

ITEM 2 Helensburgh Town Centre and Environs Town Planning Proposal – Lakatoi Pty Ltd

Report of Director Environment and Planning (DB) 18/2/05

PRECIS

Councillors received a Briefing on 29 November 2004 from KBR Consulting on a town planning proposal for the further development of specific lands within Helensburgh on behalf of Lakatoi Pty Ltd who have considerable land-holdings in the Helensburgh area.

In 1994 (then) Department of Urban Affairs and Planning held a Commission of Inquiry to deal with urban development proposals for Helensburgh (see Attachment 1). The Commission of Inquiry report, delivered in December 1994, recommended that there be no change to current planning provisions until such time as further environmental, land-use and catchment studies across the wider Helensburgh area are completed. This recommendation was supported by the Minister for Planning and by Council.

As recently as October 2004 the Department of Infrastructure Planning and Natural Resources have advised Council that the State Government's position on Helensburgh has not changed. That advice indicated that the Government did not support urban expansion of Helensburgh.

With this advice from the State Government and the comprehensive review of Council's Local Environmental Plan currently underway. It is recommended that such a plan for only part of the Helensburgh area is clearly not appropriate given the Commission of Inquiry findings and recommendations and the previous Council position (Resolution of 6 February 1995). A Strategic Plan is needed for the Helensburgh district as a whole and the prioritisation of this should be part of the Council Corporate Plan and the Strategic Planning Division's Business Plan for 2005/06.

RECOMMENDATION

Council:

- 1 Advise Lakatoi Pty Ltd that it will not give priority to planning for only a partial area within the Helensburgh district and that the proposal submitted on behalf of Ensile Pty Ltd will be considered as an integral part of a Strategic Plan for the Helensburgh district as a whole.**
- 2 Consider the priority for a Strategic Plan for Helensburgh district as part of the Corporate Planning process for 2005/06-2009/10.**



BACKGROUND

Councillors received a Briefing on 29 November 2004 from KBR Consulting on behalf of Lakatoi Pty Ltd who has considerable land-holdings in the Helensburgh area, on a town planning proposal that Lakatoi wished to present to Council with the view to a co-operative arrangement for the further development of specific lands within Helensburgh.

A copy of the proposal presented to Council by Lakatoi's Planning Consultant is Attachment 2.

Councillors will be aware of the 1994 (then) Department of Urban Affairs and Planning Commission of Inquiry to deal with urban development proposals for Helensburgh. The Commission of Inquiry report was delivered to the Minister for Planning in December 1994.

The significant recommendation from the Commission report was that:

"there be no change in the current Local Environment Plan or current zonings until further studies are undertaken primarily aimed at identifying existing and potential impacts from various land use, then setting of appropriate environmental objectives, followed by identification of a cost-effective strategic catchment management plan to control existing catchment pollution sources and identify land use controls capable of meeting these objectives."

The Inquiry found that basically previously disturbed and cleared areas of Gills Creek areas and a smaller cleared and filled area of Lady Carrington Estate owned by Lakatoi have potential for urban capability, but further studies are required to more accurately define such areas as well as to define the necessary controls, limited (to development), or other requirements.

Council considered a detailed report on the Commission of Inquiry report in 1995 (see Attachment 3) and resolved, amongst other things:

- 1 *The Minister for Planning be advised:*
 - a *Council agrees with the findings and recommendations of the Inquiry in terms of on-going studies, trials, monitoring, standards etc. required to be undertaken before any land is deemed suitable for or rezoned for urban development.*
 - b *Council agrees that an independent body undertake such studies and reviews all findings with consultation with Council.*

- c Council endorse its previous decision concerning all the lands considered by Council and the Commission of Inquiry, these lands to be zoned 7(b) with the exception of the Gills Creek catchment area.*
- d Council agrees that unless appropriate improvements in stormwater quality and catchment impacts can be appropriately demonstrated, then all of the subject lands be zoned Environmental Protection.*
- 5 Any further studies required be undertaken at the landowners cost.*
- 10 The Minister be advised of Council's other resolutions regarding the above matters and be requested to support such initiatives of Council.*

In line with the State Government's position and the resolutions of Council the Strategic Planning Division have on a number of occasions advised enquirers that Council does not support spot re-zonings or further urban development within the Helensburgh area in the absence of a comprehensive area-wide study as recommended in the Commission of Inquiry.

PROPOSAL

The proposal presented to Council by Lakatoi sets out the following information for Council's consideration:

Lakatoi Universal Pty Ltd (Lakatoi) is a company which has an agreement in place with landowner Ensile Pty Ltd to develop property where possible. Ensile is a primary producer and farmer, the principals of which have lived in the Helensburgh area for over 30 years. Ensile presently operates a horse riding school and horse hire/riding establishment at Helensburgh/Otford. This Equestrian Centre is used by residents from Sydney, Wollongong and has international visitors.

The Lakatoi lands, which are the subject of this proposal, are a small part (approx 8 ha) of the Ensile land holdings of some total 400 ha. The land subject to this proposal is shown in the following table and accompanying figure at Attachment 4:

<i>Parce l</i>	<i>Existing title/lots</i>	<i>Area (m²)</i>	<i>Proposed use</i>
<i>5a</i>	<i>9</i>	<i>8,400</i>	<i>Residential</i>
<i>4a & 4b</i>	<i>10</i>	<i>10,080</i>	<i>Residential</i>
<i>1</i>	<i>7</i>	<i>4,300</i>	<i>Residential</i>
<i>2</i>	<i>1</i>	<i>30,050</i>	<i>Park, drainage</i>



			<i>reserve</i>
<i>3</i>	<i>29</i>	<i>29,500</i>	<i>Residential</i>
Total	56 lots	82,330 m² (8.2 ha)	

NB: Table excludes laneways

The 56 lots and laneways subject to this proposal were part of the subdivision for the original Helensburgh township with the subdivision dated 6 February 1885. The land was transferred to Ensign on 20 December 1982.

The proposal involves some 8 ha of Lakatoi land of which 52,280 m² would be residential and 30,050 parkland giving a split of residential 63.5% and parkland 36.5%. It is proposed that some of the parkland would be used for drainage and water quality control measures.

Lakatoi put the position to Council that their landholding

“represents an opportunity to capitalise on Helensburgh as a unique village, close to the ocean and escarpment for recreation and amenity and to Sydney and Wollongong for employment and social activity. There is no settlement in the Greater Sydney Metropolitan Area with the natural and locational attributes of Helensburgh”.

The Lakatoi vision for the town centre proposal is to use their landholdings to tidy up the fragmented town centre, to create a central park and stormwater treatment system that cleans up the uncontrolled and ad hoc stormwater run off from large parts of the existing township. In so doing, Lakatoi suggest (Council emphasis), the proposal will achieve substantial recommendations of the 1994 Commission of Inquiry (CoI). This proposal will create urban rejuvenation at Helensburgh and greatly help its evolution from a mining village.

The reason Lakatoi is now proposing a smaller area than the entire CoI area is due to the immediate pressure on Lakatoi's central area lands and the level of rubbish, pollutants, uncontrolled and untreated discharges spilling over their land. The proposal provides the funds at no cost to Council to solve this problem and associated easement and access disputes.

Other related reasons to address this land now are:

- *the proposed residential land is well located, serviced and is in short supply;*
- *Council has issued a resumption threat for Lakatoi lanes with no overall plan;*
- *Lakatoi no longer wishes to deal with ad hoc drainage easement requests and Council erosion and litter degradation to its property;*
- *the land was intended for urban use and Lakatoi is seeking to rationalise its landholding which have been in the company for a long time.*

The proposal as outlined in the presentation to Council on 29 November 2004 is for Lakatoi to undertake a strategic planning process with Council, other landowners and stakeholders in central Helensburgh with a view to rezoning around 5 ha of Lakatoi land residential and 3 ha parkland/drainage reserve. Lakatoi will meet the costs of the studies including development of a S.94 infrastructure plan.

