



Hawkesbury City Council

extraordinary  
meeting  
business  
paper

date of meeting: 07 June 2011  
location: council chambers  
time: 6:30 p.m.



mission  
statement

***“To create opportunities  
for a variety of work  
and lifestyle choices  
in a healthy, natural  
environment”***

## **How Council Operates**

Hawkesbury City Council supports and encourages the involvement and participation of local residents in issues that affect the City.

The 12 Councillors who represent Hawkesbury City Council are elected at Local Government elections held every four years. Voting at these elections is compulsory for residents who are aged 18 years and over and who reside permanently in the City.

Ordinary Meetings of Council are held on the second Tuesday of each month, except January, and the last Tuesday of each month, except December. The meetings start at 6:30pm and are scheduled to conclude by 11:00pm. These meetings are open to the public.

When an Extraordinary Meeting of Council is held it will usually start at 6:30pm. These meetings are also open to the public.

### **Meeting Procedure**

The Mayor is Chairperson of the meeting.

The business paper contains the agenda and information on the issues to be dealt with at the meeting. Matters before the Council will be dealt with by an exception process. This involves Councillors advising the General Manager at least two hours before the meeting of those matters they wish to discuss. A list will then be prepared of all matters to be discussed and this will be publicly displayed in the Chambers. At the appropriate stage of the meeting, the Chairperson will move for all those matters not listed for discussion to be adopted. The meeting then will proceed to deal with each item listed for discussion and decision.

### **Public Participation**

Members of the public can request to speak about a matter raised in the business paper for the Council meeting. You must register to speak prior to 3:00pm on the day of the meeting by contacting Council. You will need to complete an application form and lodge it with the General Manager by this time, where possible. The application form is available on the Council's website, from reception, at the meeting, by contacting the Manager Corporate Services and Governance on 4560 4426 or by email at [arouse@hawkesbury.nsw.gov.au](mailto:arouse@hawkesbury.nsw.gov.au).

The Mayor will invite interested persons to address the Council when the matter is being considered. Speakers have a maximum of five minutes to present their views. If there are a large number of responses in a matter, they may be asked to organise for three representatives to address the Council.

### **A Point of Interest**

Voting on matters for consideration is operated electronically. Councillors have in front of them both a "Yes" and a "No" button with which they cast their vote. The results of the vote are displayed on the electronic voting board above the Minute Clerk. This was an innovation in Australian Local Government pioneered by Hawkesbury City Council.

### **Planning Decision**

Under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a 'planning decision' must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

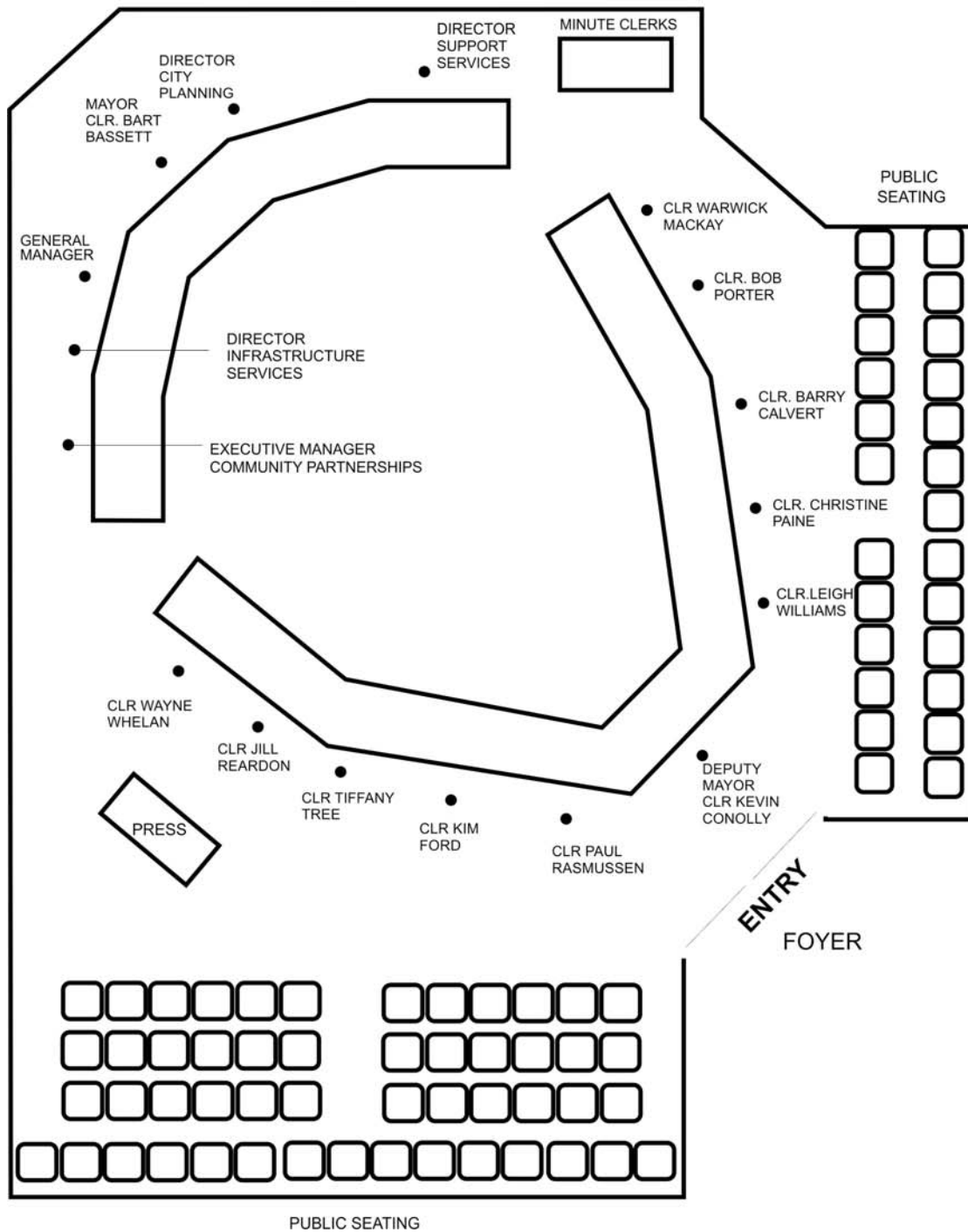
### **Website**

Business Papers can be viewed on Council's website from noon on the Friday before each meeting. The website address is [www.hawkesbury.nsw.gov.au](http://www.hawkesbury.nsw.gov.au).

### **Further Information**

A guide to Council Meetings is available on the Council's website. If you require further information about meetings of Council, please contact the Manager, Corporate Services and Governance on, telephone (02) 4560 4426.

# council chambers



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**SECTION 4 - Reports for Determination**

**CITY PLANNING**

**Item: 120 CP - Conversion of Hawkesbury Local Environmental Plan 1989 to NSW Government Standard Local Environmental Plan - Public Exhibition of Draft Hawkesbury Local Environmental Plan 2009 - (95498)**

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**REPORT:**

**Department of Local Government Dispensation from Councillor Pecuniary Interest Responsibilities**

In accordance with a previous resolution of Council on 7 October 2010, correspondence was sent to the Minister for Local Government requesting that the Minister exercise discretion under Section 458 of the *Local Government Act 1993* to remove the pecuniary interest disabilities of Councillors Bassett, Conolly, Calvert, Ford, Mackay, Paine, Porter, Rasmussen, Reardon and Whelan with respect to the consideration of and voting on the draft Hawkesbury Local Environmental Plan 2009 as related to the effects the document may have on properties those Councillors may have had an interest in.

In reply, on 9 November 2010, the Minister determined that it was appropriate to exercise discretion so as to remove the pecuniary interest disabilities of these Councillors.

The Minister provided Council with an "Instrument made under Section 458" for each of the above mentioned Councillors and a copy of these instruments have been provided to these Councillors.

At the time of making the application to the Minister, Councillor Tree did not have any pecuniary interests with respect to this matter and Councillor Williams did not provide sufficient information to enable an application be made to the Minister.

**Executive Summary**

In March 2006 all councils in NSW were directed by the NSW Government to prepare a new local environmental plan (LEP) for their respective local government areas in accordance with a standard format legislated by the *Standard Instrument (Local Environmental Plans) Order 2006*.

In response to this direction the draft Hawkesbury Local Environmental Plan 2009 (draft plan) was prepared.

In general terms the draft plan:

- adopts the standardised zonings, definitions, mapping, format and clauses required by the Standard Instrument;
- includes amended exempt and complying development schedules;
- classifies a number of Council owned lands as "operational";
- incorporates current draft Hawkesbury Local Environmental Plan 1989 Amendments 48, 115 and 156. This affects land within the vicinity of Bridge Street and Macquarie Street, Windsor (Hawkesbury Valley Holden), 84 - 112 Mulgrave Road, Mulgrave (Mushroom Substrate Production Facility) and 739 George Street, South Windsor (Windsor District Baptist Church);
- corrects anomalies in the Hawkesbury Local Environmental Plan 1989 (HLEP 1989) written instrument and maps, in regard to heritage item descriptions, wetland locations, National Parks, open spaces, minor mapping errors.

