

ITEM 6.12

SUBJECT: RURAL LANDS STUDY (M 8906)

BUSINESS PROGRAMME: FORWARD PLANNING

REPORTING OFFICER: MANAGER - POLICY AND  
PLANNING - SIMON  
KINCHINGTON

EXECUTIVE SUMMARY

The consultant acting on behalf of the landowners within the identified Rural Lands Study Precincts has submitted a final report. The report recommends the preparation of a draft local environmental plan and a draft development control plan. The report has been reviewed by Council, NSW Department of Urban Affairs & Planning and a range of statutory bodies.

The review of the report concludes that the approach adopted by the consultant relies upon the development potential of the subject lands to be assessed at subdivision application stage rather than at the planning stage. This approach is not supported.

In the submissions received, it is clear that the report and its recommendations are not supported by the majority of those bodies consulted, including the Department of Urban Affairs & Planning and the Hawkesbury Nepean Catchment Management Trust. The concerns expressed stem from:

- a lack of data on key planning issues; and
- reliance upon the development application process to identify landuse constraints rather than this being done at the planning stage.

The consultant's report is not supported, accordingly it is recommended that the draft local environmental plan affecting the Rural Lands Study Precincts not be proceeded with and that the issue of rural development be further examined in the context of Council's Forward Planning Capital Works Program.

REPORT

In December 1993 Don Fox Planning Pty Ltd., acting on behalf of owners of property along Cattai Ridge and Pitt Town Roads, submitted a study on the possible subdivision of those lands shown on the attached map (Attachment A01) to create 2 hectare rural residential lots. Subdivision controls currently applying to the area specify a minimum 10 hectare lot size. The study was reviewed by Council, the NSW Department of Urban Affairs and Planning and a number of statutory bodies.

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The review indicated that the following issues:

- water quality;
- flora/fauna assessment;
- bushfire hazard;
- consultation with statutory authorities;
- community services and facilities;
- agricultural value of the land;
- cost of services to individual lots;
- roadworks;
- demography;
- heritage;
- visual impact;
- section 94;
- planning/building controls; and
- amendments to Council's planning instruments

required further assessment by the landowners' consultant.

In accordance with Council's resolution of 29 March 1994, the consultant was advised of the outstanding matters.

In August 1994, a meeting was held with the consultant, Council, the NSW Department of Urban Affairs & Planning and all relevant statutory bodies to discuss the specific concerns of all parties involved.

The final study, the subject of this report, was then submitted to Council in March 1995. The study was again referred to the relevant statutory bodies. Summarised below are the responses received:

i. National Parks & Wildlife Service

- \* The study does not include a flora assessment of the private land which is to be subdivided.
- \* The study does not address the value of regenerated bushland.
- \* The mapping of plant communities is required to assess the overall impact of the proposal.
- \* The study acknowledges the need for specific surveys of endangered species. Such surveys should be undertaken on a precinct by precinct basis, rather than at Development Application stage.
- \* The study does not include discussion of the habitat needs of the endangered species known to exist in the area.

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- \* Fauna assessment should include impacts associated with subdivision, i.e., increased number of domestic animals and water quality impacts.
- \* Endangered species cannot be protected unless more is known about the habitats which they depend upon in the study area.
- \* An assessment of impacts on regionally significant species such as wombats and platypuses should be carried out across the whole study area.
- \* The study acknowledges further work is required to identify Aboriginal sites. This work should be undertaken across the whole study area, not at Development Application stage. This is essential to establish the context and significance of any sites identified.
- \* The proposals to control effluent and weeds identified in the study will require constant monitoring if they are to be effective.
- \* Restrictions on the keeping of dogs and cats are necessary to protect wildlife in adjoining bushland areas.
- \* Minimum standards of fence construction would be required to prevent domestic animals impacting upon wildlife.
- \* Intensive agriculture, livestock and horse use, especially the stabling of horses, has the potential to seriously impact upon bushland areas.
- \* Bushfire control measures need to be incorporated into subdivision design.
- \* Concern is raised at the suggestion in the study that a network of fire trails would be required in the gully areas - this has the potential for erosion, habitat fragmentation and loss of water quality.
- \* Fire control measures should be limited to land already cleared.
- \* Detailed monitoring programs must be in place prior to proceeding with any development in the study area, particularly for water quality, sedimentation and weed invasion. The monitoring program should provide for contingency plans to address any adverse impacts.