Lakatoi suggest that the benefits to Council and the community of participating in this proposal are:

- *no cost to Council;*
- *greatly improved stormwater quality, meeting one of the CoI's primary recommendations;*
- *dedication of a new town parkland, walkway and trails of up to 3 ha – these assets can be in community title and so present no maintenance cost to Council;*
- *better bushland conservation, improved control of weeds, litter and anti-social activity;*
- *coordinated rather than ad hoc development;*
- *promotes rejuvenation of town centre from mining past;*
- *solves current lane dispute, and stormwater and pollution problems from private and Council discharges over Lakatoi land.*

It is important to note that the Lakatoi proposal also includes, what they view, are the implications of (and to) Council of not proceeding with this proposal. These implications, as put by Lakatoi, are:

- Helensburgh stormwater quality discharge remains poor and the discharge and environmental quality of the area will continue to deteriorate as it has since the CoI;
 - this includes continuation of weed, litter and anti-social activity on town centre land;
 - proliferation of ad hoc development;
 - the possibility that Lakatoi will need to sell piecemeal the 56 separate title lots. Council may then have to respond to pressures for individual rezoning;
 - Helensburgh urban design and character will continue to suffer;
 - Most importantly, current conflicts between Lakatoi and Council over;
 - lane access by adjoining residents (Council has threatened Lakatoi with resumption); and
 - stormwater discharge over their land by Council and private landholders;
- may lead to legal conflict between Lakatoi and Council.



Advice on the proposed strategic planning approach and the related easement and stormwater issues has been obtained by Lakatoi from Minter Ellison and is appended for Council's information as Attachment 5.

Lakatoi conclude their submission to Council by indicating that they would like to work cooperatively with Council in a partnership strategic planning approach to develop its (Lakatoi's) central Helensburgh lands whilst noting that the alternative to not proceeding in this collaborative approach may be legal action, continued poor environmental performance from the stormwater system and fragmented sale of the lots with piecemeal development pressures.

COMMENTS

Councillors are advised that similar enquiries have been received from other broad-acre landowners in Helensburgh requesting Council to investigate the potential for development of certain land within their ownership at Helensburgh.

As recently as October 2004 Council wrote to the Department of Infrastructure, Planning and Natural Resources seeking their view on the Helensburgh land development proposals given that any rezoning of land for residential purposes within Helensburgh will require the support of the New South Wales Government. This request for information also coincided, generally, with the release of the Minister's Metropolitan Strategy. In this context it was timely to again seek Department of Infrastructure, Planning and Natural Resources' intentions regarding the future planning of Helensburgh.

The Department of Infrastructure, Planning and Natural Resources' response to Council clearly indicates that the State Government's position on Helensburgh has not changed since advice provided to Council in 1996 and does not support urban expansion of Helensburgh.

With this advice from the State Government and the comprehensive review of Council's Local Environmental Plan currently underway, it is not recommended, at this point in time, to provide unbudgeted funds to expedite an environmental management plan in co-operation with landowners and other agencies for the Helensburgh area.

Notwithstanding this re-affirmation of Council's existing Policy position, it is relevant that Council recognise that Lakatoi has mooted potential legal action in relation to lane access by adjoining residents, including Council lands, and, alleged, illegal stormwater discharge over their (Lakatoi) land by Council and private landholders.

Accordingly Council Officers are currently considering this threat and the content of the letter (Attachment 5) before determining an appropriate response to Lakatoi. Councillors will be informed of further progress in this matter when known.

CONCLUSION

The findings of the Commission indicate that, with the exception of the Gills Creek catchment, urban development should not take place because of likely detrimental environmental impacts on the Hacking River and Royal National Park. The Commission also emphasised that a great deal of additional work is required (studies, trials, monitoring, adoption of standards and controls) before any authority can determine with any certainty that any particular land is suitable for urban development.

This proposal does not further the understanding of the impacts of the existing urban areas – required by the Commission to establish environmental objectives and criteria for the remaining studies – and is dealing with land that, according to the Commission, has a low ranking in terms of urban capability.

Accordingly it is not recommended, at this point in time, to provide significant unbudgeted funds to expedite an environmental management plan for the Helensburgh area.

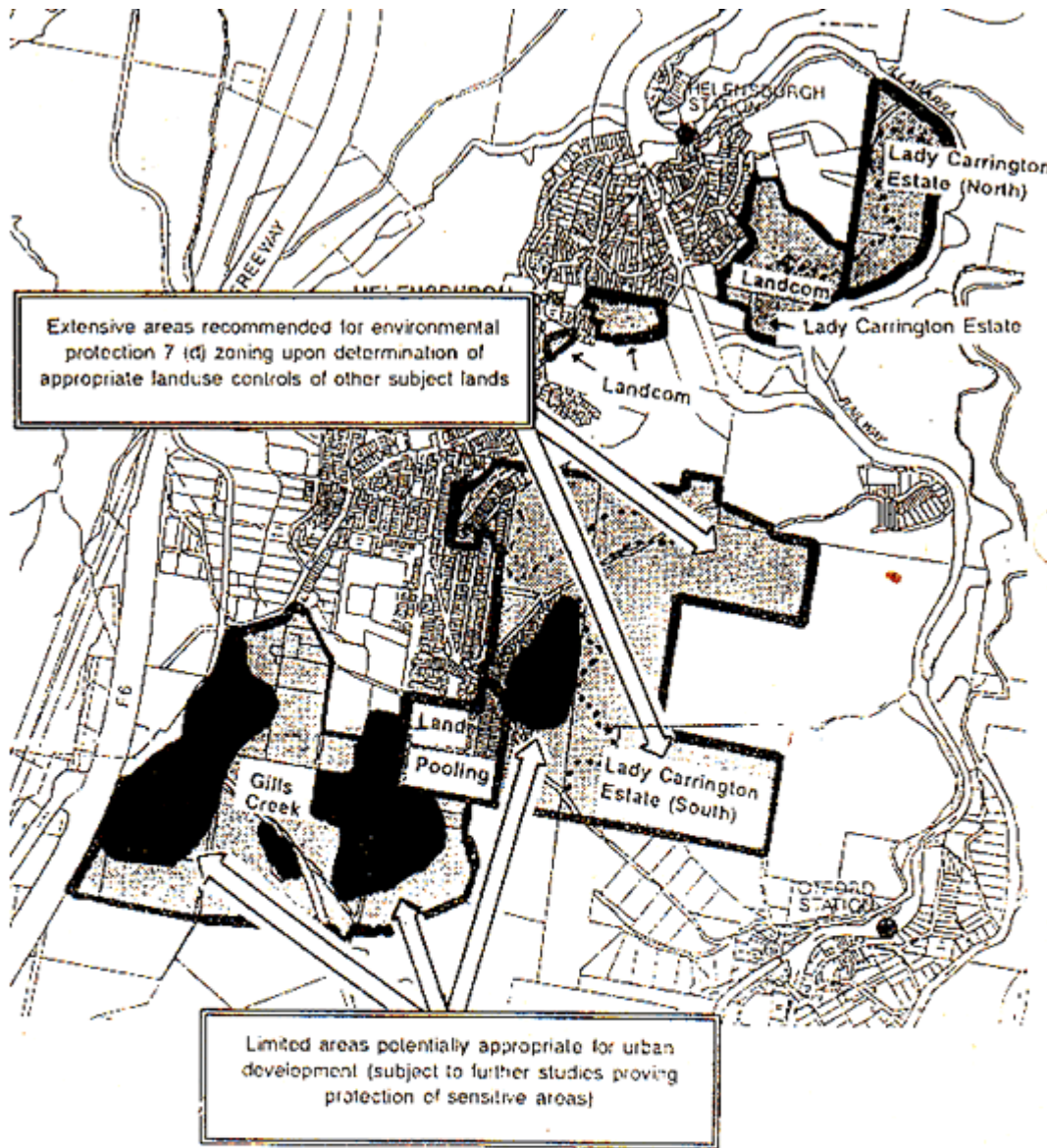
All other headings have been considered but are not relevant.

ATTACHMENTS

- 1 1994 Commission of Inquiry Study Area.
- 2 Copy of Proposal presented by KBR Consulting.
- 3 Council Development and Planning Committee Report of 6 February 1995.
- 4 Location of Lakatoi Land the Subject of their Submission.
- 5 Letter to Lakatoi from Minter Ellison Solicitor referencing potential legal action against Council.



ATTACHMENT 1



Extensive areas recommended for environmental protection 7 (d) zoning upon determination of appropriate landuse controls of other subject lands

Limited areas potentially appropriate for urban development (subject to further studies proving protection of sensitive areas)

AREA SUBJECT TO INQUIRY

APPROXIMATE EXTENT OF URBAN DEVELOPMENT PROPOSED BY LAND OWNERS ON PARTICULAR SITES.



