



Hawkesbury City Council

hawkesbury  
independent  
hearing and  
assessment  
panel  
business  
paper

date of meeting: 17 May 2018  
location: council chambers  
time: 11:30 a.m.



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SECTION 2 – Reports for Determination

**Item: 003** CP - DA0332/16 - 396 Bells Line of Road, Kurmond - Subdivision Involving Earthworks, Filling of Dams, Construction of Roads Including Creek Crossing, Installation of Sewer Main and Revegetation of Riparian Area to Create 37 Residential Lot - (137333)

**Previous Item:** 001 - HIHAP (28 March)

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**DEVELOPMENT INFORMATION**

**File Number:** DA0332/16  
**Property Address:** 396 Bells Line of Road, Kurmond  
**Applicant:** North Western Surveys Pty Ltd  
**Owner:** 101 Group Pty Limited  
**Proposal Details:** Subdivision involving earthworks, the filling of dams, the construction of roads including a creek crossing, the installation of a sewer main and the revegetation of riparian area to create 37 residential lots within a community title scheme  
**Estimated Cost:** \$2,000,000  
**Zone:** RU1 Primary Production  
**Date Received:** 23 May 2016  
**Advertising:** 3 to 17 June 2016 and 11 to 25 May 2017

**Key Issues:**

- ◆ Site planning history
- ◆ Attainment of zone objectives
- ◆ Context of surrounding land and future development

**Recommendation:** Refusal

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**REPORT:**

**Executive Summary**

This development application seeks Council's approval for a community title subdivision of land at 396 Bells Line of Road, Kurmond.

The matter was the subject of an assessment report presented to the Hawkesbury Independent Hearing and Assessment Panel meeting of 28 March 2018. This report is reproduced in full as Appendix 1 to this report.

The original assessment report recommended refusal of the application, however the Panel did recognise some merit in the proposal and therefore recommended a deferral to allow the Applicant to consider some changes to the subdivision layout. The Minutes of the Panel meeting are Appendix 2.

The Applicant subsequently submitted to Council a letter dated 6 April 2018 in which they advised that they did not wish to amend the application. This letter is Appendix 3 to this report.

As no amendments will be forthcoming from the Applicant, it is recommended that the Panel determine the application based on the assessment report considered by the Panel at its meeting on 28 March 2018.

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**Previous Panel Consideration and Determination**

As stated, the Panel did consider that the development proposal had some merit. Notably, it recognised that the Development Application had come about following a comprehensive Planning Proposal process; State authorities had given concurrence to the proposal (Roads and Maritime Services, Rural Fire Service and Office of Water); and the site can be connected to mains sewerage.

However, the Panel also recognised the following relevant matters:

- The pattern of proposed development did not demonstrate a differentiation in lot size reflective of the topography and prevailing rural-residential character of the area;
- The road network and site works will have a substantial impact on the rural-residential character of the area; and
- As a consequence of the above two points, there will be visual impact arising from the development.

These considerations lead the Panel to their recommendation that a modified subdivision layout could possibly be more sympathetic to the existing rural-residential character of the area.

**Applicant's Response to Panel Determination**

The Applicant submitted to Council a letter dated 6 April 2018 in which they advised that they did not wish to amend the application.

The basis of the Applicant's response is that they have, for a long period of time, complied with each and every request made of them by the Council in reaching the stage of the current development proposal.

In the view of the applicant, *"this proposal is more in line with being an infill as the properties directly behind us along Silks Road range in size between 701m<sup>2</sup> to the largest at 4 hectares", therefore not only are we compliant but these lots are more in keeping with the current character of the area than is proposed by the Panel*.

**Further Assessment**

The application has been assessed in the original assessment report presented to the Panel meeting on 28 March 2018. With the applicant choosing not to make any amendments to the development proposal, there is no additional or revised assessment report.

The Panel should note that in the recent assessment of a planning proposal for the rezoning of Lot 2 in DP 600414 immediately adjoining the subject site, the Department of Planning and Environment has clarified the correct interpretation of the wording of HLEP Clause 4.1D which deals with exceptions to minimum lot sizes in "Area A" on the Lot Size Map.

This Clause provides that:

- (1) *Despite the considerations provided for under Clause 4.1, 4.1AA and 4.1A, development consent must not be granted for the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map if:*
  - (a) *Arrangements satisfactory to the consent authority have not been made before the application is determined to ensure that each lot created by the subdivision will be serviced by a reticulated sewerage system from the date it is created, and*
  - (b) *The area of any lot created by the subdivision that contains or is to contain a dwelling house is less than 4,000 square metres.*

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The Department's interpretation of this Clause clarifies that within "Area A", subclauses a) and b) are read together and any new lot is required to comply with both requirements of this Clause. This interpretation does not alter the original assessment or the recommendation of that report for refusal.

It is noted however, that the Panel's recommendation identifies the area to the east of the creek corridor as more visually sensitive, hence the requirement for the larger lot sizes. The Applicant's reference in their submission to Council of smaller lots behind the subject site, down to 700m<sup>2</sup>, is assumed to be a reference to those on the eastern side of Silks Road (Lots 1-7 DP 217731). They however are not immediately adjoining the site and not directly within the view corridor. The lots directly adjoining the site, and therefore significantly contributing to the current rural-residential character of the locality, are much larger lots.

There is not considered to be any inconsistency between the Panel's desire for larger lots on the eastern side of the creek and the prevailing subdivision pattern of the adjoining land. The very small 700m<sup>2</sup> lots should not be considered as being determinative in any future decisions on the character of this locality.

It is the successful integration between the prevailing character and the new character arising from additional subdivision that the Panel's decision seeks to achieve.

In this case, the Panel has determined the land directly off Bells Line of Road to be less visually sensitive than that on the upper slopes of the eastern side of the creek. Unless this part of the site is addressed in a different way to the current proposal, it would remain unacceptable.

**RECOMMENDATION:**

That in relation to Development Application No. DA0332/16 at 396 Bells Line of Road, Kurmond, for the subdivision of land into 37 residential lots in a community title scheme, the original recommendation of the assessment report considered by the Hawkesbury Independent Hearing and Assessment meeting of 28 March 2018 be adopted and the application be refused.

**ATTACHMENTS:**

- AT – 1**            Assessment Report presented for 28 March 2018 Panel Meeting
- AT – 2**            Minutes of 28 March 2018 Panel Meeting
- AT – 3**            Letter submitted by 101 Group Pty Limited in response to Panel Decision

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**AT - 1 Assessment Report presented for 28 March 2018 Panel Meeting**

**Item:** Business Paper - Hawkesbury Independent Hearing and Assessment Panel MASTER - 17 May 2018

**Directorate:** City Planning

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**DEVELOPMENT INFORMATION**

**File Number:** DA0332/16  
**Property Address:** 396 Bells Line of Road, Kurmond  
**Applicant:** North Western Surveys Pty Ltd  
**Owner:** 101 Group Pty Limited  
**Proposal Details:** Subdivision involving earthworks, the filling of dams, the construction of roads including a creek crossing, the installation of a sewer main and the revegetation of riparian area, to create thirty seven (37) residential lots within a community title scheme  
**Estimated Cost:** \$2,000,000  
**Zone:** RU1 Primary Production under Hawkesbury Local Environmental Plan 2012  
**Date Received:** 23 May 2016  
**Advertising:** 3 to 17 June 2016 and 11 to 25 May 2017

**Key Issues:**

- ◆ Site planning history
- ◆ Attainment of zone objectives
- ◆ Context of surrounding land and future development

**Recommendation:** Refusal

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**REPORT:**

**Executive Summary**

This development application seeks Council's approval for a Community Title subdivision of land at 396 Bells Line of Road.

The proposed subdivision involves earthworks, the filling of dams, the construction of roads, including one creek crossing, the installation of a sewer main and restoration works to an endangered ecological community in order to support the creation of a Community Title subdivision that will create 37 residential lots.

The land is located within the Kurmond Kurrajong Investigation Area and 396 Bells Line of Road has been subject to a site-specific Planning Proposal, being Planning Proposal No. LEP001/12, that amended the Hawkesbury Local Environmental Plan (HLEP 2012) to allow minimum lots sizes of 2,000m<sup>2</sup>, 1Ha and 1.5Ha. Importantly, this Planning Proposal did not change the underlying zoning of the land from its RU1 Primary Production zone under the Hawkesbury Local Environmental Plan 2012.

At the time of the lodgement of the development application the prevailing provisions of the HLEP2012 required a minimum lot size of 10 hectares and the development proposal was non compliant and could not be approved.

The Planning Proposal and subsequent Amendment to HLEP 2012 was gazetted on 27 January 2017 and amended the relevant Minimum Lot Size Maps for the subject land. As a consequence, it became

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possible for the submitted Development Application to be determined as it proposes lots that are compliant with the newly established minimum lot sizes.

The critical issues in the assessment of the Development Application are:

- Site planning history
- Whether or not the proposed development adequately addresses and satisfies the objectives of the underlying RU1 Primary Production zone
- Whether or not there exists sufficient planning context to enable a properly informed decision on the potential impacts of the proposed development within this locality

The conclusion of this assessment report is that the Development Application not be supported in its current form at this time.

**Description of Proposal**

Pursuant to Section 4.12 of the *Environmental Planning and Assessment Act 1979*, (previously Section 78A(1)), this application seeks Council's approval for a Community Title subdivision at 396 Bells Line of Road, Kurmond, being Lot 2 in DP 607906.

A second property, being Lot 2 DP600414, 2 Inverary Drive, Kurmond is included in the proposal for the purpose of constructing temporary road turning areas at the termination of two internal roads. Future subdivision of this land may proceed in which case these temporary turning areas could be incorporated into formal extensions of the road pattern. The construction of a sewer pump station and creation of a community allotment for the pump station is also included on this second property.

The Development Application was lodged on 23 May 2016. This followed a lengthy process involving the land owners and the Council relating to the future development potential of the land and of the broader Kurmond Kurrajong Investigation Area, resulting in the Council's approval of Planning Proposal No. LEP001/12 and the gazettal of site-specific lot size controls for 396 Bells Line of Road. It is noted that the Planning Proposal was not gazetted until 27 January 2017. To a large extent the development application now being assessed relies upon this decision as its justification.

For correctness the application at the time of lodgement, should have been made pursuant to the provisions of Section 3.39 of the Act (previously Section 72J), as a development proposal contingent upon an amendment to the planning instrument.

The alternative of supporting the application with a formal variation request under Clause 4.6 of HLEP2012 to the minimum subdivision lot size that was still prevailing at the time of lodgement would not of been possible in this case. This is because the provisions of Clause 4.6 as they relate to subdivision within the RU1 Primary Production zone would not have allowed the extent of the necessary lot size variation. Council could not have dealt with the application.

The proposal specifically involves:

- The removal of vegetation to accommodate earthworks and road construction;
- Bulk earthworks associated with road construction, drainage and lot levelling;
- The de-watering, de-silting and removal of three dams;
- The construction of a new intersection off Bells Line of Road, as the primary point of vehicular access to the site the design of which provides for a dedicated right turn lane and a left turn in deceleration lane into the site off Bells Line or Road and dedicated left turn out and right turn out lanes from the site onto Bells Line of Road
- an internal road network to service the residential allotments including a creek crossing that effectively links the north eastern portion of the site with the south western portion of the site;
- The installation of a septic holding tank and pump station within 2 Inverary Drive;
- The installation of a sewer main within Bells Line of Road from the development to Sydney Water's North Richmond Sewerage Treatment Plant;

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- Weed removal and revegetation works within the riparian corridors that will be accommodated within the two larger residential lots; and
- A community title subdivision to create 37 residential lots, two residue lots and one community lot.

Plans of the Proposal are included as Attachment 1.

Two larger residential lots are proposed centrally within 396 Bells Line of Road to accommodate identified watercourses and riparian corridors. These allotments, which are identified as Lots 110 and 126, are to have areas of 1.3Ha and 2.25Ha respectively. The remaining residential lots, which are identified as Lots 101 to 109, 111 to 125 and 127 to 138, are to have areas ranging from 2,000m<sup>2</sup> to 4,000m<sup>2</sup>.

The majority of 2 Inverary Drive is to be created as proposed Lot 39 and is to have an area of 10.94Ha. This allotment contains a dwelling house and would essentially function as a residue lot pending the determination of Planning Proposal No. LEP001/12 which is currently being considered by the Sydney Western City Planning Panel to determine if it should proceed to Gateway.

The proposed residue lots, Lots 40 and 41, will not have a building entitlement. The creation of Lot 40 has been nominated to allow its consolidation with 1 Inverary Drive, whilst Lot 41 is to be used for landscaping and to cater for the intersection works.

A series of restrictions and measures are proposed by the Applicant to retain vegetation and maintain a more rural character for the estate. The proposed Section 88B restrictions and landscaping measures are nominated as follows:

- The implementation of a Vegetation Management Plan over the central native vegetation riparian corridors. This Vegetation Management Plan would be registered over the properties accommodating the riparian corridor;
- The provision of street trees within the local road network;
- The provision of vegetation buffers along property boundaries;
- The provision of building envelopes on the titles of Lots 110 and 126 to minimise the impact on the riparian corridor with the future development of these allotments;
- A restriction on the residential lots to require a minimum housing setback of 18m, with a side setback for corner blocks of 5m;
- A restriction on the residential lots requiring detached main garages to follow the design of the dwelling and to be constructed in the same materials;
- A restriction on the residential lots requiring garages to be constructed at the same time as the main dwelling and to have a minimum footprint of 64m<sup>2</sup>;
- Restrictions on the residential lots outlining that sheds and barns are to be limited to a maximum size of 150m<sup>2</sup> and shall be used for purposes ancillary to the dwelling only;
- A restriction on the residential lots requiring building design, materials and front fences to be approved by the developer's representative prior to the lodgement of an application; and
- The construction of rural-style fencing to the rear and side boundaries of each residential lot;

Each of the residential allotments are to be connected to a proposed private sewer reticulation system which will drain effluent to a septic holding tank and pump station located within Lot 1 which is the community lot. The effluent will then be pumped to the proposed sewer main that will gravity feed all sewerage to Sydney Water's Sewerage Treatment Plant at North Richmond.

The supplied documentation indicates that the private sewer main will be an 80mm pipe constructed wholly within the road corridor of Bells Line of Road for a length of approximately 3km. The proposed method of construction for the sewer main will be by directional drilling and horizontal boring.

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**Site and Locality Description**

The subject land comprises two parcels being:

- 396 Bells Line of Road which is legally described as Lot 2 in DP 607906
- 2 Inverary Drive which is legally described as Lot 2 in DP 600414.

The land is located on the north eastern side of Bells Line of Road and is bound by Kurmond Road to the north, Silks Road to the northeast, Slopes Road to the east and Bells Lane to the west.

The allotments have a combined area of approximately 24.03Ha, with 396 Bells Line of Road having an area of approximately 13.07Ha and 2 Inverary Drive having an area of approximately 10.96Ha. The combined land is generally rectangular in shape, save for irregular frontages to Bells Line of Road. The topography of the properties range in height from approximately 95m AHD at their highest point along Bells Line of Road down to 52-60m AHD for the central gully and watercourses. From the central gully the rear portion of the land then rises again to a height of approximately 84m AHD at the northeastern corner of the site.

396 Bells Line of Road generally consists of cleared pasture and remnant vegetation around the intermittent watercourses. A single dwelling house previously existed on the property however this was demolished with a Complying Development Certificate. The presence of asbestos has been identified in the location of the former house. Access to this property is available from Bells Line of Road.

2 Inverary Road, like 396 Bells Line of Road, comprises of cleared pasture and remnant vegetation. A dwelling house exists to the raised frontal portion of the property. Access to the property is available from Inverary Drive, which is a slip road off Bells Line of Road.

The subject land is located within the broader Kurmond Kurrajong Investigation Area.

Surrounding development generally comprises of rural, rural residential and agricultural land. Land to the northwest fronting Bells Line of Road comprises of a number of large residential lots of approximately 4,000m<sup>2</sup>, whilst land to southeast fronting Bells Line of Road comprises of a number of residential lots of approximately 2,000m<sup>2</sup>. This pattern is common where residential dwellings address the road, more often than not along ridge lines, and provide a semi urban streetscape. This is in contrast to the larger rural properties, such as the subject site, that sit behind and provide the rural views and vistas that are common in the area. These larger sites also accommodate the environmental elements of the locality such as watercourses, areas of native vegetation and steeper topography.

An adjoining property at 406 Bells Line of Road operates as a restaurant known as Barrel 58 and also contains a dwelling house. This commercial property has recently undergone a major renovation. It is serviced by a on site car park to the buildings north with access directly off Bells Line of Road.

Land to the north, northeast and west fronting Kurmond Road, Silks Road and Slopes Road generally comprises of rural and rural residential land. These properties have areas ranging from approximately 4,000m<sup>2</sup> to 10Ha. Properties on the western side of Bells Line of Road generally comprise of rural residential land and have areas ranging from 2Ha to 4Ha.

**Background and planning history relevant to the Development Application**

The Hawkesbury Residential Land Strategy aims to:

- Accommodate between 5,000 to 6,000 additional dwellings by 2031, primarily within existing urban areas;
- Preserve the unique and high quality natural environment of the municipality;

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- Accommodate a changing population, which presents new demands in terms of housing, services and access;
- Identify on-going development pressures to expand into natural and rural areas, as well as new development both in and around existing centres;
- Identify physical constraints of flood, native vegetation and bushfire risk;
- Ensure that the appropriate infrastructure is planned and provided to cater for future development.

The Strategy does not rezone land or approve the development of areas or localities. Instead the Strategy sets a planning framework to assist in the implementation of the above aims and is to be used to guide the preparation and assessment of Planning Proposals.

In response to the recommendations of the Hawkesbury Residential Land Strategy, Planning Proposal No. LEP001/12 was lodged with Council on 26 October 2012 for 396 Bells Line of Road. This Planning Proposal sought to alter the Lot Size Map to permit the subdivision of the land to a greater degree than the 10 hectare minimum lot size that was existing at that time.

The Planning Proposal initially proposed minimum lot sizes of 4,000m<sup>2</sup> however this was later modified to propose minimum lot sizes of 2,000m<sup>2</sup>, 1Ha and 1.5Ha with the provision of reticulated sewer. The larger lot sizes were specifically to address the existing riparian corridor that bisects the site.

The amended Planning Proposal was forwarded to the Department of Planning and Environment for consideration on 17 March 2014 and Council received a revised Gateway Determination on 13 June 2014.

Council resolved on 31 March 2015 to commence structure planning and development contributions planning for the purposes of large lot residential and rural-residential development within the Kurmond Kurrajong Investigation Area. The subject site is within this investigation area.

At its meeting of 28 July 2015 Council adopted an Interim Policy comprising of a local planning approach and the establishment of development constraint principles to guide structure planning and Planning Proposals within the investigation area.

Council also resolved at this meeting that current planning proposals within the Kurmond Kurrajong Investigation Area would "*only proceed to Gateway if the 'fundamental' development constraints have been addressed*".

Part B of the Kurmond Kurrajong Investigation Area Interim Policy contained the following development constraint principles that are to be used in the assessment of Planning Proposals:

*Part B – Development Constraints*

*Planning proposals will not be supported by Council unless:*

1. *Essential services under LEP 2012 and fundamental development constraints are resolved.*
2. *Building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%.*
3. *Removal of significant vegetation is avoided.*
4. *Fragmentation of significant vegetation is minimised.*
5. *Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourse) are located outside of riparian corridors.*
6. *Road and other crossings of water courses is minimised.*
7. *Fragmentation of riparian areas is minimised.*
8. *Removal of dams containing significant aquatic habitat is avoided.*

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On 24 November 2015 Council considered a report on Planning Proposal No. LEP001/12, including the minimum lot size proposal of 2,000m<sup>2</sup> and a draft Voluntary Planning Agreement (VPA) for the development. In response to this report, Council resolved to proceed with the Local Environmental Plan Amendment as follows:

*That:*

1. Council, under the authorisation for Council to exercise delegation issued by the Department of Planning and Environment's Gateway determination, proceed with the making of an LEP that will give effect to the revised proposal described in this report.
2. Council publically exhibit the Draft Voluntary Planning Agreement attached to this report for a minimum of 28 days with the following amendment to Clause 9.3:

*Clause 9.2 does not allow the Council or the Developer to retrospectively apply a section 94 contribution for allotments for which development contributions have been paid in accordance with this Agreement.*

3. The Voluntary Planning Agreement be reported back to Council following public exhibition prior to finalisation.

The Local Environmental Plan Amendment to establish minimum lot size controls of 2,000m<sup>2</sup>, 1Ha and 1.5Ha for 396 Bells Line of Road was gazetted on 27 January 2017. The VPA for the land was executed on 20 April 2017.

