24th August 2017
MPS Ref: 34/2016

The General Manager
Hawkesbury City Council
PO Box 146
WINDSOR  2756

Attention: William Pillon

Dear William

OBJECTION TO DEVELOPMENT APPLICATION
RECREATION FACILITY (MAJOR) – WORLD POLO CHAMPIONSHIPS 2017
VARIOUS PROPERTIES – RICHMOND LOWLANDS & RACECOURSE ROAD,
CLARENDON
DA 439/17

I refer to the subject application and on behalf of my client, Marshall Rural P/L, I hereby
wish to object to the proposed development on the following grounds:

1. The application is by definition Integrated Development and as such it is submitted
   that the proposal fails to comply with Division 5 of the Environmental Planning &
   Assessment Act 1979 and Division 3 of the Environmental Planning & Assessment
   Regulations.

2. The application seeks to rely upon the use and occupation of unauthorised
   structures and for which a lawful Building Certificate has not been obtained under
   Section 149D of the Environmental Planning and Assessment Act.

3. The application seeks to rely upon an exception to a development standard under
   Clause 4.6 of the Hawkesbury Local Environmental Plan 2012. It is submitted that
   the submitted Clause 4.6 submission is not well founded and does not satisfy the
   applicable tests as determined by the Land & Environment Court of NSW.

4. The application does not contain a Risk Management & Evacuation Plan that has
   been prepared in consultation with the State Emergency Service contrary to the
   requirements of Clause 6.12(5) of the Hawkesbury Local Environmental Plan 2012.

5. The application seeks to utilise land at 15 & 15A Racecourse Road, Clarendon and
   occupied by “Hawkesbury Race Club” for the purpose of a “car park” and which is
   a use prohibited upon land zoned RE2 – Private Recreation.
6. The application seeks to undertake activities (a recreational paddling boat facility) upon land zoned E2 – Environmental Conservation in circumstances where such a use is prohibited and no assessment has been undertaken of the impact of such an activity upon what is a sensitive ecological area and where such a use is prohibited.

7. The application is not accompanied by a detailed ecological constraints and opportunities analysis which gives consideration to the potential impacts of all activities proposed to be undertaken upon the sensitive natural environment occurring both on and adjoin the site.

8. The application is not accompanied by a hazardous material assessment in relation to the existing authorised and unauthorised structures erected upon the site.

9. The application is not accompanied by appropriate documentation and certification in relation to the unauthorised fill and earthworks located upon the site and which are to be utilised as part of the subject application. Importantly the application is not accompanied by an appropriate assessment under SEPP No.55 in relation to the potential presence of contamination within the unauthorised fill.

10. The applicant has not demonstrated the ability of the existing amenities located upon the site to cater with the anticipated patronage and strategies to be implemented in the event that the existing system reaches capacity. This is considered to be critical given the sensitive nature of the site and its proximity to the Hawkesbury River and local wetlands.

11. The application has not been accompanied by information detailing how the applicant proposes to comply with Clause 6.12(4)(b) of the Hawkesbury LEP in relation to the restoration of the site at the completion of the event.

12. The application does not include details of the proposed treatment of the proposed parking areas, access roads and pathways.

13. The cost of works as identified on the Development Application Form is not considered to correctly reflect the true cost of the proposal including the construction costs of the unauthorised structures upon which it relies. This has the potential to deny Council and the community the collection of an applicable Section 94A Contribution.

14. The application has the potential to result in unreasonable acoustic impacts upon adjoining properties.

15. The proposal has the potential to result on unreasonable and unsafe traffic impacts for adjoining property owners and road users in general.
Detailed Explanation of Above Objections

The following detailed explanation is provided in relation to the nominated objections.

1. **The application is by definition Integrated Development and as such it is submitted that the proposal fails to comply with Division 5 of the Environmental Planning & Assessment Act 1979 and Division 3 of the Environmental Planning & Assessment Regulations.**

   The subject application as detailed on the plans submitted proposes works and uses located within 40m of a watercourse or water related body. On this basis, it is our understanding that the application is by definition Integrated Development in accordance with the requirements of Division 5 of the Environmental Planning & Assessment Act 1979 and Division 3 of the Environmental Planning & Assessment Regulations together with the requirements of the Water Management Act 2000.

   I have undertaken a review of the exhibited Development Application Form as submitted by the applicant and note that the application form has not been marked as comprising Integrated Development.

   I am also unaware if the Integrated Development fee of $320.00 has been paid to the NSW Office of Water.

   It is therefore submitted that the application has not been properly made and therefore cannot be approved.

2. **The application seeks to rely upon the use and occupation of unauthorised structures and for which a lawful Building Certificate has not been obtained under Section 149D of the Environmental Planning and Assessment Act.**

   The application identifies that it in part seeks approval to use a number of unauthorised structures and works as part of the proposed World Cup of Polo and that separate Section 149D Building Certificate Applications have been submitted for those structures.

