood centre from developing on adjoining land and may impact on the ability of the other centres from developing additional retail services and facilities (Draft Competition SEPP).

(Section 79C (b) of the Environmental Planning and Assessment Act, 1979).

4. The proposed development is unsatisfactory in respect to engineering considerations as follows:
- (a) An agreement from the downstream property owner supporting the drainage disposal and the location and construction measures agreed to the affected property owner.
 - (b) The provision of plans demonstrating the compliance of proposed car park, vehicular access and circulation prepared in accordance with relevant design standards including:
 - Australian/ New Zealand Standard AS/NZS 2890.1:2004 – Parking facilities – Part 1: Off-street car parking;
 - Australian/ New Zealand Standard AS/NZS 2890.6:2009 – Parking facilities – Part 6: Off-street parking for people with disabilities;
 - Australian/ New Zealand Standard AS/NZS 2890.2:2002 – Parking facilities – Part 6: Off-street commercial vehicle facilities.
 - Baulkham Hills Development Control Plan (BHDCP) Part D Section 1– Parking.

(Section 79C (b) of the Environmental Planning and Assessment Act, 1979).

5. The proposed development has not adequately demonstrated that the proposal is satisfactory in respect to building height plane, setback, landscape provision, soil salinity and site contamination (Section 79C (b) of the Environmental Planning and Assessment Act, 1979).

6. The proposed development is unsatisfactory given the adverse impact upon flora and fauna due to the siting and design of the proposal (Section 79C (c) of the Environmental Planning and Assessment Act, 1979).
7. The proposed development is unsatisfactory and is not in the public interest as it is contrary to the adopted Centres Direction and Centres Hierarchy (Section 79C (d) and (e) of the Environmental Planning and Assessment Act, 1979).

ATTACHMENTS

1. Locality Plan
2. Aerial Photo
3. Existing Zoning under LEP 2005
4. Draft LEP 2010 (DOP Proposed Zoning)
5. Council's Preferred Zoning
6. DCP Proposed Road Layout Plan
7. Threatened Species Plan
8. Site Plan
9. Basement Plan
10. Ground Level Plan
11. Upper Level Plan
12. Elevations

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
☒ PROPERTIES NOTIFIED

NOTE: ONE SUBMISSION RECEIVED
OFF THE SCOPE OF THIS MAP

ATTACHMENT 2 – AERIAL PHOTO



ATTACHMENT 4 – DRAFT LEP 2010 (DOP PREFERRED ZONING)



THE HILLS SHIRE COUNCIL

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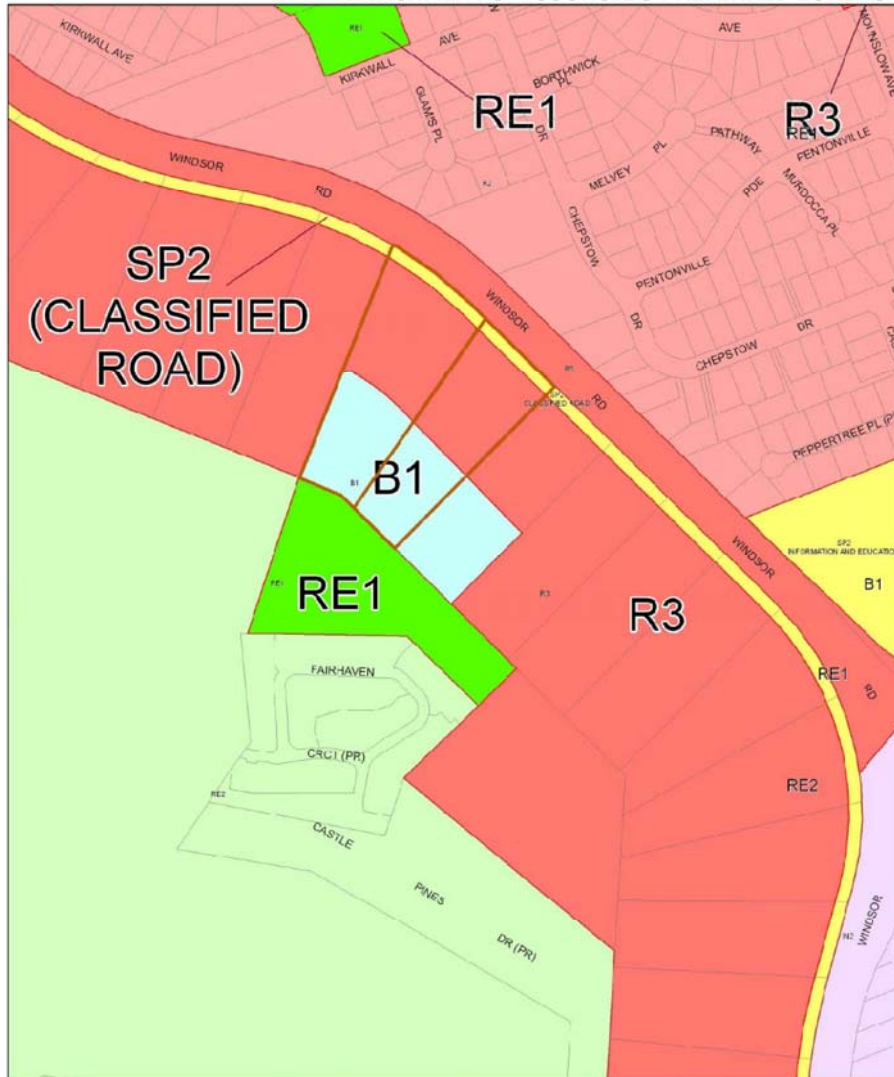
DA NO. 704/2011/JP