Following consideration of a Mayoral Minute, Council at its Ordinary Meeting of 30 May 2017 resolved to undertake a review of the Hawkesbury Residential Land Strategy as follows:

*That:*

1. Council staff initiate a review of the Hawkesbury Residential Land Strategy and in doing so draw on all available data such as Council's recently adopted Community Strategic Plan and additional data as it becomes available, for example, Council's Economic Development Strategy, Council's Comprehensive Hawkesbury Traffic Study, the Hawkesbury-Nepean Flood Risk Management Strategy, the Hawkesbury Tourism Strategy, the Greater Sydney Commission's District Plan, the Rural Land Strategy, the Western Sydney 'City Deal' and data from the recent Census.
2. Council consider the Commonwealth Governments 'City Deal' focus areas in relation to:
  - infrastructure
  - employment
  - housing
  - environment and liveability
  - improving coordination and integration between infrastructure, land use, housing and environmental planning

*as a further consideration in the ongoing assessment of the nine applications that have received Gateway Approval to progress to formal Community Consultation and assessment by Council Planning Officers.*

3. Council reaffirm its previous resolution in relation to new Planning Proposals in relation to land, which read as follows:

*Council not accept any further planning proposal applications within the Kurmond and Kurrajong investigation area until such time as the structure planning as outlined in this report is completed. Council receive a progress report on the structure planning prior to July 2017.*

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4. *Council be provided with regular updates regarding the progress of reviewing the Hawkesbury Residential Land Strategy and associated matters.*
5. *Councillors be invited to attend a Councillor Workshop to further develop and discuss the Hawkesbury Residential Land Strategy.*

Based on this and other resolutions, Council is currently undertaking a review of the Hawkesbury Residential Land Strategy and will not accept further Planning Proposals for subdivision in the Kurmond Kurrajong Investigation Area.

The work arising out of the investigation area is vital to ensuring the appropriate long term outcomes for the Kurmond Kurrajong area. It is anticipated that towards the end of May 2018 recommendations arising out of this work will be available for Council consideration.

**State Legislation, Local Planning instruments, Council Policies, Procedures and Codes to which the matter relates**

State Environmental Planning Policy No 44—Koala Habitat Protection (SEPP No. 44)  
State Environmental Planning Policy No 55—Remediation of Land (SEPP No. 55)  
State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)  
Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) (SREP No. 20)  
Hawkesbury Local Environmental Plan 2012 (LEP 2012)  
Hawkesbury Development Control Plan 2002 (HDCP 2002)

**Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 (previously Section 79C)**

In determining the application, Council is required to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- a) **The provisions of any:**
  - i. **Environmental Planning Instrument:**

**State Environmental Planning Policy (Infrastructure) 2007**

Bells Line of Road is a main road that is owned and controlled by Roads and Maritime Services (RMS).

As the subdivision involves the creation of a new intersection and access road off Bells Line of Road the development requires the concurrence of the RMS under the Roads Act 1993. The proposal is not however defined as 'traffic generating development' under Clause 104 and Schedule 3 of the Infrastructure SEPP.

Having reviewed the application and the most recent design of the intersection, the RMS have advised by letter dated 26 October 2017, that they raise no objection to the proposal on traffic grounds. As noted in the description of the development, the design of the intersection provides for a dedicated right turn lane and a left turn deceleration lane into the site off Bells Line of Road and dedicated left turn out and right turn out lanes from the site onto Bells Line of Road.

The concurrence of the RMS has been provided subject to the imposition of conditions including the entering into a Works Authorisation Deed (WAD) that would enable the applicant to undertake works within the RMS road.

One of the conditions relates specifically to a portion of the site (Lot 2 DP607906) that is identified upon the HLEP2012 Land Reservation Acquisition Map Sheet LRA\_008AA and zoned Classified Road (SP2). This land is required by the RMS for road widening purposes.

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Pursuant to Clause 5.1 of HLEP2012, the RMS is the relevant authority for acquisition of such land. A suitable condition of consent can be imposed on any consent to ensure the land is acquired prior to the release of the Subdivision Certificate.

The final design of the intersection and road design will need to be approved by the RMS prior to the release of the Construction Certificate.

The installation of the sewer main to Sydney Water's Sewerage Treatment Plant is permissible under Clause 106(3C) of the Infrastructure SEPP.

The installation of a sewer main to Sydney Water's Sewerage Treatment Plant is proposed to service the estate with reticulated sewer. The connecting sewer main will be an 80mm pipe constructed wholly within the road corridor of Bells Line of Road for a length of approximately 3km. The proposed method of construction for the sewer main will be by directional drilling and horizontal boring.

Directional drilling is a trench-less method of underground pipe installation. Horizontal boring machines drill a pilot hole that can enter and exit at predetermined locations and change direction to avoid underground obstructions, pre-existing lines and services. The supplied documentation indicates that from this pilot hole, the new sewer pipe can be established without a pre-existing line; thus allowing for a complete underground installation without trenching.

The proposed installation should not interrupt traffic flow or impact existing public assets. However, as the work will be undertaken along the road verges there is the possibility of minor damage during under boring operations. In order to mitigate risk or damage, Council's Development Engineer recommends a bond of \$100,000 in the event that any damage to the road and road verges are not restored to Council standard.

Design and construction of the sewer main will be in accordance with relevant standards and the requirements of Sydney Water. Once the works have been completed, the new sewer main will be surveyed and registered with Dial Before You Dig to ensure the underground sewer main is protected from future excavation and disturbances.

**State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP No. 44 aims to "*encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas, to ensure permanent free-living populations over their present range and to reverse the current trend of population decline*". A series of Flora and Fauna Assessment Reports have been prepared in support of the subject application and the Planning Proposal to ascertain whether a Koala (*Phascolarctos cinereus*) population resides in the area and whether the proposal will impact upon Koala habitat.

The land subject to this application does contain Koala feed species, in particular Forest Red Gums (*Eucalyptus tereticornis*) and Grey Gums (*Eucalyptus punctate*), and accordingly the land does comprise 'potential Koala habitat'.

Whilst no Koalas were observed during ecological surveys, the more significant vegetation onsite along the riparian corridor is to be retained and revegetated which will assist in maintaining potential Koala habitat.

Whilst it will also provide some connectivity between riparian areas on adjoining land, the subdivision layout does not achieve connectivity to the areas identified upon Council's terrestrial biodiversity mapping. See later comments in relation to Hawkesbury Local Environmental Plan 2012. This lack of connectivity is unlikely to maximise the opportunities for the retention and enhancement of koala habitat.

**State Environmental Planning Policy No. 55 – Remediation of Land**

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Clause 7(1) of SEPP No. 55 outlines a consent authority "*must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose".*

Documentation supplied in support of the application indicates that 396 Bells Line of Road has been used in the past for grazing, agricultural and rural residential purposes. Based on this history a Detailed Site Investigation Report including sampling and testing has been prepared for the application.

The report identifies the presence of asbestos material associated with the former dwelling house onsite. The Detailed Site Investigation Report outlines that this material should be removed and disposed of to an appropriately licenced waste facility.

With the implementation of appropriate strategies and validation reporting the Detailed Site Investigation Report concludes that the land is suitable for residential development. If the proposed development is to be approved, then appropriate conditions of consent can be imposed to ensure any necessary site remediation and validation is undertaken prior to the issue of a Subdivision Certificate.

On the basis of the above, it is considered that the Council has adequately considered the question of land contamination and that the proposal can proceed in satisfaction of the provisions of SEPP No. 55.

***Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River***

The subject site falls within the boundary of SREP No. 20. This Policy aims "*to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context*".

SREP No. 20 requires an assessment of local environmental plans, development control plans and development applications with regard to the general and specific considerations, policies and strategies set out in the Policy. In amending the Hawkesbury Local Environmental Plan 2012 Minimum Lot Size Maps with Planning Proposal No. LEP001/12, the Council was required to consider the Regional Plan.

The submitted Statement of Environmental Effects in support of the development application contains reference to Part 2 Clause 6 of the SREP20 that deals with specific planning policies and strategies, with Clause 6(1) being Total catchment management. This is a particular challenge for the development application because it is a single development parcel within a much broader catchment.

It can be argued that the proposed retention, revegetation and protection of the riparian corridors is consistent with the environmental and flora and fauna considerations of the SREP No.20. The provision of reticulated sewer would satisfy its environmental and water quality objectives.

However, the site is located within the Kurrajong Kurmond Residential Investigation Area and there is no evidence provided as to how this singular development proposal is consistent with or in satisfaction of the overall outcomes that are being sought for this broader area by the regional plan. In other words, what is the total catchment management strategy in satisfaction of the SREP No. 20 and how does this development proposal satisfy it.

Without such context, it is difficult to say categorically that the subdivision will not significantly impact on the environment of the Hawkesbury-Nepean River in either a local or regional context. This is a difficult question for the applicant alone to answer. In this respect the development application, although responding to the recent change in the minimum lot size maps, could be said to be premature because the site does not yet have a full planning context around it within which properly informed catchment analysis and decisions can be made.

***Hawkesbury Local Environmental Plan 2012***

The relevant local planning instrument is the Hawkesbury Local Environmental Plan 2012 (HLEP2012). The following paragraphs assess the development proposal against the relevant provisions of the HLEP2012

Part 2 Permitted or prohibited development

The proposed subdivision is permissible with consent subject to Clause 2.6(1) of the Hawkesbury LEP 2012.

The subject land is zoned RU1 Primary Production. A small portion of the site is zoned SP2 Infrastructure – Classified Road for the purpose of road widening and is identified on the Land Reservation Acquisition Maps of the HLEP 2012 with the Roads and Maritime Service the responsible acquisition authority. This has been acknowledged in the development application and in the formal response from the RMS. If approval is granted an appropriate condition of consent will be required to ensure acquisition proceeds accordingly.

Clause 2.1 identifies the land use zones under the HLEP2012 and Clause 2.2 makes reference to the Land Zoning Maps. The subject site is identified upon the Land Zoning Map Sheet LZN\_008AA as RU1 Primary Production.

Clause 2.3 refers to zone objectives and the Land Use Tables. Clause 2.3(2) is very specific and states that the consent authority “*must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone*”. This is particularly relevant in a case such as this, where the minimum lot size for subdivision has been amended but the underlying zoning of the land has not.

The Land Use Table of the Hawkesbury LEP 2012 establishes the following zone objectives for the RU1 Primary Production zone:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage agricultural activities that do not rely on highly fertile land.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*
- *To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

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As noted, Clause 2.3(2) of Hawkesbury LEP 2012 states Council's obligation in relation to the zone objectives and their importance in assessing development proposals. Given the chance to change the zoning of the land with the recent Planning Proposal, the Council chose not to do this and therefore it should be accepted that the zone objectives will play a significant part in the assessment of the development proposal.

Conversely, a number of the zone objectives are clearly not as relevant to the proposal as they may have previously been on account of the site-specific lot size controls established by the aforementioned Planning Proposal and subsequent amendments to the Hawkesbury LEP 2012.

It is open to debate as to where the weight of determination should be placed in this case. It could be argued that the minimum lot size controls, which are development standards, should be given more weight than the zone objectives in respect of establishing the character and density of the development. In fact, the submitted Statement of Environmental Effects reads as an argument in support of this contention as it relies far more heavily upon compliance with the minimum lot size as a reason to support the proposal.

However, it is considered that this represents a misreading of the construction of the planning system that establishes a logical and sequential approach to the assessment of development proposals in the following way. A development must firstly be permissible with reference to the land use table; it must then be suitable when matched against the objectives of the zone; and then it must be compliant having regard to any particular development standards to be imposed.

This is not to say that all of the zone objectives must be satisfied, but conversely it also means that mere compliance with a numerical development standard is not enough to secure approval, particularly in a case where attainment of objectives for an area are not positively addressed.

It is instructive and of significance that the underlying zoning of the land was not changed when the minimum lot size for subdivision was changed. Despite the ability for smaller lot sizes to be considered, the land remains, at least at present, within a rural zone. It is also important that the development standard is framed as a 'minimum' standard, meaning that development for new allotments should not fall below a certain size, implying that in some circumstances it may require something above the minimum to secure appropriate outcomes.

In other words, a minimum lot size standard is not an 'as of right' allowance. In this case, of the 35 lots situated within the 2000m<sup>2</sup> minimum lot size area, the development proposes eighteen (18) at exactly the minimum lot size. A further seven (7) are less than 2200m<sup>2</sup>. Of the remaining ten (10) lots, eight (8) are between 2,200m<sup>2</sup> and 2500m<sup>2</sup>, with only two (2) being more than 2,500m<sup>2</sup>. These are Lot 2 (4000m<sup>2</sup>) at the entrance to the subdivision with frontage to both Bells Line of Road and the new entrance road and Lot 28 on the northern boundary of the site.

The accumulated impact of this maximisation of lot numbers is a development not conducive to an appropriate outcome and pushes the proposed development further away from attainment of any of the zone objectives than would be possible with a lesser number of larger lots. For instance, landscaping and character values of the locality will be difficult to retain with the predominance of minimally sized lots that will be the subject of future residential development of significant scale.

The larger central lots that will retain the riparian corridors are large enough to accommodate development that can be respectful of the topography of the land, however this is not the case with many of the smaller lots. In regards to the topography of the land, there is a significant fall from Bell Line of Road down to the riparian corridor, with a corresponding rise back up again on the other side of the creek. There are areas that exceed 15%. Most lots will be subject to benching with significant earthworks and the use of retaining walls. This not only expands the

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resultant building footprint but limits genuine opportunity for substantial revegetation and landscaping.

This could be assumed as being standard practice in standard density residential locations and could be reasonable in this location on larger lots where the balance between earthworks and retention of natural landforms would be achieved. However, the accumulated impact of a large number of minimally sized lots is of major concern.

Through the Statement of Environmental Effects, the applicant has addressed the objectives of the RU1 zone and made statements as to how the development responds to those objectives. The following Table provides a précis of the applicant’s response to the zone objectives.

<b>RU1 zone objectives</b>	<b>Applicants response as expressed in SEE</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li><i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i></li> </ul>	The area is within the Kurmond village, there is no primary industry in the locality which is characterised by rural residential development	The site is not within the village area. The locality is characterised by rural residential development but with prevailing lot sizes well in excess of those proposed.
<b>RU1 zone objectives</b>	<b>Applicants response as expressed in SEE</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li><i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i></li> </ul>	The objective is not relevant to this proposal	The objective remains relevant to the RU1 zone and is not promoted by this development. Under the current lot size, the land has limited primary industry capacity, whereas under the proposed development it would have no primary industry capacity
<ul style="list-style-type: none"> <li><i>To minimise the fragmentation and alienation of resource lands.</i></li> </ul>	The locality is unsuitable for primary industry or intensive agriculture	See above comment
<ul style="list-style-type: none"> <li><i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i></li> </ul>	Notwithstanding the RU1 zone, the locality is characterised by rural residential properties of varying sizes.	The proposed residential development of the land is unlikely to lead to land use conflicts given the existing predominance of residential occupation of the land and the limited existing agricultural activity
<ul style="list-style-type: none"> <li><i>To encourage agricultural activities that do not rely on highly fertile land.</i></li> </ul>	The objective does not apply to the proposal	It is accepted that rural activities on the land are unlikely

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RU1 zone objectives	Applicants response as expressed in SEE	Comment
<ul style="list-style-type: none"> <li><i>To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.</i></li> </ul>	<p>The development will be connected to water and sewer systems</p>	<p>It is accepted that the issues of water quality have been addressed to satisfaction</p>
<ul style="list-style-type: none"> <li><i>To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.</i></li> </ul>	<p>The proposal includes a riparian corridor containing endangered ecological community</p>	<p>The proposed larger lots within the riparian corridor provides the opportunity to conserve and enhance some native vegetation however vegetation and connectivity outside of the riparian corridor is not adequately resolved</p>
<ul style="list-style-type: none"> <li><i>To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.</i></li> </ul>	<p>It is considered that the landscape values of the rural village area will be retained</p>	<p>This conclusion from the SEE is not supported. The larger lots along the riparian corridor is a positive aspect of the proposal however its value in retaining the existing landscape value of the site is likely to be significantly diminished by the predominance of smaller residential lots that will not sustain sufficient distances between the future built form or provide for any meaningful revegetation opportunities thus adversely impacting on the landscape quality of the site. The site will lose all semblance of an agricultural component</p>

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RU1 zone objectives	Applicants response as expressed in SEE	Comment
<p><i>To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.</i></p>	<p>The development will not detract from the existing rural character. The development has made suitable arrangements for reticulated water and sewer and entered into a Planning Agreement which will provide funds for the provision of public amenities</p>	<p>The conclusion that the development will not detract from the existing rural character is not supported. See comments above. The density and pattern of development is at odds with that existing. The work of the Kurmond Kurrajong Investigation Area has yet to be completed and it is this work that will be key in setting parameters for the future character of the locality, particularly in how it identifies key landscape qualities and opportunities for landscape and vegetation connectivity. The arrangements for water and sewer and the benefits that can accrue through the Planning Agreement are acknowledged</p>

The existing zone objectives clearly are no longer as closely aligned with the land as they were when the larger 10 hectare minimum lot size prevailed. However, in changing the minimum lot size, a deliberate decision was made to retain the underlying zoning and therefore not to abandon the zone objectives.

It is this tension that is at the core of the assessment of the submitted DA – outcomes or compliance. This is evident in the SEE when it states that the change in lot size will ‘overtake’ some of the zone objectives and justifies this with the claim that the lot sizes now in place are complied with.

However, Council could have changed the zoning at the same time as they supported the change in minimum lot sizes, but they did not. This must be seen as significant and does not allow the applicant or the Council to put aside the zone objectives.

The work of the Kurmond Kurrajong Investigation Area is proceeding and it is this work that will be vital for the future of the locality, in all likelihood leading to a revised set of objectives for the area. This work should continue as a priority.

Although the development application has been facilitated by a change to the minimum lot size maps and the proposal is numerically compliant, it remains somewhat ‘random’ in the sense that the required strategic context remains unresolved. For instance, a proper strategic context would identify terrestrial biodiversity connections in support of the mapping in the HLEP2012. It would provide some basic future road layouts to ensure optimum safety and efficiency for the road network. It would identify the important cultural and scenic landscapes that are key to the character of the area.

In the absence of this proper context, the underlying zoning remains as the most important yardstick for measuring the developments suitability. Therefore in the circumstances, the zone

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objectives must still be given weight and the proposed development does not adequately respond to those objectives.

Part 4 Principal development standards

Clause 4.1 deals with minimum subdivision lot size and makes reference to the Lot Size maps of the HLEP2012. Following the recent amendment to the HLEP2012, the Lot Size Maps show that the site is subject to minimum lot size for subdivision of 2,000m<sup>2</sup>, 1Ha and 1.5Ha. A minimum lot size control of 10Ha applies to 2 Inverary Drive.

Clause 4.1AA deals specifically with minimum lot sizes for community title subdivision.

The proposed subdivision layout corresponds with the Lot Size Map and the proposed residential allotments satisfy the minimum lot size controls of Clauses 4.1(3) and 4.1AA(3) of the Hawkesbury LEP 2012. The land comprising 2 Inverary Drive, exclusive of Lot 1 which is to contain the septic holding tank and pump station, also satisfies the minimum lot size control of 10Ha.

The proposed community title lot, Lot 1, is not subject to minimum lot size controls pursuant to Clause 4.1AA(3) of the Hawkesbury LEP 2012.

The residue lots, Lots 40 and 41 are not exempt from Council's minimum lot size controls. To address this issue it is recommended that a condition on any consent that may be issued be imposed requiring these undersized residue lots to either be consolidated with the adjoining residential lots or incorporated into the community lot. This would not prevent Lot 41 from being consolidated with the adjoining property at 1 Inverary Drive.