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ii. Hawkesbury Nepean Catchment Management Trust

- \* The water quality of the Hawkesbury River at locations to which the subject land drains is below standard and needs to be improved.
- \* The study did not include adequate water quality investigations.
- \* The Trust is not satisfied that the planning controls recommended in the study are adequate to protect water quality.
- \* Australian Standard (A.S.) 1547 - "On Site Effluent Disposal" is being questioned regarding its effectiveness.
- \* Existing vegetation links must be maintained and where possible enhanced.
- \* The study does not make provision for the maintenance of bushland/habitat corridors.
- \* Land with a slope in excess of 20% should not be zoned for development or included in the minimum 2 hectare lot area.
- \* Further investigation is required to identify how the planning controls proposed will be effective and how Council will be in a position to ensure compliance with and the performance of the controls.
- \* The Trust cannot support the current proposal because:
  - the controls and practices suggested to prevent water pollution are not adequate;
  - the proposal is likely to have an adverse impact upon flora and fauna; and
  - the zonings recommended are not appropriate.

iii Environmental Protection Authority

- \* The EPA advises that a centralised sewage treatment facility would be preferable.
- \* If the above is not possible, full implementation and full compliance with the on-site disposal method referred to in the study is necessary.

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iv Department of Health

- \* A.S. 1547 - "On Site Effluent Disposal" contains flaws which may lead to the under-estimation of the area required for effluent disposal.
- \* Soil sampling is required to assess the proposed disposal areas.

v Sydney Water

- \* Sydney Water is satisfied that the study reflects the present situation with regard to water supply within the study area.

vi National Herbarium

Planning issues such as:

- conservation;
- fragmentation of habitat; and
- ensuring conservation areas are representative

need to be addressed over the whole study area, not on a piecemeal basis at subdivision stage.

- \* Environmental protection zones need to be identified.
- \* Crown lands in the study area should be identified for conservation purposes and adequate linkages between them identified at the planning study stage.
- \* Flora and fauna investigation is not adequate
- \* The flora and fauna investigation merely draws together existing general information on the area, no specific information has been provided as a basis upon which the proposed zoning of the land could be determined.
- \* If in the long-term the existing landscape is to be retained the proposal to allow 2 hectare subdivision should be rejected.

vii Department of Bushfire Services

- \* The issue of bushfire hazard management is adequately addressed in Council's Fuel Reduction Plan, approved by the Department of Bushfire Services.

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viii Department of School Education

- \* The Department expects no difficulties in accommodating the likely growth in schools population should the proposal proceed.

ix Cattai Catchment Management Committee

- \* The revised report submitted by the consultant does not satisfy the committee that the proposed development could not occur without adverse impacts upon the catchments of Cattai and Little Cattai Creek.
- \* The issues of compliance monitoring and the undertaking by Council of an independent and properly conducted rural lands study are vital before any such proposal can be considered.
- \* The committee fully supports the position taken by the Hawkesbury Nepean Catchment Management Trust on this issue, i.e., that the current proposal should not be allowed to proceed.

x NSW Department of Urban Affairs & Planning

- \* The consultant has previously been advised of the importance of assessing the impact of the proposal upon water quality.
- \* Key to the review of water quality issues was:
  - an assessment of existing water quality;
  - the likely impact of additional development;
  - likely impact of onsite effluent disposal; and
  - each precinct/catchment has to be assessed individually to determine the appropriate level of development.

From the information presented, this does not appear to have occurred.

- \* The planning approach recommended relies on the assessment of environmental impact at Development Application stage. This approach would make Council responsible for evaluating a wide range of technical investigations as well as the ongoing monitoring and enforcement of the controls at and after Development Application stage.
- \* Without an effective monitoring system the approach recommended would result in further degradation of the Hawkesbury Nepean system.