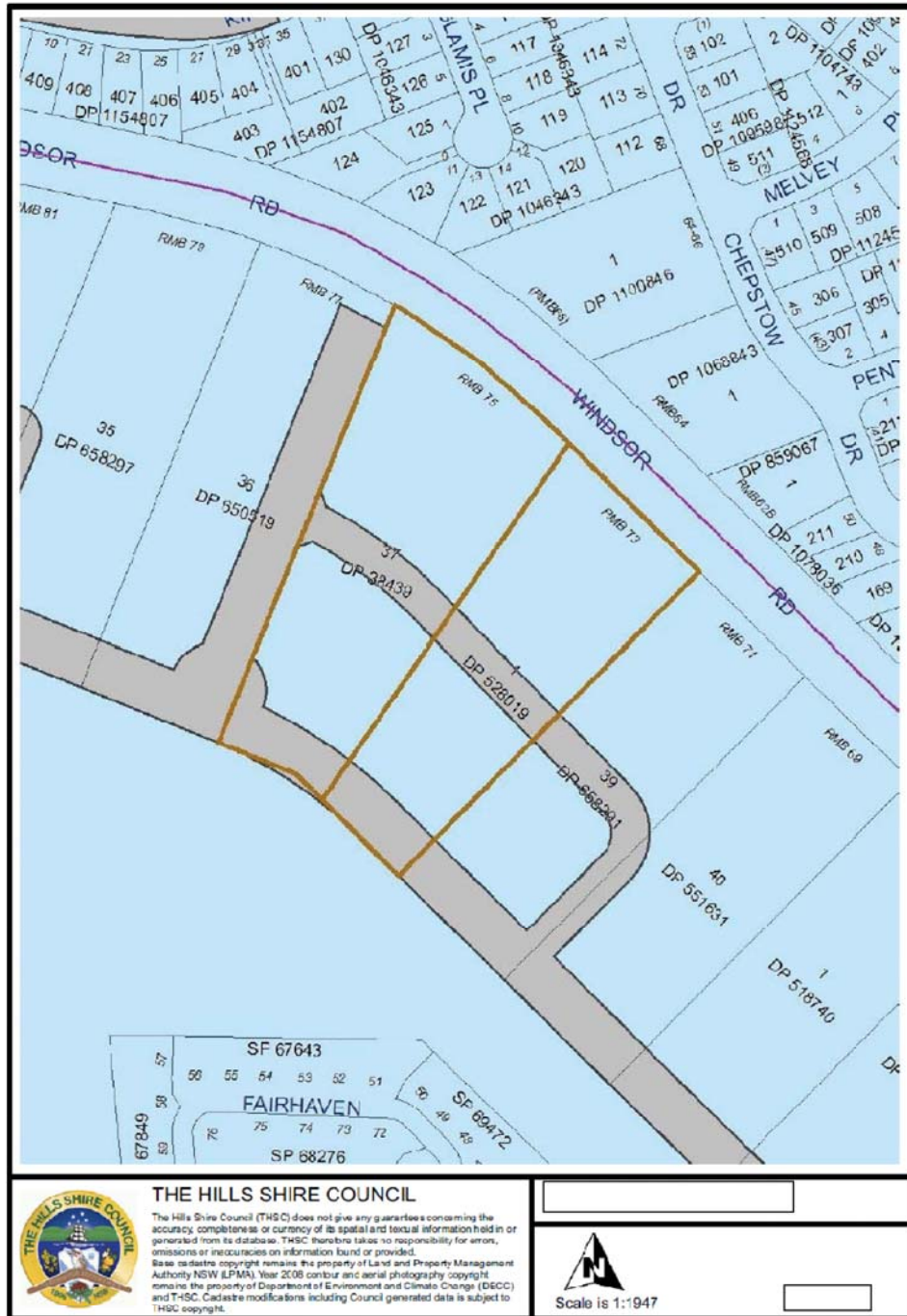
Scale is 1:2641

16/06/2011

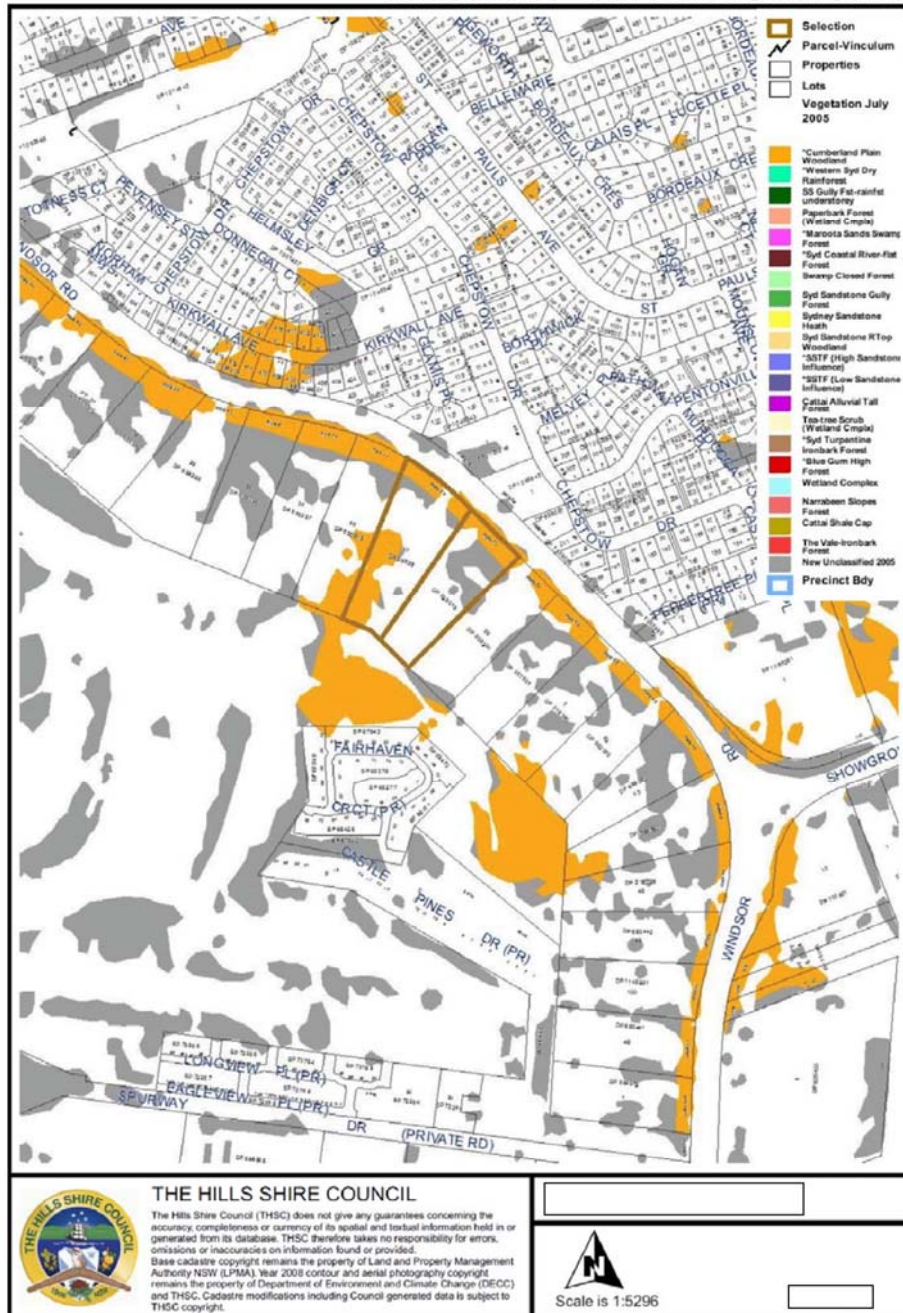
ATTACHMENT 5 – COUNCIL’S PREFERRED ZONING