Clause 4.1B deals with additional requirements for subdivision in certain rural zones including the RU1 Primary production zone.

The Clause requires the consent authority to be satisfied of certain matters in its consideration of development proposals. Consent cannot be granted unless:

- (a) *the pattern of lots created by the subdivision and the location of any buildings on those lots is not likely to have a significant impact on any threatened species, populations or endangered ecological community or regionally significant wetland, waterways, groundwater or agricultural activities in the locality, and*
- (b) *the consent authority is satisfied that each lot to be created contains a suitable area for a dwelling house, an appropriate asset protection zone relating to bush fire hazard and an adequate sewage management system if sewerage is not available, and*
- (c) *if sewerage is not available—the consent authority has considered a geotechnical assessment that demonstrates the land is adequate for the on-site disposal of effluent, and*
- (d) *the consent authority is satisfied that there is a satisfactory ratio between the depth of each lot and the frontage of each lot, having regard to the purpose for which the lot is to be used.*

The submitted Statement of Environmental Effects does not appear to have considered this Clause.

The proposed lot layout provides for larger lots along the riparian corridor thus decreasing the potential impacts upon threatened species or EEC. This lot arrangement will not alter the impacts upon agricultural activities in the locality. Each lot will have a suitable building area and sewerage will be made available. The ratio of lot depth to lot frontage is considered acceptable.

However the development is likely to have adverse impacts through the inappropriate pattern of lots created by the subdivision that will not advance the objectives of environmental conservation and rural character.

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There are no other principal development standards applicable to the site or to the development proposal.

Part 5 Miscellaneous provisions

Clause 5.1 identifies the relevant acquisition authority for that part of the land within the SP2 Infrastructure Classified Road zone as the Roads and Maritime Service. This has been acknowledged and an appropriate condition of consent can be imposed as necessary.

Clause 5.1A does not allow consent to be granted on land identified as classified road unless it is for road purposes. The development proposal complies with this Clause.

There are no other miscellaneous provisions applicable to the site or to the development proposal.

Part 6 Additional local provisions

Clause 6.1 deals with acid sulphate soils. The land is within Class 5 as identified on the Acid Sulphate Soils map. There is no adjacent Class 1,2, 3, or 4 land and there is no work proposed that would affect the water table. No specific controls would be required.

Clause 6.4 deals with terrestrial biodiversity. Reference is made to the relevant Terrestrial Biodiversity Map which identifies the site as containing both significant vegetation and a role in connectivity between significant vegetation.

The Statement of Environmental Effects refers to reports prepared in support of the Planning Proposal and it is clear that this issue was an important part of the consideration of the Planning Proposal.

However, Clause 6.4 specifically sets out to maintain terrestrial biodiversity, requires Council to consider a specific development proposal rather than a concept and promotes the well recognised avoid, minimise and mitigate approach to ecological outcomes.

Regardless of the land use zoning or the minimum lot size, Clause 6.4 requires the consent authority to consider the following:

- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:*
- (a) whether the development:*
    - (i) is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
    - (ii) is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
    - (iii) has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
    - (iv) is likely to have any adverse impact on the habitat elements providing connectivity on the land.*
  - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Council's mapping system indicates that the land contains Shale Sandstone Transition Forest (High and Low Sandstone Influence), Shale Plains Woodland and Regenerating Acacia Scrub vegetation communities. Shale Plains Woodland (which is also known Cumberland Plain Woodland) is listed as being critically endangered whilst Shale Sandstone Transition Forest is listed as endangered under the Threatened Species Conservation Act 1995.

The submitted Flora and Fauna Assessment Reports, including seven part tests of significance, detail that the development of the land is unlikely to significantly impact threatened species,

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populations or endangered ecological communities subject to the removal of weeds, the retention and revegetation of the riparian corridors and the protection of the riparian corridor via a Vegetation Management Plan. Furthermore, the reports do not identify the three existing dams on 396 Bells Line of Road as comprising significant aquatic habitat.

A Vegetation Management Plan, including species selection and ongoing monitoring and maintenance requirements, has been provided and may be registered on the title of the affected residential lots to satisfy the environmental and conservation objectives of the zone. The retention and protection of the riparian corridors and the provision of a single crossing over a watercourse is also consistent with Kurmond Kurrajong Investigation Area Interim Policy.

However, the fundamental challenge for the development proposal is in dealing with these issues within the broader context of the locality, especially taking a biodiversity perspective when the obvious interconnections between this site and adjoining sites are considered. This is particularly critical in relation to those proposed lots on the north eastern side of the riparian corridor that is land identified as being a connectivity area between the higher grade vegetation within the riparian corridor and important vegetated areas further north east.

Clause 6.4(3) (a) iii) and (iv) are specific in their intent to avoid fragmentation and ensure connectivity of important native vegetation areas. The proposed larger lots have been included to provide protection to the riparian areas and this is a positive element of the proposal. However, the effect of the majority of the lots within the subdivision will be to dislocate identified biodiversity corridors, in particular to the north east of the riparian corridor. This potential impact is exacerbated by the predominance of lots proposed at the absolute minimum lot size. Although they may be compliant, they are not entirely suitable for the sites circumstances.

The combination of small lot size, slope and residential development expectations will result in little to no ability to maintain any native vegetation as the lots will be dominated by the built form.

It is conceivable that a more holistic overview of the locality would allow for a different response - one more aligned with the imperatives of Clause 6.4 rather than an outcome that seems exclusively to focus on the riparian corridor. Even allowing for the importance of that corridor, the outcome is not considered acceptable and represents an opportunity lost in achieving an important ecological objective of Council.

Section 6.7 of the Hawkesbury LEP 2012 requires the provision of essential services to new allotments. A feasibility letter from Sydney Water outlines that potable water and reticulated sewer may be made available, whilst conditions may be imposed regarding electricity and telecommunications facilities. Confirmation of these services would be required prior to the release of any relevant Construction Certificates or Subdivision Certificates.

- ii. **Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved):**

No Draft Environmental Planning Instruments apply to the subject development.

- iii. **Development Control Plan:**

*Hawkesbury Development Control Plan 2002*

The proposal has been considered against the provisions of the Hawkesbury DCP 2002:

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Part A Chapter 3: Notification:

The application was originally notified from 3 to 17 June 2016 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. With the submission of amended plans and details of the proposed sewer line the application was re-notified from 11 to 25 May 2017. A total of four submissions were received in response to the notification and are discussed later in this report.

Part C Chapter 1 Landscaping

This Section of the DCP requires consideration of the existing environment into which development will be placed. It requires development to retain, protect and enhance existing native vegetation.

In this case, this requirement is complementary to the biodiversity imperatives of the HLEP2012.

The proposed development responds positively in respect of the riparian corridor, but less so for the other areas of the site. Refer to previous comments.

Part D Chapter 3 – Subdivision

Section 3.2 deals with Flora and Fauna Protection and has the basic aim of protecting bushland and habitats from the impacts of subdivision and of subsequent development. It has two specific objectives as follows:

- *The movement of fauna species on sites should be maximised so as to maintain biological diversity within the subdivision and road network.*
- *Opportunities for revegetation should be pursued as part of the subdivision process as a trade off for site development and as a means of value adding to the environment through the development process.*

The submitted Statement of Environmental Effects has addressed the particular rules set out in this Section of the DCP that are designed to give effect to the main objectives.

As noted earlier in the comments relating to landscaping, the development proposal responds in a positive way to these two objectives and to the rules of the DCP through the identified riparian corridor, but it is not convincing outside of that area. Simply put, the subdivision pattern outside of the riparian corridor will not allow for the movement of fauna species and does not provide for revegetation opportunities. It does not allow for linkages to other bushland areas other than the riparian corridor despite the connectivity importance identified upon the Terrestrial Biodiversity maps of the HLEP2012.

Section 3.3 deals with Visual amenity and has the basic aim of ensuring that subdivision and subsequent development does not impact upon important views and vistas. Also it seeks to ensure that subdivisions are designed so as to preserve and enhance visual landscapes.

The proposed development does this in a satisfactory manner in relation to the riparian corridor but not in relation to the smaller lots either side of the riparian corridor. The density of development is such that the built form will completely dominate the landscape character of the locality. The resultant visual impact will be significant.

Section 3.8 deals with Rural and Rural-Residential subdivision. The submitted Statement of Environmental Effects provides comments in relation to this Section as far as it is relevant to the development proposal.

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Council's Development Engineer has reviewed the proposal and is supportive of the road design plans subject to the imposition of conditions.

The application proposes the dedication of the roads to Council upon the completion of the development. Whilst it is not typically Council's policy to take on roads associated with a community title subdivision, it has been argued that in this instance the roads are to be constructed to Council's design specifications for a medium collector and local roads and the dedication of the roads as public roads will also allow Council garbage trucks to service the estate. This is a matter that should be more fully resolved before any development consent was to be issued and as for other issues, it would benefit from a comprehensive consideration of the Kurmond Kurrajong Investigation Area.

**iiia. Planning agreement that has been entered into under section 7.4 (or former section 93F), or any draft planning agreement that a developer has offered to enter into under section 7.4 (or former section 93F):**

The executed VPA requires the payment of contributions based on the number of residential allotments. A contribution of \$30,000.00 applies per lot and will be indexed based on changes to the Consumer Price Index (CPI).

Appendix 1 of the VPA indicates that the collected contributions will help to fund bus shelters, the relocation of speed zones, an upgrade of the Kurmond to North Richmond Cycleway, North Richmond Jetty upgrade, fire station upgrades, Library computer equipment, Museum items, car park lighting and landscaping works.

**iv. Matters prescribed by the Regulations:**

The payment of development contributions is required under the executed VPA for 396 Bells Line of Road.

**v. Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

The proposal is generally consistent with the Upper Hawkesbury River Estuary Coastal Zone Management Plan. Conditions may be imposed to ensure that erosion and sedimentation control measures are implemented for the works.

**b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality:**

**Context and Setting**

The setting for the proposed development is a locale that exhibits a range of residential and rural residential development on properties of various sizes. It exhibits semi rural characteristics rather than any specific agricultural land use pattern. Despite the multitude of existing dwelling houses that surround the subject site, there remains many views and vistas that reinforce the rural rather than the residential ambience of the area. The development pattern tends to be smaller lots with residential development along the road pattern, with larger rural lots, such as the subject site, sitting behind providing the dominant rural views and vistas and the still obvious rural setting to the locality.

The context however is far more problematic because it is an area in transition. There is no doubt that at some time in the near future additional development will occur, not only upon the subject site but also upon adjoining sites. However, despite the transition, the context is still predominately rural, not residential.

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Oddly, this situation is currently not to the applicant's advantage because the full context of that transition has not been determined sufficiently to answer the multitude of questions that arise as an area moves from one dominant development scenario to another.

This lack of a full planning context leads to significant questions over whether this development proposal is a positive or negative impact for the locality. On the balance of the prevailing planning controls, the conclusion is that the development as proposed is more likely to be a negative outcome and therefore should not be supported at this time.

**Access, Transport and Traffic**

For the proposed development of the site, this issue has been satisfied through the agreement of the RMS to the new intersection design between the proposed subdivision and Bells Line of Road.

It is unclear however if this access point and arrangement would be the optimum outcome if the total context of the Kurmond Kurrajong Investigation Area was considered. Similar to the comments above relative to context, approval of the proposed new road and intersection will impact upon future traffic management and road layout decisions that will need to be made for the broader Kurmond Kurrajong Investigation Area. It is not considered that these questions have been adequately addressed.

**Utilities**

Appropriate arrangements have been made for the servicing of the proposed development. It is unclear whether or not future subdivisions within the locality would lead to a different arrangement.

**Flora and Fauna**

The proposed development makes adequate provision for the protection of vegetation within the riparian corridor. However, the land either side of the corridor, in particular to the north east of the creek, effectively splits the riparian corridor from the other identified terrestrial biodiversity land on the HLEP2012 Terrestrial Biodiversity maps. The number of lots proposed and the density of development upon them will not allow for any connectivity to other 'green web' lands.

Similar to the comments above in relation to context, approval of the development in the current form will impact upon the future biodiversity connectivity and landscape conservation decisions that will need to be made for the broader Kurmond Kurrajong Investigation Area.

**Social Impact in the Locality**

In a general sense, the availability of additional housing choices should be seen as a positive social outcome.

In this particular circumstance there is the strong possibility of a future social problem arising due to the poor relationship that will be created between the existing restaurant at 406E Bells Line of Road that shares a common boundary with the development site. This business establishment has only recently undergone extensive renovations. It has a car park, garbage storage area and outdoor dining verandah directly adjoining proposed lots within the subdivision.

There is a strong potential of future conflict between this existing commercial use and the new residential dwellings that will be built on these lots. Such an outcome could be mitigated through a different lot layout that incorporated larger lots in the vicinity of the restaurant to enable larger separation distances to be established. The current lot layout has not adequately considered this neighbouring land use and it has not been acknowledged in the submitted Statement of Environmental Effects.

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**Cumulative Impacts**

The development is proposed within an area that will in all likelihood be subject to further development pressures. However, at this stage the extent of such proposals is unknown and therefore any potential cumulative impacts cannot be assessed.

The claim in the Statement of Environmental Effects that there is no cumulative impacts associated with the proposal is not accepted. This is because there will likely be similar developments repeated throughout the locality. There is however limited opportunity to assess how these developments aggregate to deliver a coherent and sustainable outcome for the locality. That is the work of the Kurmond Kurrajong Investigation Area.

Without the ability to assess how numerous developments ‘come together’, then the risk is high that cumulative impacts will not be well managed.

This is a critical concern as to why support for the development proposal at this point in time is difficult to recommend.

**c) Suitability of the site for the development:**

The site is suitable for some subdivision development. The recent planning history is well documented and supports this contention. As the submitted SEE points out, the site is within the Kurmond Kurrajong Investigation Area and the genesis of the recent amendment to the lot size maps of the HLEP2012 was the Hawkesbury Residential Land Strategy.

However, successful long term planning outcomes still require development approval decisions to be made in the appropriate context with the benefit of all necessary information. Only then can the consent authority be assured not only that a site is suitable for development but that a particular development proposal is suitable for that site in the prevailing circumstances.

Important issues of biodiversity, landscape character, traffic and access and utility services would all benefit from the holistic appraisal that can be supplied by the Kurmond Kurrajong Investigation Area work.

**d) Any submissions made in accordance with the Act or the regulations:**

The application was originally notified from 3 to 17 June 2016 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. With the submission of amended plans and details of the proposed sewer line the application was re-notified from 11 to 25 May 2017. A total of four submissions were received in response to this notification, with two submission received in response to the first notification period and an additional two submissions received in response to the second notification period.

The matters raised in these submissions are detailed below in italics, followed by a response by the assessing officer:

*Bells Line of Road experiences significant traffic congestion and the approval of this and other developments west of the river will exacerbate this issue.*

Officer's comment: As discussed previously Bells Line of Road currently experiences significant traffic volumes during peak periods. The cumulative impacts of planning proposals for subdivision within the Kurmond Kurrajong Investigation Area will be investigated by Council as part of the review of the Hawkesbury Residential Land Strategy and any further Structure Planning.

The submitted Traffic Report indicates that the development will generate a minor level of additional traffic to and from the site and will not significantly impact upon the performance of Bells Line of Road.

Neither the RMS nor Council's Development Engineer have objected to the subject proposal on traffic grounds.

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The submission however is consistent with the view that the full context of planning in this area is not available.

*The prepared Traffic Report contains a number of errors and the prepared surveys are limited.*

Officer's comment: See above comments.

A detailed design of the intersection has been reviewed and the concurrence of the RMS has been provided.

*The proposal relies on a Planning Proposal that is yet to be finalised.*

Officer's comment: Planning Proposal No. LEP001/12 for 396 Bells Line of Road was approved by Council and the subsequent amendments to the Hawkesbury LEP 2012 were gazetted on 27 January 2017.

*The proposed 2,000m<sup>2</sup> lot sizes are inconsistent with the surrounding properties and the prevailing rural character.*

Officer's comment: All lots proposed are compliant with the minimum lot size maps as amended by Planning Proposal No. LEP001/12.

Rural character and outlook impacts are discussed elsewhere in this report.

*The proposal relies on the provision of sewer from Sydney Water however no approval has been obtained.*

Officer's comment: A feasibility letter has been provided outlining Sydney Water's requirements for the provision of water and sewer services. The obtainment of a Section 73 Certificate from Sydney Water will be required.

*The subdivision will impact on views and the outlook from the restaurant at 406 Bells Line of Road.*

Officer's comment: The restaurant at 406 Bells Line of Road, like the majority of nearby dwelling houses, is constructed on the ridgeline and has rural views over the central gully, bushland and surrounds.

A planning principle for views was established in the judgement of *Tenacity Consulting v Warringah* [2004] NSWLEC 140. This planning principle has generally been accepted as the primary guide for assessing views although Council's planning documents do not specifically refer to this planning principle. The planning principle provides the following assessment:

*The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable).*

*To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.*

1. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the*

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*interface between land and water is visible is more valuable than one in which it is obscured.*

2. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
3. *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*
4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The land falls gradually from Bells Line of Road from approximately 95m AHD at its highest point down to 52-60m AHD for the intermittent watercourse running northwest to southeast through the centre of the property. From the central gully the land then rises to a level of approximately 84m AHD in the northern corner.

The rear deck of the restaurant at 406 Bells Line of Road is elevated approximately 3m above the natural ground level and is located approximately 10m from its shared boundary with 396 Bells Line of Road. From this location the patrons of the restaurant benefit from rural pasture and bushland views, as well as wider district views.

Applying the above principles to the subject proposal, it is considered that the foreground views over pasture and vegetation within 396 Bells Line of Road are neither iconic nor unique and most relevantly, are over private property which the restaurant does not own or control. Whilst the views are obtained from the rear of the property, the views are not owned and there are no guarantees that views from a development will be maintained. The patrons of the restaurant would also be transient in nature.

Rural and semi-rural views are available for many kilometres along Bells Line of Road and are not unique to this location.

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It is recognised that foreground views will change significantly as a consequence of dwelling construction following the subdivision. However, the further district views to the higher ridgeline to the north will not be lost due to the nature of the terrain.

In relation to the fourth and final step established by the planning principle, the proposal complies with the relevant site-specific planning controls (minimum lot sizes) established for 396 Bells Line of Road through the Minimum Lot Size maps. It is open to debate as to the level of attainment of the zone objectives. Therefore, on balance and having considered the planning principle of Tenacity Consulting v Warringah, it is considered that the impacts to views and outlook do not, of themselves, warrant the refusal of the application, although it does contribute to the concern arising of the resultant impact of the development.

*The application should be amended to include the intended subdivision of 2 Inverary Drive.*

Officer's comment: The subject application includes 2 Inverary Drive to allow for the creation of a community lot and the construction of a septic holding tank and pump station. The creation of this lot will not result in the 2 Inverary Drive failing to comply with the minimum 10Ha minimum lot size control.

A Planning Proposal to establish planning controls for the further subdivision of 2 Inverary Drive is currently being considered by Council and the Department of Planning and Environment.

*The portion of land adjoining 1 Inverary Drive should be retained as a Torrens title lot as opposed to community title.*

Officer's comment: It is understood that a boundary adjustment is to be undertaken and a portion of land identified as Lot 40 will be dedicated to the neighbouring property at 1 Inverary Drive. However, Council has not been formally advised of this adjustment and based on Council's lot size controls a condition is recommended requiring this land to form a part of the community lot or be consolidated with adjoining lots because it is not possible to utilise the provisions of Clause 4.6 to allow a variation in lot size of the magnitude required. This could be a lot on the subject site or the neighbouring property. This recommended condition will not prevent the consolidation of this residue lot.

*The existing dam on 2 Inverary Drive should be retained for stormwater drainage purposes with the further subdivision of this allotment.*

Officer's comment: The removal of the dam at 2 Inverary Drive is not proposed with the current application.

*Covenants should be registered on the titles of the residential lots to prohibit dual occupancies.*

Officer's comment: Whilst a series of restrictions and covenants have been nominated by the developer to guide future development, no such restrictions on dual occupancies have been nominated by the developer. As attached dual occupancies are permissible within the RU1 Primary Production zone it is considered unreasonable for Council to impose such a requirement. In any event, HLEP2012 utilises Clause 1.9A, which has the effect of putting aside any such covenant that would seek to restrict or prohibit development otherwise allowed by the local planning instrument.