   It is noted that despite a number of requests for information regarding those Building Certificate Applications that no information has been provided to date.

   Notwithstanding the above it is noted that the application in relation to the unauthorised works and structures states that:

   a. A Section 149D Building Certificate Application will/has been lodged in respect of the unauthorised works/structures.
b. That a separate Development Application will be submitted for the subsequent use of the unauthorised work/structure post the Polo Championships.
c. That the unauthorised works/structures will be used for a purpose related to the Polo Championships.

In relation to the subject application and the proposed regularisation of the unauthorised works/structures it is submitted:

a. That prior to the Council being able to approve a Section 149D Building Certificate Application for each of the unauthorised works/structures the Council must first approve its lawful permanent use.
b. That absent the submission of a Development Application for the permanent use of the unauthorised work/structure the only application that the Council currently has before it for the use of the unauthorised work/structure is associated with the Polo Championships and which in accordance with Clause 6.12(6) of the Hawkesbury LEP expires on the 31st December 2017.

It is therefore my opinion that absent a Development Application to use the unauthorised work/structures for a permissible use (beyond 31st December 2017) that the Council cannot lawfully issue a Section 149D Building Certificate for the unauthorised work/structures and as such those structures cannot be approved for use as part of this application.

Council cannot rely upon a temporary land use, the permissibility of which will expire on the 31st December 2017, to justify the regularisation of an unauthorised structure.

3. The application seeks to rely upon an exception to a development standard under Clause 4.6 of the Hawkesbury Local Environmental Plan 2012. It is submitted that the submitted Clause 4.6 submission is not well founded and does not satisfy the applicable tests as determined by the Land & Environment Court of NSW.

Recent decisions of the Land & Environment Court of NSW have set out the correct procedures to be followed in determining whether a Clause 4.6 submission is properly made and can be relied upon by a consent authority.
It is my opinion that the Clause 4.6 submission is not properly made for the following reasons:

a. The objection has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard in accordance with Clause 4.6(3)(b) of the LEP.

b. The objection has not in my opinion demonstrated that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out as required by Clause 4.6(4)(a)(ii) of the LEP.

On the basis of the above it is my opinion that the Council should not rely upon the submitted Clause 4.6 submission.

4. The application does not contain a Risk Management & Evacuation Plan that has been prepared in consultation with the State Emergency Service contrary to the requirements of Clause 6.12(5) of the Hawkesbury Local Environmental Plan 2012.

Clause 6.12(5) of the LEP states that:

(5) Development consent must not be granted under this clause to development that is likely to increase visitation to the land to which this clause applies, unless the consent authority is satisfied that a risk management and evacuation plan has been prepared in consultation with the State Emergency Service.

It is my opinion that no evidence has been provided to the Council which demonstrates that a risk management and evacuation plan has been prepared in consultation with the State Emergency Service.

Reference is made to Section 6 (page 5) of the submitted Risk Management Plan within which there is no reference to the State Emergency Service as being a stakeholder which the applicant has engaged with.

It is also noted that this was a matter identified by the Council as being outstanding within a letter written by the Council to the applicant and dated 27th July 2017.

On the basis of the above it is submitted that the Council cannot approve the subject application.
5. The application seeks to utilise land at 15 & 15A Racecourse Road, Clarendon and occupied by “Hawkesbury Race Club” for the purpose of a “car park” and which is a use prohibited upon land zoned RE2 – Private Recreation.

Council is advised that the land use “car park” is a prohibited land use upon land zoned RE2 – Private Recreation. It is agreed with the applicant that in relation to the existing use of 15 & 15A Racecourse Road, Clarendon by “Hawkesbury Race Club” that a “car park” is permissible as an ancillary use to the primary use of the site as a “recreation facility (major)”.

It is not agreed however that the land use “car park” is permissible as an ancillary use when the “recreation facility (major)” is occurring on an unrelated site.

In such a circumstance (as is proposed here) the land use “car park” is a standalone (primary) land use and must be a permissible use in the zone.

Given that a “car park” is a prohibited land use upon land zoned RE2 – Private Recreation it is submitted that Council cannot approve land at 15 & 15A Racecourse Road, Clarendon for a “car park” under this application.

6. The application seeks to undertake activities (a recreational paddling boat facility) upon land zoned E2 – Environmental Conservation in circumstances where no assessment has been undertaken of the impact of such an activity upon a sensitive ecological area and where such a use is prohibited.

The submitted Statement of Environmental Effects at page 3 states that:

“....with a small pontoon and recreational paddling boat facility proposed in the E2 zone.”

In relation to this proposed use it is submitted that:

a. A recreational paddling boat facility is by definition classified as a “recreation facility (outdoors)”.
b. A “recreation facility (outdoors) is a prohibited use within the E2 zone.
c. The dispensation provided by Clause 6.12 only applies to land zoned RU2 – Rural Landscape.