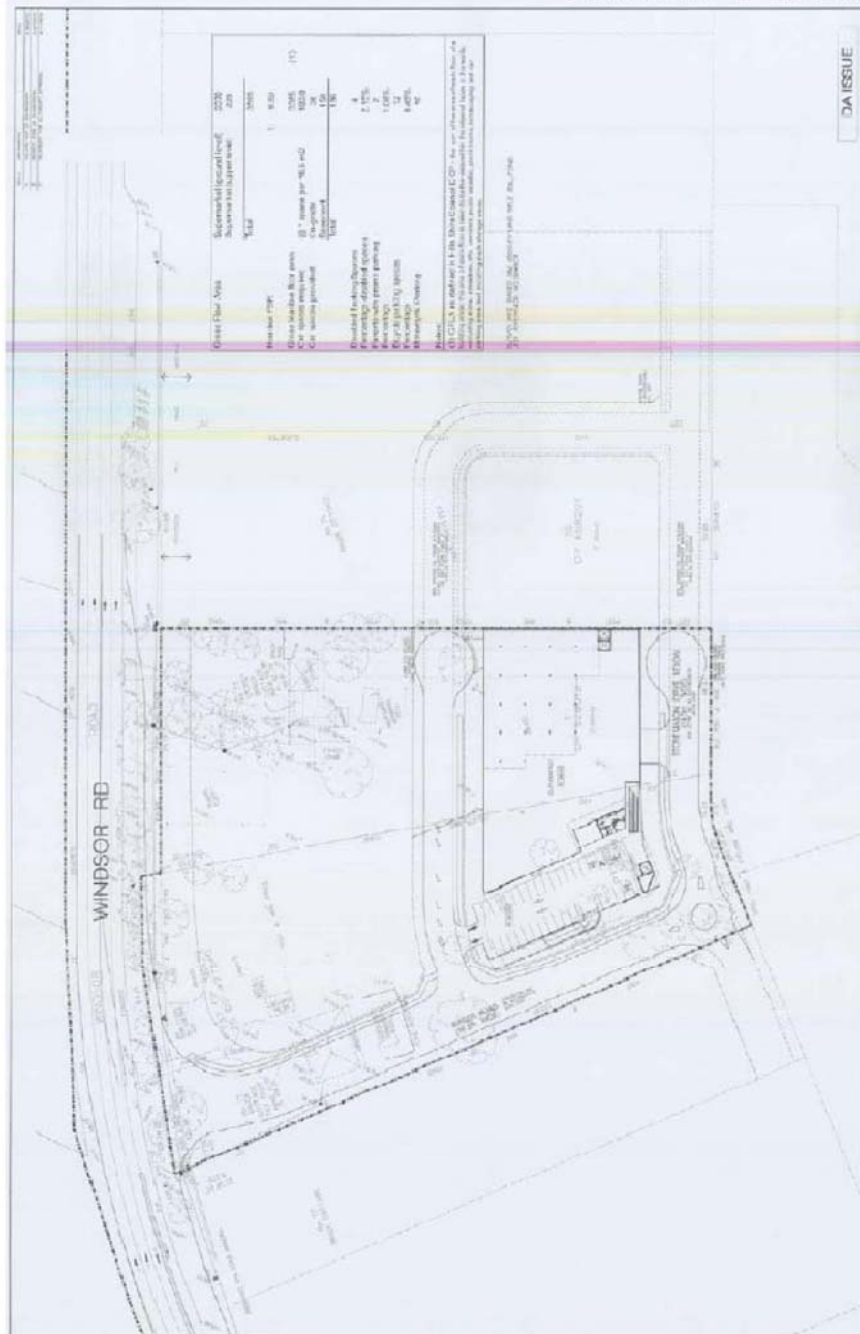
ATTACHMENT 6 – DCP PROPOSED ROAD LAYOUT



ATTACHMENT 7 – THREATENED SPECIES PLAN



DAISSUE



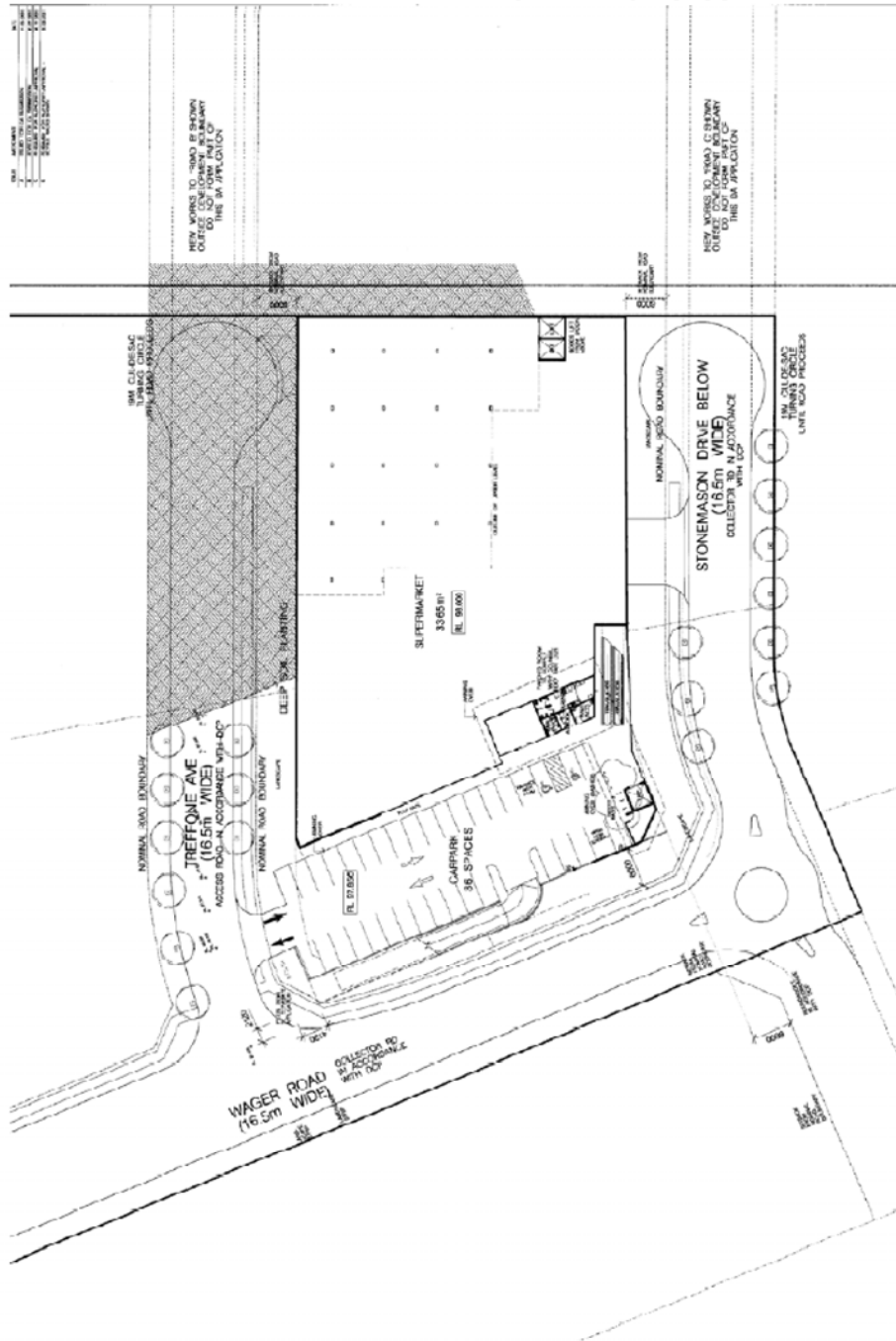
LOT 36
2nd EXPOSURE

WALTER ROAD
(16.5m WIDE)