**e) The Public Interest:**

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The claim within the Statement of Environmental Effects that the development is in the public interest is not supported.

The public interest is best served when development proposals are consistent with the established planning regime and when areas in transition can be managed effectively to ensure there are positive outcomes resulting from development.

It is generally not satisfactory to simply be a permissible development to claim that it is in the public interest. Private interests are benefitted from individual decisions and outcomes arising from permissible development, whereas the public interest is generally served by coordinated decisions, that take into consideration a broader context and elevate outcomes above the mere perfunctory.

In this case, the land is located within the Kurmond Kurrajong Investigation Area, an area clearly in transition but not yet enjoying the benefits of a fully coordinated approach to development. This is acknowledged as a responsibility of Council and work is ongoing to have suitable guidelines and controls in place as soon as possible.

The planning history of the site has been discussed earlier in this assessment report and it is a fact that the proposed development satisfies the newly established minimum subdivision lot size controls of the Hawkesbury LEP 2012 following Council's approval of Planning Proposal No. LEP001/12.

However, the development does not satisfactorily address the objectives of the RU1 Primary Production zone; a zone that was not changed when the HLEP2012 lot size maps were amended under Planning Proposal No. LEP001/12. As a result the design and character of the subdivision is not reflective of development that would ordinarily be anticipated within the RU1 zone.

It is also considered that the layout does not adequately or comprehensively consider and respond to likely development scenarios that will arise when, as expected, the work of the Kurmond Kurrajong Investigation Area is completed. This issue is not assisted by the applicant's maximisation of lot yield with a predominance of lots at or marginally above the minimum allowable lot size. This is not a criticism of the applicant, simply a statement that in this case the maximum yield is not providing for a development in the public interest.

In summary, due to the lack of a coordinated planning structure within this area, the development outcome is not optimum and therefore the proposed development could not be said to be in the public interest at this time.

**Conclusion**

The conclusion of this assessment report is that the development proposal should not be supported at this time.

Critical in reaching this conclusion are two significant factors:

- the failure of the application to properly address the objectives of the RU1 Primary Production zone that remain in place for the site and the surrounding land despite the recent change in the minimum lot size maps for the site; and
- the inability of the application to properly consider the context of the proposed development within the Kurmond Kurrajong Investigation Area because the work being undertaken by the Council in this area is ongoing

Despite the long time frame involved since the initial Planning Proposal application was made for the subject site and despite the Council support for the amendment to the relevant Lot Size Maps, the total strategic planning process remains unresolved and therefore in some respects the Development Application is premature.

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It is understandable why the applicant would have come forward with a specific development proposal, but conversely Council is not obliged to accept a development outcome that has not convincingly demonstrated its suitability within an area clearly in transition.

One decision of Council (the Planning Proposal) does not necessarily bind them into support for another decision (a Development Application). In circumstances such as these, the consent authority should be cautious and ensure appropriate long term decisions are made notwithstanding the fact that the timetable for the making of those decisions may not be to the timetable that the applicant would prefer to work to.

It is considered an important fact that the underlying zoning of the subject site remains as RU1 Primary Production with all of the zones attendant objectives still required to be a factor in any assessment process. It is not optional to consider zone objectives. The compliance of a development proposal with a numerical development standard should not be read as sufficient justification for approval if zone objectives have not been adequately addressed and satisfied.

The conclusion of this assessment report is that this fact was not given sufficient weight by the development application, resulting in a proposal that although numerically compliant would not lead to appropriate development outcomes. Therefore it cannot be supported at this time.

**RECOMMENDATION:**

That:

1. Development Application DA0332/16 at 396 Bells Line of Road, Kurmond, for the subdivision of land into 37 residential lots in a community title scheme be REFUSED for the following reasons:
  - a) The proposed development fails to adequately respond to Clause 2.3 of Hawkesbury Local Environmental Plan 2012, Zone objectives and Land Use Table, specifically the objectives of the RU1 Primary Production zone, in its failure to ensure the development retains or enhances existing landscape values and its failure to ensure the development does not detract from the existing rural character of the site and the surrounds. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act).
  - b) The proposed development fails to adequately address and respond to the requirements of Clause 4.1B Hawkesbury Local Environmental Plan 2012, Additional requirements for subdivision in certain rural, residential and environmental protection zones, in the inappropriate pattern of lots created by the subdivision that will not advance the objectives of environmental conservation and rural character. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act).
  - c) The proposed development fails to adequately respond to Clause 6.4 of Hawkesbury Local Environmental Plan 2012, Terrestrial biodiversity, in the likely fragmentation and disturbance of biodiversity composition on the land and adverse impacts on habitat elements that currently provide connectivity. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act).
  - d) The proposed development is likely to have adverse impacts upon biodiversity within the locality as well as adverse impacts upon the existing character of the locality, specifically the prevailing rural views and vistas. (Section 4.15(1)(b) of the Environmental Planning and Assessment Act).
  - e) The proposed development is currently not in the public interest because it has not adequately demonstrated how it appropriately complies with and complements the broader planning outcomes being sought by Hawkesbury City Council through the work

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of the Kurmond Kurrajong Investigation Area. (Section 4.15(1)(e) of the Environmental Planning and Assessment Act).

2. Council officers:
  - a) Review the Contamination Documentation supplied with the application, in particular those sections that confirm the presence of asbestos material associated with the former dwelling house on site
  - b) Work with the owner to confirm how this material should be removed and disposed of to an appropriately licensed waste facility

**ATTACHMENTS:**

- AT - 1 Plans of the proposal
- AT - 2 Locality Plan
- AT - 3 Aerial Photograph

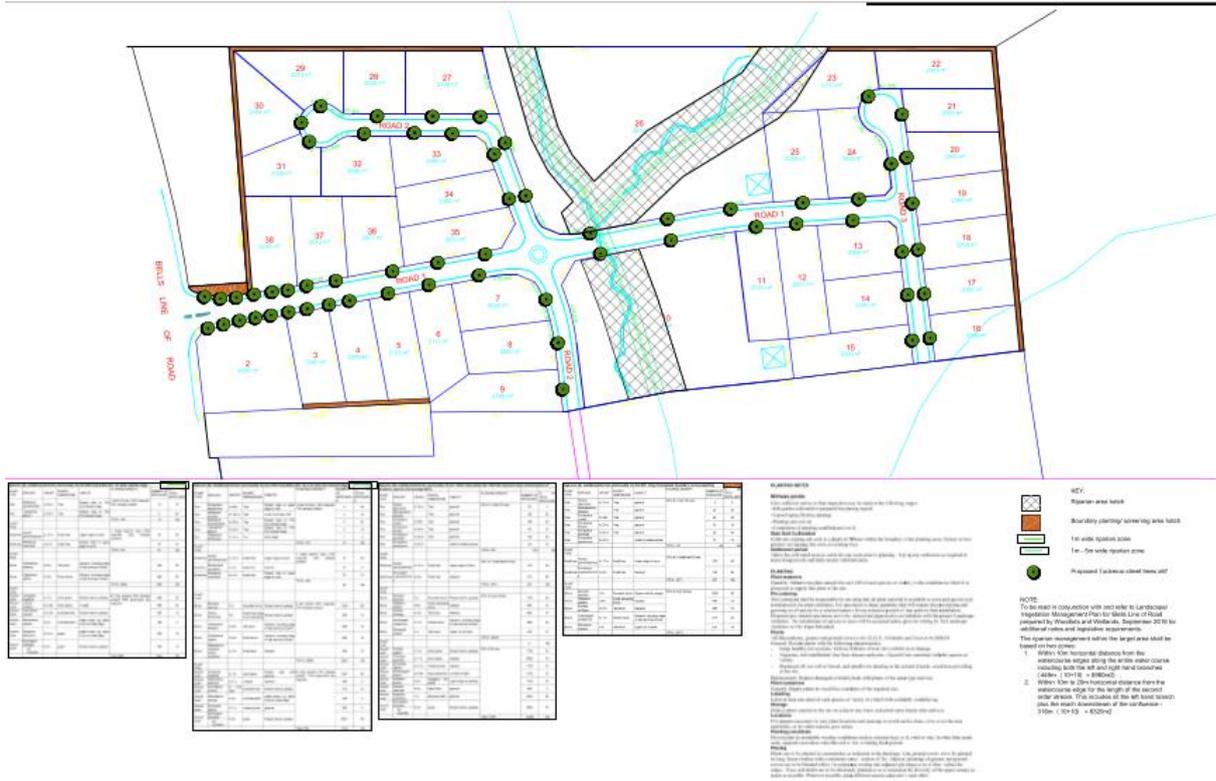
**AT - 1 Plans of the proposal**



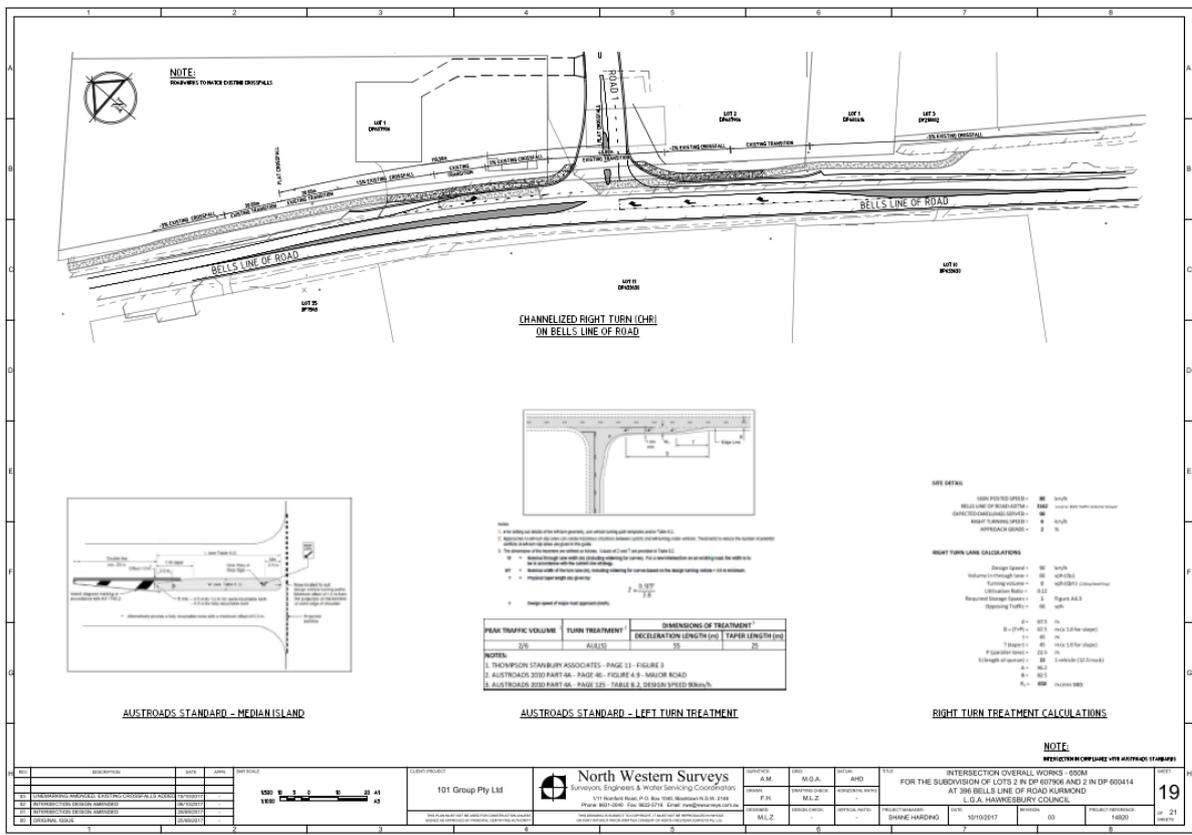
HAWKESBURY INDEPENDENT HEARING AND ASSESSMENT PANEL

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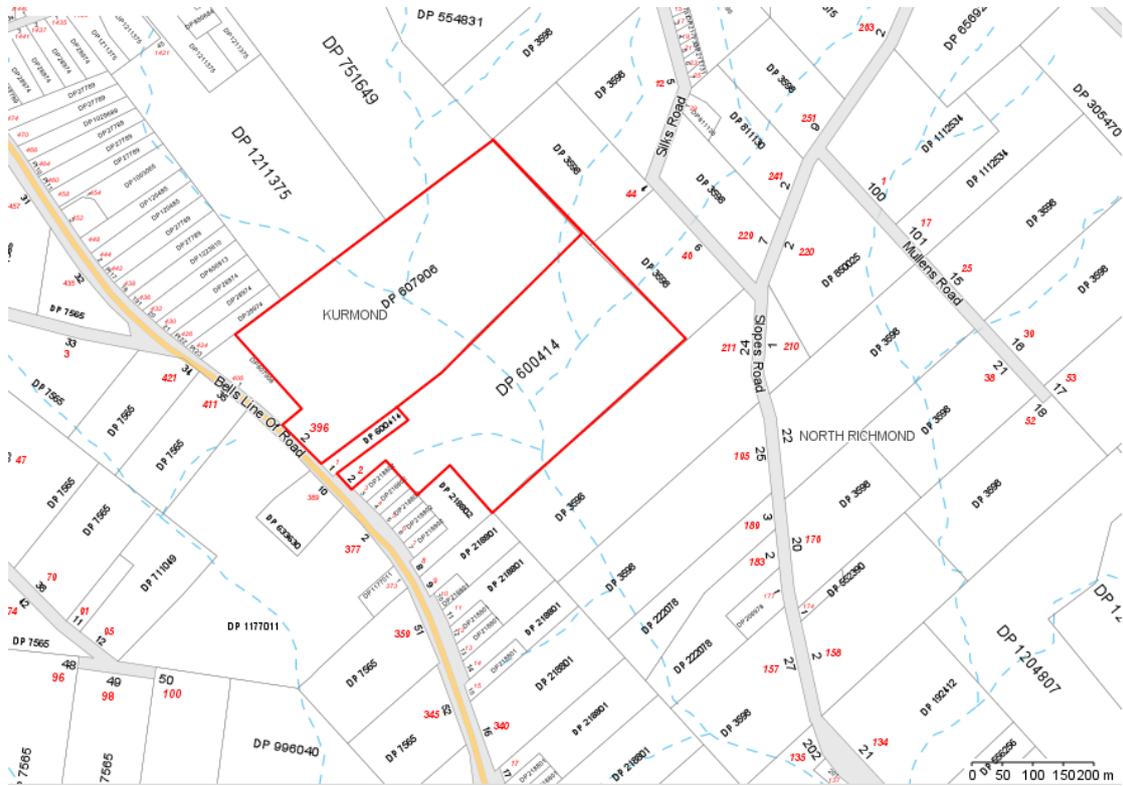
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<p><b>PROJECT</b>          ENVIRONMENTAL LANDSCAPE COLLECTOR          Landscape Architecture and Environmental Design          APR 22 452 452 300          Suite 3, 7/11 Bruce Road, Kurmond, NSW          Ph: 642 5388 1777</p>	<p><b>Scale:</b>          1:1000@A1          Project No:          ELC-18001</p>	<p><b>Date:</b>          8/01/18</p>	<table border="1"> <thead> <tr> <th>Rev</th> <th>Issue</th> <th>Date</th> <th>By</th> <th>Checked</th> <th>Approved</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>001</td> <td>Issue</td> <td>08/01/18</td> <td>ELC</td> <td>ELC</td> <td>ELC</td> <td>Development Application - Combined WIP and Boundary Surveying</td> </tr> </tbody> </table>	Rev	Issue	Date	By	Checked	Approved	Description	001	Issue	08/01/18	ELC	ELC	ELC	Development Application - Combined WIP and Boundary Surveying	<p><b>Project:</b>          396 Bells Line of Road,          Kurmond, NSW</p> <p><b>Client:</b>          101 Property Group</p>	<p><b>Drawing No:</b>          1 of 1</p> <p><b>Revision:</b>          A</p>
Rev	Issue	Date	By	Checked	Approved	Description													
001	Issue	08/01/18	ELC	ELC	ELC	Development Application - Combined WIP and Boundary Surveying													



**AT - 2 Locality Plan**



**AT - 3 Aerial Photograph**



oooO END OF REPORT Oooo

# ACTION ITEM

## ADOPTED

At the Hawkesbury Independent Hearing and Assessment  
Panel Meeting held on *28 March 2018*

### User Instructions

To view the original Agenda Item, refer to the Meeting tab using the above date.

### Resolved Items Action Statement

Action is required for the following item as per the Council Decision or Resolution Under Delegated Authority.

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**Item: 001**                      **Business Paper - Hawkesbury Independent Hearing and Assessment  
Panel MASTER - 17 May 2018**

**Directorate:**                City Planning

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The Panel Chair, Ms Alison McCabe, declared a non-pecuniary conflict of interest in this matter as Council appointed Town Planning Consultant had previously undertaken contract work for the firm of which she is a Director. She was not in attendance at the meeting.

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The Panel inspected the subject site and viewed the site, neighbouring properties and context prior to the public meeting.

Mr Ken Hardaker, Mr Mike Caris and Mr Robert Montgomery, speaking against the recommendation, addressed the Panel.

**001 RESOLUTION:**

The Panel unanimously resolved that the determination of the application be deferred to allow the applicant an opportunity to submit amended plans.

The amended plans are to be submitted to council by no later than 30 June 2018.

**REASONS FOR DECISION:**

The Panel acknowledged that there was merit to the proposal to subdivide the site into a number of smaller lots, for the reasons listed below:

1. The application is subject to a previous approval from a Planning Proposal that permitted subdivision of the subject site.
2. The RMS, RFS, and Office of Water have all given concurrence to the proposed development.

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3. The site is suitable for connection to mains sewerage.

However, the Panel accepted the argument in the planning report that the right to subdivision was not the only relevant factor to consider.

Other factors considered relevant by the Panel included:

1. The pattern of development proposed, apart from the two larger lots protecting the riparian zone (which the Panel supports), does not demonstrate a differentiation in lot size reflective of the topography and prevailing rural-residential character of the area.
2. The proposed road works and site works associated with the application require substantial changes to, and impacts on, the rural-residential character of the site.
3. The impacts of the above on the visual character of the area.

The Panel was of the view that a modified design that provided a greater differentiation in lot size, with smaller lots (not less than the permissible minimum lot size) between Bells Line of Road and the creek corridor, and larger lots (with an average lot size of not less than 4000m<sup>2</sup>) to the east of the creek corridor, would provide an outcome more in keeping with the existing and desired future character of the area.

The Panel agreed to defer the matter to enable the applicant the opportunity to amend the plans in accordance with the above.

The amended plans are to indicate any trees that are proposed to be removed as a result of the subdivision, as well as any tree planting proposed to be provided as part of the subdivision.

AT – 3 Letter submitted by 101 Group Pty Limited in response to Panel Decision

**101 Group Pty Limited  
138/2-18 Buchanan Street,  
Balmain, 2041.**

6th April, 2018.

Mr Andrew Johnston & Ms Cristie Evenhuis,  
Planning Department,  
Hawkesbury City Council,  
PO Box 146,  
WINDSOR, 2756.

**RE: HAWKESBURY IHAP DETERMINATION.**

Dear Cristie & Andrew,

I refer to your email at 1.42pm today and to our earlier discussion this morning whereby I was advised that we had now missed the deadline for the April hearing date and would be considered for a May hearing. Please be advised that we see this as another unnecessary delay and unacceptable.

For a well documented period of time we have complied with every condition that Council has raised and clearly believe as the people who in fact have walked every inch of this site daily for well over five years and have addressed and designed with full consultation with Council Planning and Environmental officers the most suited lot layout.

As stated in yesterday's email the area at the rear of the site now in question not only does not have any impact on the visual character of the area but more importantly falls well within the original and current review area with none of the properties outside the mapped review area adjoining this property being compliant to the Lot size for the land and zone.

Again I state that this proposal is more in line with being an infill as the properties directly behind us along Silks Road range in size between **"701m<sup>2</sup> to the largest at 4 hectares"**, therefore not only are we compliant but these lots are more in keeping with the current character of the area than is proposed by the panel.