HELENSBURGH
COMMISSION OF INQUIRY

ATTACHMENT 2

Helensburgh Town Centre & Environs Town Planning Proposal

Prepared for:

Wollongong City Council

Prepared by:

Kellogg Brown & Root Pty Ltd &
Lakatoi Universal Pty Ltd



29 November 2004

9SU739-B01-001

Contents

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11. Questions and Answers





1. Who we are?

Stephen Bargwana – Principal Planner KBR

- 30 years' planning experience
- Currently working at West Dapto and for BHP Billiton Illawarra
- Many commissions for DIPNR

Ian Rowbottom – Principal Hydrologist/Environmental Engineer

- 20 years hydrology and environmental experience
- Expert witness Land and Environment Court
- Supreme Court – Helensburgh stormwater management issues

Curt Hogarth, Janenne Kidd

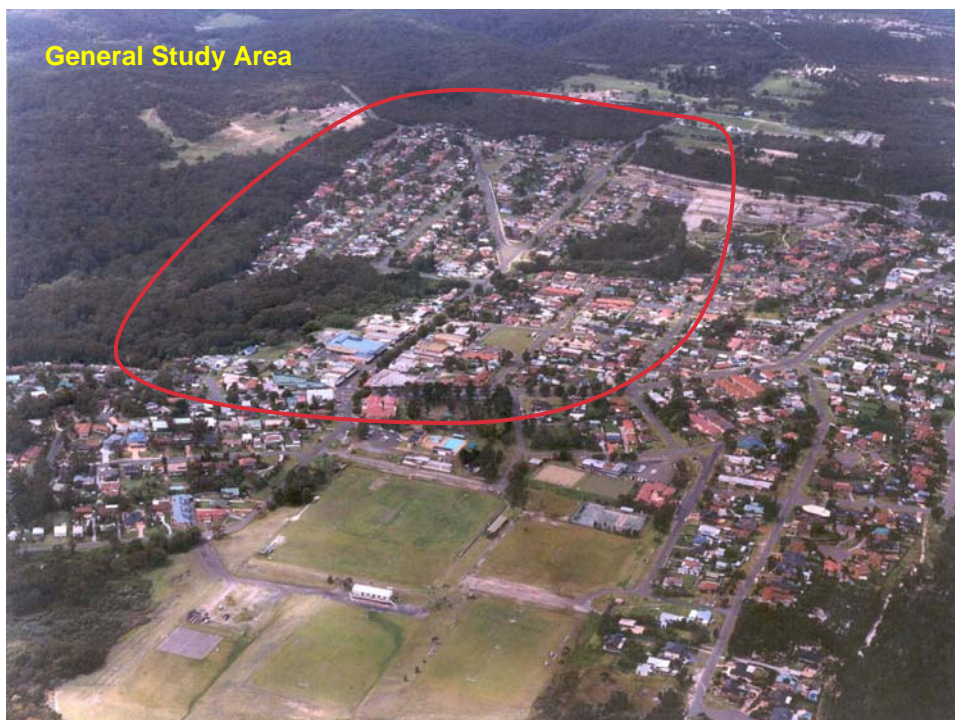
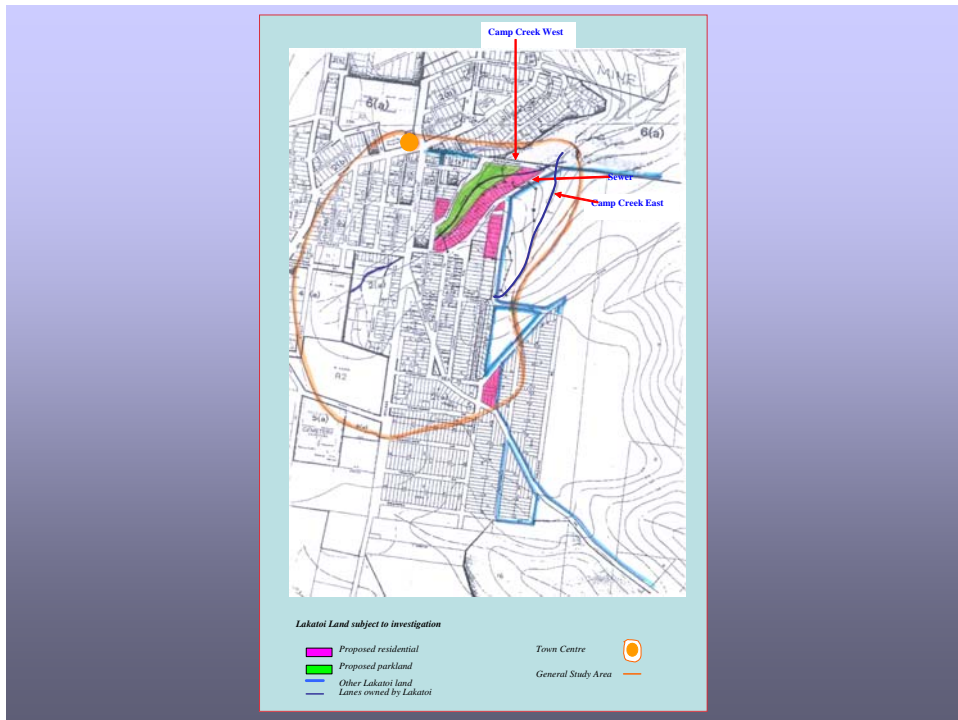
- Members, Hogarth Family and Directors of Lakatoi
- Major Landowner, Lakatoi Universal Pty Ltd
- Local resident – 25 years
- Owner Otford Valley Farm

KBR

2. Purpose of Presentation

- **Outline current problems – Lakatoi Town Centre Lands**
- **Propose a new strategic planning process**
- **Demonstrate how public will benefit**
- **Achieve Council support, involvement and partnership**
- **Agree on an implementation action plan**

KBR





3. Planning History

- 1885 Helensburgh subdivision certificate date
- 1982 town residue lots (172 titles) purchased by Lakatoi
- 1985 Helensburgh recommended for Illawarra Urban Development Program
- City of Wollongong Local Environmental Plan 1990
- Commission of Inquiry (1994) – Appropriate Land Use and Zonings in vicinity of Helensburgh
- Part of land rezoned to Environmental Protection contrary to recommendation of COI

KBR



OFFICE OF THE COMMISSIONERS OF INQUIRY
FOR ENVIRONMENT AND PLANNING

The Hon Robert Webster MP
Minister for Planning and Minister for Housing

December 1994

Appropriate Landuse and Zonings in the Vicinity of Helensburgh

“It is recommended that there be no change in the current Local Environmental Plan or current zonings until further studies are undertaken primarily aimed at identifying existing and potential impacts from various landuses, then setting of appropriate environmental objectives/standards, followed by identification of a cost-effective, strategic catchment management plan to control existing catchment pollution sources and determine appropriate landuse controls capable of meeting these objectives.”

4(a). Current Planning Issues – Positives

- Helensburgh has underutilised strategic infrastructure
 - » substantial public infrastructure investments
 - » on/off ramps and freeway access Sydney, Sutherland, Wollongong
 - » railway station access, Otford and Helensburgh
 - » beach and coast access
 - » national park access
 - » availability of water, sewer and telecoms

KBR





4(b). Current Planning Issues – Negatives

- Zonings not protecting environment or water catchment
- Poor drainage and stormwater quality controls
- Lakatoi lands used for unregulated drainage discharge
- Council / adjoining land owners demand for lane access
- Trail bike riding, weeds, litter and erosion on town centre lands
- Poor town centre urban design

KBR













5. Need for Strategic Planning Approach

- COI recognised urban capability potential
- COI recommended further studies including water quality control
- Helensburgh and environs town plan needs upgrading
- Lakatoi controls considerable town centre land
- Public water, sewer and road investments in place but underutilised
- Significant studies and knowledge already exist