The draft plan has been publicly exhibited and Council received 102 submissions from the public and 20 submissions from public authorities. This report provides a summary of these submissions as well as discussion on the issues raised.

This report also discusses post-exhibition instructions received from the Department of Planning and Infrastructure (DoPI) with respect to the content of the draft plan and amendments to the Standard Instrument that will affect the draft plan.

Finally, this report also provides a discussion with respect to staff proposed amendments to the draft plan and the findings of a Public Hearing held into certain elements of the draft plan.

The draft plan attached to this report incorporates a number of amendments to that of the exhibited draft plan. These amendments are as a result of seeking to resolve concerns raised by respondents, amendments required by DoPI, and minor amendments recommended by Council staff. Given the nature of these amendments, it is considered that the draft plan need not be re-exhibited and that Council resolve to forward the draft plan to DoPI for finalisation and gazettal.

## **Background**

### ***Form and content of draft plan***

The draft plan is derived from the "Standard Instrument - Principal Local Environmental Plan" (Standard Instrument) as prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

The Standard Instrument provides a standardised form and content for local environmental plans and consists of the following parts and schedules.

- Part 1 Preliminary
- Part 2 Permitted or prohibited development
- Part 3 Exempt and complying development
- Part 4 Principal development standard
- Part 5 Miscellaneous provisions
- Part 6 Additional local provisions
- Schedule 1 Additional permitted uses
- Schedule 2 Exempt development
- Schedule 3 Complying development
- Schedule 4 Classification and reclassification of public land
- Schedule 5 Environmental heritage
- Dictionary

The Standard Instrument contains mandatory provisions which may be compulsory provisions or optional provisions. Mandatory provisions cannot be varied by Council.

DoPI has also provided "model local provisions" which are clauses that have been settled by the Parliamentary Counsel's Office which address common topics raised by councils.

Additional provisions may be included in the plan, but only if they are not inconsistent with the mandatory provisions of the standard instrument and comply with any relevant directions of DoPI.

The dictionary provides definitions of land use terms and other terms relevant to the interpretation and application of the plan. The land use terms are either "group terms" or "individual terms". A group term is a land use that includes a number of individual terms.

### ***Intent of the draft plan***

The draft plan has been in preparation since the gazettal of the *Standard Instrument (Local Environmental Plans) Order 2006* in March 2006. Council's initial agreed timeframe with the Department of Planning (now

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Department of Planning and Infrastructure) was for gazettal of the draft plan by March 2008 (this was subsequently revised to completion by 2011).

Given this relatively short timeframe and the previous strategic planning Council had undertaken, the intent of the draft plan was, and remains, that it be as much as possible a “like for like” conversion of HLEP 1989 to the Standard Instrument format without substantially changing the existing land use planning zones/rules, underlying permitted or prohibited land uses, or minimum lot size provisions. The draft plan has been prepared and exhibited on this basis.

It should be noted however that this intention has been affected by differences in the Standard Instrument LEP compared with HLEP 1989, various amendments to the Standard Instrument by DoPI, various directions from DoPI and input from other public authorities. Hence it has not been possible to reproduce the entire content of HLEP 1989 in an exact manner.

The table below shows how, in general terms, the zones of HLEP 1989 have been converted to the Standard Instrument zones and applied in the draft plan (as exhibited).

<b>HLEP 1989</b>	<b>Draft Plan</b>
<b>Zone</b>	<b>Zone</b>
Mixed Agriculture	RU1 Primary Production
Mixed Agriculture at Nepean Park	R5 Large Lot Residential
Rural Living excluding Windsor Downs	RU4 Rural Small Holdings
Rural Living at Windsor Downs	R5 Large Lot Residential
Rural Village	RU5 Village
Consolidated Land Holdings	RU4 Rural Small Holdings
Housing	R2 Low Density Residential
Multi-Unit Housing	R3 Medium Density Residential
Multi-Unit Housing (with cross hatching)	R1 General Residential
Rural Housing at Pitt Town	R5 Large Lot Residential
3(a) Business General	B1 Neighbourhood Centre B2 Local Centre (Richmond 3(a) and Windsor 3(a))
3(b) Business Special	B6 Enterprise Corridor
4(a) Industry General	IN1 General Industrial
4(b) Industry Light	IN2 Light Industrial
5(a) Special Uses "A"	SP1 Special Activities (Designated Use)  SP2 Infrastructure (Designated Use)  or appropriate adjoining zone
5(b) Special Uses (Railways)	SP2 Infrastructure (Railways)
6(a) Open space (Existing Recreation)	RE1 Public Recreation
6(b) Open space (Proposed Recreation)	RE1 Public Recreation
6(c) Open space (Private Recreation)	RE2 Private Recreation
7(a) Environmental Protection (Wetlands)	E2 Environmental Conservation
7(d) Environmental Protection (Scenic)	E4 Environmental Living
7(d) Environmental Protection	RU5 Village

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(Scenic) at Bowen Mountain	
7(d) Environmental Protection (Scenic) at The Islands	R5 Large Lot Residential
Environmental Protection - Mixed Agriculture (Scenic)	E4 Environmental Living
Environmental Protection - Agricultural Protection (Scenic)	RU2 Rural Landscape
7(e) Environmental Protection (Consolidated Land Holdings)	E3 Environmental Management
8(a) Nature Reserve	E1 National Parks and Nature Reserves
9(b) Proposed Road (adjoining "Classified Road")	SP2 Infrastructure (Classified Road)
9(b) Proposed Road (not adjoining "Classified Road")	Adjoining zone adopted
Hawkesbury River upstream of Windsor Bridge	W1 Natural Waterway
Hawkesbury River downstream of Windsor Bridge	W2 Recreational Waterway

**Previous Council Reports and Notices of Motion**

The draft plan has been the subject of a number of reports to Council. Below is a summary of these reports:

9 May 2006 - discussed incorporation of draft HLEP 1989 (Amendment 152) into standard instrument LEP. Amendment 152 deals with land that is proposed to be reclassified as "operational".

28 November 2006 - provided a summary of the Memorandum of Understanding with DoPI regarding the conversion process, outlined basic structure of standard instrument, zone conversion table, dealing with wetlands designated under *Sydney Regional Environmental Plan No. 20 (No.2-1997)*, draft amendments to HLEP 1989 and future spot rezoning requests.

13 February and 27 February 2007 - provided advice from DoPI regarding LEP preparation timeframes and conversion approach to new LEP, also discussed zoning anomalies.

24 April 2007 - Notice of Motion seeking to identify various anomalies in HLEP 1989.

29 May 2007 - report regarding Notice of Motion of 24 April 2007. Discussed permissibility of *truck depots* and other transport related developments, *self storage units*, tourist facility related zone objective, *light industries* in 3(b) zone, open space zones, definition of *rural shed*, spot rezonings, use of B6 Enterprise Corridor and RU6 Transition zones.

30 October 2007 - Notice of Motion regarding *animal boarding or training establishments*.

11 December 2007 - provided a summary of consultation with relevant public authorities, conservation of biodiversity corridors and remnant indigenous vegetation, permissibility of *extractive industries*, heights of buildings map, permissibility of *sex service premises*, exempt and complying development amendments and the zone conversion table.

29 September and 13 October 2009 - update of draft plan's progress, addition of waterway zones and E4 Environmental Living zone, amendment to exempt and complying development, proposed flood clause, "lot averaging" provisions, deletion of specific HLEP 1989 clauses, temporary use of land clause, wetland zone at McGraths Hill Sewerage Treatment Plant, zone conversion table.

## Consultation

The draft plan was publicly exhibited in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* (EP & A Act) for the period 5 February - 12 April 2010. Notices relating to the public exhibition were published on 4 and 18 February, 4 and 18 March, and 1 April 2010.

The draft plan and associated documentation were available for viewing at Council's main administration building as well as on Council's website throughout the exhibition period.

Approximately 1650 letters were posted to relevant public authorities and selected owners of land where a potentially significant zone change or land use change was proposed.

Throughout the exhibition period Council staff dealt with at least 250 telephone or counter enquiries regarding the draft plan. At the request of the Windsor Downs Home Owners Association, a public meeting was held on 11 March 2010. The meeting was attended by approximately 90 people and was specifically to explain the draft plan to Windsor Downs land owners.

At the time of preparing this report, Council had received 102 submissions from the public and 20 submissions from public authorities.

The draft plan proposes to classify certain Council owned land as "operational". In accordance with the provisions of the *Local Government Act 1993* (LG Act) and the EP & A Act, a Public Hearing regarding the proposed reclassifications was held on 22 July 2010 at the Council Chambers. Notices regarding the public hearing were published on 17 and 24 June 2010.

## Department of Planning Directions Regarding LEPs and Standard Instruments

When preparing a LEP councils are bound by the legislative provisions of the EP & A Act and associated *Environmental Planning and Assessment Regulation 2000* (EP & A Reg). Included in these are matters known as "Section 117 Directions". These directions deal with matters such as zoning changes, preservation of resources, environmental and heritage protection, infrastructure provision, consideration of hazards and risks, and various administrative matters. A LEP must be consistent with these directions unless the inconsistency can be justified by way of a detailed study or if it is of minor significance.