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- \* The Department is concerned over the recommendations of the study relating to onsite effluent disposal.
- \* Studies into on site disposal systems in the Hawkesbury Nepean Catchment indicated that 40%-80% of these systems fail.
- \* Adequate monitoring of effluent disposal systems is expensive and rarely occurs.
- \* The study does not address the conservation of significant vegetation communities. The lot by lot approach advocated does not preserve vegetation communities/habitats as functioning systems.
- \* The Department reiterates the concerns of the National Parks & Wildlife Service regarding Koala habitat and suggest Council adopt SEPP44 in principle. This would require the preparation of a Koala Management Plan prior to any development occurring in the study area.
- \* The Department questions the appropriateness of increasing development in an area of high bushfire hazard, in particular the planning and legal ramifications of this need to be examined.
- \* The Department also reiterates the concern of the National Parks & Wildlife Service regarding the environmental impact of bushfire hazard reduction that would be necessitated by further residential development.
- \* The Department has previously advised that lands identified in the 1991 Rice Daubney Rural Lands Study as having no present potential for subdivision should not be included in the proposal unless further justification was provided. The consultant's report does not provide any justification for the inclusion of these lands in any draft Local Environmental Plan.
- \* Land with slopes in excess of 20% should not be included in the calculable lot area. The inclusion of this land is recommended by the consultants.
- \* The Department is unable to support the recommendations of the study.

**Key Issues**

As can be seen from the foregoing, a range of issues relevant to the proposal remain unresolved. The key issues upon which an assessment of the development potential of the lands can be made are described as follows:

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**Slope Analysis**

The 1991 Rice Daubney Rural Lands Study identified land with a slope in excess of 20% as having no development potential and therefore should not be included in rural residential lots. This approach is supported and is consistent with the advice of the Soil Conservation Service. The report by Don Fox Planning Pty Limited recommends the inclusion of lands with a slope up to 33% within rural residential lots. It is acknowledged that the Development Control Plan suggested would place controls on the use of land in the 20%-33% slope category. However, it is noted that once land is zoned for development an expectation is created that the land may be used for the purpose for which it is zoned.

It is likely that a property owner purchasing a 2 hectare lot zoned for rural residential development, would expect to be able to use all of it for that purpose, regardless of Development Control Plan controls. It is unlikely Council could prevent this from occurring.

The development or clearing of land in excess of 20% slope is likely to lead to an unacceptable rate of erosion and resultant environmental degradation. It has been accepted planning practice since the 1975 Central Coast Rural Lands Study (New South Wales Environment and Planning Commission) that land within slope categories in excess of 20% should remain within conservation zones to clearly identify that the land has no development potential. The consultant's report provides no justification for including land within lots with a slope in excess of 20%.

**Development Potential**

The study is not clear on the ultimate development potential of the subject lands. In discussing the existing situation the study states that there is potential for an additional 105 lots to be created under the current zoning.

The draft plan proposed by the consultants would, according to the study, yield between 250 and 420 lots, depending upon whether or not vacant Crown lands were to be developed. The study suggests that Crown lands would be retained for conservation purposes, however, correspondence from the Department of Conservation and Land Management advises that this may not be the case. This issue has not been clarified.

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**Water Quality**

The water quality investigations described in the consultants' study refer to water quality testing undertaken on Upper Cattai Creek, Smalls Creek, Caddies Creek and Second Ponds Creek some years ago for the purpose of assessing Sydney Water treatment plant proposals. This information is not relevant to the study area. No water quality testing appears to have been carried out by the consultants as part of this study. The study cannot provide any information regarding the existing situation within creeks in the study area.

**On Site Effluent Disposal**

Concerns regarding the effectiveness of current onsite disposal techniques have been raised by the Department of Health, Hawkesbury Nepean Catchment Management Trust and the Department of Urban Affairs & Planning. It should also be noted that the study does not examine the effects that differing soil landscapes throughout the study area might have upon the proper absorption of effluent.