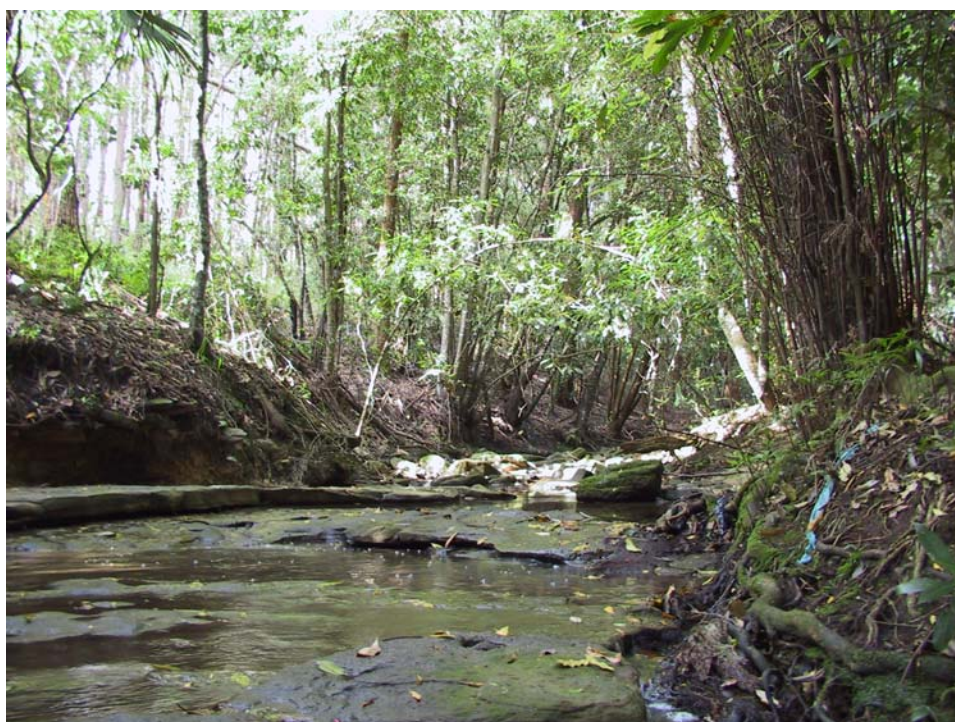
KBR

6. Public Benefits

- Improved stormwater quality
- New town parkland, walkway and trails
- Better bushland conservation
- Improved control of weeds, litter and anti-social activity
- Coordinated rather than *ad hoc* development
- Promotes rejuvenation of Town Centre from mining past
- Solves current lane dispute

KBR







7(a). Planning Studies Required

- Stage 1 – Investigation
 - Flora and fauna
 - Bushfire management
 - Stormwater management strategy for both arms of Camp Creek
 - Residential land demand
 - Land use masterplan and urban design principles
- Stage 2 – Rezoning
 - Local Environmental Study
 - Draft local environmental plan, development control plan and Section 94 contribution plan

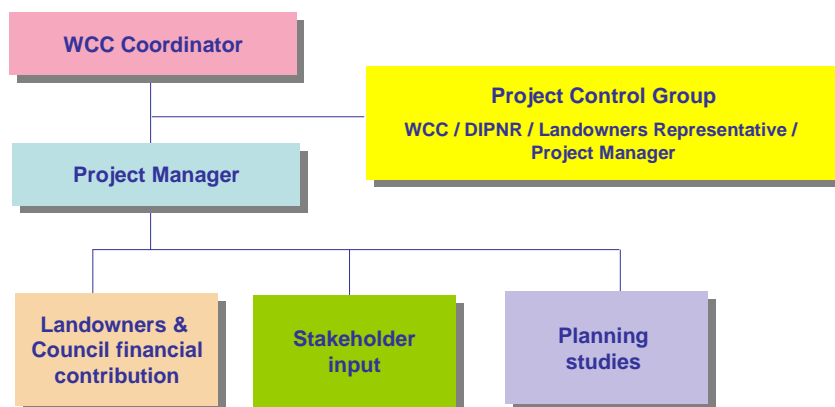
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7(b). Planning Process



KBR

8(a). Management



KBR

8(b). Indicative Cost

Stage 1

• Project management	\$40,000
• Flora and fauna study	\$20,000
• Bushfire	\$10,000
• Camp Creek Stormwater catchment strategy	\$40,000
• Residential land demand	\$ 8,000
• Land use master plan and urban design	\$60,000

Total (exclusive G.S.T.)	\$179,000

KBR



8(c). Time

Time

- December 2004 Agree to proceed
- December to January 2005 Prepare briefs
- June 2005 Complete studies
- July to August 2005 Council considers
- August to January 2005 Statutory plan process/exhibition
- January to March 2006 Minister approves plan

KBR

9. Consequences of 'doing nothing'

- Helensburgh stormwater quality discharge remains poor
- Conflict on lane access and drainage easements over Lakatoi land
- Continuation of weed, litter and anti-social activity on town centre land
- Proliferation of *ad hoc* development
- Piecemeal sale of town lots in 7(d) zone
- Small landowners pressure on Council for zoning change
- Helensburgh urban design and character suffers

KBR

10. Conclusion

Conclusion

- Opportunity to significantly improve Helensburgh
 - stormwater quality
 - town centre – park and trails
 - appearance and amenity
 - resolving lane, land access and drainage easement
- Capitalise on strategic infrastructure investment
- Provides sound growth for future
- Alternative is fragmented piecemeal development
- Lakatoi a willing partner and contributor
- Win:win for all parties in joint initiative

KBR

11. Next Step

Next Step

- Council agree to strategic planning process
- Council allocate budget and personnel
- Project Control Group established

Thank You

Questions and Answers

KBR



ATTACHMENT 3

**RECOMMENDATION – DEVELOPMENT & PLANNING COMMITTEE – 6 FEBRUARY 1995
APPROPRIATE LANDUSE AND ZONINGS IN THE VICINITY OF HELENSBURGH –
HELENSBURGH COMMISSION OF INQUIRY
REPORT OF MANAGER PLANNING**

PRECIS

Commissioner (Dr) Mark Carlton has completed his report following the Commission of Inquiry into Landuse, Planning and Development Proposals at Helensburgh.

Robert J Webster MLC, the Minister for Planning and Minister for Housing has forwarded the report to Council, as agreed, so that Council can consider the draft Local Environmental Plan in the light of the Commissioner's findings.

The Minister comments that the Inquiry has been a useful forum to bring together a variety of views and issues about the environmental consequences of land uses and development in the area. He is confident that the report will assist Council in its decisions about future planning and development at Helensburgh.

RECOMMENDATION

- 1 The Minister for Planning be advised in terms of this report, namely:
 - a Council agrees with the findings and recommendations of the Inquiry in terms of on-going studies, trials, monitoring, standards etc. required to be undertaken before any land is deemed suitable for or rezoned for urban development.
 - b Council agrees that an independent body such as a sub-committee of the Hacking River Catchment Management Committee undertake such studies and reviews all findings with consultation with Council.
 - c With regard to zoning:
 - i Council agrees that no rezoning occur at this time for the following land areas:
 - Gills Creek land (cleared area);
 - LCE (south) land (cleared and filled area);
 - vegetated area of Gills Creek land;
 - Land Pooling land (area adjacent to existing urban area only).

- ii Council requests that the following land be immediately rezoned 7(d) Hacking River Environmental Protection.
 - Land Pooling land (with exception of area adjacent to existing urban area);
 - Landcom (northern area);
 - LCE (south) ridge areas;
 - LCE (north) east of tip.

 - d Council agrees that the following land be rezoned Environmental Protection.
 - Landcom (two small sites);
 - LCE (near tip but south of Landcom (northern area));and the Minister be requested to rezone this land 7(d) Hacking River Environmental Protection.

 - e Council agrees that unless appropriate improvements in stormwater quality and catchment impacts can be appropriately demonstrated, then all of the subject lands be zoned Environmental Protection.
- 2 The Minister be requested to review the Hacking River Catchment Management Committee in terms of representation, skills, funding and administrative support to ensure that the Committee is adequately resourced and capable of undertaking the studies, trials etc. required as recommended by the Inquiry and that support for this be requested from Sutherland Council.
 - 3 The Minister be requested to review Council's representation on the Committee and appoint Council's first nominated representative to the Committee.
 - 4 Council agree to contribute limited funding to carry out recommended studies, trials etc., at the ratio of 1:2:2 (Council, Government, landowners).
 - 5 An environmental management plan be prepared for the Helensburgh urban area and the Hacking River Catchment Management Committee be requested to give priority to the preparation of such plan with consultation with council.
 - 6 A draft Local Environmental Plan be prepared amending Local Environmental Plan 1990 with a view to prohibiting dual occupancy development and multi unit development on land zoned 2(a) at Helensburgh and the draft plan be exhibited in



- accordance with the provisions of the Environmental Planning and Assessment Act.
- 7 Development Control Plan No. 9 (Residential Standards) be amended to set minimum lot size of 550 square metres for residential subdivision on land zoned 2(a) at Helensburgh and the draft amending plan be exhibited in accordance with the provisions of the Environmental Planning and Assessment Act.
 - 8 The lack of sewerage at Otford and Stanwell Tops, being a major source of pollution of the Hacking River, be brought to the attention of the Government and strong representation be made requesting urgent allocation of funds to sewer these areas.
 - 9 The Environment Protection Authority (EPA) be requested to take urgent action to remediate point sources of pollution identified by the Inquiry, namely:
 - Otford Valley Farm;
 - the industrial area south of Lawrence Hargrave Drive;
 - Symbio Animal Farm;
 - Horse activities in the Gills Creek catchment.
 - 10 The Minister be advised of Council's other resolutions regarding the above matters and be requested to support such initiatives of Council.