Councils must also comply with various DoPI Practice Notes and Planning Circulars. DoPI has issued a number of practice notes or planning circulars relating to the Standard Instrument. These deal with such matters as zone selection and zone objectives, land uses, reclassification of land, exempt and complying development, height and floor space ratios, mapping requirement and various administrative matters.

The *Standard Instrument (Local Environmental Plans) Order 2006* has been amended four times throughout the preparation of the draft plan. Two amendments have been made after the exhibition of the draft plan. These were on 28 April 2010 and 25 February 2011. These amendments and the incorporation of them into the draft plan will be discussed later in this report.

## Affect of State Environmental Planning Policies and Sydney Regional Environmental Plans

From time to time DoPI make State Environmental Planning Policies (SEPPs) and Sydney Regional Environmental Plans (SREPs). The Minister in determining whether or not to make a LEP will consider its consistency with relevant SEPPs and SREPs. In addition, some SEPPs and SREPs contain provisions which Council should consider when preparing a LEP. In the case of this draft plan, relevant provisions of various SEPPs and SREPs include:

### ***State Environmental Planning Policy No 19 - Bushland in Urban Areas***

Clause 10 of this plan requires Council to consider a number of general and specific matters relating to the protection and preservation of bushland within urban areas as well as the need to give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which outweigh the value of the bushland.

It is considered that the aims of the draft plan, various zone objectives, the affect of Clause 5.9 Preservation of trees or vegetation and the proposed Clause 6.9 Environmentally sensitive land - biodiversity (now known as Clause 6.8 Biodiversity (Terrestrial) and to be discussed later in this report) achieve satisfactory compliance with the provisions of Clause 10 of this SEPP.

***State Environmental Planning Policy No 32 - Urban Consolidation (Redevelopment of Urban Land)***

Clause 6 of this SEPP requires that Council consider whether urban land is no longer needed or used for the purposes for which it is currently zoned or used, whether it is suitable for redevelopment for multi-unit housing and related development in accordance with the aims and objectives of the SEPP, and whether action should be taken to make the land available for such redevelopment.

Clause 7 requires that Council must, when preparing environmental planning instruments relating to urban land, implement the aims and objectives of this SEPP to the fullest extent practicable.

The aims of this SEPP are:

- (a) *to promote the orderly and economic use and development of land by enabling urban land which is no longer required for the purpose for which it is currently zoned or used to be redeveloped for multi-unit housing and related development, and*
- (b) *to implement a policy of urban consolidation which will promote the social and economic welfare of the State and a better environment by enabling:*
  - (i) *the location of housing in areas where there are existing public infrastructure, transport and community facilities, and*
  - (ii) *increased opportunities for people to live in a locality which is close to employment, leisure and other opportunities, and*
  - (iii) *the reduction in the rate at which land is released for development on the fringe of existing urban areas.*

The relevant objectives of this SEPP are:

- (a) *to ensure that urban land suitable for multi-unit housing and related development is made available for that development in a timely manner, and*
- (b) *to ensure that any redevelopment of urban land for multi-unit housing and related development will result in:*
  - (i) *an increase in the availability of housing within a particular locality, or*
  - (ii) *a greater diversity of housing types within a particular locality to meet the demand generated by changing demographic and household needs*

Given the conversion intent of the draft plan, the previous strategic planning Council has undertaken, and the format and provisions of the Standard Instrument, it is considered that the urban lands within the City have been appropriately zoned.

***State Environmental Planning Policy No 55 - Remediation of Land***

Clause 6 of this SEPP requires Council to consider certain matters relating to the potential for land to be contaminated, used and remediated. Ordinarily this would require Council to consider a preliminary investigation, of the affected land, carried out in accordance with contaminated land planning guidelines. The guidelines recognise that for general LEPs (that is City wide LEPs or LEPs covering a large area) it is difficult for a Council to be satisfied that every part of the land subject to the LEP is suitable in terms of contamination. The guidelines advise that in these circumstances the LEP should proceed provided measures are in place to ensure that the potential for contamination and suitability of the land for any proposed uses are assessed once detailed proposals (development applications) are made. It is considered that the development application assessment provisions of the EP & A Act and SEPP 55 itself

contain appropriate measures to ensure that Council can appropriately consider potential contamination issues as required in the future.

**State Environmental Planning Policy No 64 - Advertising and Signage**

Clause 31 of this SEPP requires consultation with the Roads and Traffic Authority (RTA). The RTA was consulted with during the preparation of the draft plan.

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

Clause 28 of this SEPP states that when preparing an environmental planning instrument that makes provision with respect to residential flat development, Council should include provisions in the instrument to ensure the achievement of design quality in accordance with the design quality principles of the SEPP and having regard to the Residential Flat Design Code, DoPI, September 2002.

The design principles of the SEPP address matters such as context, scale, built form, density, resource, energy and water efficiency, landscape, amenity, safety and security, social dimensions and housing affordability, and aesthetics. The Design Code expands upon these with various provisions relating to the local context, site design and building design.

*Residential flat buildings* are permissible within the proposed R1 General Residential, B1 Neighbourhood centre, and B2 Local centre zones. Given the intent of the draft plan, it is considered that the aims of the draft plan, various zone objectives of these zones and the Height of Buildings map achieve satisfactory compliance with the Clause 28 of this SEPP.

**Sydney Regional Environmental Plan No 9 - Extractive Industry (No 2 - 1995)**

Clause 12 of this plan requires that Council should not prepare a draft LEP to permit development for the purpose of an *extractive industry* in the Richmond Lowlands unless it has considered certain matters. The draft plan does not permit *extractive industries* on such land.

Clause 13 of this plan states that Council should not prepare a draft local environmental plan to prohibit development for the purpose of an *extractive industry* on land described as:

- *Land at Windsor covered by License Number 74/3, Windsor. Rocla, Hawkesbury River, Windsor*
- *Land at Pitt Town covered by License Number 82/14, Windsor. Breen Holdings P/L, Hawkesbury River, Pitt Town*
- *Lots 221, 222, and 223 DP 623304, Kurrajong, CSR*
- *Lot 1, DP 437699; Lot 4, DP 556534, Kurrajong and Part Portion 106, Parish of Meehan, County of Cook, being land contained in Certificate of Title Volume 6858, Folio 53, East Kurrajong, Schaffer Corporation*

The zoning of that part of the Hawkesbury River affected by the License Number 74/3 will be discussed in the "Submission received from Public Authorities" section of this report. Enquiries with the Land and Property Management Authority reveal that License Number 82/14 has been terminated. The lands in Kurrajong are proposed to be zoned RU1 Primary Production. *Extractive industries* are permissible within the RU1 zone.

Clause 18 of this plan applies to the Kurrajong lands and states that a local environmental plan should not permit a subdivision of land which will allow a residential building situated within 50 metres of a road constructed to provide access to a quarry. The draft plan does not alter the minimum lot size provisions of the Kurrajong lands or their immediate surrounds. In the event of future subdivision of these or surrounding lands the location of future dwellings can be appropriately considered at the development application stage.

**Sydney Regional Environmental Plan No 19 - Rouse Hill Development Area**

This SREP requires Council to consider certain matters with respect to public utilities, transport, flooding and the Rouse Hill Development Area Planning Report. It also requires certain provisions to be included in a local environmental plan relating to the provision of public utilities and an arterial road network.

DoPI has advised that whilst this SREP is still active, *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* is the more important statutory instrument for this area. *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* does not contain any local environmental plan making provisions. DoPI and RTA have not requested Council to include any specific provisions relating to the Rouse Hill Development Area or the North West Growth Centre in the draft plan.

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

Clause 4 of this SREP states that the general planning considerations, the specific planning policies and related recommended strategies should be taken into consideration in the preparation of an environmental planning instrument.

The general planning considerations of the SREP are:

- (a) *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,*
- (b) *the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy,*
- (c) *whether there are any feasible alternatives to the development or other proposal concerned,*
- (d) *the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored.*

The specific planning policies and recommended strategies for this plan concern matters relating to total catchment management, environmentally sensitive areas, water quality, water quantity, cultural heritage, flora and fauna, riverine scenic quality, agriculture/aquaculture and fishing, rural residential development, urban development, recreation and tourism, metropolitan strategy.

Given the conversion intent of the draft plan, the previous strategic planning Council has undertaken, and the format and provisions of the Standard Instrument it is considered that the draft plan satisfactorily deals with the general planning considerations, the specific planning policies and related recommended strategies of the SREP by way of zone selection, zone objectives, permissible and prohibited land uses, and special provisions of the plan.

**Consideration of Submissions to the Draft Plan**

Council is required to consider the submissions received and the public hearing report made with respect to the draft plan. Prior to forwarding a draft plan to DoPI for finalisation and gazettal, the EP & A Act allows Council to make any alterations to a draft plan it considers necessary in light of the submissions, public hearing report, or other relevant matter. The EP & A Act also allows Council, in limited circumstances, to defer matters from a draft plan pending further examination and consideration. Council is however still required to ensure that any proposed amendments are consistent with the above mentioned Section 117 directions, practice notes, planning circulars, SEPPs and SREPs.