BASEMENT
PARKING
DOCK
SUPER MARKET
PAVING

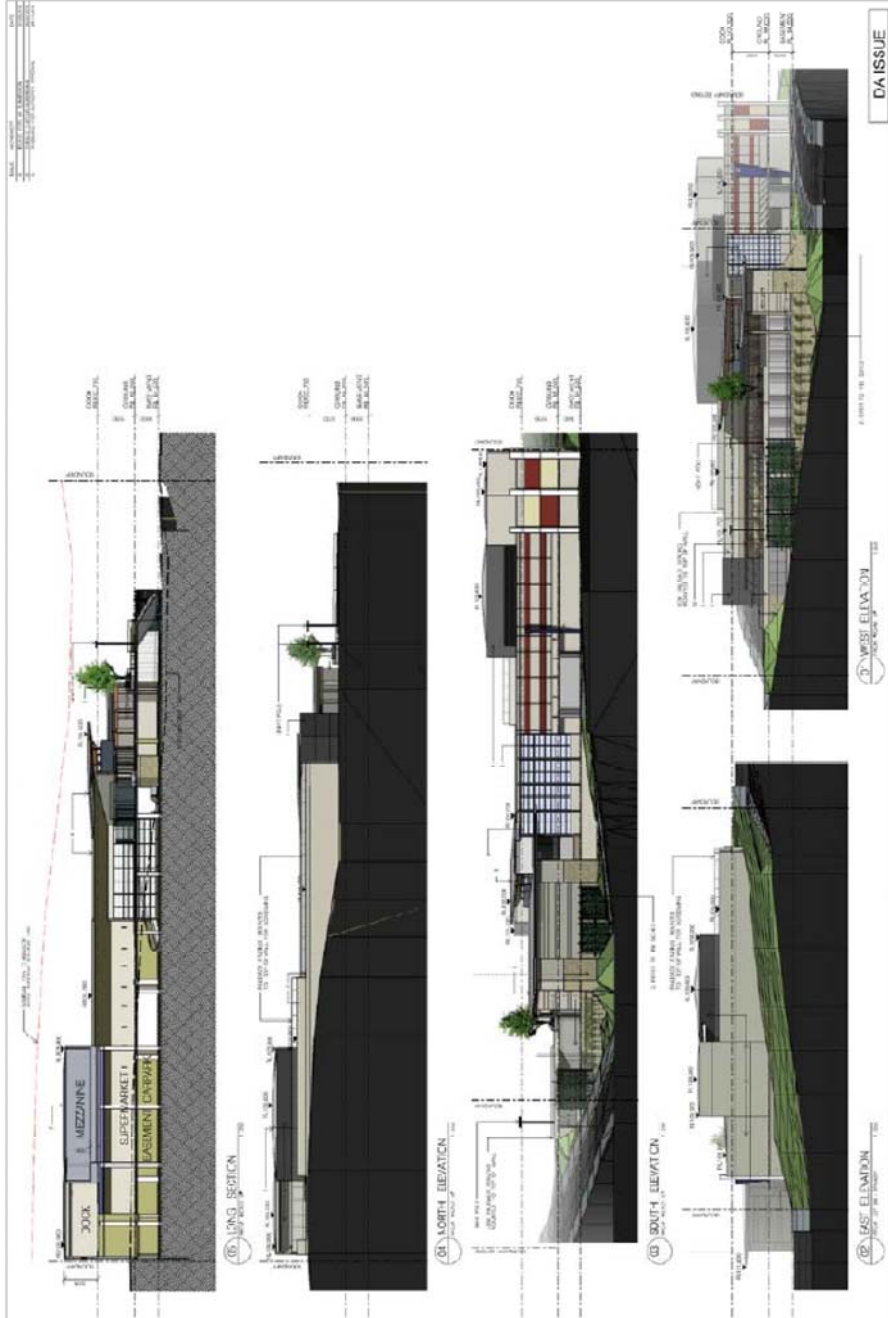
LOT 36
2nd EXPOSURE

ATTACHMENT 10 – GROUND LEVEL PLAN



1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400
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Year	Number of cases	Rate per 100,000
1990	1,000	1.0
1991	1,100	1.1
1992	1,200	1.2
1993	1,300	1.3
1994	1,400	1.4
1995	1,500	1.5
1996	1,600	1.6
1997	1,700	1.7
1998	1,800	1.8
1999	1,900	1.9
2000	2,000	2.0
2001	2,100	2.1
2002	2,200	2.2
2003	2,300	2.3
2004	2,400	2.4
2005	2,500	2.5
2006	2,600	2.6
2007	2,700	2.7
2008	2,800	2.8
2009	2,900	2.9
2010	3,000	3.0
2011	3,100	3.1
2012	3,200	3.2
2013	3,300	3.3
2014	3,400	3.4
2015	3,500	3.5
2016	3,600	3.6
2017	3,700	3.7
2018	3,800	3.8
2019	3,900	3.9
2020	4,000	4.0



ATTACHMENT 2 – COUNCIL'S MEMO DATED 30 JUNE 2011



Internal Memorandum

TO: JOINT REGIONAL PLANNING PANEL

FROM: PRINCIPAL EXECUTIVE PLANNER

SUBJECT: ADDITIONAL INFORMATION SUBMITTED BY THE APPLICANT
DEVELOPMENT APPLICATION 704/2011/JP
73-75 WINDSOR ROAD, BAULKHAM HILLS (WOOLWORTHS)

DATE: 30 JUNE 2011

COPIES TO: GROUP MANAGER PLANNING AND ENVIRONMENT
MANAGER DEVELOPMENT ASSESSMENT

I refer to Development Application 704/2011/JP and to the additional information submitted by the applicant to Council via email at 5.36pm on 22 June 2011. I note that Council's assessment report had already been provided to the JRPP.

The additional information included the following:

1. Cover letter from the applicant (TPG NSW);
2. Stage 2 Environmental Site Assessment and Salinity Assessment;
3. Letter from Golf Club (Country Club) agreeing to proposed easement to drain water and letter from Woolworths agreeing to Golf Clubs terms;
4. Independent Peer Review of Economic Impact Assessment; and
5. Independent Peer Review of Draft Master Plan and Draft DCP for Stone Mason Drive.

In respect to the above information, it may be noted that the salinity assessment and site contamination assessment were requested in Council's initial letter to the applicant dated 17 December 2010. The letter from the Castle Hill Country Club agreeing to the easement was requested in Council's letter to the applicant dated 10 January 2011. The applicant was requested to address the proposed Masterplan and DCP requirements for Stone Mason Drive on 11 April 2011.