Concern is also expressed that the worth of the onsite disposal systems is ultimately related to Council's ability to monitor and police their use. Currently there is no system in place to monitor the performance of onsite disposal systems, nor have resources been identified to establish or operate such a system.

The water quality impacts of the proposed development are not limited to domestic waste water. Land clearing, use of pesticides, fertilisers and livestock will also impact upon water quality. The consultants' report does not suggest any means to effectively counter these impacts.

**Flora/Fauna Impacts**

The consultant's report does not provide a systematic assessment of the significance of vegetation communities or fauna habitat existing within the study area. Without such assessment, it is not possible to gauge the impact of development or include within Council's planning instruments any effective conservation strategies.

**Proposed Planning Controls**

The consultant's report recommends the imposition of planning controls relating to:

- subdivision controls;
- establishment of a principal development area within each lot;

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- the identification of a Rural 1(d) zoning over those lands within the study area with slopes up to 33%;
- agricultural land;
- keeping of livestock;
- water supply;
- bushfire hazard; and
- flora and fauna.

Unfortunately, most of the above controls, with the exception of the subdivision and principal development area controls, are dependent upon the resolution of key planning issues at subdivision or dwelling development application stage. This approach is not supported. Reliance on the application assessment provisions of Part IV of the Environmental Planning & Assessment Act cannot be substituted for a local environmental study under Part III.

Issues such as:

- the environmental impact of bushfire hazard reduction;
- loss of vegetation/habitat;
- soil absorption capability;
- slope analysis;
- archaeological investigation;
- counter encroachment strategies (re. agricultural use); and
- the viability of livestock controls

have a direct bearing upon the development potential of the land. The consultant has recommended these issues be dealt with at subdivision stage. From a town planning viewpoint, it is recommended that these issues must be addressed at the planning study stage and the constraints that emerge clearly identified by zoning or on development control plans. In this way Council's planning controls will reflect the actual potential of the land. Little benefit is seen in zoning land for development then attempting to prevent development at a later date when it is found that an application does not bear scrutiny under Section 90. This approach also exposes Council to the appeal provisions of the Environmental Planning & Assessment Act.

In addition, the controls suggested in relation to effluent disposal and livestock will require Council to commit considerable resources to policing consents and monitoring the physical impacts of development.

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**CONCLUSION**

The proposed development is not supported by the majority of public authorities consulted, based upon the submissions received. The proposal is not supported from a town planning viewpoint by the NSW Department of Urban Affairs & Planning. The concerns stem mainly from:

- a lack of data on key planning issues; and
- reliance on development application assessment rather than a determination of development potential at the proper planning stage.

In short, the consultant's study does not provide the base data upon which an informed decision can be made regarding the environmental impact of the proposed development. Accordingly, the proposal to proceed with a draft local environmental plan to rezone the subject lands to enable 2 hectare subdivision cannot be supported.

Were development to proceed on the basis recommended in the study, it is suggested that the environment of the locality and downstream areas would be degraded.

The issue of rural residential development, however, needs to be resolved, as pressure for this form of development is likely to remain. The development should, however, be in accordance with Council's strategic objective as outlined in the Strategic Plan 1995-1999 adopted by Council, i.e.,

"Development of rural areas of the Shire is to be environmentally responsible, orderly and sustainable in terms of human services, capital infrastructure and the needs of the community".

In order to achieve the above, the issue of rural planning needs to be identified within the Forward Planning Capital Works Program 1995-1999. This matter will be reported to Council in the near future.

**FINANCIAL IMPACT**

There is no direct financial impact arising from this matter at the present time.

**RECOMMENDATION**

- a) Council not proceed with the draft local environmental plan providing for the rezoning of rural land within the precincts identified on the attached map.

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- b) The Manager - Forward Planning be requested to report to Council on the issue of rural planning in the compilation of the Forward Planning Works Program.

ATTACHMENTS

PAGE NO.

Locality Map

A01