Council should be mindful that amendments to a draft plan may require it to be re-exhibited. The EP & A Act and DoPI do not have definitive or prescriptive provisions which direct a Council to re-exhibit an amended plan. However, relevant cases before the Local Environment Court which have dealt with this issue suggest that in determining whether or not an amended draft plan should be re-exhibited, Council should consider the extent to which amendments to the plan change its character, whether the amended plan will still be a product of the relevant provisions of the EP & A Act (i.e. from initial Council resolution, consultation with public authorities, DoPI permission to exhibit the plan, and public exhibition) or is the draft plan now "a quite different plan" from the exhibited plan. [Case cited: John Brown Lenton and Co Pty Ltd v Minister for Urban Affairs and Planning and Ors]



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In this respect, and to enable the draft plan to be progressed, it is recommended that no amendments be made to the draft plan that would require its re-exhibition. Accordingly, upholding the conversion intent of the draft plan has been a primary consideration in assessing the submissions received.

### **Submissions received from Public Authorities**

20 submissions were received from various public authorities. The content of these submissions is summarised below.

Some public authorities provided a lengthy response with multiple matters for consideration. For the ease of responding to these matters these lengthy submissions and associated responses are provided in a tabular form.

In some cases the nature of the submissions conflicted with instructions Council staff had received from DoPI regarding the content and construction of the draft plan. In these cases advice was sort from DoPI and this advice is included in the response to the relevant submission.

### ***NSW Industry and Investment - Small Business Services and Sydney Operations***

#### *Submission*

No comment.

#### *Response*

No action required.

### ***NSW Department of Education and Training***

#### *Submission*

Notes proposed zone change. Requests advice is provided regarding all substantial new residential proposals so the possible need for new school sites and facilities can be identified.

#### *Response*

No amendment has been made to the draft plan.

Referral of residential proposals is an operational matter separate to this draft plan.

### ***RailCorp - Office of Rail Heritage***

#### *Submission*

Requests Clarendon Railway Station be removed from the draft plan's heritage list as the original timber station buildings that made up the listing were removed from the site following weather damage in 2002.

#### *Response*

Council's Heritage Advisor has reviewed this submission and agreed with RailCorp's request for the removal of Clarendon Railway Station from the heritage list.

Clarendon Railway Station has been removed from "Schedule 5 Environmental heritage" and the Heritage Map of the draft plan has been amended accordingly.

**Department of Planning - Heritage Branch**

*Submission*

Requests formatting corrections to "Schedule 5 Environmental heritage", inclusion of St Albans Bridge in "Schedule 5 Environmental heritage" as it a "State" listed item, change significance status of Richmond Park to "State", change significance status of Benson House, 61 Francis Street, Richmond to "Local", change address of "Toxana" in Richmond from 147 Windsor Street to 157 Windsor Street, and wherever possible to include the name of heritage item in Column 2 of "Schedule 5 Environmental heritage".

*Response*

These matters have been incorporated into the draft plan except for the change of address for "Toxana" and the inclusion of additional names of heritage items.

Council's Property Information system shows that the street number of "Toxana" is 147 not 157.

With respect to including names of heritage items, Council's records are incomplete and potentially out of date and therefore this has not been done. At present staff resources and time constraints do not allow for the updating of Council's records, however, this could be undertaken in the future and incorporated into an amendment to the plan. The listing of the name of a heritage item is not critical to the identification of heritage item as this is achieved via the property description and identification on the Heritage Map.

**Sydney Water**

*Submission*

Sydney Water's preferred zone for its critical water, wastewater and stormwater assets is SP2 Infrastructure so as to ensure that the existing dominant function of the land and Sydney Water's assets are protected. In this regard Sydney Water nominated eleven (11) properties which they recommend the zone in the draft plan be changed to SP2 Infrastructure. They also recommended that one property, Lot 1 DP 217647, Bourke Street, Richmond which is proposed to be zoned SP2 (Sewage system) be zoned the adjoining zone of RE2 Private Recreation.

Sydney Water also recommends minimum water efficiency requirements for non-residential development is included in Council's development controls.

*Response*

Sydney Water's recommendation to zone certain lands to SP2 Infrastructure was potentially in conflict with DoPI's direction to minimise the use of the SP2 Infrastructure zone and for councils to adopt the surrounding land use zone. Council staff subsequently wrote to DoPI seeking clarification of this matter. DoPI responded as follows:

*Given the nature of some of these sites (for example, treatment plants, other major infrastructure) it may be appropriate for Council to action Sydney Water's requests and change the zoning of these sites to SP2 Infrastructure. Additionally, if an adjoining zone or prescribed zone (in the Infrastructure SEPP) is not suitable, then the SP2 zone is appropriate.*

*Smaller structures or facilities (such as tanks or reservoirs) should preferably be zoned as per the adjoining zone. However, if Council feels SEPP 55 may be an issue in zoning such sites from a Special Purpose to an adjoining zone, then Council may wish to keep the zoning of the site as SP2. In any case, determining the appropriate zoning for such land is primarily Council's responsibility.*

The properties nominated by Sydney Water were re-examined and it was found that they generally contained a major infrastructure item and/or the proposed zoned was not a "prescribed zone" under *State Environmental Planning Policy (Infrastructure) 2007*. Note, this SEPP allows certain work to be undertaken without consent in certain "prescribed zones". The table below shows how the subject lands are now proposed to be zoned.

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<b>Land</b>	<b>Sydney Water Asset</b>	<b>Recommended Zone</b>
Lot 1 DP 818045 and Lot 1 DP 591288, 24 Old Bells Line of Road, Kurrajong	Kurrajong Reservoir and Water Treatment Works	SP2 Infrastructure (water supply)
Lot 92 DP 214752, 358 Spinks Road, Kurmond	Glossodia Reservoir and Water Treatment Works	SP2 Infrastructure (water supply)
Lot 10 DP 833598, 110 Bells Line of Road, North Richmond	North Richmond Sewerage Treatment Plant and Sewer Pumping Station	SP2 Infrastructure (sewage system)
Lot 3 DP 1004863, 99 Grose Vale Road, North Richmond (formerly known as Lot 1 DP 85745)	North Richmond Water Pumping Station and Reservoir	SP2 Infrastructure (water supply)
Lots 1 and 4 DP 222300, Dight Street, Richmond	Richmond Reservoir and Water Pumping Station	SP2 Infrastructure (water supply)
Lot 1 and 2 DP 234175, Lot 2 DP 217647, Lot 1 DP 1105163, 61, 61A, 61B, and 61C Blacktown Road, Richmond	Richmond Sewerage Treatment Plant	SP2 Infrastructure (sewage system)
Lot 1 DP 233380 and Lot 1 DP 625126, 43-45 Kurmond Road, Wilberforce	Wilberforce Reservoir, Water Treatment Works and Water Pumping Station	SP2 Infrastructure (water supply)
Lot 1 DP 89958, Hall Street, Pitt Town	Pitt Town Reservoir	SP2 Infrastructure (water supply)
Lots 1 and 2 DP 877335, Lot 2 DP 789666, 154 and 154A Boundary Road, Oakville	Oakville Elevated Reservoir	SP2 Infrastructure (water supply)
Lot 1 DP 603809, 718 George Street, South Windsor	Toorah Reservoir	SP2 Infrastructure (water supply) – excluding that part of the land proposed to be zoned SP2 Infrastructure (classified road)
Lot 1 DP 89929, Lot 1 DP 205292, Lots 1 and 2 DP 608887, 7 Ham Street and 170, 172 and 172A Mileham Street, South Windsor	South Windsor Reservoir, Water Pumping Station, and Water Treatment Works	SP2 Infrastructure (water supply)

As per Sydney Water's request, Lot 1 DP 217647, Bourke Street, Richmond has been zoned RE2 Private Recreation.

The minimum water efficiency requirements for non-residential development suggested by Sydney Water can be considered in the next available review of Council's Development Control Plan (DCP).

### **Department of Planning**

#### **Submission**

This submission followed a meeting with DoPI staff in March 2010 in which the exhibition of the draft plan was discussed. In response DoPI advised:

*"The Department is aware that there are difficulties regarding new prohibitions in the Mulgrave/Vineyard area, particularly along Windsor Road where bulky goods retail premises are currently located, and which have been exhibited as an industrial zone. It is understood there are existing approvals for a number of uses in this area which do not fit neatly within an industrial zone.*

*Given the existing nature of this area, and existing development approvals, it may be appropriate for Council to consider applying the B5 Business Development zone to this area in Mulgrave/Vineyard*

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*where there are existing bulky goods premises. This zone permits a broad range of use and can include bulky goods premises, as well as warehousing and distribution uses. Although this zone is primarily used in areas which are close to centres, in some instances where there is an existing cluster of bulky goods premises it is appropriate to zone such areas B5 - such as in the Mulgrave/Vineyard area. You may wish to refer to page 105 in the Metropolitan Strategy for further information regarding the B5 zone.*

*However, Council should be careful to ensure that the areas in Mulgrave/Vineyard which currently accommodate industrial use should remain under the IN1 or IN2 zone accordingly."*

### *Response*

The B5 Business Development zone has been incorporated into the draft plan. This submission will be discussed in the "Submissions received from the Public" section of this report.