BACKGROUND

The Commission of Inquiry stemmed from resolutions of Council in 1980 to prepare a draft Local Environmental Plan for land surrounding Helensburgh. The Plan was completed in conjunction with State Government Departments in 1989 and adopted by Council for exhibition purposes only. Based on submissions received to the exhibited Plan, Council resolved in 1991 to reject the draft Plan and to rezone the subject lands to an Environmental Protection zone (Attachment 1).

In 1992, the Department of Planning (DoP) gave authority to exhibit the draft Local Environmental Plan for the Environmental Protection zones. In 1993, Council resolved to rezone the land as exhibited except for the Gills Creek Catchment and defer consideration of the Gills Creek Catchment pending the outcome of mediation between interested groups (which mediation was subsequently abandoned). Following repeated requests for the Minister for make the draft Plan, the Minister announced the appointment of a Commission of Inquiry on 30 March, 1994.

Terms of Reference of the Inquiry were to assess the capability of certain land in the general vicinity of Helensburgh, to sustain various land use options without causing

significant environmental degradation and to make recommendations on appropriate land uses and zonings based on the assessment of capability and taking into account various matters relating to water quality, the impact on the Royal National Park, economic costs and other matters (Attachment 2).

Approximately 700 submissions were made to the Inquiry by 244 parties and around 7,000 submissions (mainly pro forma letters made in response to the exhibited draft Local Environmental Plan) were also considered. In total, over 25,000 pages of documents, (including background material), and over 50 consultant reports have been received during the Inquiry. Nearly five weeks of public hearings, including 3 days of site inspections and 3 round table sessions were undertaken between 15 July and 15 November, 1994. Overall, there were 24 days of hearings.

Council joined with Sutherland Council to engage the services of Barrister, Mr T Robertson and various expert consultants in the fields of hydrology, hydrological modelling, flora and fauna, freshwater biology, ecosystem management and soils. In addition, Council was represented at the Inquiry by Mr P Cumming - Manager - Planning, Mr A Doughton - Assistant Manager - Planning, Ms A Trezise - Planner, Mr G Whittaker - Special Projects Engineer and Dr I Yassini - Scientist and Water Control Officer.

Total cost to Council and Sutherland Council amounted to about \$85,000. In addition staff time and on-costs for Council were in the order of approximately \$35,000.

INQUIRY FINDINGS AND RECOMMENDATIONS

The findings and recommendations of the Commissioner are set out below.

A FINDINGS

The findings of the Commissioner are attached (Attachment 3).

The overall term of reference was **“to assess the capability of land in the general vicinity of Helensburgh, ... to sustain various land use options without causing significant environmental degradation.”**

- There are extensive areas with environmental protection attributes and smaller areas with identified urban and industrial development potential.
- Extensive vegetated areas have environmental protection attributes and should be conserved. These are the eastern, northern and southern peripheral areas which are generally not suitable for urban land use due to steeper slopes, related moderate to high erosion hazard, and/or the need to conserve or protect the



natural vegetation and soils of the area. These areas should be considered for environmental protection.

- Generally the flatter, cleared and presently disturbed or developed western most and south western areas, (being certain areas of Gills Creek and Lady Carrington Estate (LCE) (south) land, are assessed to have potential urban capability (subject to further studies including existing catchment impacts, identification of necessary standards and determination of appropriate land use controls). Performance of water quality controls is required to be proven and trialing would be necessary. Such trials are integral to the previously mentioned studies. Should these studies and assessment not find that sensitive areas would be protected or water quality or impacts be improved for the catchment, the Environmental Protection zoning is recommended.
- Previously disturbed and cleared areas of Gills Creek areas and a smaller cleared and filled area of LCE (the former quarry area) have potential for urban capability, but surface studies are required to more accurately define such areas as well as to define the necessary controls, limits or other requirements. Unless such studies and assessment can demonstrate otherwise, then these areas should also be considered for Environmental Protection zonings.
- As to the other subject lands, Land Pooling land, Landcom land, (the tip site), LCE land (the northern site) and LCE land (south) (other than the filled, cleared and disturbed area) have limited potential urban capability. There is concern and uncertainty as to water quality, downstream impacts, flora and fauna potential impacts and other matters. In total there is greater potential impacts from urban development proposals or rezoning these other lands than for the Gills Creek and LCE (south) cleared and disturbed areas identified as having potential urban capacity.

As to the other terms of reference the Commissioners findings are set out in Attachment 3.

B RECOMMENDATIONS

The recommendations of the Commissioner are attached (Attachment 4).

Briefly the recommendations are -

- 1 There be no change in the current Local Environmental Plan on current zonings until further studies are undertaken, primarily aimed at:-
 - Identifying existing and potential impacts from various landuses.

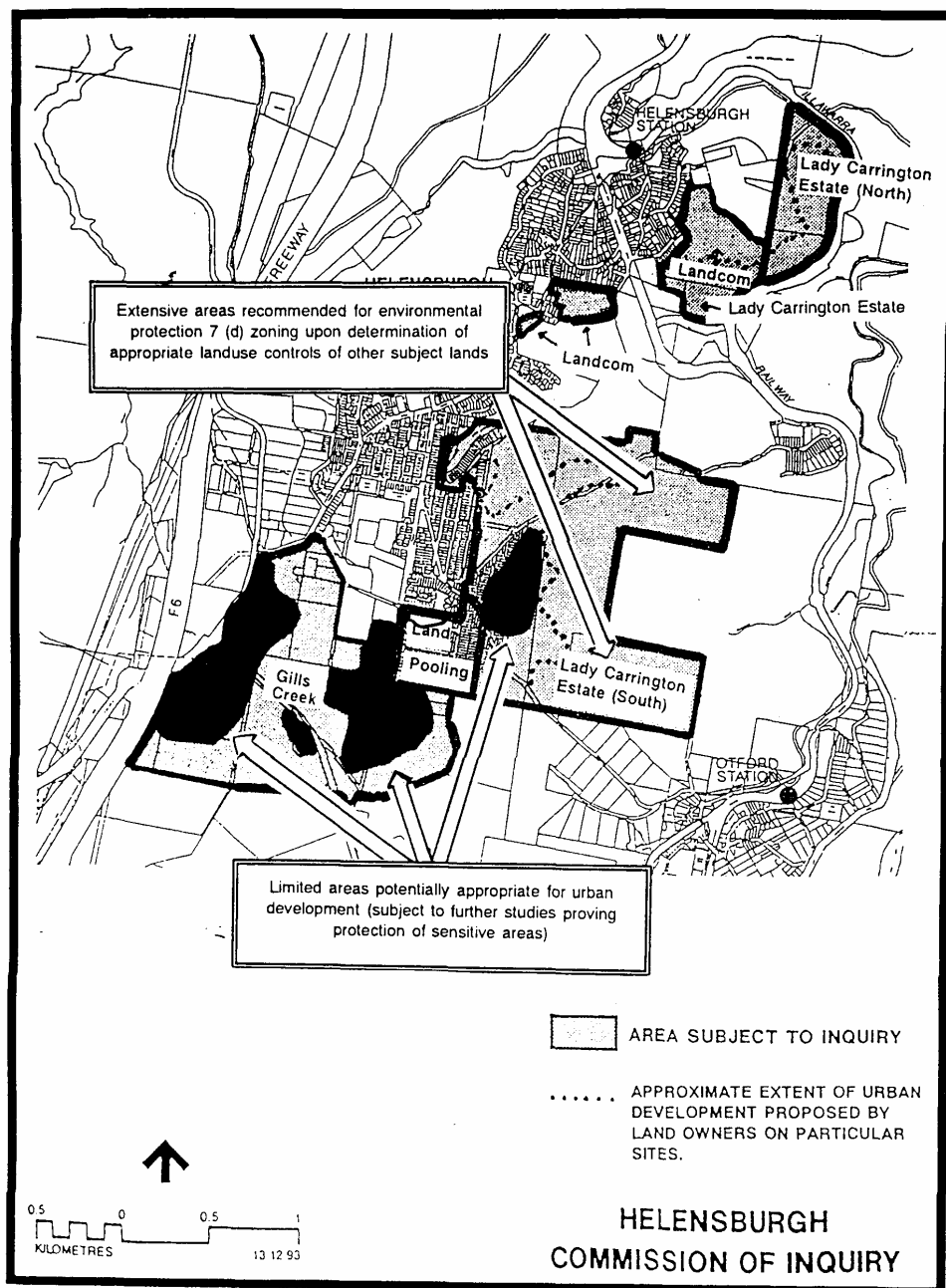
- Setting appropriate environmental objectives.
 - Identification of a cost effective strategic catchment management plan to control existing catchment pollution sources.
 - Identifying land use controls capable of meeting these objectives.
- a) These studies be conducted in an independent fashion i.e. Hacking River Catchment Management Committee (and particularly a nominated sub-committee to comprise one representative from the EPA (Chair), Wollongong Council, a landowner representative (of the subject lands), a conservation representative (or a NPWS representative), and a Department of Planning representative).
- b) Final considerations (regarding catchment management approach, strategies, standards, controls, and success or failure of water quality control trials or other studies), are to be by the Hacking River Catchment Management Committee sub-committee, with recommendations to Council. Any rezoning should not occur until all such recommendations are with Council.