As stated also in yesterday's email Council has been provided with more than enough documentation including comprehensive Vegetation Management Plan, Statement of Environmental Effects and an Addendum to the SEE. We have also provided a full Main Road design with a full

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accompanying RMS Audit. Any further detail should and would be provided at the Construction Certificate stage.

As per our email yesterday we have stated that we do not propose to amend our application, therefore we request a formal determination to approve or refused.

We are of the understanding that this can be effected outside of a meeting under,

**Schedule 4B EPA Act**

**14 Transaction of business outside meetings or by telephone etc.**

- (1) *A panel may, if it thinks fit transact any of its business by the circulation of papers among all of the members of the panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the panel.*
- (2) ....
- (3) *For the purpose of:*
  - (a) *the approval of a resolution under sub clause (1), or*
  - (b) *a meeting held in accordance with sub clause (2),**The chairperson and each member of the panel have the same voting rights as they have at an ordinary meeting of the panel.*
- (4) *A resolution approved under sub clause (1) is to be recorded in the minutes of the meetings of the panel.*
- (5) *Papers may be circulated among the members for the purpose of sub clause (1) by electronic transmission of the information in the papers concerned.*

We now await your earliest response and the Panels determination so that this proposal moves forward one way or another.

Kindest Regards,

  
Ker Hardaker.

oooO END OF REPORT Oooo

SECTION 2 – Reports for Determination

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**Item: 004** CP - DA0545/16 - 122-132 Macquarie Street Windsor - Demolition of Existing Structures and Construction of Residential Flat Building comprising 40 Residential Units and Basement Parking - (95498, 105984, 133876)

**Directorate:** City Planning

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**DEVELOPMENT INFORMATION**

**File Number:** DA0545/16  
**Property Address:** Lot 381 DP 595952, Lot 380 DP 818974, Lot 1 DP 797152, Lot 1 DP 613929 and Lot 1 DP 579823, 122-132 Macquarie Street WINDSOR NSW 2756  
**Applicant:** JS Architects Pty Limited  
**Owner:** Hajjar Investments Pty Limited  
**Proposal Details:** Residential flat building - Demolition of existing structures and construction of residential flat building comprising 40 residential units and basement parking  
**Estimated Cost:** \$9,430,000.00  
**Zone:** R1 General Residential under *Hawkesbury LEP 2012*.  
**Date Received:** 29/07/2016  
**Exhibition Dates:** 10/07/2017 - 24/07/2017  
**Area:** Total 3435m<sup>2</sup>  
**Submissions:** Nil

**Key Issues:**

- ◆ Significant non-compliance with maximum building height under the Hawkesbury LEP of 12 metre (proposed 31.6% variation for centre building at rear of site)
- ◆ Visual bulk of four-storey building results in an unacceptable transition to the adjoining low density residential area
- ◆ Concern as to loss of privacy for adjoining residential dwellings

**Recommendation:** Refusal

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**REPORT:**

**Executive Summary**

This application seeks consent for the construction of a residential flat building development at Nos. 122-132 Macquarie Street Windsor.

The application proposes a total of 40 residential units consisting of a mix of two and three-bedroom units and basement parking for 48 cars.

The proposed units will be located in three separate buildings situated above the common basement car park. The two buildings fronting Macquarie Street are three storeys in height whilst the rear building in the centre is four storeys.

Access is via a driveway to Macquarie Street.

The application is reported to the Panel as it involves a 31.6% variation to the 12 metre maximum building height requirement of Hawkesbury Local Environmental Plan 2012, and involves SEPP65 development.

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An assessment of the proposal reveals that the development has a number of deficiencies, the main issues being the proposed building height of the rear building and its potential impact on adjoining low density residential dwellings and the reduced building setback to Macquarie Street which are not supported. It is recommended that the proposal be refused.

**Description of Site**

The site is located on the south eastern side of Macquarie Street, Windsor, within an established urban streetscape largely characterised by a varied built form including detached-style residential housing to the south and south east, and low-rise, multi-unit dwelling houses to the east and north east, including the corner site which operates as a medical centre. Windsor Public School is located to the west on the opposite side of Macquarie Street.

The site, comprising a total of 5 allotments, is irregular in shape and has a variable depth of 27m to 46m, resulting in a total cumulative site area of 3.434.86m<sup>2</sup>.

Macquarie Street is an Arterial Road controlled by the RMS. The site has existing access to Macquarie Street via numerous driveways.

The site is affected by RMS easements for batter approximately 2.75m wide but variable across the 5 subject lots fronting Macquarie Street (excepting the middle lot). This land subject to the easement is restricted and cannot be built upon.

Two existing dwellings occupy the site which is predominantly level, except for a pronounced cross fall from the front boundary toward the rear corner of approximately 5 metres.

There are 5 mature existing trees on the site which also has large open areas. All these trees are proposed to be removed and replaced with new landscaping.

The locality plan and aerial photograph are included in Attachment 1.

**Description of Proposal**

Pursuant to Section 4.12 of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's approval for the demolition of existing structures and construction of a residential flat building development comprising 40 residential units and basement parking.

The units are in three separate building blocks with a common basement car park. The two building blocks fronting Macquarie Street (Block A and C) are three storeys in height and the rear building block (Block B) is four storeys in height. The individual blocks will comprise of the following units:

**Block A**

Floor	Two bedroom units	Three bedroom units
Ground floor	3 (including one adaptable unit)	1
First floor	3	1
Second floor	3	1

**Block B**

Floor	Two bedrooms	Three bedrooms
Ground floor	3	1 (adaptable unit)
First floor	3	1 (adaptable unit)
Second floor	3	1 (adaptable unit)
Third floor	3	1 (adaptable unit)

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Block C

Floor	Two bedrooms	Three bedrooms
Ground floor	4 (including one adaptable unit)	-
First floor	4 (including one adaptable unit)	-
Second floor	4 (including one adaptable unit)	-

In total, there are 33 two-bedroom units and 7 three-bedroom units. 5 of the units have been designed to be adaptable units.

The basement car park has been designed to provide for residents' parking and residents' storage, visitor parking and waste storage and collection. Each building will be provided with a lift.

Parking is proposed to consist of 6 visitor parking spaces and 42 resident parking spaces including 4 accessible parking spaces, a total of 48 cars.

**Background**

The subject land (minus Lot 1, DP579823) was granted approval for a 3-4 storey building consisting of 19 residential units and two commercial units in 2011 under application number DA0403/11. (Figure 1)

The former approval related to a smaller site comprising Lot 381 DP 595952, Lot 380 DP 818974, Lot 1 DP 797152 and Lot 1 DP 613929. (The current application extends over lots described above as well as the additional Lot 1 DP 579823).



**Figure 1 - Elevations of and site plan of residential units approved as part of Development Consent Notice No. DA0403/11**

**History of the application**

The current application originally proposed a single, three-storey residential flat building comprising of 41 apartments extending across the whole of the lot frontage. (Figure 2)



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Figure 4 - Current proposal showing two, 3 storey buildings and a 4 storey building in the middle of the site, setback 19m from Macquarie Street

The amended plans comprising three buildings were notified to adjoining neighbours from 10 July 2017 until 24 July 2017. No objections were received.

#### Consultation with Council's Engineers

Following referral of the initial application to Council's Engineering Section, on 4 October 2017, the applicant was supplied with a copy of the RMS correspondence raising issues about access and also advised of Council's engineering concerns.

On 7 November 2017, the applicant provided further amended plans and details to address RMS concerns in respect to the further issues raised.

On 13 December 2017, the RMS raised concern that the applicant has still not satisfied its concerns.

On 9 January 2018, the applicant's traffic consultant advised Council that they were in discussions with the RMS.

On 8 March 2018, the applicant was advised that the application has still not obtained the concurrence of the RMS and that Council's engineers have requested a plan showing "extent of proposed earthworks".

On 14 March 2018, the applicant submitted an "extent of earthworks" plan.

RMS concurrence was granted on 6 April 2018.

#### Policies, Procedures and Codes to which the matter relates

Greater Sydney Regional Plan and Western City District Plan

State Environmental Planning Policy No 55 -- remediation of Land (SEPP No. 55)

State Environmental Planning Policy No 65 -- Design Quality of Residential Apartment Development (SEPP 65)

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)

State Environmental Planning Policy State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)

Sydney Regional Environmental Plan No 20-Hawkesbury-Nepean River (No 2 -- 1997) (SREP No. 20)

State Environmental Planning Policy (**Coastal Management**) 2018

Hawkesbury Local Environmental Plan 2012 (LEP 2012)

Hawkesbury Development Control Plan 2002 (HDCP 2002)

Development of Flood Liable Land Policy 2012

#### Matters for consideration under Section 138 of the Roads Act 1993 No 33

Section 138 of this act requires:

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- (1) *A person must not:*
- (a) *erect a structure or carry out a work in, on or over a public road, or*
  - (b) *dig up or disturb the surface of a public road, or*
  - (c) *remove or interfere with a structure, work or tree on a public road, or*
  - (d) *pump water into a public road from any land adjoining the road, or*
  - (e) *connect a road (whether public or private) to a classified road,*

*otherwise than with the consent of the appropriate roads authority.*

The application was referred to the RMS as required under SEPP (Infrastructure) 2007 as the new driveway accessing Macquarie Street is located along a classified road and requires concurrence under Section 138 of the Roads Act 1993. The latest design provided on 7 November 2017 was forwarded to the RMS, and following further discussions, the RMS issued approval and conditions on 6 April 2018.

In considering the application, the RMS considered a number of easements for support and for drainage which are required in relation to Macquarie Street. Ultimately, no objections were raised by RMS to the development providing the following matters were satisfied in relation to the easement:

- All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Macquarie Street boundary and clear of the identified easement;
- Access to the RMS easement is not denied; and
- The integrity of the easement is not compromised.

RMS also provided detailed conditions for inclusion in the Council consent, in the event that the application was approved by Council.

**Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979**

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

**a) The provisions (where applicable) of any:**

**i. Environmental Planning Instrument:**

***State Environmental Planning Policy No. 55 – Remediation of Land***

This Policy prevents Council from consenting to a development unless it has considered whether the land is contaminated, and whether the land is suitable in its contaminated state (or would be suitable, after remediation) for the use for which consent is sought.

Council records show that the subject land has been used for residential and commercial (offices) in the past. There is no evidence that a potentially-contaminating land use has been carried out on the land. As a result it is considered that it is highly unlikely that the land would be contaminated to an extent as to pose a risk or prohibit residential development.

The proposed development is consistent with the provisions of this Policy.

***State Environmental Planning Policy No 65 -- Design Quality of Residential Apartment Development***

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The development is subject to the requirements of this policy as the application proposes a building that is three or more storeys and contains at least four dwellings.

The aims of this policy are to improve the design quality of residential apartment development in New South Wales.

An assessment of the proposal against this plan reveals that the development is unacceptable having regard to the design criteria due to:

- Inadequate site analysis;
- loss of visual privacy and visual impact of the 4-storey building on adjoining low density residential dwellings;
- consideration of disabled access (no disability access report);
- flood risk not established.

A detailed assessment against the Design Quality Principles of SEPP No. 65 and the Apartment Design Guide (ADG) is included under Attachments 3 and 4 attached to this report.

***State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)***

A BASIX Certificate has been issued for the proposed development. If supported, the development will be required to comply with the energy and water commitments identified in the BASIX certificate. This would be enforced via conditions of consent.

***State Environmental Planning Policy State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)***

The proposal has been referred to the RMS in respect to Clause 101 and 104 of the SEPP.

Following discussions between the applicant and RMS concurrence has been granted, and accordingly, the proposal is considered acceptable in this regard. RMS conditions have been provided.

***Sydney Regional Environmental Plan No 20 -- Hawkesbury-Nepean River (No 2 -- 1997) (SREP No. 20)***

The aim of this plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

The proposal is not contrary to the aims, objectives and recommended strategies of SREP No. 20. The site is not within a scenic corridor of local or regional significance, and is not expected to significantly impact on the environment of the Hawkesbury-Nepean River in either a local or regional context.

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***State Environment Planning Policy (Coastal Management) 2018***

This Policy updates and consolidates into one integrated policy SEPP14 (Coastal Wetlands), SEPP26 (Littoral Rainforests) and SEPP71 (Coastal Protection), including clause 5.5 of the Standard Instrument – Principal Local Environmental Plan. These policies are now repealed.

The Coastal Management SEPP gives effect to the objectives of the Coastal Management Act from a land use perspective, by specifying how development proposals are to be assessed if they fall within the coastal zone.

The subject site falls outside the area specified as affected by the SEPP.

***Hawkesbury Local Environmental Plan 2012***

The land is zoned R1 General Residential, and the zone objectives are:

- To provide for the housing needs of the community;
- To provide for a variety of housing types and densities;
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development adds variety to the prevailing types of housing in the Windsor area, of which there is currently very little apartment-style development. Development of sites for residential apartments close the Windsor Town Centre is considered to be positive for the future viability of the Windsor Town Centre, and a way of addressing increased need for affordable housing. The proposal provides apartment living for residents close to town centre services and is within walking distance to Windsor railway station.

***Clause 4.6 Exceptions to development standards***

The development exceeds the maximum building height development standard prescribed under Clause 4.3 of HLEP 2012. A written request in relation to the contravention to the building height development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of HLEP 2012 was submitted within the SEE of the application.

A maximum building height of 12 metres applies to subject site under Clause 4.3 of HLEP 2012.

The maximum building height in the 4-storey part of the proposed development is 15.8m which results in a 3.8m variation or 31.6% variation.

The two 3-storey buildings have a maximum height of 12.87 metres and 12.75 metres and breach the 12 metres height standard by 0.87 metres or 7.5% and 0.75 metres or 6.5%.

Figure 5 below shows the extent of non-compliance of the three proposed buildings with Council's 12 metre height control.



Figure 18: 12m height plane showing the extent of non-compliance.

[Source: JS Architects, 2017. Drawing No.042/15-16 19/32 Revision B dated 16/05/2017]

**Figure 5 – Extract from SEE report by Edwards Planning June 2017**

Under Clause 4.6, development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that demonstrates that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

The Consent Authority must also be satisfied 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.

Best practice in dealing with Clause 4.6 Variations involves a consideration of relevant court cases, including:

- *Wehbe v Pittwater Council [2007] NSW LEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSW LEC 1386;*
- *Moskovich v Waverley Council [2016] NSW LEC 1015; and*
- *Zhang and anor v Council of the City of Ryde [2016] NSW LEC 1179.*

In *Wehbe v Pittwater Council [2007] NSW LEC 827*, Chief Justice Preston stated that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary in the circumstances of the case. These five ways are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

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4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

In relation to this proposal, the written request provided by the applicant contends that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case for reasons which reflect ways 1 and 2 outlined in *Wehbe*.

The applicant considers compliance with the maximum building height development standard to be unreasonable and unnecessary because the objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objectives as set out by clause 4.3(1) of the HLEP 2012 are as follows:

- (a) *To protect privacy and the use of private open space in new development and on adjoining land;*
- (b) *To ensure that the bulk of development is not excessive and relates well to the local context;*
- (c) *To nominate heights that will provide a transition in built form and land use intensity;*
- (d) *To ensure an appropriate height transition between new buildings and heritage items.*

Part (2) of Clause 4.3 states that "*the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map*".

The written request in the revised SEE dated June 2017, states the following points in support of the requested variation, ie that:

- "In the case of Blocks A and C, the non-compliant portions of the roof form do not result in any impact to the privacy of occupants to adjoining land, with no opportunities for overlooking from windows, balconies or other habitable or trafficable spaces. In the case of Block B, the non-compliant upper storey includes windows to the northern and southern side elevations and the eastern rear elevation, which also includes two modest sized balconies. There is likelihood for some opportunities for overlooking to the private open spaces of adjoining properties, however the extent of overlooking would be marginally different were the building to achieve numerical compliance with the maximum building height development control".
- "Much of the additional shadow cast from Block B will fall within the boundaries of the subject site and will still achieve an equitable and satisfactory provision of solar access to the private open spaces of adjoining properties."
- "When viewed from a pedestrian scale within Macquarie Street and adjoining property, the hipped roof forms of the three buildings will largely be concealed from view, whereby not directly contributing to a sense or perception of excessive building bulk and scale".
- "The three buildings are therefore considered to be appropriately scaled, commensurate to the width and depth of the large site. The incorporation of generous setbacks to the side and rear boundaries further amplifies the sense of building separation and provides for an appropriate sense of

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transition in scale rather than an abrupt transition. This will be enhanced by the introduction of new landscape plantings, commensurate with the height and scale of the buildings”.

The applicant contends that there are sufficient environmental planning grounds to justify contravening the development standard as:

- “The proposal can be considered consistent with the objectives and intent of the Maximum Building Height Standard and the R1 General Residential zone and there is sufficient justification to conclude that strict numerical compliance with the development standard of clause 4.3 is unreasonable and unnecessary in the circumstances of the case.”

Furthermore, the SEE concedes that “although the proposed design is not necessarily considered to provide a better urban design outcome than what would be achieved if strict numerical compliance with the development standard was required, the proposed built form is considered to provide a satisfactory and acceptable design outcome in terms of scale, form and language, and the relationship and transition in scale to adjoining land and built forms”.

The applicant’s justification is not agreed with and not well-founded. The 4-storey building (Block B) fails to consider the privacy of adjoining dwellings to the rear and does not relate well to the local context. The 4-storey building does not transition comfortably with adjoining dwellings which are single and 2-storey. The proposed height of 15.8 metres represents a significant 31.6% non-compliance with the maximum 12 metre height standard specified in the LEP.

The 3-storey buildings (Block A and C) breach the 12 metre height standard by a lesser degree of non-compliance of 0.725% (Block A) and 6.25% (Block C). The non-compliance is limited to the upper portion of the hipped roof forms.

Block A fails to achieve the minimum 6m side setback to the eastern and southern boundaries required by the ADG. A setback of only 5.675 metres is achieved to the eastern boundary and 5.5 metres to the nearest southern boundary. This under-provision of side boundary setbacks, coupled with the extra height, creates additional bulk impacts to the adjoining residential flats on both the eastern and southern adjoining lots, potentially restricting their future redevelopment and reducing the privacy of the occupants.

The western boundary which includes the driveway and drainage easement, achieves a compliant setback of 8 metres.

Whilst the concept of the three separate buildings is preferred to the original linear street ‘wall’ building, the final design has not addressed Council’s concerns about the overall bulk, scale and amenity impacts.

The height of the proposed central building (Block B) is not supported on merit, due to a concern for its impact on adjoining dwellings based on visual bulk and loss of privacy.

The additional height of Block A is not supported as coupled with the reduced setbacks, Block A will also have unacceptable visual bulk and privacy impacts on adjoining residential buildings.

There are a number of additional deficiencies in the application which result in the view that the proposed development generally is unacceptable.

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The impacts of the proposed development on adjoining development have been inadequately described in the SEE. The site analysis lacks detail of window locations, living areas, private open space areas and associated view lines, relating to adjoining dwellings to the south and south west. This means that concerns relating to loss of privacy and visual bulk have not been adequately addressed by the application.

Accordingly, the variation to the allowable height standard of 12 metres in Council’s LEP is not considered adequately justified and is not well-founded or worthy of support.