### ***Hawkesbury - Nepean Catchment Management Authority***

#### *Submission*

Recommends the following matters be considered in the LEP:

- improving condition of native vegetation using active and passive regeneration of buffers around existing high priority remnants;
- identifying and including in management plans activities classified as "threatening processes";
- conserving threatened species, endangered populations and ecological communities outside currently protected areas;
- reducing weeds through primary weed control and eradicating new weed outbreaks and emerging weed threats;
- sustaining progress of areas treated for invasive weed control;
- including of populations of invasive pest animal species in threat abatement plans and managing them according to the priorities of those plans;
- reducing condition that favour invasive species.

### *Response*

No amendment has been made to the draft plan.

Most of these items are matters that would typically be addressed through Plans of Management, the DCP, and by other plans that are separate to LEPs. Notwithstanding this, it is considered the various zone objectives, Clause 5.9 Preservation of trees or vegetation and proposed Clause 6.9 Environmentally sensitive land - biodiversity (now known as Clause 6.8) are an appropriate response to these issues given the conversion intent of the draft plan.

### ***Department of Defence***

#### *Submission*

Supports draft plan's adoption of Australian Standard AS 2021-200 for development control and land planning around RAAF Base Richmond.

### *Response*

No action required.

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**NSW Industry and Investment - Mineral Resources, Agriculture and Fisheries Divisions**

*Submission*

**Mineral Resources Division**

Recommend a footnote within the Land Use Table (LUT) be added at the end of the RU4, R2, R5, IN1, IN2, RE1, E3 and E4 zones regarding the applicability of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*. Rocla sand extraction site on the Hawkesbury River at Windsor should be zoned W3 Working Waterways with extraction as a permitted use or draft plan shall contain an overlay to identify extraction as a permissible use within the defined area.

Land adjacent to Tinda Creek quarry should be reviewed to see whether it qualifies as land suitable for E2 Environmental Conservation zone.

**Forestry Division**

Comleroy State Forest should be zoned RU3 Forestry.

*DoPI response*

Council to insert Parliamentary Counsel's latest wording under start of LUT regarding possible SEPP applicability.

Council may consider keeping W2 zoning but add extraction as an additional use for this particular site in "Schedule 1 Additional permitted uses".

Council to retain E2 zone if currently zoned for similar zone under HLEP 1989. The land adjacent to the quarry can be investigated for rezoning as a separate process to the draft plan should there be a proposal in the future to quarry the site.

Council to consider appropriateness of RU3 zoning for this site.

*Council response*

The draft plan has been amended as per DoPI's instruction.

"Schedule 1 Additional permitted uses" of the draft plan has been amended to allow *extractive industry* within the Rocla sand extraction site.

The E2 zone has been removed from this property.

The application of E2 zone is discussed in detail later in this report.

No amendment has been made to the draft plan.

The Comleroy State Forest is currently zoned Mixed Agriculture and Environmental Protection – Mixed Agriculture (Scenic) under HLEP 1989 and is proposed to be zoned RU1 Primary Production and E4 Environmental Living in the draft plan. *Forestry* is permissible with consent in both of these zones.

Under the Standard Instrument the RU3 Forestry zone allows uses authorised under the *Forestry Act 1916* as permissible without consent. Introducing a potentially substantially different zone at this stage in the preparation of the draft plan may give rise to re-exhibition of the draft plan.

The incorporation of the RU3 zone could be investigated as a

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**Fisheries Division**

W1 Natural Waterways and W2 Recreational Waterways zones should be applied to Colo River and MacDonald River, particularly sections of the rivers that are wide, permanently inundated and used for boating. The proposed E4 Environmental Living zoning of these areas does not acknowledge their aquatic nature. W1/W2 zonings in these areas will give consideration to the types of development likely to be proposed in these waterways and afford greater protection to this key fish habitat in this important commercial and recreational fishing region.

Council to consider appropriateness of W1 and W2 zones for such areas. The draft Practice Note says for tidal coastal waterways including bays and estuaries, councils should apply a W zone up to the mean high water mark as defined by the Standard Instrument.

For major watercourses above tidal influence, such as rivers and major inland lakes, councils may wish to apply a W zone up to the lowest channel bank or other level depending on council's existing data. If no studies exist, council should be guided by the best topographic and cadastral information.

All other watercourses, should generally be zoned the same as the most appropriate adjoining land based zone. For example a creek in a rural area would be given the same zone as the adjoining land. If additional protection is justified, a local zone objective and/or local provision and associated map may be applied. For example, in urban areas where there is an intention to preserve and rehabilitate streams, council may wish to apply an additional zone objective (e.g. to recognise work associated with preserving and rehabilitating stream channels towards their natural state).

It is important that Council consider whether an existing and adjoining land based zone and its uses are compatible with the proposed W zone and its uses. For example, whether the adjoining terrestrial zone is appropriate for the land-based components of waterway uses such as marinas and charter and tourism boating facilities.

Recommends the objective for reducing adverse effects on

Council to consider amending existing environmental objective

possible future amendment to the plan.

No amendment has been made to the draft plan.

The Colo River and MacDonald River are currently zoned Environmental Protection - Mixed Agriculture (Scenic) until they enter national parks land whereby they are zoned 8(a) Nature Reserves. According to the conversion intent of the draft plan the rivers have been zoned E4 and E1 National Parks and Nature Reserve.

Whilst some parts of these rivers are permanently inundated and navigable, there are also significant parts that are either shallow or often dry and the actual course of the river does not follow cadastral boundaries. Council does have some information regarding the tidal influence of these rivers, however the accuracy of this information could be improved with further survey work.

The zone objectives and permitted uses within the zones that are adjacent to these rivers are considered to be appropriate.

The zoning of these rivers to the W1 or W2 zone could be investigated as a possible future amendment to the plan.

The following objective has been included in the E4 zone:

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water catchments that appears in the RU1 Primary Production, RU2 Rural Landscape, RU4 Rural Small Holdings, and E3 Environmental Management zones be included in E4 Environmental Living zone.

A specific local provision and mapped overlay should be included for sensitive waterways.

The Environmentally Sensitive Land clause should contain an objective that directly refers to protection of vegetated riparian zones.

Remove *aquaculture* from RU4 Rural Small Holdings, B1 Neighbourhood Centre, B2 Local Centre, B6 Enterprise Corridor, IN2 Light Industrial and E4 Environmental Living Land Use Tables as this is governed by *State Environmental Planning Policy No 62 - Sustainable Aquaculture*.

Include *aquaculture* as permitted with consent in suitable waterways zones until SEPP 62 is amended to cover various types of *aquaculture* in these zones.

**Agriculture Division**

To reflect the significant agricultural development in RU2 Rural Landscape zone (eg Bilpin, Richmond lowlands) the sustainable agriculture objective should be moved to top of the objectives list.

*Rural worker's dwelling* should either have clear criteria noted

to include reference to water catchments.

It is noted that Council has chosen not to include a local provision for riparian land or waterways. Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment.

Council to consider inclusion of reference to vegetated riparian zones in biodiversity clause objectives. Any such changes should be balanced with the consideration of whether such amendments trigger re-exhibition.

Council to consider request given SEPP 62.

Council to consider request given SEPP 62.

Council to retain current order of objectives given the mandatory nature of the Standard Instrument objectives.

*To ensure that development occurs in a manner 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.*

No amendment has been made to the draft plan.

This matter could be investigated as a possible future amendment to the plan.

Amendments to Clause 6.9 are discussed in detail later in this report.

To ensure consistency between the draft plan and SEPP 62, *aquaculture* has been removed from the RU4, B1, B2, B6, IN2 and E4 zones.

*Aquaculture* has been included in W1 Natural Waterways and W2 Recreational Waterways zones as permissible with consent.

No amendment has been made to the draft plan.

All objectives must be considered by Council in the assessment of development applications. The order in which they appear bears no reflection on their importance. No amendment has been made to the draft plan.

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in a DCP or form part of Council's growth management strategy and be included as a form of dual occupancy.

The definition of a *rural worker's dwelling* is a mandatory definition and cannot be amended. The draft plan seeks to retain the current permissibility of *rural worker's dwelling* in the RU1 Primary Production, RU2 Rural Landscape, RU4 Rural Small Holdings and E4 Environmental Living zones. More detailed provisions relating to *rural worker's dwelling* could be investigated as a possible future amendment to the Hawkesbury DCP.

No amendment has been made to the draft plan.

Consider inclusion of various agri-business uses such as intensive greenhouse horticulture and rural processing such as abattoirs in the IN1 General Industry zone.