On the basis of the above the proposed recreational paddling boat facility cannot be approved as part of this application.
7. The application is not accompanied by a detailed ecological constraints and opportunities analysis which gives consideration to the potential impacts of all activities proposed to be undertaken upon the sensitive natural environment occurring both on and adjoin the site.

The subject lands contain sensitive wetlands and in addition adjoin the Hawkesbury River. Pursuant to Clause 6.5 – Wetlands of the Hawkesbury LEP, Council cannot determine a Development Application unless a detailed assessment of the potential impacts of the activity has been undertaken and measures for the mitigation of any impacts provided.

Whilst a Flora and Fauna Report has been submitted with the Development Application it is not considered that the report specifically refers to the activities and uses proposed by the Development Application and the specific locations and impacts of those activities relevant to the wetlands.

This position is supported by the content of Council’s letter dated 27th July 2017.

On this basis it is my opinion that Council cannot approve the subject application.

8. The application is not accompanied by a hazardous material assessment in relation to the existing authorised and unauthorised structures erected upon the site.

Reference is made to Council’s letter to the applicant dated 27th July 2017 wherein the above information was requested.

It is understood that the requested information has not been provided to the Council.

In the absence of this application it is considered that Council cannot approve the subject application.

9. The application is not accompanied by appropriate documentation and certification in relation to the unauthorised fill and earthworks located upon the site and which are to be utilised as part of the subject application. Importantly the application is not accompanied by an appropriate assessment under SEPP No.55 in relation to the potential presence of contamination within the unauthorised fill.

Pursuant to the requirements SEPP 55 an assessment is required to be undertaken to confirm that the unauthorised fill located upon the site does not pose a risk to persons attending the site.
Reference is also made to Council’s letter to the applicant dated 27th July 2017 wherein the above information was requested.

It is understood that the requested information has not been provided to the Council.

In the absence of this application it is considered that Council cannot approve the subject application.

10. The applicant has not demonstrated the ability of the existing amenities located upon the site to cater with the anticipated patronage and strategies to be implemented in the event that the existing system reaches capacity. This is considered to be critical given the sensitive nature of the site and its proximity to the Hawkesbury River and local wetlands.

Reference is made to Council’s letter to the applicant dated 27th July 2017 wherein the above information was requested.

It is understood that the requested information has not been provided to the Council.

In the absence of this application it is considered that Council cannot approve the subject application.

11. The application has not been accompanied by information detailing how the applicant proposes to comply with Clause 6.12(4)(b) of the Hawkesbury LEP in relation to the restoration of the site at the completion of the event.

Reference is made to Clause 6.12(4)(b) of the LEP together with Council’s letter to the applicant dated 27th July 2017 wherein the above information was requested.

It is understood that the requested information has not been provided to the Council.

In the absence of this application it is considered that Council cannot approve the subject application.

12. The application does not include details of the proposed treatment of the proposed parking areas, access roads and pathways.

Reference is made to Council’s letter to the applicant dated 27th July 2017 wherein the above information was requested.

It is understood that the requested information has not been provided to the Council.

In the absence of this application it is considered that Council cannot approve the subject application.
13. The cost of works as identified on the Development Application Form is not considered to correctly reflect the true cost of the proposal including the construction costs of the unauthorised structures upon which it relies. This has the potential to deny Council and the community the collection of an applicable Section 94A Contribution.

It is considered that the development cost of the proposal should properly include the actual costs associated with the construction of the unauthorised structures and works upon which the application relies. The true cost of the development including the unauthorised works and structures should then be relied upon for the calculation of the application Section 94A Contribution applicable to the proposal.

14. The application has the potential to result in unreasonable acoustic impacts upon adjoining properties.

It is considered that in the absence of an independent acoustic testing programme to ensure compliance with the requirements of the submitted Acoustic Report that the acoustic amenity of the surrounding property owners cannot be guaranteed.

It is therefore requested that should consent be granted to the proposal that an independent acoustic testing programme (managed by the Council) be implemented for the course of the event.

15. The proposal has the potential to result on unreasonable and unsafe traffic impacts for adjoining property owners and road users in general.

It is considered that any non-compliance with the submitted Traffic Management Plan and statutory parking requirements has the potential to unreasonably impact upon surrounding property owners.

It is therefore requested that should consent be granted to the proposal that Council rangers undertake regular inspections of the roads adjoining and surrounding the site to ensure compliance for the course of the event.

Summary

In summary, it is our opinion that for the reasons as detailed above that it would be both unlawful and inappropriate for Council to grant consent to the subject application in its current form.
It is requested that should you have any queries regarding this submission that you do not hesitate to contact me to discuss.

Yours Sincerely

Andrew Minto
DIRECTOR