Clause 5.10 Heritage conservation

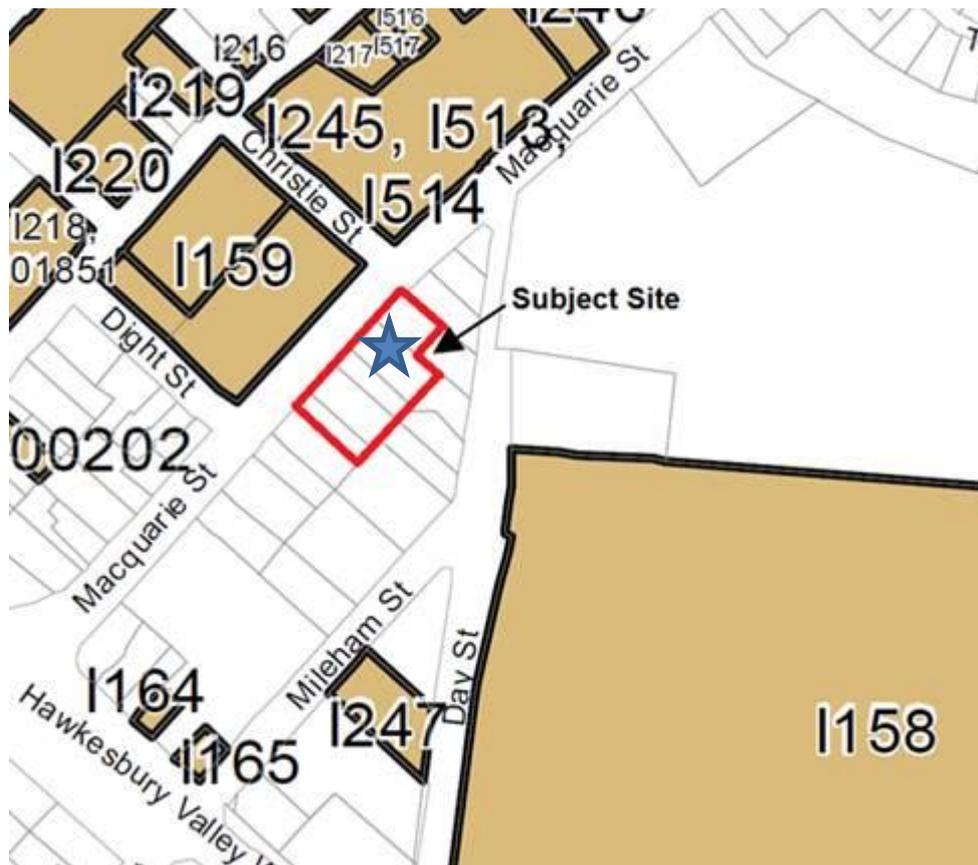


Figure 6 - Extract from Council’s Heritage Map under HLEP 2012

Note.

*Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.*

(1) Objectives

The **objectives of this clause** are as follows:

- (a) *to conserve the environmental heritage of Hawkesbury,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

(5) *Heritage assessment*

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*The consent authority may, before granting consent to any development:*

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

*require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

The revised SEE satisfactorily addresses the matter of the compatibility of the development, in its amended form with three separate buildings, with heritage items in the vicinity, and especially those directly opposite the subject site comprising the Windsor Public School and old Hawkesbury Hospital.

6.1 Acid sulfate soils

Consent is not required under this clause. The land is mapped as Class 5 land and works are not below 5 metres Australian Height Datum. The water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

This matter is considered satisfactory.

6.2 Earthworks

The earthworks would not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land and are considered ancillary to the proposed development. The works do not require separate consent.

It is noted that earthworks will affect a RMS easement that burdens the site and accordingly the RMS requested additional information in this regard. The information has now been provided and is considered satisfactory by the RMS.

6.3 Flood planning

- (1) The **objectives of this clause** are as follows:*
  - (a) to minimise the flood risk to life and property associated with the use of land,*
  - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
  - (c) to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) This clause applies to land at or below the flood planning level.*
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
  - (a) is compatible with the flood hazard of the land, and*
  - (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
  - (c) incorporates appropriate measures to manage risk to life from flood, and*



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Both traffic and aircraft noise were also considered in the report and appropriate recommendations made to ensure compliance with design criteria for residential habitable and other spaces as given in Australian Standard AS2021-2015. This matter could be addressed by conditions on any development consent.

6.7 Essential services

*Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:*

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable road access.*

All of the above matters relating to services have been met, including the submission of a Waste Management Plan, with the application, enabling suitable conditions to be drafted and applied to any development consent.

Concerns relating to road access in and out of the development from Macquarie Street were resolved with concurrence from RMS being received on 6 April 2018. The concurrence also dealt with conditions around an easement for support to the Macquarie Street pavement.

Council Engineers advised that the proposed relocation of the 3m wide drainage easement from its existing location within Lot 1, DP613929 to the western end of the being the western boundary of Lot 1, DP579823 where it is proposed at 2.5 m wide, is satisfactory.

ii. **Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:**

None applicable

iii. **Non-statutory documents**

***Greater Sydney Region Plan and Western City District Plan***

The Greater Sydney Region Plan is the new regional plan for the Sydney metropolitan region, produced by the Greater Sydney Commission. The Western City District Plan is a sub-plan which provides more detailed strategic planning for the Western district in respect of economic, social and environmental matters. It identifies the planning priorities for the district and actions to achieve these priorities.

The following priorities are relevant to the proposed development:

***Planning Priority W5 - Providing housing supply, choice and affordability, with access to jobs, services and public transport***

In this regard, the proposal provides a type of housing type (units) which is less common in the Hawkesbury LGA. The subject site is within walking distance to public transport. The proposal thus satisfies the Planning Priority in terms of choice and affordability, and providing housing with reduced car dependence.

***Planning Priority W6 – Creating and renewing great places and local centres, and respecting the District’s Heritage***

Additional density will have a positive impact on the Windsor Town Centre. Compatibility with nearby heritage-listed building has been satisfactorily addressed in the design of the proposed development.

***Planning Priority W20 – Adapting to the impacts of urban and natural hazards and climate change***

***Objective 37 – Exposure to natural and urban hazards is reduced***

The Western City District Plan recognizes that the Hawkesbury-Nepean Valley has the greatest flood exposure in NSW with specific characteristics. “Evacuation of people in extreme events is made complicated by the size of the area affected the need to evacuate certain areas early before they become isolated by rising flood waters”.

The Plan recommends applying flood related development controls on land between the 1 in 100 year chance flood event and the probable maximum flood (PMF) level. The application not supported by a specific flood risk management report which considers Councils flood related development controls and is considered to be inconsistent having regard to the planning priority of this plan.

***Hawkesbury Development Control Plan (HDCP) 2002***

The proposed development has been assessed having regard to the requirements of HDCP. An assessment of the proposal against the relevant provisions of this plan is provided at Attachment 5.

**iv. Planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F**

None applicable.

**v. Any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*)**

The proposal is not inconsistent with the Upper Hawkesbury River Estuary Coastal Zone Management Plan. The 2018 SEPP for Coastal Management now applies, and has been addressed earlier in this report.

**vi. Matters prescribed by the Regulations:**

The Environmental Planning and Assessment Regulation 2000 provides that:

- The proposal be levied against Councils Section 94A Development Contributions Plan. In this respect, Councils Section 94A Development Contributions Plan 2015 would require a 1% levy to be paid on the development based on the estimated development; and,
- That the development shall comply with the provisions of the Building Code of Australia (BCA)/National Construction Code.

The nominated cost of development is \$9,430,000 and therefore if approved, the Section 94A contribution would be approximately \$94,300. Given the time that the application has been under assessment, and changes to the proposed built form, a revised cost of

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works would be required, prior to setting this figure in a condition in the event of approval being granted.

**b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality**

The 4-storey component of the proposed development is likely to have unacceptable privacy impacts on adjoining low density residential development as it is very close to the rear boundary. Also, the basement wall reads as a storey, effectively giving the impression of a five storey development against the back boundary (refer south east elevation). As such, the development will have an unacceptable visual bulk impact on adjoining properties to the rear.

**c) Suitability of the site for the development**

In principle the site is considered a suitable site for higher density residential development, notwithstanding the fact that it is flood-affected. It has good access to public transport (Windsor Train and Bus Station), to the commercial business areas of Windsor and South Windsor and access to community parks and facilities such as the hospital, schools, and McQuade Park.

**d) Any submissions made in accordance with the Act or the Regulations**

***Roads and Maritime Services***

The application was referred to RMS for comment and has been discussed previously in this report.

***Australian Department of Defence***

The application was referred to RMS as the proposal is located within the noise exposure flight path of the Royal Australian Air Force Base Richmond. In its response of 10 August 2017, the Department of Defence advised that increasing residential density within a flight path is not supported.

The Department of Defence recommends that the applicant obtains the services of a specialist risk assessment consultant to advise on this matter and make any recommendations to ensure public safety, including any recommendations be included in an emergency management plan.

Furthermore the Department of Defence notes that if the proposal was supported, the applicant should be required to adhere to the requirements outlined in the Traffic Noise and Aircraft Noise Assessment submitted with the application. If the application was to be approved, then the recommendations of the Traffic Noise and Aircraft Noise Assessment Report would be incorporated into conditions.

**e) The Public Interest**

All aspects of the proposed development have been considered and on balance, it is felt that even though the application was improved over a number amendments, the remaining deficiencies of the application are significant and result in the application not being supportable in its current form.

**Conclusion**

The subject application for development of the site for apartments has undergone several amendments since its initial lodgement in July 2016.

Whilst the final set of amended plans are an improvement on the development proposal originally submitted to Council, numerous deficiencies with the development proposal remain raising concerns in respect to visual bulk impacts, insufficient communal space, non-compliant setbacks and loss of privacy to adjoining residential dwellings to the rear of the site. Furthermore key reports (ie tree

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survey and assessment, flood impact assessment, disability access, and revised acoustic report) were not provided with the amended application.

Accordingly, the application is not supported and refusal of the application is recommended, for the following reasons.

**RECOMMENDATION:**

That Development Application No. DA0545/16 at Lot 381 DP 595952, Lot 380 DP 818974, Lot 1 DP 797152, Lot 1 DP 613929 and Lot 1 DP 579823, 122-124 Macquarie Street WINDSOR NSW 2756 for a residential flat building be REFUSED for the following reasons:

1. The proposed development exceeds the maximum building height development standard of 12 metres prescribed under Clause 4.3 of Hawkesbury Local Environmental Plan 2012 by 31.6% for Block B and 7.5% and 6.5% for Blocks A and C respectively, and an exception to this development standard is not supported under Clause 4.6 of Hawkesbury Local Environmental Plan 2012. The application fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and the written request provided has failed to provide well-founded planning grounds to justify the contravention of the development standard.
2. The proposed development is unacceptable having regard to the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, and in particular:
  - (a) The site analysis plan lacks detail on adjoining residential dwellings which are likely to be significantly impacted by the proposed development, and especially by Block B which is proposed at 4 storeys. The site analysis plan lacks information about distances to adjoining dwellings, the characteristics of their private spaces, including trees and land levels, location and height of existing windows, detail on living areas of these dwellings, balconies, wall and fence heights, sight lines from proposed balconies and living areas of the proposed development, all of which are specified as required information of the Apartment Design Guide (ADG). Accordingly, it does not satisfy Objective 3A-1 in Part 3 of the ADG;
  - (b) The proposed development fails to provide the minimum 6m setbacks on the eastern and southern boundaries for Blocks A and B, resulting in habitable rooms and balconies being located less than 6m to boundaries. Accordingly, the development is considered unsatisfactory in terms of Objective 3F -1 relating to Visual Privacy of the ADG:
  - (c) The proposed development does not satisfy the minimum requirement for Common Open Space specified in Part 4 of the ADG in which the Design Criteria to meet the Objective 3D-1 specifies a minimum area equal to 25% of the site. The common open space plan (21 of 32) Issue C dated 16 May 2017 shows parts of the common open space to be less than 2m in width ie along the south western and south eastern boundaries which will be landscaped but which are clearly not useable as recreational area. Also, the areas occupied by the proposed electricity sub-station in the northern corner and areas forward of the front fence and affected by an RMS easement are clearly not usable, and should not be included.
  - (d) The proposed development lacks details detail on external finishes and landscape features including details of seating, lighting, pathway finishes, front fencing, letter box design, screening of balconies which overlook rear properties and planting in areas affected by easements.

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- (e) The proposed removal of 5 existing mature trees on the subject site was not supported by a tree survey and assessment report by a qualified arborist, and as such it is not possible to properly assess whether or not some of these existing trees could have been retained in the design of the development.
3. The proposed development fails to adequately respond to Clause 2.3 of Hawkesbury Local Environmental Plan 2012, Zone objectives and Land Use Table, and the objectives of the R1 zone, in its failure to ensure the development retains or enhances existing landscape values and does not detract from the existing residential character of the site and the surrounds.
  4. The proposed development fails to adequately respond to Clause 4.3 of Hawkesbury Local Environmental Plan 2012, Height of Buildings, in that the proposed buildings as a whole do not fit within the maximum building height shown for the land and the rear building block in particular does not provide for an appropriate height transition with adjoining development.
  5. The proposed development, fails to adequately respond to Clause 6.3 of Hawkesbury Local Environmental Plan 2012, Flood related development controls, in that the application is not supported by a flood risk assessment report.
  6. The proposed development fails to provide the 10 metre setback to an Arterial Road as required under Hawkesbury Development Control Plan 2002 (Part D Section 1.4 of the Residential Chapter). The proposed setback does not provide for an attractive streetscape and would result in providing an unsatisfactory amenity for future residents.
  7. A Disability Access Report has not been submitted with the application and therefore there is concern that the proposed development may not be able to ensure a network of accessible pathways to all communal parts of the development, including letterboxes, waste disposal areas and storage areas.
  8. The proposed development presents an unsatisfactory built form for the subject site and the desired future streetscape.
  9. Due to the above reasons, the proposal is not considered to be in the public interest

**ATTACHMENTS:**

- AT - 1** Locality plan and Aerial photograph
- AT - 2** Plans
- AT - 3** Assessment of Application against the Design Quality Principles of SEPP No. 65
- AT - 4** Assessment of Application against the Apartment Design Guide
- AT - 5** Assessment of Application against Hawkesbury DCP

**AT - 1 Locality plan and Aerial photograph**

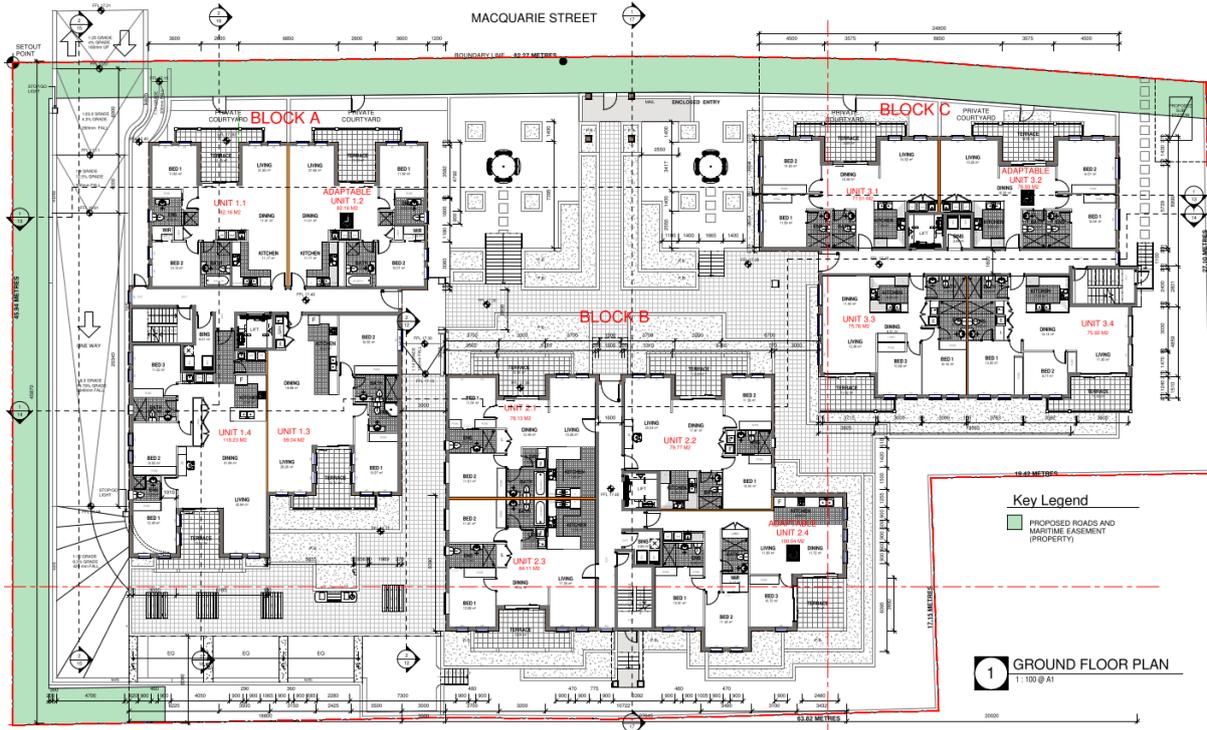




# HAWKESBURY INDEPENDENT HEARING AND ASSESSMENT PANEL

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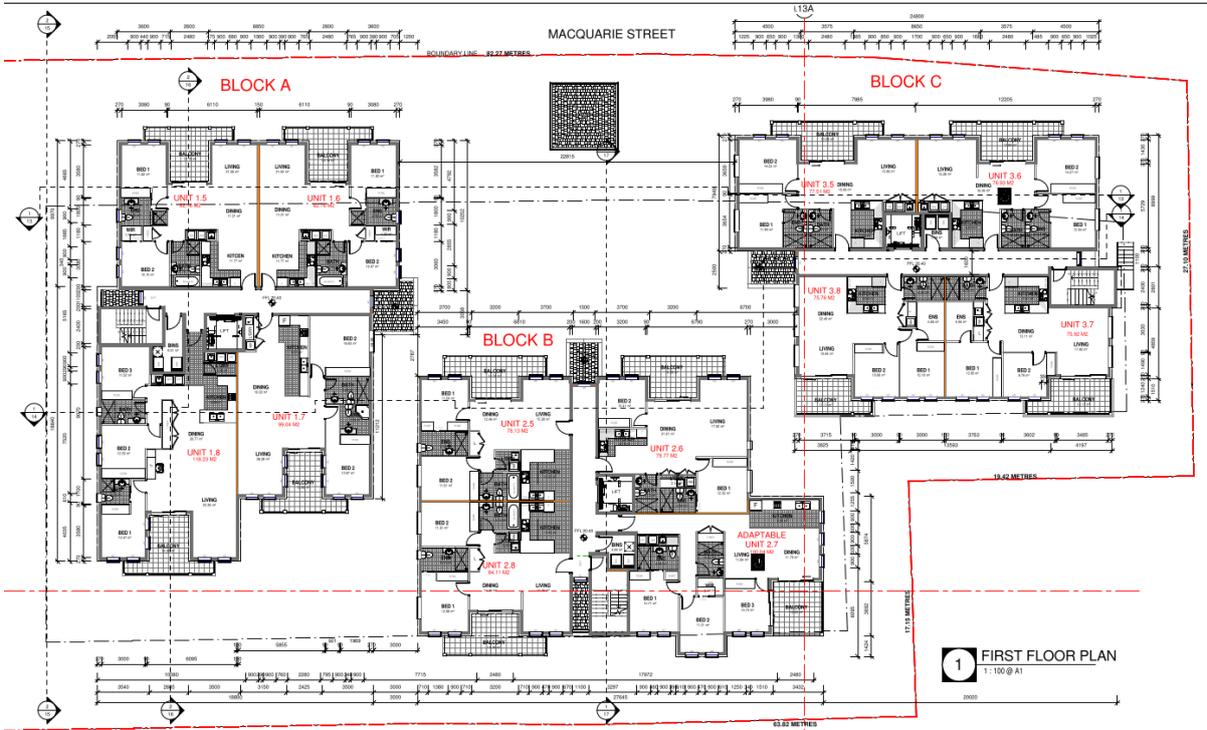
REVISIONS	DATE	BY	DESCRIPTION
1	04/15/16	JS	ISSUED FOR PERMIT