Council to consider appropriateness of permitting various rural uses in the General Industry zone (noting that ideally, the Department's preference is to retain industrial zones for industrial uses, with rural uses located in rural zones only to reduce any potential land use conflict issues)

*Intensive agriculture*, which includes *intensive horticulture*, is prohibited in the 4(a) Industry General zone of HLEP 1989. This prohibition has been carried over to the IN1 zone.

Council to also consider innominate uses in the land use table and whether rural uses are in fact permitted in the zone.

*Livestock processing plants* are a sub-set of *rural industries* which are permissible with consent in the IN1 zone.

Permissible uses within the SP2 Infrastructure zone for UWS Hawkesbury should be widened to include agricultural activities as well as the educational activities.

Agricultural activities which are undertaken in relation to the educational use would be seen as ancillary, and therefore there is no need to include agricultural uses in the SP2 Land Use Table or add such uses as additional uses for this land in "Schedule 1 Additional permitted uses".

Description of SP2 Infrastructure zone for UWS has been expanded.

This matter is discussed later in this report in association with the UWS's submission.

Height controls for areas where *intensive agriculture* is permissible should be flexible enough to allow greenhouses (i.e. 6m).

Council to consider whether its proposed height controls enable specialised agricultural facilities to be constructed.

No amendment has been made to the draft plan.

Where 2ha lots are proposed in areas where *intensive agriculture* is permitted with consent, the zone objectives should reflect the intent to allow development of land for agricultural industries.

The proposed zone objectives are sufficient.

The height maps for these areas allow for a maximum building height of 10m.

No amendment has been made to the draft plan.

It is considered that the objectives of the RU4 Rural Small Holdings zone are satisfactory.



**Hornsby Shire Council**

*Submission*

Recommends Council re-consider zones selected for waterways and surrounding areas in order to be consistent with Hornsby Shire Council's Waterways Review 2005 and draft Waterways Review LEP 2006. In particular submission recommends:

- W1 Natural Waterways be applied to the majority of the waterways. The W1 zone is a restrictive zone that allows uses consistent with the scenic and environmental qualities of the area.
- W2 Recreational Waterways be applied in limited areas to permit a broader range of uses in recognition of their recreational and tourism functions.
- E1 National Parks and Nature Reserves be applied over areas below the Mean High Water mark (MHW) within the gazetted boundaries of the National Park or Nature Reserves.
- E2 Environmental Conservation be applied to areas of mangrove, salt marsh and seagrass communities and intertidal mudflats.

*Response*

No amendment has been made to the draft plan.

The draft plan proposes to zone the Hawkesbury River W1 Natural Waterways from Yarramundi to the Windsor Bridge and W2 Recreational Waterways from Windsor Bridge to Wisemans Ferry. DoPI's LEP Practice Note PN06-002 describes the W1 and W2 zones as follows:

**W1 Natural Waterways**

*This zone is generally intended for waterways that are to be protected due to their ecological and scenic values.*

*A limited number of low impact uses that do not have an adverse effect on the natural value of the waterway can be permitted in this zone.*

**W2 Recreational Waterways**

*This zone is generally intended for waterways that are used primarily for recreational purposes such as boating, fishing and waterskiing, but which may also have ecological, scenic or other values that require protection.*

The main area for water based recreation and related uses along the Hawkesbury River, within the Hawkesbury LGA, is between Windsor Bridge and Wisemans Ferry. This can be seen in the general boating and water ski activities of the public and the many organised drag boat, power boat, canoeing and skiing events. Upstream of the Windsor Bridge to Yarramundi the occurrence of these recreational uses is significantly reduced. Given these uses it is considered that the W1 and W2 zones have been appropriately applied.

Penrith City Council for their Standard Instrument have selected the W1 zone at Yarramundi, Gosford Council have selected the W2 zone near Wisemans Ferry and The Hills Shire Council has selected the W2 zone for their side of the Hawkesbury River from Cattai Creek to Wisemans Ferry. The draft plan is consistent with Penrith's, Gosford's and The Hills Shire's draft plans.

The E1 National Parks and Nature Reserves zone has been applied in accordance with directions from the Department of Environment Climate Change and Water (DECCW). DECCW are the public authority responsible for National Parks.

The E2 Environmental Conservation has been applied to selected wetlands. The application of this zone will be discussed in greater detail later in this report.

**Office of the Hawkesbury - Nepean (OHN)***Submission*

OHN believes it is critical that rigorous provisions relating to waterway health be included in LEPs. Request that the following zone objective be included as an objective for urban zoning:

*To ensure that urban activities occur in a manner that do not have a significant adverse effect on water catchment, including surface and groundwater quality and flows; land surface conditions and important ecosystems such as streams and wetlands.*

This is a modified objective of that which appears in the RU1 Primary Production, RU2 Rural Landscape, RU4 Rural Small Holdings, and E3 Environmental Management zones.

OHN is concerned that the water catchment objectives for certain zones may not be achieved in practise in the absence of a specific provision relating to the protection of waterways from the impacts of urban development.

OHN recommends inclusion of a clause relating to the protection and management of riparian land on the basis that the health and amenity of the river and its tributaries is greatly influenced by the function and health of the stream banks and land adjoining the waterway.

*Response*

No amendment has been made to the draft plan.

Due to the nature of this submission, advice was requested from the DoPI and this is included below.

With respect to the suggested additional objective, DoPI advice that this is not needed as this is addressed in the general aims of plan. Furthermore it is considered that this matter can be more specifically dealt with via detailed provisions in the Hawkesbury DCP.

With respect to the suggested local provision for protection of waterways DoPI advise that:

*It is noted that Council has chosen not to include a local provision for riparian land or waterways. Such provisions are optional only. It is open to Council, subsequent to the finalisation of the [draft plan], to undertake the necessary strategic work (including mapping) to include such a provision in the [plan] as an amendment.*

The inclusion of such a clause into the plan could be investigated as a possible future amendment to the plan.

**Department of Environment Climate Change and Water***Submission***Environmental Protection Zones**

E2 Environmental Conservation zone should be applied to other areas of high conservation value e.g. vegetated Crown lands, Council bushland reserves, or lands with critically endangered ecological communities (EECs). Where it is not practicable to apply an E2 zone over an entire lot, a split zone approach could be adopted to enable areas of high

*DoPI response*

Council to review zoning of vegetated Crown land, publicly owned land that has high conservation value and lands with EECs, and associated permissibility of uses – noting however that E2 land must be of the highest conservation value and preferably in public ownership (or if in private ownership, a sufficiently wide range of permissible uses to

*Council response*

The E2 zone has been applied only to selected wetlands. The application of this zone is discussed later in this report.

EECs are proposed to be protected by way of proposed Clause 6.8.

Applying split zones would not be consistent with the conversion intent of the draft

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conservation value to be protected alongside more intensive land uses.

*DoPI response*

reduce likelihood of acquisition issues, or ensure a significant portion of the lot in a developable zone).

*Council response*

plan.

Recommend that *extensive agriculture* not be allowed in E2 Environmental Conservation zone as it will result in long term degradation of these areas. Recommend that Council advise landholders to fence outside the E2 zone boundaries to exclude stock.

Council to consider whether split zoning is appropriate, however the biodiversity layer mapping and clause should provide some level of protection where environmentally significant land does not qualify for E2 zoning.

*Extensive agriculture* is prohibited in E2 zone.

No amendment has been made to the draft plan.

*Extensive agriculture* is prohibited in E2 zone.

The application of the E2 zone is discussed later in this report.

Council advice to landowners regarding the E2 zone is outside the purpose of this report.

No amendment has been made to the draft plan.

Only permit mandated uses in E2 Environmental Conservation zone and perhaps *roads* and *recreation areas* if currently in operation.

Not needed, the proposed permissible uses in the E2 zone are already very limited.

Consider applying E3 Environmental Management zone to other lands with high conservation value that do not qualify for E2 Environmental Conservation zoning.

Council to review zoning of lands with high conservation value for possible E3 zoning. This may include ephemeral wetlands and the like.

No amendment has been made to the draft plan.

The E3 zone has been applied to land known as "The Islands", Kurrajong Heights which is currently zoned 7(e) Environmental Protection (Consolidated Land Holdings) in HLEP 1989. Applying the E3 zone to other areas would not be consistent with the conversion intent of the draft plan.

Inappropriate land uses, such as *cemeteries, correctional centres, educational establishments, hospitals, public administration buildings, veterinary hospitals* and *registered clubs* be removed from the E3 Environmental Management zone.

Council to consider appropriateness of permitted uses in E3.

Excluding *cemeteries*, the nominated uses are equivalent to the current permitted uses within the 7(e) Environmental Protection (Consolidated Land Holdings) zone. It is considered that these uses, albeit possibility only on a small scale, could be appropriately developed on subject land.

*Cemeteries* are currently not permitted in the 7(e) Environmental Protection (Consolidated Land Holdings)

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Council consider removing intensive land uses from the E4 Environmental Living zone. Where such uses exist, Council should consider applying a split zone.