It is also noted that on 11 May 2011 the applicant advised, in response to an email from Council staff advising that the salinity and site contamination reports remained outstanding, that

"To keep things moving forward, we ask that you complete the assessment report on the DA without further delay based on the information as submitted".

Notwithstanding this, the information has been reviewed and the following comments made.

- a. Council's Senior Subdivision Engineer has reviewed the correspondence from the Castle Hill Country Club and has advised that the easement agreement is satisfactory. As such the reason for refusal Part 4(a) as shown in the JRPP report can be deleted.
- b. Council's Acting Senior Environmental Health Officer has reviewed the Environmental Site Assessment and Salinity Assessment which satisfies the requirement to demonstrate that the proposal can be made suitable for the development provided the recommendations of the assessment are put in place. As such the reason for refusal Part 5 as shown in the JRPP report has been amended to delete reference to soil salinity and site contamination.
- c. Council's Principal Planning Reform and Policy has reviewed the Independent Peer Review of Economic Impact Assessment and Independent Peer Review of Draft Master Plan and Draft DCP for Stone Mason Drive and it is considered that these reports further strengthen Council's designation of the site as a neighbourhood centre. The EIA peer review has highlighted the lack of rationale and inaccurate assumptions contained in the original EIA in relation to population forecast, trade area and competition issues. While individual proponents may be able to initiate demand for single development, there is a need to demonstrate that it will not adversely impact on the overall hierarchy of centres. It is considered that the peer review reinforces Council's centres hierarchy.