CLIENT	PROJECT NUMBER	DATE
H&P BUILDING GROUP	042/15-16	05/02/16

PROJECT	SCALE	SPRINT
RESIDENTIAL FLAT BUILDING NO 122/132 MACQUARIE STREET, WINDSOR, NSW	SCALE @ A1	C



REVISIONS	DATE	BY	DESCRIPTION
1	04/15/16	JS	ISSUED FOR PERMIT

CLIENT	PROJECT NUMBER	DATE
H&P BUILDING GROUP	042/15-16	05/02/16

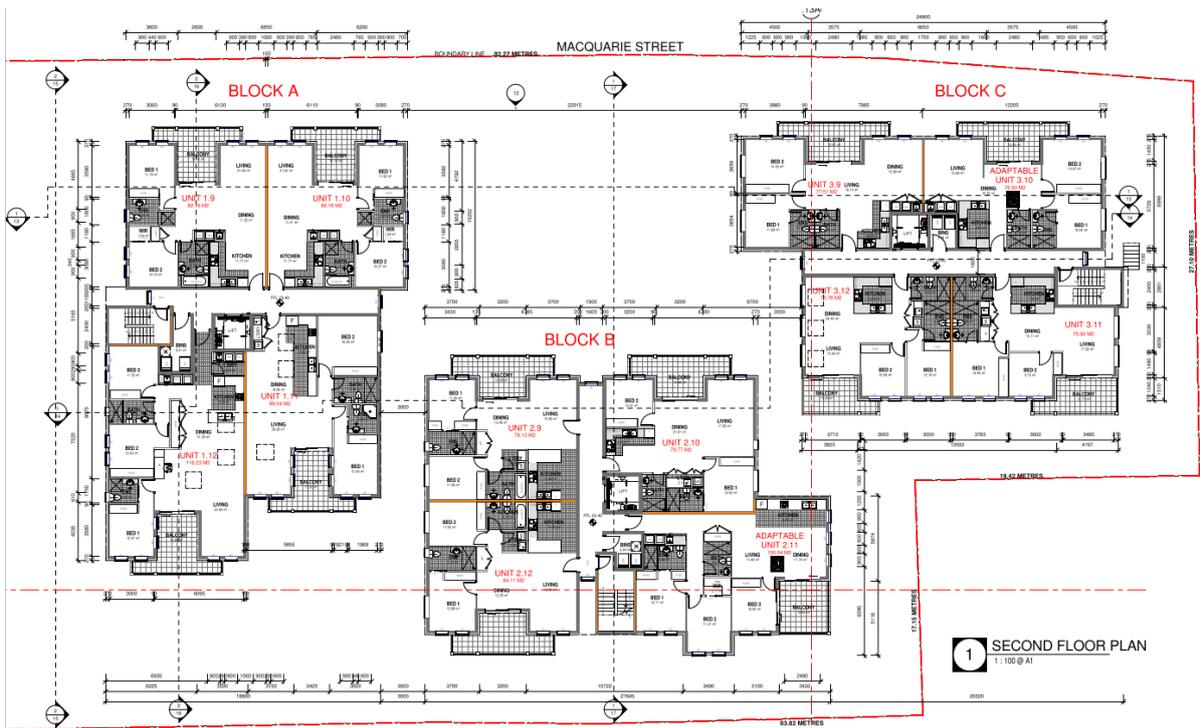
  

PROJECT	SCALE	SPRINT
RESIDENTIAL FLAT BUILDING NO 122/132 MACQUARIE STREET, WINDSOR, NSW	SCALE @ A1	C

# HAWKESBURY INDEPENDENT HEARING AND ASSESSMENT PANEL

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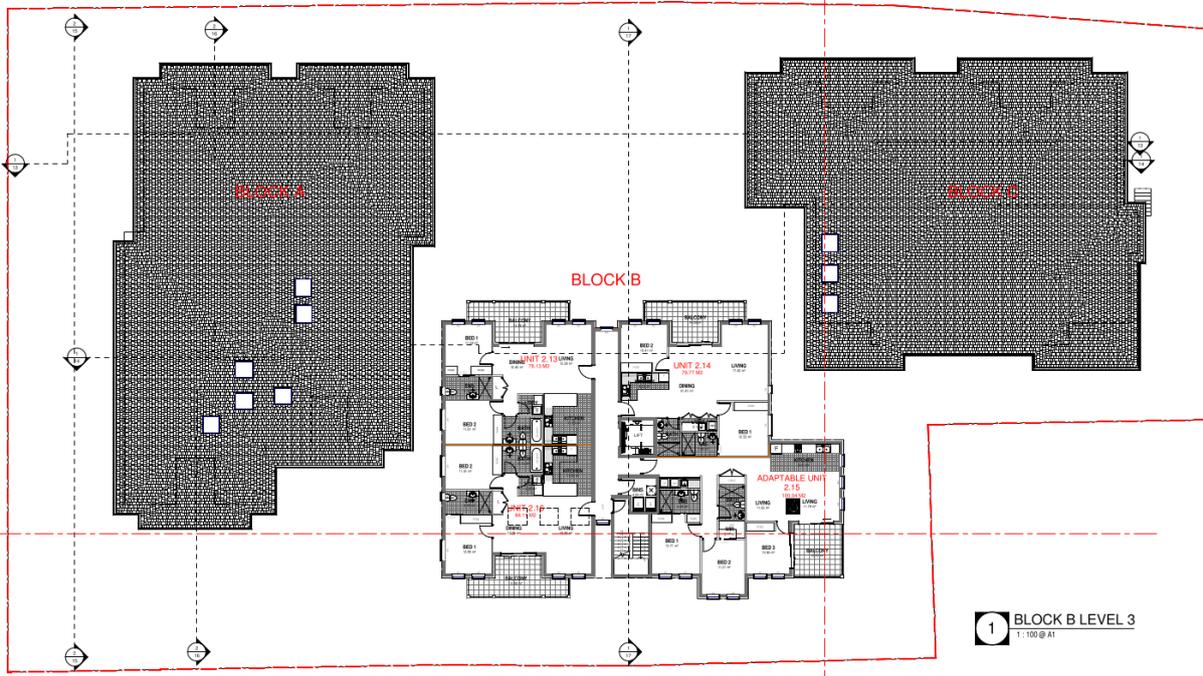
**1** SECOND FLOOR PLAN  
1:100 @ A1

NO.	REVISION	DATE	BY	CHECKED



VISUAL SCALE 1:100 @ A1

CLIENT	HMP BUILDING GROUP	PROJECT	RESIDENTIAL FLAT BUILDING NO 122-132 MACQUARIE STREET, WINDSOR, NSW
DRAWING TITLE	SECOND FLOOR PLAN	ARCHITECT	JS Architects Pty Ltd
DATE	04/15/16	SCALE	1:100 @ A1
PROJECT NUMBER	042/15-16	DRAWING No.	07
		ISSUE	C



**1** BLOCK B LEVEL 3  
1:100 @ A1

NO.	REVISION	DATE	BY	CHECKED



VISUAL SCALE 1:100 @ A1

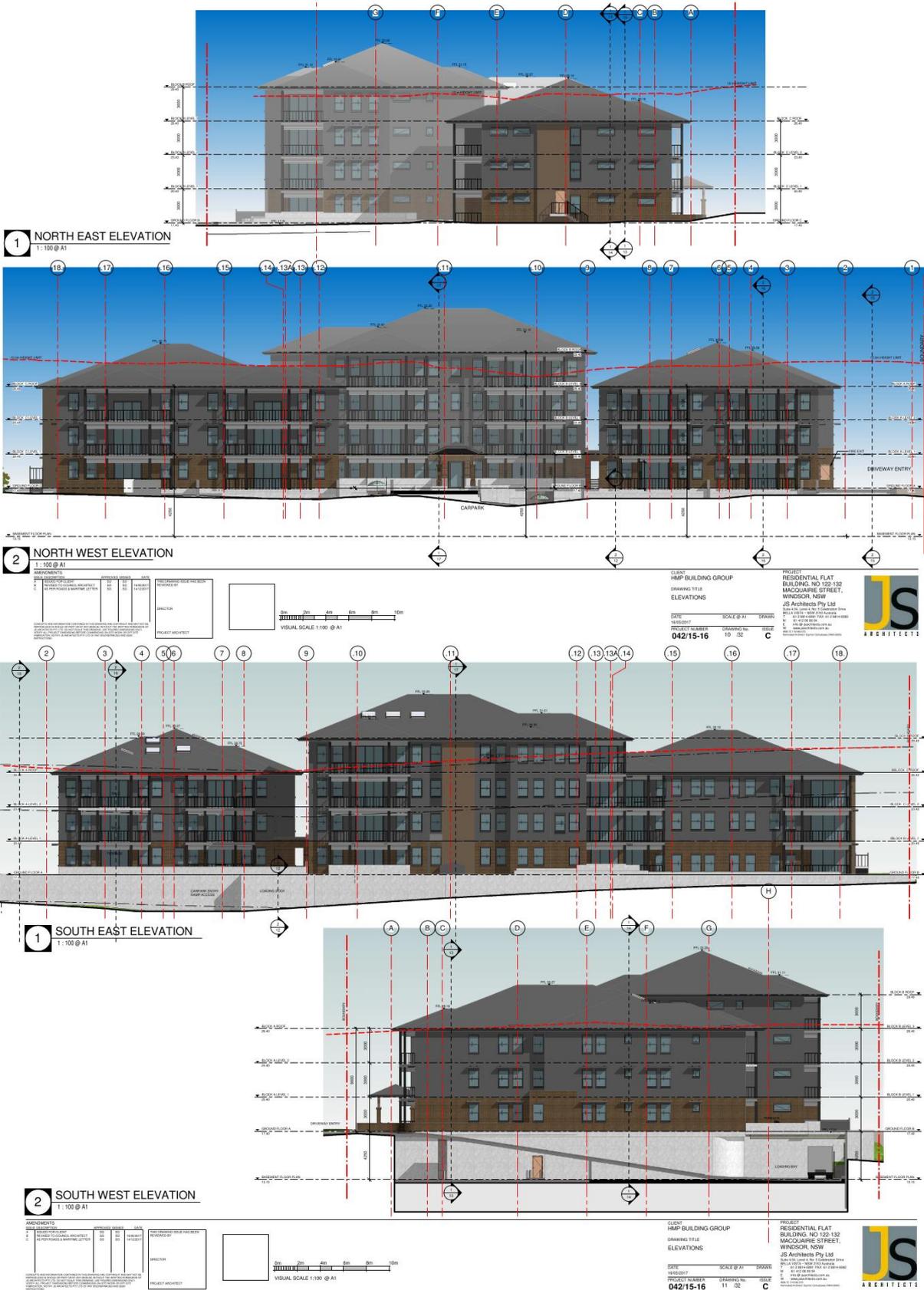
CLIENT	HMP BUILDING GROUP	PROJECT	RESIDENTIAL FLAT BUILDING NO 122-132 MACQUARIE STREET, WINDSOR, NSW
DRAWING TITLE	BLOCK B LEVEL 3	ARCHITECT	JS Architects Pty Ltd
DATE	04/15/16	SCALE	1:100 @ A1
PROJECT NUMBER	042/15-16	DRAWING No.	08
		ISSUE	C



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**AT - 3 Assessment of Application against the Design Quality Principles of SEPP No. 65**

SEPP 65 Design Quality Principles	Council Officers Comment
<p><b>Principle 1: Context and neighbourhood character</b>                      Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.                      Responding to context involves identifying the desirable elements of an area’s existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.                      Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The hipped roof form is consistent with other surrounding roof forms on the building on the opposite side of Macquarie Street (Windsor Library and the old Hawkesbury Hospital).</p> <p>There is concern that the four storey building does not transition to adjoining development at the side and rear which comprises low density single and double storey residential dwellings.</p>
<p><b>Principle 2: Built form and scale</b>                      Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.                      Good design also achieves an appropriate built form for a site and the building’s purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.                      Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The four storey building to the rear of the site does not relate well with the adjoining properties to the south and south west and due to its siting and the fall of the land represents an overbearing level of bulk and scale.</p>
<p><b>Principle 3: Density</b>                      Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.                      Appropriate densities are consistent with the area’s existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>Increased density for the subject site is considered acceptable in principle.</p>
<p><b>Principle 4: Sustainability</b>                      Good design combines positive environmental, social and economic outcomes.                      Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and livability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The proposal meets the necessary requirements for BASIX and is compatible with sustainability principles.</p>

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<b>SEPP 65 Design Quality Principles</b>	<b>Council Officers Comment</b>
<p><b>Principle 5: Landscape</b>                      Good design recognises that landscape and buildings operate together as an integrated and sustainable system, and of considered together, will result in a better design and better amenity. A positive image is achieved when new development contributes to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>Existing trees are proposed to be removed and the applicant has not justified their removal.</p> <p>Details regarding pavement finishes, the front entrance feature, street tree planting, the type of seating in the two front seating areas, and fencing detail have not been provided and this forms a ground of refusal.</p> <p>The common open space plan does not provide dimensions, and areas which are not useable ie perimeter areas, area of proposed electricity sub-station, and areas affected by RMS easements, have been incorporated whereas these areas do not meet the test of being usable. It is not clear whether the 25% requirement for common open space specified in the ADG can be met.</p>
<p><b>Principle 6: Amenity</b>                      Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The amenity of future residents of the developments depends largely on a reasonable level of solar access and ventilation of the apartments.</p> <p>68% of apartments will receive more than 2 hours of direct sunlight during the mid-winter solstice, and 35 apartments (around 80%) have a dual aspect enabling cross ventilation.</p> <p>Overlooking from Building B and loss of visual privacy to adjoining dwellings remains a matter of concern and one which has not been fully addressed by the application.</p>
<p><b>Principle 7: Safety</b>                      Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>Adequate surveillance of common areas is provided by the proposed design, with some units able to look into the communal areas from balconies and windows.</p>
<p><b>Principle 8: Housing diversity and social interaction</b>                      Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p>	<p>The proposed design provides opportunity for social interaction ie the communal landscaped gardens in the front setback of the development, but it is not clear whether</p>

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<b>SEPP 65 Design Quality Principles</b>	<b>Council Officers Comment</b>
<p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>the areas will be accessible to all residents.</p> <p>The application does not include an Access Report from a suitably-qualified access consultant. Therefore it is difficult to assess whether or not all units have satisfactory access to the communal areas. This matter forms a ground of refusal of the application.</p>
<p><b>Principle 9: Aesthetics</b></p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The application lacks detail on finishes, and this matter forms a ground of refusal. Likewise the landscape plan is lacking in important details which are required to address this principle in SEPP65.</p>

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**AT - 4 Assessment of Application against the Apartment Design Guide (ADG)**

It provides design criteria and general guidance about how development proposals can achieve the nine design quality principles identified in SEPP 65 (*State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*). Only those provisions of the Guide that are relevant to this proposal are discussed below:

Objective	Comment	Compliance
<p>3A-1 Site Analysis</p> <p>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context</p>	<p>The site analysis does not adequately consider impacts associated with a four-storey development at the rear of the site and its relationship with the lower scale residential development.</p>	No
<p>3B-1 Orientation</p> <p>Building types and layouts respond to the streetscape and site whilst optimising solar access within the development</p> <p>3B-2 Orientation</p> <p>Overshadowing of neighbouring properties is minimised during mid-winter</p>	<p>The proposed orientation of the development is considered satisfactory.</p> <p>The shadow diagrams lack sufficient detail to determining the exact level of overshadowing particularly in relation to the neighboring private open space. Notwithstanding based on what was submitted the level of overshadowing in mid-winter appears to be within acceptable limits.</p>	Yes
<p>3D-1 Communal and Public Open Space</p> <p>Design Criteria</p> <p>Communal open space has a minimum area equal to 25% of the site area</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter)</p>	<p>The communal open is stated to be 46% of the overall site area, but includes areas along the perimeter of the site, the area of the proposed electricity sub-station and areas which are affected by an RMS easement. All of these areas are not usable for recreation, and the amount of usable common open space provided is overstated in the diagram.</p>	No

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Objective	Comment	Compliance
<p>3E-1 Deep Soil Zones</p> <p>Design Criteria</p> <p>Deep soil zones are to meet the following minimum requirements:</p> <p>Site area &lt;650m<sup>2</sup> 7% of site area</p> <p>Site area 650m<sup>2</sup>-1,500m<sup>2</sup></p> <p>Minimum dimensions of 3m and 7% of site area</p> <p>Site area &gt;1,500m<sup>2</sup></p> <p>Minimum dimensions of 6m and 7% of site area</p> <p>Site area &gt;1,500m<sup>2</sup> with significant existing tree cover</p> <p>Minimum dimensions of 6m and 7% of site area</p>	<p>Site area &gt;1,500m<sup>2</sup></p> <p>Minimum dimensions of 6m and 7% of site area</p> <p>The proposed Deep Soil Diagram also includes the area of the proposed electricity substation and the RMS easement and therefore overstates the achievement of deep soil which is stated to be 30.75%.</p>	<p>No</p>
<p>3F-1 Visual Privacy</p> <p>Design Criteria</p> <p>Separation distance between windows and balconies is provided to ensure visual privacy is achieved. Minimum requires separation distance from buildings to the side and rear boundaries are as follows:</p> <p>Building up to 12m (4 storeys)</p> <p>6m between habitable rooms and balconies, 3m between non-habitable rooms</p> <p>Building up to 25m (5-8 storeys)</p> <p>9m between habitable rooms and balconies, 4.5m between non-habitable rooms</p> <p>Building over 25m (9+ storeys)</p> <p>12m between habitable rooms and balconies, 6m between non-habitable rooms</p>	<p>It is considered that four storeys at the rear of the site is unacceptable having regard to the adjoining low density zone. A four storey building at a setback of less than 6m to the rear boundary will not provide for visual privacy to adjoining development. The impact of the building is exacerbated by the rear fall of the land.</p> <p>Habitable rooms and balconies of Buildings A and B are located less than the required 6m to the nearest side and rear boundaries.</p> <p>A three-storey development at the rear would be more appropriate in terms of transition with adjoining single and two-storey buildings in the lower density zone. It is noted that the ADG recommends:</p> <p><i>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)</i></p>	<p>No</p>

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<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distance between neighbouring properties</p>		
<p>3F-2 Visual Privacy</p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space</p>	<p>Visual privacy within the development has been addressed satisfactorily by the proposed built form involving three buildings and the associated placement of windows, balconies and private terraces, with the exception of private open spaces located fronting Macquarie Street.</p>	<p>No, the privacy amenity of some ground floor units close to the front boundary will be poor.</p>
<p>3G-1 Pedestrian Access and Entries</p> <p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>3G-2 Pedestrian Access and Entries</p> <p>Access, entries and pathways are accessible and easy to identify</p>	<p>The proposed common front entry is legible and relates well to the street. Direct (gate) access is proposed to 4 units off Macquarie Street, although the practicality of this arrangement which does not relate to the front doors is queried.</p>	<p>Yes</p>
<p>3H-1 Vehicle Access</p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>Access to the site was originally a matter of RMS concern, but has been satisfactorily resolved, subject to conditions.</p>	<p>Yes</p>

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Objective	Comment	Compliance
<p>J-1 Bicycle and Car Parking</p> <p>Design Criteria</p> <p>For development in the following locations:</p> <p>on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</p> <p>on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less</p> <p>The car parking need for a development must be provided off-street</p>	<p>Based on the Guide to Traffic Generating Development, the recommended minimum number of off-street resident parking spaces for a high density residential development in a metropolitan sub-regional centre, is:</p> <p>0.9 spaces per 2 bedroom unit 1.4 spaces per 3 bedroom unit 1 space per 5 units for visitor parking.</p> <p>Therefore, based on the Guide, the car parking required would be 48 spaces. This is provided in the basement carpark.</p>	<p>Yes</p>
<p>4A-1 Solar and Daylight Access</p> <p>Design Criteria</p> <p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter</p>	<p>Only 68% of apartments will receive the 2 hours of minimum direct sunlight.</p> <p>From the solar access diagram provided, 8 apartments out of 40 or 20% appear not to receive the required level of solar access.</p> <p>It is not clear how many of these 8 apartments receive no direct sunlight, as the diagram does not provide the required level of detail.</p>	<p>No</p>

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Objective	Comment	Compliance
<p>4B-3 Natural Ventilation</p> <p>Design Criteria</p> <p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be naturally ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation can cannot be fully enclosed</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	<p>All proposed units have cross ventilation.</p>	<p>Yes</p>
<p>4C-1 Ceiling Heights</p> <p>Design Criteria</p> <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms - 2.7m</p> <p>Non-habitable rooms - 2.4m</p> <p>2 storey apartments - 2.7m for main living area floor</p> <p>2.4m for second floor, where its area does not exceed 50% of the apartment area</p> <p>Attic spaces - 1.8m at the edge of room with a 30 degree minimum ceiling slope</p> <p>If located in mixed use areas, 3.3m for ground and first floor to promote future flexibility of use</p>	<p>All apartments have a minimum ceiling height of 2.7m to habitable rooms.</p> <p>All apartments have a minimum ceiling height of 2.4m to non-habitable rooms.</p>	<p>Yes</p>