**Crown Land Rezoning**

Lot 59 DP 751664, 1027 Mountain Lagoon Road, Mountain Lagoon should be zoned E1 National Parks and Nature Reserves. All fully vegetated Crown lands should be zoned E2 Environmental Conservation. This includes Lot 2 DP 753823, Lot 2 DP 753827 both Upper Macdonald Road, Higher Macdonald; Lot 197 DP 47698, 751 Blaxlands Ridge Road, Blaxlands Ridge; Lot 10 DP 751628 (now Lot 7300 DP 1158044), Mount Tootie Road, Bilpin; Lot 11 DP 753788, 5838 Putty Road, Colo Heights; and Lot 21 DP 751629, Pittmans Road, Kurrajong Heights with restricted land uses including no dwellings and no agricultural uses.

Lot 1 DP 658635, 1433 Bicentenary Road, Webbs Creek should have a split zoning with an E2 Environmental Conservation applied to the vegetated sections, and Lot 75 DP 751664, 527 Mountain Lagoon Road, Bilpin should be zoned either E2 Environmental Conservation or E3 Environmental Management.

**Protection of native vegetation and conflict with agricultural uses**

*Extensive agriculture* should only be permitted with consent in RU2 Rural Landscape and E4

*DoPI response*

Council to consider appropriateness of permitted uses in E4.

Council to zone Wollemi NP E1.

While it is appropriate to permit *extensive agriculture* without consent in a rural zone such as

*Council response*

zone and have been deleted from the E3 zone. No amendment has been made to the draft plan.

The E4 zone has been applied to land which is currently zoned 7(d) Environmental Protection (Scenic) and Environmental Protection – Mixed Agriculture (Scenic) (EP-MA).

The uses permitted in the E4 zone are equivalent to the current permitted uses within the 7(d) and EP – MA zones.

The land has been zoned E1.

No amendment has been made to the draft plan.

These lands are currently incorrectly zoned 8(a) Nature Reserves. They are proposed to be zoned the dominant adjoining zone which is either E4 Environmental Living, RU1 Primary Production or RU2 Rural Landscape.

The E2 Environmental Conservation zone has been dedicated to selected wetlands.

No amendment has been made to the draft plan.

These lands are currently incorrectly zoned 8(a) Nature Reserves. They are proposed to be zoned the dominant adjoining zone which is E4 Environmental Living.

The E2 zone has been dedicated to selected wetlands.

No amendment has been made to the draft plan.

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*Submission*

Environmental Living zones to ensure it does not conflict with zone objectives.

Extend the environmental constraints mapping to the RU4 Rural Small Holding zone to cover all EECs, or consider requiring consent for *extensive agriculture* in RU4.

*DoPI response*

RU2, the permissibility of *extensive agriculture* without consent in the E4 zone may require review – or apply different zoning.

Council to consider extension of environmental mapping to RU4.

*Council response*

The RU2 zone is derived from the current Environmental Protection – Agriculture Protection (Scenic) zone (EP-AP).

The E4 zone is derived from the current 7(d) Environmental Protection (Scenic) zone (7(d)) and Environmental Protection – Mixed Agriculture (Scenic) zone (EP-MA).

The RU4 zone is substantially derived from the current Rural Living zone (RL).

Under HLEP 1989 *agriculture* is permitted without consent in the 7(d), EP – MA, EP – AP and RL zones. Permitting *extensive agriculture* without consent in the RU2, RU4 and E4 zones is consistent with the current provisions of HLEP 1989.

DECCW concern is based on the possibility of *extensive agriculture* requiring the clearing of native vegetation and that land owners/occupiers may clear vegetation without consent on the basis that it was ancillary to *extensive agriculture*. Clause 5.9 of the draft plan provides the consent requirements for the clearing of vegetation. These provisions are in addition to the provisions of the Land Use Matrix hence in the circumstances whereby consent is required for the clearing of vegetation one could not do so without consent on the basis that it was ancillary to *extensive agriculture*.

Extension to the Environmental Constraints mapping (which presently covers part of the Grose Wold area and a small number of properties on Terrace Road, Freemans Reach) would not be consistent with the conversion intent of the draft plan. This could be investigated as a possible future amendment to the draft plan.

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*DoPI response*

*Council response*

Where high conservation lands have been zoned RU1 Primary Production – such as Priority Conservation Lands, these should be included in Environmental Constraints mapping. The Land Use Table for RU1 should also be amended to reflect that consent is needed for *extensive agriculture* on areas on the environmental constraints maps.

Council to consider extension of environmental mapping to RU1 for Priority Conservation Lands. Suggested subzone approach is not supported.

No amendment has been made to the draft plan.

Extension to the Environmental Constraints mapping would not be consistent with the conversion intent of the draft plan. This could be investigated as a possible future amendment to the draft plan.

**Clause 5.9 and Draft DCP Provisions**

Clause 5.9 Preservation of trees or vegetation should be referred to in the DCP as applying to native vegetation.

Council to consider as part of DCP

No amendment has been made to the draft plan.

This matter is to be considered as part of the review of the DCP.

The DCP should include requirements for assessment under s.5A of the EP&A Act (7 part test)

**Draft Cumberland Plain Recovery Plan and Priority Conservation Lands**

Priority Conservation Lands under the draft Cumberland Plain Woodland Recovery Plan should be zoned E2 Environmental Conservation wherever practicable.

Council to consider the zoning of Priority Conservation Lands. If land does not qualify for E2 Environmental Conservation zoning, Council may wish to consider E3 Environmental Management or other zones/biodiversity mapping.

No amendment has been made to the draft plan.

The E2 zone has been applied only to selected wetlands.

EECs are proposed to be protected by way of the biodiversity protection clause within the draft plan.

The application of the E3 zone could be investigated as a possible future amendment to the draft plan.

No amendment has been made to the draft plan.

Extension to the environmental constraints mapping would not be consistent with the conversion intent of the draft plan.

This could be investigated as a possible future amendment to the draft plan.

Council should include the Priority Conservation Lands in the environmental constraints layer.

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*Submission*

**Mapping of Environmentally Sensitive Lands**

Clause 6.9 Environmentally Sensitive Land – Biodiversity should be amended in order that it applies to all mapped “Significant Vegetation” and “Connectivity between Significant Vegetation” areas. Council should consider additional and specific assessment criteria in its comprehensive DCP to address connectivity and specific threatened species issues (such as koala habitat).

**Aboriginal Cultural Heritage**

Council should prepare an Aboriginal Cultural Heritage Study and sensitivity mapping, and maintain an inventory of Aboriginal heritage items.

**Floodplain Risk Management Aspects**

Council to obtain advice from DoPI regarding suitability of flooding clause and possibility of differentiation of land use zone due to flood affectation.

**Minor Amendments**

Cumberland Plain Woodland was recently declared as Critically endangered; therefore all references to CPW should refer to it as “Critically Endangered” – rather than just an EEC.

*DoPI response*

This can be undertaken outside the draft plan process.

N/A – model flooding clause (without map) used by Council.

Council to amend references to CPW throughout the draft plan.

*Council response*

The amended clause 6.9 will apply to both “Significant Vegetation” and “Connectivity between Significant Vegetation”.

This matter is discussed in detail later in this report. This matter is to be considered as part of the review of the DCP.

No amendment has been made to the draft plan.

This could be investigated as a possible future amendment to the draft plan.

No amendment has been made to the draft plan.

DoPI’s model flooding clause has been used in the draft plan. The use of any alternative clause is to be considered as part of the Hawkesbury Floodplain Risk Management Study and Plan process which is currently being undertaken by Council.

The draft plan has been amended accordingly.

**Landcom**

*Submission*

Submission concerned Lot 7304 DP 1141427, 67 Kurrajong Road, Kurrajong and the minimum lot size provisions applying to Housing zoned land not serviced by reticulated sewerage.

The subject property is 3.2ha in area and is located on the southern side of Kurrajong Road between Old Bells Line of Road and Woodburn Road. It is currently within the Housing zone, is proposed to be zoned R2 Low Density Residential and is not serviced by reticulated sewerage. Landcom advise that the land has been included in the Crown Home Lands Program.

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HLEP 1989 and the draft plan state that the minimum lot size for subdivision of Housing/R2 Low Density Residential land that is not serviced by reticulated sewerage is 4000m<sup>2</sup>.

The 4000m<sup>2</sup> minimum is overly restrictive and should be reworded to allow some flexibility. There is now a range of sewer treatment options available that may allow for subdivision below the 4000m<sup>2</sup> as well as alternative treatments to prevent negative environmental impacts. Recommend that the word "reticulated" in Clause 4.1B (3)(a) be replaced with "adequate" thereby allowing landowners to apply for subdivisions based on the merit of their application and the solution provided. Such an amendment would facilitate subdivision into lots smaller than 4000m<sup>2</sup> which would provide diversity of land product in the Hawkesbury area.

*Response*

No amendment has been made to the draft plan.

The ramifications of the proposed amendment extend beyond the particular property Landcom have interest in, to all Housing zoned land which is not serviced by reticulated sewerage. This includes the areas within Kurrajong, Kurmond, Kurrajong Heights and until the Agnes Banks and the 3 Towns Priority Sewerage Programs are completed, parts of Agnes Banks, Glossodia, Wilberforce and Freemans Reach. Furthermore the proposed amendment could significantly increase the subdivision potential of these lands (i.e. by allowing lots as small as 450m<sup>2</sup>) with associated impacts such as change in the respective character of the areas, increase in traffic, and addition requirements for the provisions of infrastructure and services.