Arrangements for setting up the fundings of such studies should be similar to what has occurred at West Dapto, with joint Council, Government and developer co-operation. Some studies are specific to certain land and these studies will involve funding by that landowner. Other studies are catchment based and therefore involve joint Council, government and landowner joint funding. Any arrangements or disputes as to funding, proportional funding etc are to be decided by the Catchment Management sub-committee.

- 2 Timing of further studies of major or critical importance is uncertain but indicative times are:
- a) Immediate studies (commencing now for up to 12 - 18 months).
- Assessment and location of trial basin. This requires urgent consideration or action.
 - pre-construction impacts with such trials.
 - Construction - erosion - sedimentation study involving detailed assessment of various soil losses for soils, slopes and vegetation cover.
- b) Longer term studies (12 months minimum but may require 3 years awaiting representative condition requirements).



- Existing water quality, water quality impacts and environmental impacts on the Royal National Park.
 - Cumulative impacts of other land uses and pollution sources on the Hacking River and National Park.
 - Flora and fauna habitat loss involved with urban land uses.
 - Testing and proving water quality pond/wetland proposals associated with land use options. Such trials being undertaken for existing developed Helensburgh area/s where success or failure does not have detrimental impact on downstream areas.
- c) Additional longer term (1 - 3 years) specific studies funded by individual landowners.
- rare and endangered fauna impacts particularly potential impacts on the Sooty Owl (by LCE and Landcom);
 - rare and endangered flora studies on LCE land (by LCE);
 - wildlife corridor impacts from various land uses and buffer areas (by LCE);
 - sizing of storm ponds, potential impacts of partial or untreated stormflows (by all landowners);
 - identification of potentially problematic soils, their management, treatment and construction controls (by all landowners for colloidal soils, and LCE for the filled - cleared area soils).
- 3 Funding of the abovementioned studies is to be by certain or all landowners (with certain Council or Government assistance), the management and assessment of the studies is to be by the Sub-Committee.
- 4 Priority ranking of the subject lands (map below shows location of each land parcel) based on assessment of urban capability are:



- a Gills Creek cleared and disturbed lands.
- b LCE (south) filled, cleared and disturbed area. Unless improvements in stormwater quality and catchment impacts can be appropriately demonstrated, the land should be zoned Environmental Protection.
- c Existing flatter, naturally vegetated central to northern areas of Gills Creek land.



- d Land Pooling land. A fringe of urban or low density urban-rural type development might be possible (around 10-25 lot capacity) adjacent to the northern boundary subject to negotiations in a similar fashion to Council's "Fair Trading Policy" for conservation of the residue of the land.
 - e Landcom (northern area). There is limited existing cleared area and limited urban potential area subject to future closure of the tip.
 - f LCE (south) ridge areas (smaller than proposed).
 - g LCE (north) a substantially reduced area on the smaller and disturbed western boundary area preferably in conjunction with future closure of the tip.
 - h Landcom (two smaller sites) and LCE (near tip but south of Landcom (north area)). Sites have identified environmental attributes and should be considered for Environmental Protection zoning.
- 5 Unless appropriate improvements in water quality and catchment impacts can be appropriately demonstrated, then all of these subject lands should be recommended for Environmental Protection zoning.
- 6 Subject to these further trials, studies, Catchment Management Committee considerations Council should amend the Draft Local Environmental Plan for submission to the Minister.

C COMMENT:

- 1 The Inquiry has found that there is insufficient information available to determine that urban expansion around Helensburgh will not have detrimental environmental impacts. Further that it must be demonstrated that any such urban expansion will have positive impacts in reducing pollution from the existing urban area.

These findings vindicate Council's stand that the land is unsuitable for urban development (with the exception of land in the Gills Creek catchment) and should be zoned Environmental Protection.

- 2 Commissioner Carlton recommended that no land be rezoned Environmental Protection (except for the Landcom land (two smaller sites) and LCE land (near tip site but south of Landcom (north area)) until exhaustive additional studies, trials and monitoring are undertaken to positively rule out any urban capability for

any part of the land. To be realistic however, only two areas have any potential urban capability with limited potential capability for two others:

- Gills Creek (cleared area) has reasonable capability;
- LCE (south) (cleared and filled area) a lower capability;
- the vegetated areas of Gills Creek (the next lowest capability);
- Land Pooling has a lower capability again (catchment improvements are unlikely).

Having regard to the work, time, cost and organisation involved to ensure that urban development, even in the Gills Creek (cleared area) will have beneficial environmental impacts it is very unlikely that Landcom (northern area), LCE (south) (except the cleared and filled area), and LCE (north) will be identified in the near future to be suitable for urban development. These lands should be zoned Environmental Protection now and if found, in future that parts of these lands have urban capability consideration could be given to back zoning then.

3 In relation to the sites which have potential urban capability:

- Gills Creek (cleared area) - the current Non Urban zoning should be retained until the recommended trials, studies and monitoring clearly establish that beneficial environmental impacts will result from future urban development.
- LCE (south) (cleared and filled area) - the current Non Urban zoning should also be retained until the recommended trials, studies etc. carried out as per the Gills Creek land and until urban development is determined appropriate for the Gills Creek land.

If urban development eventually is found to be appropriate for this land any rezoning should be subject to negotiations in a similar fashion to Council's "Fair Trading Policy" for conservation of the residue of the land which the Inquiry finds has vegetation, flora and fauna and wildlife corridor value of significance for the Royal National Park and the community in general.

- The vegetated areas of Gills Creek - this land is the third in rank of land having potential urban capability. However, because it is an integral part of the cleared land (ranked first for potential urban capability) in terms of land ownership catchment, drainage, land use etc. it should also retain in its current Non Urban zone until all the recommended studies are carried out. Land use options however should be reviewed to ensure that new land uses



will not reduce the environmental quality of the land or add to existing water pollution.

- Land Pooling land - the bulk of the land should be zoned Environmental Protection with the exception for a fringe adjacent to the northern boundary which could retain the current Non Urban zone. If the Gills Creek land and the LCE land (south) (cleared and filled area) are shown to be suitable for urban development then the required studies could be undertaken for this land for possible limited urban development (10-25 lots) subject to negotiations in a similar fashion to Council's "Fair Trading Policy" for the conservation of the residue of the land. It is to be noted that the National Parks and Wildlife Service (NPWS) does not categorise the vegetation on the land as having conservation significance in terms of value for addition to the Royal National Park or as a buffer for Park land.

The Helensburgh Land Pooling Group (HLP) have contacted me concerning the Commissioners findings and recommendations. HLP is concerned that the number of lots recommended will make the proposal uneconomic and unachievable. The likely result will be disbanding of HLP which will negatively impact upon Council and the community in that it will be difficult for Council to ensure the land is properly managed in terms of rubbish removal and bushfire protection if negotiations are with each individual land owner instead of one representative body.

The Commissioner in his report comments that Council and HLP should co-operate to find a solution to the landowners predicament. Council of course has given the landowners considerable support over the years in an endeavour to find suitable solutions to their problems. However, if the land is not suitable for urban development the landowners must accept the fact that they will not receive an adequate return on their investment.