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Objective	Comment	Compliance
<p>4D-1 Apartment Size and Layout</p> <p>Design Criteria</p> <p>Apartments are required to have the following minimum internal areas:</p> <p>Studio - 35m<sup>2</sup></p> <p>1 bedroom - 50m<sup>2</sup></p> <p>2 bedroom - 70m<sup>2</sup></p> <p>3 bedroom - 90m<sup>2</sup></p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>The minimum apartment sizes are met for all apartments.</p>	<p>Yes</p>
<p>4D-2 Apartment Size and Layout</p> <p>Design Criteria</p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Minimum sizes for habitable room depths comply.</p>	<p>Yes</p>

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Objective	Comment	Compliance
<p>4D-3 Apartment Size and Layout</p> <p>Design Criteria</p> <p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>1 bedroom apartments - 3.6m</p> <p>2 or 3 bedroom apartments - 4m</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>Minimum sizes and dimensions for bedrooms and living areas comply</p>	<p>Yes</p>
<p>4E-1 Private Open Space and Balconies</p> <p>Design Criteria</p> <p>All apartments are required to have primary balconies as follows:</p> <p>Studio apartments - 4m<sup>2</sup></p> <p>1 bedroom apartments - 8m<sup>2</sup> with a minimum depth of 2m</p> <p>2 bedroom apartments - 10m<sup>2</sup> with a minimum depth of 2m</p> <p>3+ bedroom apartments - 12m<sup>2</sup> with a minimum depth of 2.4m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m</p>	<p>Minimum balcony sizes comply, but should be conditioned in any approval as the SEE refers to an earlier version of the development</p>	<p>Yes</p>

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Objective	Comment	Compliance
<p>4F-1 Common Circulation and Spaces</p> <p>Design Criteria</p> <p>The maximum number of apartments off a circulation core on a single level is eight</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>	<p>Common circulation spaces appear to comply, but should be conditioned in any approval, as the SEE applies to an earlier version of the development</p>	<p>Yes</p>
<p>4G-1 Common Circulation and Spaces</p> <p>Design Criteria</p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>Studio apartments - 4m<sup>3</sup></p> <p>1 bedroom apartments - 6m<sup>3</sup></p> <p>2 bedroom apartments - 8m<sup>3</sup></p> <p>3+ bedroom apartments - 10m<sup>3</sup></p>	<p>Adequate storage is available within the development, but conditions would be required in any approval to ensure areas are allocated.</p>	<p>Yes</p>
<p>4L-1 Ground Floor Apartments</p> <p>Street frontage is maximized where ground floor apartments are located</p>	<p>The development is designed so that a considerable number of apartments are oriented towards the street. The built form comprising three separate buildings should provide visual interest when viewed from Macquarie Street.</p>	<p>Yes</p>
<p>4M-1 Facades</p> <p>Building facades provide visual interest along the street while respecting the character of the local area</p>	<p>Satisfactory design in principle, although lacking detail of finishes.</p>	<p>Yes</p>
<p>4N-1 Roof Design</p> <p>Roof treatments are integrated into the building designed and positive respond to the streets</p>	<p>Roofs are hipped and considered satisfactory.</p>	<p>Yes</p>
<p>4W-1 Waste Management</p> <p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p>	<p>Waste storage facility is provided in the basement area.</p>	<p>Yes</p>

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Objective	Comment	Compliance
4X-3 Building Maintenance  Material selection reduces ongoing maintenance costs	More information on building and landscaping finishes would be required to make a proper assessment.	No

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**AT - 5 Assessment of Application against Hawkesbury DCP**

The following is an assessment of the application against the Hawkesbury Development Control Plan:

***Part A Chapter 3 – Notification***

The plans were publically notified in accordance with the requirements of this plan between Amended plans notified to adjoining neighbours from 10 July 2017 until 24 July 2017. No submissions were received in response to the application.

***Part C Chapter 1 -- Landscaping***

A landscaping plan has been submitted with the application and proposes landscaping along the property boundaries and in the front of Block B facing the street.

A tree survey and assessment report by an arborist was not submitted with the application, and it appears the removal of the 5 existing mature trees on the property was considered necessary to accommodate the proposed development, and that there was not attempt to try and retain any of the mature trees on the site as part of the design of the development.

New trees are proposed to be planted at the rear of the site to soften the appearance of the building and provide screening to address privacy concerns for adjoining properties. However, it is considered that this does not adequately mitigate the impact of the height of the proposed four story block.

The layout of landscaping is considered to be generally acceptable for the proposed development. Comprehensive details of the finishes of paving, seating, lighting, all fencing etc were not submitted with the application.

It is also pointed out that the areas around the perimeter of the development adjacent to the boundaries, as well as areas for the electricity sub-station and RMS easement are not usable recreational space, and should not be included in the calculation of useable open space.

***Part C Chapter 2 – Car parking and Access***

The DCP controls for car parking are as follows:

- 1 covered space per small dwelling (GFA less than 55m<sup>2</sup>)
- 1.5 covered spaces per medium dwelling (GFA between 55m<sup>2</sup> and 85m<sup>2</sup>)
- 2 covered spaces for large dwellings (GFA greater than 85m<sup>2</sup>)
- For each development containing 3 or more dwellings, visitor parking should be provided at the rate of 1 space per 5 dwellings or part thereof.

10 of the 40 proposed apartments are larger than 85m<sup>2</sup> (requiring 2 spaces each) and the remaining apartments are less than 85m<sup>2</sup> but greater than 55m<sup>2</sup>, requiring 1.5 spaces. (In this regard, it is noted that the applicant's Statement is incorrect as it quotes the incorrect DCP controls).

Therefore the DCP would require 65 resident car spaces, and 8 visitor car spaces.

The proposed number of parking spaces in the development is 48, consisting of:

- 6 visitor parking spaces
- 42 resident parking spaces, inclusive of 4 accessible parking spaces
- 6 bicycle rails

A loading bay and dock for service vehicles has been designed in the basement to service the waste and delivery needs of the residents.

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The revised Traffic and Parking report by E3 Traffic Solutions dated 7 November 2017 refers to car parking requirements in SEPP65, being for a high density residential development in a metropolitan sub-regional centre. These rates are:

- 0.6 spaces per 1 bedroom unit (0 units)
- 0.9 spaces per 2 bedroom unit (33 units)
- 1.4 spaces per 3 or greater bedroom unit (7 units); and
- 1 space per 5 units for visitor parking.

Based on the application (comprising 33 x 2 BR units and 7 x 3 BR units), and utilising the above rates, a car parking requirement of 40 resident car spaces inclusive of 4 disabled spaces, and an additional 8 spaces for visitors would be required.

The development, which can accommodate 48 cars in the basement, can comply with the RMS requirements.

Whilst the proposal does not meet the necessary parking requirements under Council's DCP, the shortfall is considered acceptable having regard to its location which is within walking distance to Windsor Railway Station and also close to a number of bus stops in Macquarie Street.

Councils are prevented from refusing consent to a SEPP 65 development where parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide which calls up the RMS Guidelines.

**Part D Chapter 1 – Residential Development**

Additional clarification is required in respect of soft landscaping areas and the amount of provision of communal space due to the fact that areas accommodating the proposed electricity sub-station and RMS easement have been included. These areas should not be included in the calculations.

A major non-compliance with respect to the DCP relates to the building height requirements. This has been discussed previously in the report and is not supported. Particular concern is raised regarding the height of Block B in the centre of the site and closest to the rear property boundary.

The building height of the development at the rear of the site is unacceptable having regard to bulk and scale and relationship with adjoining low density development.

Council's DCP requires a 10m setback for a residential flat building fronting a Main or Arterial Road. The application proposes considerably reduced setbacks of between 4.2m and 5.78m.

The applicants front setback justification is contained in the revised SEE submitted (June 2017) and states that *"While the front setback is less than the minimum stipulated, the building proposes an alignment and setback that is consistent with the established streetscape character and the landscape plan demonstrates that a quality landscaped setting will still be achieved, enhancing the streetscape character and landscaped amenity of the locality. The deep setback to Block B will allow for a generous sense of openness and opportunities for substantial landscape planting to enhance the sensory and aesthetic appeal of the streetscape presentation."*

The suggestion that the setbacks of existing single and double storey detached housing could justify the same setback of a 3 storey residential flat building development is not supported. A larger setback as per the DCP is considered necessary to ensure residential amenity and sufficient landscaping across the development frontage.

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A 10m setback would ensure that the site of a residential flat building development can be intensively landscaped across its main road frontage, with some more advanced tree plantings to create some visual and acoustic separation from the Main Road so as to maximise residential amenity and soften the appearance of the buildings.

The proposal is consistent with the residential requirements of this chapter relating to private open space and basement parking.

A detailed table of compliance with Section 1.4 of the Residential Chapter of the DCP is provided below.

<b>Element</b>	<b>Rules</b>	<b>Provided</b>	<b>Complies</b>
Height	(a) New buildings are to be constructed within the Building Height Plane for the relevant residential use. The Building Height Plane it to be adjusted for sloping sites to follow the natural ground level.	The proposed building encroaches the building height plane	No
Setbacks	(a) For sites fronting main or arterial roads, buildings are to be set 10m back from the front boundary unless there are exceptional physical circumstances. The 10m setback commences after any road widening which may affect the subject land.	The building fronts Macquarie Street which is a main/arterial road. Road Widening of Macquarie Street was effected many years ago and the frontage of the subject site is only affected by the Easement for Batter. The setback of the proposed building is between 4.2m and 5.78m to the front property boundary. This is considered inadequate for a residential flat building development, and the applicant has failed to justify the reduction in setback.	No
Landscaped Areas	(a) All forms of residential development are to contain pervious soft <u>landscaped areas</u> to a total of 30% of the total site area. This may be calculated by adding together soft <u>landscaped areas</u> of private and <u>common open space</u> . Development proposals, where required, are to indicate the proportion of the total site area that is: <ul style="list-style-type: none"> <li>▫ total “soft” <u>landscaped area</u>;</li> <li>▫ total ground level <u>private open space</u>; and</li> </ul>	The landscaped area is asserted to be 35.72% which exceeds the 30% required. However, the areas of soft landscape include area to be occupied by the electricity sub-station or the RMS easement, such that the degree of compliance is not clear. A tree survey and assessment report was not submitted with the	No

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	<ul style="list-style-type: none"> <li>▫ total common open space.</li> </ul>	<p>application, with the assumption made that all trees would need to be removed to accommodate the proposed development.</p>	
Private Open Space	<p>(a) Single dwelling houses and multi-unit housing are to provide at least one area of <u>private open space</u> for each dwelling.</p>	<p>The level of provision complies with the DCP, but there is poor amenity to the courtyards of some of the units facing Macquarie Street.</p>	No
	<p>(b) The total of <u>private open space</u> at ground level must be a minimum of 20% of the site area, regardless of permeability of the surface. This space must:</p> <ul style="list-style-type: none"> <li>▫ be capable of containing a rectangle 5m x 6m that has a slope less than 1:10;</li> <li>▫ not be comprised of any area with a dimension less than 4m; and</li> <li>▫ be exclusive of clothes drying areas, driveways, car parking and other utility areas.</li> </ul>	<p>Private open space has been provided in accordance with the numerical requirements of State Environmental Planning Policy No. 65.</p>	Yes
	<p>(a) Any above ground level balcony or rooftop area designed for <u>private open space</u> must have a minimum area of 10m<sup>2</sup> with a minimum dimension of 2m. This area is not included in the calculation for the provision of total <u>private open space</u>.</p>	<p>All primary balconies have an area in excess of 10m<sup>2</sup> and a minimum dimension of 2m.</p>	Yes
Common Use Open Space	<p>(a) For development proposals that contain 5 or more units common use open space is encouraged. Concession may be given where it is demonstrated that sufficient useable private open space has been provided.</p> <p>(b) The communal open space should generally have access only from within the site.</p> <p>(c) <u>Common open space</u> for multi-unit housing developments should be accessible from all dwellings within the development. Surveillance of</p>	<p>Open space has been provided for the development although side setbacks have been included but are not considered usable. Also the area required for the sub-station and the area of the RMS easement cannot be taken into account as part of this assessment. The centrally-located common recreation areas are suitably positioned having regard to amenity.</p>	No (further clarification required)

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	<p>this space should be possible from at least 2 dwellings.</p> <p>(d) Any proposed communal recreational <u>facilities</u> must be designed and located to avoid nuisance or danger to neighbours, residents and visitors.</p>		
<p>Access and Parking</p>	<p>(a) Driveways next to any side or rear boundary must have a landscape strip of at least 1m to separate them.</p> <p>(b) Shared driveways, access lanes and car parks must be setback a minimum of 1.5m from windows to main habitable rooms of dwellings. This standard does not apply if the floor level of the dwelling is at least 1m above the driveway.</p> <p>(c) All driveways must have a minimum width of 3m and must be sealed to prevent surface erosion.</p> <p>(d) For development that contains more than 2 units driveways are to have a minimum driveway width of 6m from the layback/kerb line to 6m inside the property.</p> <p>(e) Garages and carports must not visually dominate the street facade, should occupy less than 50% of the building facade and must be compatible with the building design.</p> <p>(f) Uncovered car parking spaces and turning areas can be located within the front setback to the required building line provided that this area is dominated by landscaping and/or addresses established streetscape patterns.</p> <p>(g) Where parking spaces are located as 90° to the driveway alignment the minimum driveway width adjacent to the space is to be 6.7m, increased as necessary to allow adequate manoeuvring on site.</p>	<p>Provided</p> <p>Provided</p> <p>Provided</p> <p>Provided</p> <p>No garages/carports within the front facade</p> <p>None provided within the front setback</p> <p>No parking spaces adjacent to driveway alignment.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

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	<p>(h) On site manoeuvring areas shall be provided to allow entry and exit to the site in a forward direction.</p> <p>(i) On site manoeuvring areas shall be provided to allow entry and exit to and from all car spaces including garage, carports, uncovered spaces and visitor spaces by a single turning movement.</p> <p>(j) Where more than 3 units are served by an access or the access is greater than 30m long, a turning area shall be provided at or near the end of the access.</p> <p>(k) On site manoeuvring shall be based on the Ausroads Standard 5m design vehicle. Templates for this standard are provided in the appendices. When using the templates a minimum of 150mm shall be provided between any fixed object and the extremities of the swept paths.</p> <p>(l) All on site car spaces shall comply with the minimum dimensions set out in Part C Chapter 2 (Car Parking and Access). Where a space adjoins a wall, fence or other fixed structures, the width shall be increased as follows to allow adequate door opening:  On one side only to 3.2m On both sides to 3.8m.  Refer to Part C Chapter 2 - Car Parking and Access for additional requirements.</p>	<p>Provided</p> <p>Provided</p> <p>Provided</p> <p>Councils engineer has assessed the traffic report and designs and consider manoeuvring adequate having regard to Australian Standards</p> <p>Councils engineer has assessed the traffic report and designs and considers manoeuvring adequate having regard to Australian Standards</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes, subject to conditions</p> <p>Yes</p>
Basement Parking	<p>(a) Only the basement parking entry should be seen as a separate level in a building. Large exposed foundations, voids and walls are not to be used.</p> <p>(b) No part of a basement should extend more than 1m above natural ground level so the height of the building is not excessive.</p> <p>(c) Consideration may be given to a sump and pump where storm water volumes are low based on merits of</p>	<p>Acceptable given location and design of the building.</p> <p>The rear of the basement wall is higher than 1m above the ground level</p> <p>Proposed</p>	<p>Yes</p> <p>No</p> <p>Yes</p>

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	the site		
Visual Amenity	<p>(a) Where there is potential for loss of privacy the proposal should incorporate some of the techniques illustrated in the DCP.</p> <p>(b) Where there is no alternative to a window, it should be screened.</p>	Overlooking is considered to be unacceptable from the four storey building.	No
Acoustic Privacy	<p>(a) Acoustic privacy is to be considered at the design stage.</p> <p>(b) Site layouts should ensure parking areas, streets and shared driveways have a line of sight separation of at least 3m from bedroom windows</p> <p>(c) A distance of at least 3m should separate openings of adjacent dwellings.</p>	<p>Satisfactory</p> <p>Provided</p> <p>Provided</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
External Noise and Vibration	<p>(a) A noise and vibration assessment must be undertaken by a suitably qualified noise consultant for any proposed residential development other than a single dwelling house located within 100m of the railway line or within Australian Noise Exposure Forecast (ANEF) 25 or greater.</p> <p>(b) Proposals must comply with the current Environment Protection Authority criteria and the current relevant Australian Standards for noise and vibration and quality assurance and incorporate appropriate mitigation measures.</p>	The proposed development is located within a 20 -25 ANEF Contour	<p>Yes</p> <p>Yes subject to compliance with recommendations of the acoustic report</p>
Safety and Security	<p>(a) Each dwelling is to be provided with direct and convenient pedestrian access to a private or public road.</p> <p>(b) Barriers to prevent movement between internal roof spaces of adjoining dwellings are required.</p> <p>(c) Elements to be incorporated in site and building design and include:</p> <ul style="list-style-type: none"> <li>▪ doorway/entry safety and surveillance to and from the footpath</li> <li>▪ illumination of public spaces including all pedestrian paths,</li> </ul>	<p>Direct pedestrian access is available from each dwelling.</p> <p>Can be provided.</p> <p>N/A</p> <p>Can be provided</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

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	<p>shared areas, parking areas and building entries to the relevant Australian Standard</p> <ul style="list-style-type: none"><li>▪ visibility to the street from the front of the development</li><li>▪ restricted access to the rear of the site.</li></ul>	Restricted access to basement car parking	
Utility and Site Services	(a) Where reticulated water is not available, a minimum storage of 100000 litres must be provided. A minimum of 10000 litres must be available at all times for fire fighting.	N/A	Yes
Cables	(a) The design, location and construction of utility services must satisfactorily meet the requirements of both the relevant servicing authority and Council.	Can be provided	Yes
Recycling, garbage and mail	(a) Collection areas must be integrated into the overall site and building design, such as the example shown in DCP.	Provided	Yes

**oooO END OF REPORT Oooo**

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**Item: 005**

**SS - Pecuniary Interest Returns - (95496, 95498)**

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**EXECUTIVE SUMMARY**

HIHAP Panel Members are required by the Code of Conduct for Local Planning Panel Members (the Code) to complete a Pecuniary Interests and Other Matters Return form identifying any pecuniary and other types of interests that they hold as at their date of commencement as a HIHAP Panel Member.

The Return forms for all HIHAP Panel Members have recently been lodged with Council on behalf of the HIHAP Chair, and the Returns are now tabled at the HIHAP Meeting as required by Section 4.19 of the Code.

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**REPORT:**

HIHAP Panel Members are required by Section 4.15 of the Code of Conduct for Local Planning Panel Members (the Code) to complete a Pecuniary Interests and Other Matters Return form identifying any pecuniary and other types of interests that they hold as at their date of commencement as a HIHAP Panel Member.

This is because HIHAP Panel Members hold a position involving the exercise of functions that, in their exercise, could give rise to a conflict between the person's duty as delegate of Council and the person's private interest.

According to Section 4.15 of the Code, these Return forms must be lodged with the Panel Chair either within one month, or prior to the Panel member's first Panel meeting, whichever occurs first, after:

- a) the person becoming a Panel member, or
- b) 30 June of each year

The Returns must be tabled at the first HIHAP Panel Meeting after the last day that the return is required to be lodged.

Section 4.18 of the Code states that the HIHAP Chair will provide the lodged Returns to Council's General Manager, who will keep the register of Returns and will cause the Returns to be published on Council's website, with the exception of the addresses of the Panel members' principal places of residence.

The Return forms for all HIHAP Panel Members have recently been lodged with Council on behalf of the HIHAP Chair, and the Returns are now tabled at the first HIHAP Meeting after the required lodgement date.

**RECOMMENDATION:**

- a) That the Section 4.15 Pecuniary Interest Returns be received and noted.
- b) That the Section 4.15 Pecuniary Interest Returns be made available on Council's website.

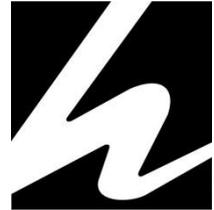
**ATTACHMENTS:**

There are no supporting documents for this report.

**oooO END OF REPORT Oooo**

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