Based on the above comments a revised recommendation is put forward as follows:

The Development Application be refused for the following reasons:

1. The proposed development is unsatisfactory in respect to the requirements of Baulkham Hills Development Control Plan Part E Section 17 Balmoral Road Release Area in relation to Section 2.2 and Section 3.1 and the impact on the environment, site characteristic, natural vegetation and bushland and biodiversity in respect to the removal of Cumberland Plain Woodland (Section 79C (a)(iii) of the Environmental Planning and Assessment Act, 1979).
2. The proposed development is unsatisfactory in respect to the adverse impact upon the environment in regard to the loss of Cumberland Plain Woodland (Section 79C (b) of the Environmental Planning and Assessment Act, 1979).
3. The proposal is unsatisfactory in respect to strategic considerations as the site is identified as being appropriate for a Neighbourhood Centre development as follows:
 - (a) The proposed development is not consistent with the strategic planning framework adopted by Council, including the Balmoral Road Release Area Structure Plan and the Centres Hierarchy, that identifies the site as a neighbourhood centre.
 - (b) The proposed development is not consistent with exhibited draft The Hills Local Environmental Plan 2010 by way of being a prohibited use within the proposed zone (R3 zone approach). The proposal is also inconsistent with floor space ratio and building height development standards (B1 zone approach).

- (c) The proposed development by way of its size, scale beyond and the built form is not representative of a neighbourhood centre and does not facilitate accessibility, connectivity to surrounding development or the creation of a local identity.
- (d) The proposed development is not consistent with the requirements of a neighbourhood centres as expressed by the Development Control Plan Part C Section 8 Business 2.2 in terms of meeting the daily convenience needs of residents.
- (e) The proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities in this location and other planned centres in the locality in that it will prevent the ability of a neighbourhood centre from developing on adjoining land and may impact on the ability of the other centres from developing additional retail services and facilities (Draft Competition SEPP).

(Section 79C (b) of the Environmental Planning and Assessment Act, 1979).

- 4. The proposed development is unsatisfactory in respect to engineering considerations as follows:
 - (c) The provision of plans demonstrating the compliance of proposed car park, vehicular access and circulation prepared in accordance with relevant design standards including:
 - Australian/ New Zealand Standard AS/NZS 2890.1:2004 – Parking facilities – Part 1: Off-street car parking;
 - Australian/ New Zealand Standard AS/NZS 2890.6:2009 – Parking facilities – Part 6: Off-street parking for people with disabilities;
 - Australian/ New Zealand Standard AS/NZS 2890.2:2002 – Parking facilities – Part 6: Off-street commercial vehicle facilities.
 - Baulkham Hills Development Control Plan (BHDCP) Part D Section 1– Parking.

(Section 79C (b) of the Environmental Planning and Assessment Act, 1979).

- 5. The proposed development has not adequately demonstrated that the proposal is satisfactory in respect to building height plane, setback and landscape provision (Section 79C (b) of the Environmental Planning and Assessment Act, 1979).
- 6. The proposed development is unsatisfactory given the adverse impact upon flora and fauna due to the siting and design of the proposal (Section 79C (c) of the Environmental Planning and Assessment Act, 1979).
- 7. The proposed development is unsatisfactory and is not in the public interest as it is contrary to the adopted Centres Direction and Centres Hierarchy (Section 79C (d) and (e) of the Environmental Planning and Assessment Act, 1979).

Submitted for your consideration in conjunction with the JRPP report.



Kristine McKenzie
PRINCIPAL EXECUTIVE PLANNER

ATTACHMENT 3 – APPLICANT’S LETTER DATED 29 JUNE 2011-07-20

PERTH
SYDNEY

29 June 2011

Panel Secretariat
Joint Regional Planning Panels
GPO Box 3415
SYDNEY NSW 2001

ATTN: Ms SUZIE JATTAN AND / OR Ms LISA FOLEY



RE: JOINT REGIONAL PLANNING PANEL – SYDNEY WEST REGION – JRPP
ITEM NO. 2011SYW083

THE HILLS SHIRE COUNCIL DA NO. 704/2011/JP - PROPOSED
SUPERMARKET AND ASSOCIATED WORKS, 73-75 WINDSOR ROAD,
BAULKHAM HILLS

Dear Sir/Madam,

To further assist with the consideration of the development application detailed above, this letter has been prepared by The Planning Group (NSW) Pty Ltd (TPG) on behalf of Woolworths Limited and Fabcot Pty Ltd (being a wholly owned subsidiary of Woolworths).

We wish to advise that additional information was provided to Council on 22 June 2011, which included:

- (a) A cover letter, outlining the additional information has been obtained by Woolworths to respond to Council's request for information dated 11 April and 11 May 2011;
- (b) Stage 2 Environmental Site Assessment and Salinity Assessment Vols 1 and 2, this report by EIS Environmental Investigation Services indicated that the site is suitable for the proposed form of development and recommended a number of processes be implemented during the construction phase associated with managing soil salinity;
- (c) Letter from Golf Club (Country Club) relating to drainage easement, in which support has been provided to a downstream easement;
- (d) Independent Peer Review of EIA by AEC, which indicates that the proposed development is acceptable; and
- (e) Independent Peer Review of Draft Master Plan and draft DCP for Stone Mason Drive by GMU, which indicates that the Draft Masterplan and Draft DCP will not provide for suitable outcomes for the land.