In any case whatever stance HLP or individual landowners take Council should continue to be willing to dialogue with them to ensure that the land is managed in an acceptable manner.

The environmental quality of the land is being degraded by unrestrained dumping of rubbish. A management plan needs to be formulated with the landowners to prevent unauthorised access to the land and a bushfire hazard reduction programme formulated to protect adjacent urban development.



- 4 All Government Departments recommended to the Inquiry that a catchment management approach should be taken in determining suitability of land for urban development. The Commissioner has recommended an independent body be responsible for overseeing this and to set appropriate standards and carry out required studies, that is the Hacking River Catchment Management Committee or a sub-committee of that Committee.

The Hacking River Catchment Management Committee would be a suitable body but as it is presently constituted lacks funding, administrative support and required expertise. Further Council's representation on the Committee and indeed the Committee membership needs review also. Council will recall that the Minister appointed Council's alternate nominee (Ms Trezise - Planner) to the Committee instead of Council's principal nominee (Councillor Christian).

Funding is a crucial issue concerning studies, trials and monitoring required to identify land suitable for urban development. Initially these studies and trials are to be carried out on the existing urban area and only if they prove satisfactory are they to be undertaken on land having potential urban capability. These initial studies would require Council funding and resource commitment together with government and landowner contribution. Council has expended considerable sums of money and staff and administrative resource in studying urban expansion at Helensburgh over the past 14 years.

Whether Council wishes to fund further studies must be considered. It is doubtful however whether landowner funding will be forthcoming because of the lack of certainty that the study results will identify suitability for urban development albeit limited urban development. Clear note must be taken of the Commissioners recommendation that unless appropriate improvements in stormwater quality and catchment impacts can be appropriately demonstrated then any or all of the subject lands should be rezoned Environmental Protection.

I think it appropriate though that Council contribute to these studies through the Catchment Management Committee Sub Committee as recommended on the basis of clear commitment by government to commit the bulk of funding required (together with landowners where appropriate). Funding ratio similar to that adopted for major flood studies (2 Federal Government: 2 State Government: 1 Council) could be adopted ie. (2 Government: 2 landowners:1 Council).

- 5 The Inquiry has highlighted unacceptable levels of pollution from Helensburgh urban area and adjacent urban and rural land uses impacting on the Hacking River.
- a Stormwater run-off from Helensburgh urban area is polluting the watercourses flowing to the Hacking River. This pollution will increase



with increase in infill development. (Council has resolved that 40% increase in population is capable with infill development).

The potential to reduce such pollution is limited but certain solutions are available which do not have to always involve land engineering solutions. It was put to the Inquiry that an Environmental Management Plan is required to identify pollution sources and identify options for mitigating such sources. Sutherland Council has offered to assist Council (by providing staff) to prepare such plan. This however, could be done through the Hacking River Catchment Management Committee and should be put on the agenda of that Committee.

- b Because urban development at Helensburgh (whether infill or expansion at periphery) will negatively impact on the environmental quality of the area and Royal National Park infill development should be limited in a similar way to that for the area between Austinmer and Stanwell Park.

Dual occupancy development and multi unit development on 2(a) zoned land should be prohibited and minimum lot size be set at 550 square metres until water quality trials and studies are completed. There is adequate 2(b) zoned land at Helensburgh available for dual occupancy and unit development which can cater for this type of housing demand. It is to be noted that the Water Board advised the Inquiry that infill development at Helensburgh will require augmentation of the water supply from Woronora Dam.

- c A major source of pollution of the Hacking River is effluent from unsewered Otford and Stanwell Tops. At the Inquiry I recommended that the Government be pressed to connect sewer to these areas without delay. This matter should be brought to the Governments attention again and be requested to provide urgent funding for the sewerage scheme.

- d A number of other pollution sources were identified during the Inquiry, namely:

- Otford Valley Town (equestrian centre and horse riding school);
- the industrial area south of Lawrence Hargrave Drive;
- Symbio animal farm;
- horse activities in the Gills Creek catchment.

The Environmental Protection Authority has the legislative power to take action to remediate such pollution sources. The Authority should be urged to take such action as a matter of high priority.

5 The following table briefly summarises the Commissioners recommendations and my recommendations concerning them.

COMMISSIONERS RECOMMENDATIONS		RECOMMENDED RESPONSE
1	Carry out trials/studies - control existing pollution.	Agree
2a)	Independent studies by Hacking River Catchment Management Committee and Sub-Committee (Strategies, standards, controls etc. EPA as chair).	Agree - concentrate studies on existing urban area.
b)	Joint funding on West Dapto Basis.	Agree but limit Council commitment (funding and staff resource).
3	Priority ranking of land capability.	
a	Gills Creek (cleared area)	okay
b	LCE (south) clear and filled area)	okay (racecourse area only subject to "Fair Trading").
c	Gills Creek (vegetated area) but subject to studies of flora/fauna significance.	okay
d	Land Pooling	Very limited development adjacent to existing urban area subject to "Fair Trading".
e	Landcom (northern area)	No - Rezone Environmental Protection.
f	LCE (south) ridge areas)	No - Rezone Environmental Protection.
g	LCE (north) east of tip)	No - Rezone Environmental Protection.



h Landcom (two small sites) LCE (near tip but south of Landcom (northern area) - Environmental Protection zone.	okay
4 If no improvements to stormwater in studies/trials then <u>all</u> should be zoned Environmental Protection.	Agree

CONSULTATION

This item has been considered and is not applicable.

PLANNING AND POLICY IMPACT/FINANCIAL IMPLICATIONS

These matters have been addressed in Inquiry Findings and Recommendations under item C (Comment).

OPTIONS

The options for Council are.

- a Adopt the recommendations above.
- b Give higher prioritisation to a Strategic Plan for the Helensburgh district as a whole.
- c Agree to a priority for planning for the land subject of this proposal by Lakatoi Pty Ltd on behalf of Ensile Pty Ltd because of the proposed public benefits relating to stormwater and water quality control management.

CONCLUSION

The findings and recommendations of the Commissioner overall are disappointing in that they do not rule out land as unsuitable for urban development which clearly have very little prospect of being suitable. However, the findings vindicate Council's stand that, with the exception of the Gills Creek catchment, urban development should not take place because of likely detrimental environmental impacts on the Hacking River and Royal National Park. The only difference is that LCE (south) (cleared and filled land) may have potential for urban development.

The Commissioner has emphasised that a great deal of additional work is required (studies, trials, monitoring, adoption of standards and controls) before any one can say with any certainty that any particular land is suitable for urban development. In the light of this it is better to rezone Environmental Protection all land with a low ranking in terms of urban capability and concentrate resources and energy on those lands which have the highest ranking and on mitigating pollution sources from the Helensburgh urban area and existing landuses.

Therefore the Minister for Planning should be advised in terms of this report.

NB – these Attachments are not included in this 7 March 2005 report.