Fabcot and TPG have reviewed the assessment report and reasons for refusal in regard to the above item due to be considered by the Joint Regional Planning Panel – Sydney West Region at its meeting to be held on Thursday 30 June 2011 and wish to draw to attention for the JRPP the following comments.

Response to reasons for refusal which relate to biodiversity and vegetation (Items 1, 2 and 6):

It is noted that the location of the Cumberland Plain Woodland in the mapping undertaken by Council is predominantly the same location as the road layout indicated within the DCP Map for Balmoral Road Release Area.

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North Sydney NSW 2060

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Facsimile +61 2 9525 0055
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The Planning Group NSW Pty Ltd
ABN 90 100 269 280

The applicant engaged Dr Alison Hunt of Alison Hunt and Associates (AHA) to undertake investigations concerning site vegetation and biodiversity evaluation, this report advises:

Although the site provides potential foraging and some roosting habitat for bats and birds, it was concluded that this proposal is unlikely to significantly impact on species listed under the TSC Act as the area of habitat to be removed is relatively minor, and is weed-infested and disturbed through past and current land use activities including clearing, agriculture, dumping and moving. Habitat for all considered species would be retained on site through the retention of large and scattered trees that contain tree hollows and roosting habitat. It would not result in any habitat becoming fragmented for these highly mobile species.

It was also concluded that this proposal is unlikely to significantly impact the CPW such that the long-term survival of the CPW within the locality would be at risk as:

- o *The 0.06 ha of the CPW that would be removed for this proposal has not been identified as priority conservation lands within the Draft Recovery Plan prepared for this community (DECCW 2009);*
- o *The area to be removed represents 0.0001% of the CPW remaining within the LGA;*
- o *Removal of this patch would not fragment or isolate CPW from other areas; and*
- o *Vegetation remaining on the site and on adjoining properties would be protected through the implementation of a stringent CEMP and that landscaping would be undertaken using locally endemic species.*

The AHA report includes in its appendices an assessment of significance under the EPBC Act (does not trigger a controlled action) and EP&A Act (Seven Part-test completed advises no need for a Species Impact Statement).

In addition, the applicant sought a peer review of the AHA report by Dr Mills, in which he concurs with the conclusion of the AHA report that a SIS is not required.

The applicant is prepared to accept conditions relating to the mitigation measures outlined in the AHA report during the construction phase.

Response to reasons for refusal concerning building height plane, setback, landscape provision, soil quality and potential contamination (condition 5):

- The applicant seeks a variation to the 45 degree height plane at the eastern boundary for the portion of the building above 8m in height and where the breach involved is minor at 1.2m in the roof of the loading dock, the variation will not adversely affect the development potential of the adjoining property, undermine its application in the future or result in unacceptable shadowing. As such, a variation of the control could be considered reasonable;
- The applicant provided justifications to the Council's assessment staff in relation to the variations sought under the DCP based on the merits of the proposed development;
- The applicant is prepared to accept Council's standard conditions associated with construction techniques or conditions to implement the recommendations outlined in the EIS Environmental Investigation Services report dated June 2011, materials to be used in construction associated with soil salinity;
- The applicant has undertaken a Stage 2 Investigation which did not identify any specific contamination of the land. The proponent will ensure that



during the construction phase all appropriate management techniques will be employed should any contamination be encountered.

Response to reasons for refusal which relate to Type of Centre (3(a),(b),(c),(d) and (e) and 7):

- The subject site was rezoned 3(a) Business General under the Baulkham Hills Local Environmental Plan 2005 via amendment No. 5 (Balmoral Road Release Area) which was gazetted on 14 April 2006.
- The proposed form of development is for the purposes of "shops" which is a permissible form of development in the 3(a) zone. Presently, no LEP control restricts the use of the land for the purposes of a supermarket and specialty shops.
- The Department of Planning and Infrastructure (DoP&I) has advised TPG in writing via letter dated 14 September 2010 that they share concerns that the future Comprehensive LEP seeks to "down-zone" the subject site and will work with Council to ensure that the current uses permitted will continue to be permitted in the future Comprehensive LEP (refer to **Appendix A**).
- In addition, the Department of Planning has advised in writing via letter dated 23 February 2010 (refer to **Appendix A**) on the definition and role of centres contained within the subregional strategies, which advises:

The draft Subregional Strategies recognise that providing for retail growth is core to the role of all types of centres. The strategies do not restrict retail growth or competition because the centre type does not prevent expansion of centres or a change in their role over time. The centre type descriptions are characterisations only and are not intended to be restrictions. However, retail growth should be focused in a range of centres, not dispersed.

- The Draft Competition State Environmental Planning Policy was introduced for consultation by the NSW State Government to seek to remove artificial barriers on competition between retail businesses in the planning system by the following:
 - *The commercial viability of a proposed development may not be taken into consideration by a consent authority, usually the local council, when determining development applications;*
 - *The likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered unless the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and*
 - *Any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.*
- Council's Centres Policy seeks to impose barriers on competition through the use of a hierarchy, and if strictly applied, will not enable outcomes as sought by the DoP&I as detailed in their letter dated 23 February 2010. Council has engaged Hill PDA to prepare a report to quantify the floor space demand in the LGA. This report indicates that there is an undersupply of supermarkets in this locality today.
- Council's Centres Policy includes provisions which enables consideration of an Economic Impact Assessment (EIA) and variation of the hierarchy of a centre. An EIA has been submitted with the DA which indicates the proposal will not adversely affect other centres and will cater for an unmet demand for supermarkets in the locality. This EIA has been the subject of two peer



reviews, which have been also submitted with the DA. These peer reviews indicates the proposal is acceptable subject to a delay in the operation of the retail development which is agreeable to the proponent.

- The amount of land rezoned 3(a) is approximately 12,536 square metres in area. The portion of land proposed to be utilised in this DA is some 7,295 square metres. The FSR applicable under the Baulkham Hills DCP Section 8 and Section 17 is 1:1. The proposed development seeks a FSR of 0.59:1 which is well under the maximum permitted as part of a retail development.
- The proposal is for a use of the land which will provide a supermarket and has the spare capacity to provide for additional shops, all of which will meet the daily convenience needs of residents.



Response to reasons for refusal which relate to Engineering considerations (4(a) and (b)):

- The downstream property owner supports the development and has provided in writing terms for a downstream easement for which Woolworths accepted in writing and these letters have been supplied to Council;
- The application has included swept paths information and a report from Colston Budd Hunt and Kafes which indicates the car parking and truck loading dock areas comply with the relevant standards. Council can condition this aspect.

We trust this information will assist the JRPP in its determination of the DA.

Should you have any queries or require clarification on any matters please do not hesitate to contact Aidan Murphy, Regional Development Manager from Woolworths on 8885 8170 or the undersigned on 0488 221082.

Yours sincerely

THE PLANNING GROUP NSW PTY LTD

Marian Higgins
(Director)

Cc: Kristine McKenzie , The Hills Shire Council

APPENDIX A – LETTERS FROM DOP&I





Planning

DATE RECEIVED
29/7/2010
TO BE ACTIONED BY:
HAR

Ms Marian Higgins
Director
The Planning Group NSW Pty Ltd
PO Box 1612
NORTH SYDNEY NSW 2059

10/17991

Dear Ms Higgins

I refer to your submission of 27 July 2010 seeking the Department's intervention prior to the exhibition of the Hills Principal LEP with regard to the proposed zone swap at 71-75 Windsor Road, Baulkham Hills North.

The Department of Planning has considered your submission and wishes to advise the following.

With regard to your concern regarding a potential down-zoning of land currently zoned 3(a) under the Baulkham Hills Local Environmental Plan (LEP) 2005 to B1 Neighbourhood Centre under The Hills draft Principal LEP (PLEP), the Department shares your concern in this regard. The Department acknowledges that the translation of zones to the Standard Instrument format can not always result in a like for like translation, however, the Department's preferred approach is to avoid a reduction in development opportunities within identified centres. As such, the Department will be working with Council to ensure that uses currently permitted in the 3(a) zone will continue to be permitted under the draft PLEP.

I also note your letter requests the Department intervene to implement Fabcot's (subsidiary of Woolworths) request to Council in April 2009 to seek the portion of land currently zoned 3(a) at the rear of the property be moved to the Windsor Road frontage in the form of a zone swap and expansion.

The Department has considered the information provided on this matter, and has consulted with both Council and the Roads and Traffic Authority (RTA).

The Department is willing to support the zone swap for the purpose of public exhibition in-principle however, this support is subject to the zone swap not increasing the amount of land to be zoned B1 and landowner consent to the dimensions of any new B1 zone area.

The Department also wishes to advise that the RTA has indicated that any development arising from a B1 zone location adjacent to Windsor Road will be subject to certain conditions – such as access being at least 90 metres from Windsor Road. Any

reconfiguration of the zone and subsequent design concepts will need to address the concerns of the RTA regarding impact on the arterial road network.

As the Department is supportive of the need to expand the amount (and capacity) of land to facilitate centre-based activities we will be working with Council to identify suitable lands to accommodate increased retail and commercial functions in appropriate locations.

Due to the advanced stage of the draft PLEP, I am concurrently corresponding directly to Council to indicate the Department's support, in-part, for a zoning swap. The Department will ask Council to work directly with you (and other proponents/landowners) regarding the proposed dimensions of any new zone.

If you have any queries with regard to this matter, I have arranged for the Mr Peter Goth, Regional Director, Sydney West to assist you. Mr Goth may be contacted on 9873 8589 or peter.goth@planning.nsw.gov.au.

Yours sincerely



Neil McGaffin
Executive Director
Planning Operations

14.9.10



Planning

Contact: Norma Shankie-Williams
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Mr Paul Oats
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15 February 2010

Dear Mr Oats

Subject: DEFINITION AND ROLE OF CENTRE TYPES

I provide the following details in response to the issues raised in your email of the 10th February 2010 to the Department of Planning. Your email raised concerns in relation to the definition and role of centres in the draft Subregional Strategies. The matters you raised have been considered on a number of occasions by the Department and the following comments have been provided previously.

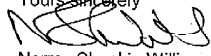
The growth and change in retail, office and housing in local centres is fundamental to the Subregional Strategies. To this effect the strategies included LGA specific housing and employment growth targets that will result in changes to the centre type designation of many centres over the life of the Strategies. For example many small villages will become villages and many villages will become towns.

The draft Subregional Strategies provide a starting point for addressing these growth targets by locating and characterising the existing range of local centres (ie towns, villages, neighbourhoods) using a common typology. The centres descriptions, including comments on number of supermarkets, are not prescriptive and do not limit growth or restrict future change in the centres hierarchy. The draft Subregional Strategies do not create new policy directions in relation to retail, they apply adopted NSW Government policy on integrating land use and transport at a subregional scale.

The draft Subregional Strategies recognise that providing for retail growth is core to the role of all types of centres. The strategies do not restrict retail growth or competition because the centre type does not prevent expansion of centres or a change in their role over time. The centre type descriptions are characterisations only and are not intended to be restrictions. However retail growth should be focussed in a range of centres, not dispersed.

Councils will be responsible for demonstrating that their growth strategies and ensuing LEPs accommodate retail, office and housing growth across a wide range of centre types.

Yours sincerely



Norma Shankie-Williams
Director, Metropolitan and Regional Strategies

28/2/16