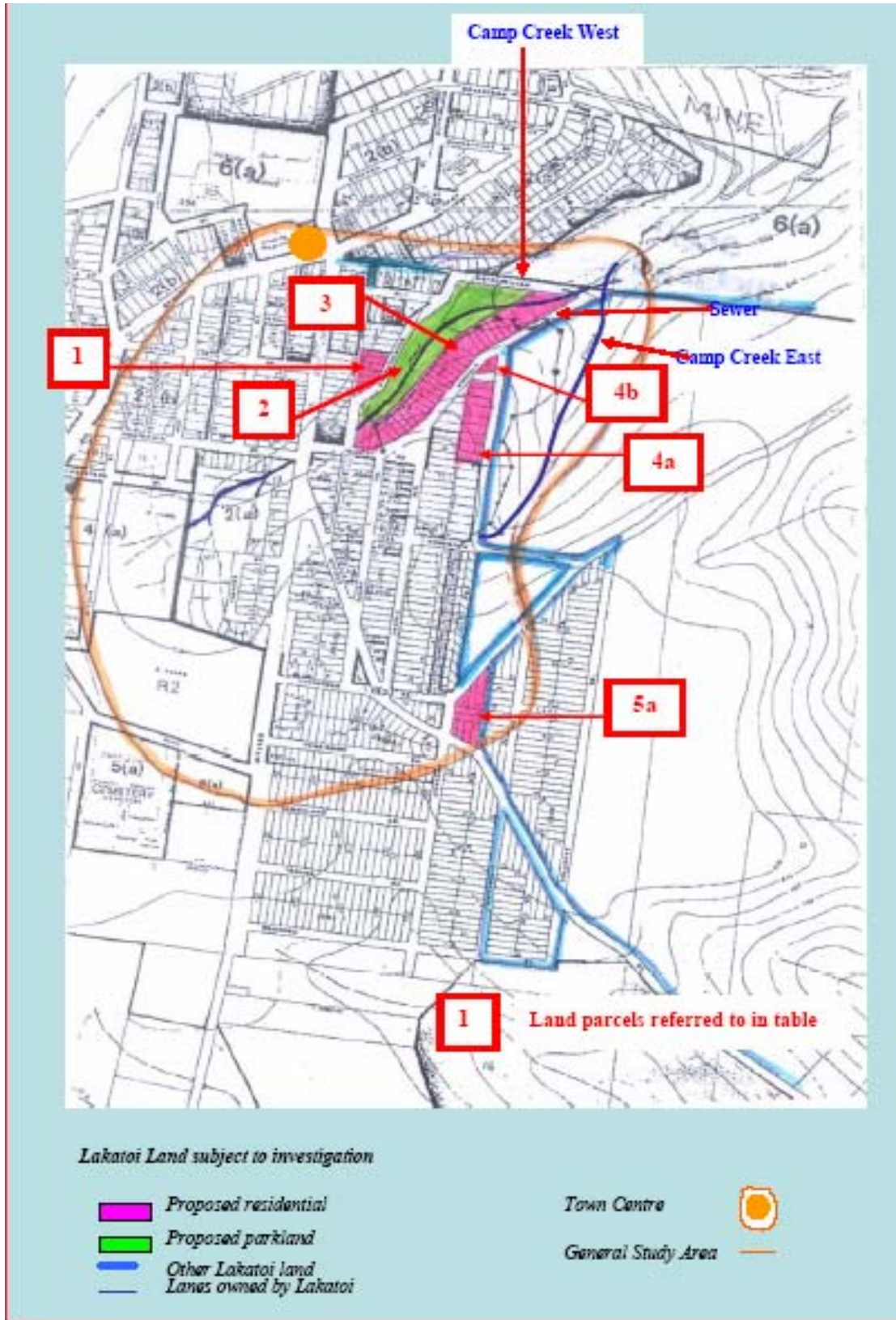
ATTACHMENTS

- 1 Map showing area subject to Commission of Inquiry. (See separate Attachment)
- 2 Terms of reference of inquiry. (See separate Attachment)
- 3 Inquiry findings. (See separate Attachment)
- 4 Inquiry recommendations. (See separate Attachment)

NB – these Attachments are not included in this 7 March 2005 report.



ATTACHMENT 4



ATTACHMENT 5



18 January 2005

AURORA PLACE 88 PHILIP STREET SYDNEY
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TELEPHONE +61 2 9521 5555 FACSIMILE +61 2 9521 8123

BY AIRMAIL: Stephen.Bargwanna@halliberton.com

Mr Stephen Bargwanna
Kellogg Brown & Root Pty Limited

Dear Stephen

Helensburgh Town Centre and Environs Drainage and Access Easements

Reference is made to the abovementioned matter and your request for advice in relation to lands owned by Lakatoi Universal Pty Limited ('Lakatoi') surrounding the Helensburgh town.

Lakatoi currently own land adjacent to the existing Helensburgh village in the catchments of the two arms of Camp Creek. These lands are currently zoned 'Environmental Protection' pursuant to the Wollongong Local Environmental Plan.

In recent periods due to development pressures in residential lots within the Helensburgh village, Lakatoi has been subject to a number of actions under section 88K of the *Conveyancing Act 1919* by adjacent property owners seeking an order of the Supreme Court to impose an easement of necessity over Lakatoi's land particularly to provide for easements for drainage and access. This position is a result of the natural topographic position of the Helensburgh village and its relationship to the Lakatoi lands.

The basis for a successful court imposed easement is 'if the easement is reasonably necessary for the effective use of development of other land that will have the benefit of the easement.' In our view it is likely that where sought for drainage and access such easements are likely to be granted over the Lakatoi land. The result will be a multitude of easements with no integrated planning or environmental controls particularly in relation to stormwater disposal.

Further the mechanism of applications for easements and necessity under section 88K of the *Conveyancing Act* does not permit an integrated approach to provide the necessary planning and design for a system of easements and access arrangements for the best community and environmental outcomes. The system for easements of necessity does not enable there to be a full engineering and environmental study as a prelude for an integrated system of drainage and access facilities for the Helensburgh village over the Lakatoi land.

The reasons why a Council driven approach is preferable is that through conditions of development consent Council can require the utilisation of joint user easements which are in favour of the Council rather than individual properties and can benefit the entire village.

MINTER ELLISON GROUP AND ASSOCIATED OFFICES
SYDNEY MELBOURNE BRISBANE CANBERRA ADELAIDE DUNMOUTH GOLD COAST



Kellogg Brown & Root Pty Limited
18 January 2005

2

Moreover the necessary funding for both planning, design, construction and environmental controls can be re-couped either by Section 94 Contributions where a contributions plan is in place or by the provision of some off-set benefit to Lakatoi.

Where stormwater drainage runs off Council owned roads or Council lands the Council is in the same position as private landowners. Where Council has concentrated overland flow and discharges over Lakatoi land such discharges are unlawful without Council obtaining a relevant easement. In addition where such stormwater discharge contains pollution the property owners and the Council whose water is being discharged on Lakatoi land are potentially committing an offence under section 121 of the *Protection of the Environment Operations Act*.

The current ad hoc approach of individual property owners seeking easements of necessity under section 88K of the Conveyancing Act or alternatively permitting unlawful discharges of stormwater across Lakatoi land provides no adequate basis for an integrated and coordinated system which is properly designed and engineered to prevent erosion, meet adequate capacity and has appropriate environmental controls to ensure no pollution to receiving waters.

A coordinated integrated ultimately requires the Council to take the initiative for the provision of a coordinated approach. This can be achieved in two ways:

- (a) Council initiates a study for the design and location of an appropriate stormwater system and makes a contributions plan under the Environmental Planning and Assessment Act to provide the funding for its implementation; or
- (b) Council reaches an agreement with Lakatoi for Lakatoi to undertake this work at no cost to Council or other landowners on the basis of the granting of other development rights to Lakatoi in relation to Lakatoi held lands.

If you require any further information please contact John Whitehouse on 9921 4285.

Yours faithfully
MINTER ELLISON

John Whitehouse

J F Whitehouse
Partner

Contact: John Whitehouse Direct phone: +61 2 9921 4285 Direct fax: +61 2 9921 8378
Email: john.whitehouse@minterellison.com
Our reference: JFW

PLEASE QUOTE

Ref: EXEC:DB:djb

Ext: 7479

File No:

Memo to be Filed □

4 March 2005

**LORD MAYOR
DEPUTY LORD MAYOR
ALL COUNCILLORS
ACTING GENERAL MANAGER
ACTING DIRECTOR CITY SERVICES
DIRECTOR CORPORATE & GOVERNANCE
MANAGER STRATEGIC PLANNING**

**ITEM 2 – ENVIRONMENT & PLANNING COMMITTEE – 7 MARCH 2005 –
LAKATOI LANDS, HELENSBURGH**

Further to the above report, I attach a letter from KBR Pty Ltd on behalf of Lakatoi Pty Ltd that is relevant to the Committee's consideration of this report at the Environment & Planning Committee meeting of 7 March 2005.



David Broyd
Director
Environment & Planning

att

SB:slv

23 February 2005

David Broyd
Wollongong City Council
SOUTH COAST MAIL CENTRE NSW 2521

Dear David

Further to the KBR letter of January 25 and discussions with Council officers I would like to confirm the intent of Ensile, subject to substantial rezoning and development approvals as proposed, to fund:

- water quality improvement works on Ensile land for Camp Creek, both east and west arms, which could include gross pollutant traps, trash racks, wetlands, grass swales etc.
- public dedication for open space and drainage of parcel 2 DP 2644 comprising 3.05 ha on Camp Creek west arm and construction of park steps, trails, boardwalks and associated weed, litter and debris removal.

The above works would be specified in the proposed planning studies, including a section 94 infrastructure plan, to be funded by Ensile and agreed with Council.

Ensile looks forward to working in partnership with Council on this urban revitalisation and environmental rehabilitation project.

Yours faithfully,



Stephen Bargwanna
Principal Planner