It is considered that the proposed amendment is a matter that could be investigated. However, any such investigation must be at the applicant's expense and must use the criteria set in the recently adopted Hawkesbury Residential Land Strategy.

**Office of Water**

*Submission*

Council should include local provisions for waterways and riparian land and riparian land mapping. The provision should seek to minimise development along the banks and beds of rivers, and mitigate adverse impacts of development on rivers.

Waterways and riparian land should be zoned E2 Environmental Conservation with limited uses if riparian land clause is not included. Only the following uses should be permitted without consent on riparian land: *environmental protection works*, drainage and crossings.

*DoPI response*

It is noted that Council has chosen not to include a local provision for riparian land or waterways. Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment. The Water Act also provides provisions for such issues.

Council to review zoning of waterways and riparian land and associated permissibility of uses – noting however that E2 land must be of the highest conservation value and preferably in public ownership (or if in private ownership, a sufficiently wide range of permissible uses to reduce likelihood of acquisition issues, or ensure a significant portion of the lot in a developable zone). Council should also note DoPI's

*Council response*

No amendment has been made to the draft plan.

This could be investigated as a possible future amendment to the draft plan.

No amendment has been made to the draft plan.

Current zoning of waterways as either W1 Natural Waterways or W2 Recreational Waterways or adjoining zone is considered appropriate given conversion intent of draft plan, the proposed purpose of the E2 zone and mapping information currently available to Council.



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If waterways and riparian land are to be zoned the same zone as adjoining land then LEP to include a Riparian Land Map and a riparian land clause, specific objectives under the relevant zone to ensure waterways and riparian lands are protected and enhanced, provisions to prevent inappropriate development/use from being located in waterways and riparian lands.  
LEP to include provisions so that the riparian lands remain, or become vegetated, with fully structured local native vegetation (trees, shrubs and groundcover species) at a density that occurs naturally.  
W1 Natural Waterways and W2 Recreational Waterways zones permit a number of uses on the bed and banks of the river. Recommend that development on the bed and banks of the river be minimised and that Council needs a provision in place for addressing the proliferation of such development along the bed and banks of the river and the potential impact of such development on the stability of the river, aesthetics, riverine ecosystem, flooded related impacts, etc and the cumulative impact of such development.  
Include specific local provisions for the following: wetlands, groundwater ecosystems, and prevention of subdivisions along frontage of waterways or above vulnerable aquifers.

Under the aims of the plan, reference should be made to

*DoPI response*

preference that all waterways should be zoned a waterway zone rather than a land based zone.

Such issues can be considered by Council in its DCP and perhaps become heads of consideration under the DCP. The Water Act also provides provisions for such issues.

Not needed, the aims already include reference to waterways

*Council response*

No amendment has been made to the draft plan.

Inclusion of a Riparian Land Map would not be consistent with the conversion intent of the draft plan.

This could be investigated as a possible future amendment to the draft plan.

No amendment has been made to the draft plan.

This could be investigated as a possible future amendment to the draft plan and/or DCP.

No amendment has been made to the draft plan.

The proposed objectives and landuses of the W1 and W2 zones are considered to be appropriate. Council is currently assisting the Office of the Hawkesbury – Nepean in their investigation of the number and types of structures within and near the Hawkesbury River.

This could be investigated as a possible future amendment to the draft plan and/or DCP.

No amendment has been made to the draft plan.

Wetlands are to be protected by way of the E2 Environmental Conservation zone and/or specific provisions within the draft plan.

Groundwater, ecosystem and subdivision provisions can be investigated as a possible future amendment to draft plan and/or DCP.

No amendment has been made to the draft plan.

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conservation and protection of waterways, riparian land, wetlands, groundwater and ground water dependent ecosystems.

Clause 2.6B Temporary use of land to include reference to waterways, riparian land and groundwater.

Clause 2.6C Earthworks to refer to waterways, riparian land and groundwater.

In RU1 Primary Production zone 6<sup>th</sup> objective insert a reference to protection, enhancement and conservation of natural resources and waterways, riparian land and groundwater dependent ecosystems.

In RU1 Primary Production zone 6<sup>th</sup> objective change "streams and wetlands" to "waterways".

All zones should include objectives relating to waterway protection etc.

In RE1 Public Recreation a specific objective should be inserted which makes reference to protection, enhancement and conservation of natural resources and waterways, riparian land and groundwater dependent ecosystems – if there is any riparian land proposes to be zoned RE1.

Include following objective under all relevant zones: "to avoid subdivision that creates new Basic Landholder Rights along frontage of waterways or vulnerable aquifers".

*DoPI response*

and the natural environment.

Not needed, the clause already references protection of environment. Note the clause is the Parliamentary Counsel approved model clause.

Not needed, clause already references protection of environment. Note the clause is the Parliamentary Counsel approved model clause.

Not needed, objectives already include reference to waterways, groundwater etc.

Council to consider amending references to "streams" to read "waterways".

Not needed, objectives already include reference to waterways, groundwater, or the natural environment in some manner – as do the aims of the plan.

Not needed, objectives already refer to protection of the natural environment.

Not needed, such issues unable to be addressed via the Standard Instrument.

DoPI's preference is (if Council sees this as an issue) that there are controls on minimum lot size in Council's DCP with this issue in mind. Secondly, the Standard Instrument is not intended to refer to matters under different legislation i.e. the Water Act. It is understood the Office of Water are reviewing the Water

*Council response*

No amendment has been made to the draft plan.

No change possible as the provision is a model clause. No amendment has been made to the draft plan.

No change possible as the provision is a model clause. No amendment has been made to the draft plan.

"streams and wetlands" has been changed to "waterways" as the definition for *waterway* is more encompassing and includes *watercourses*, *wetlands* and *water bodies* both artificial and natural.

No amendment has been made to the draft plan.

The objective referred to by DoPI only relates to protecting and enhancing the natural environmental for recreational purposes.

A similar objective relating to "environmental purposes" has been included in the draft plan.

No amendment has been made to the draft plan.

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Where SREP 20 wetlands are adjacent to land proposed to be zoned a rural zone (eg RU1 Primary Production / RU2 Rural Landscape) the following requirements should be mandatory: vegetated riparian buffer setbacks around wetlands; riparian buffer areas around E2 Environmental Conservation zoned land; and a minimum riparian vegetated buffer width of 50m. In the E2 Environmental Conservation zone include a specific objective for protection, enhancement and conservation of natural resources and waterways, riparian land and groundwater dependent ecosystems. Particularly environmentally significant watercourses should be zoned E2 Environmental Conservation.

Reduce permissible uses in E2 Environmental Conservation zone (eg delete fencing, flood mitigation works, recreation, water bodies).

In W1 Natural Waterways and W2 Recreational Waterways zones, reduce permissible uses (i.e. delete flood mitigation works, moorings, water recreational structures, pier, wharf, jetty, boat launching ramp). Include a local provision for addressing the proliferation of the above structures along

*DoPI response*

Act with this issue in mind. Not needed, such issues can be addressed in the DCP. It is noted that Council has chosen not to include a local provision for riparian land or waterways. Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment. Not needed, objectives already include reference to wetlands and the environment.

Council to review zoning of waterways and riparian land and associated permissibility of uses – noting however that E2 land must be of the highest conservation value and preferably in public ownership (or if in private ownership, a sufficiently wide range of permissible uses to reduce likelihood of acquisition issues, or ensure a significant portion of the lot in a developable zone). Council should also note DoPI's preference that all waterways should be zoned a waterway zone rather than a land based zone.

Council to consider appropriateness of permissible uses in the E2 zone. It is noted that the uses appear appropriate.

Council to consider appropriateness of permissible uses in the W1 zone. It is noted that the uses appear appropriate. Council may wish to consider addressing this issue in its DCP.

*Council response*

No amendment has been made to the draft plan.

See later discussion regarding the E2 zone.

No amendment has been made to the draft plan.

No amendment has been made to the draft plan.

Current zoning of waterways as either W1 Natural Waterways, W2 Recreational Waterways or adjoining zone is considered to be appropriate given the conversion intent of the draft plan, the proposed purpose of the E2 zone, and mapping information currently available to Council.

No amendment has been made to the draft plan.

Uses within E2 zone have been derived from current permitted uses within the 7(a) Environmental Protection (Wetlands) zone of HLEP 1989. No amendment has been made to the draft plan.

The proposed objectives and landuses of the W1 and W2 zones are considered to be appropriate. Council is currently assisting the Office of the Hawkesbury – Nepean in their investigation of the number and

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the river and the potential impact of development on the river – such structures should only be public, not for private use.

Riparian land should be excluded from exempt and complying development and linked to riparian land map. Add waterways and riparian land to 3.3 Environmentally Sensitive Areas excluded.

In clause 4.1, the objectives should refer to protection of waterways, groundwater, riparian land, new subdivision should be connected to reticulated town water (or have a sustainable water supply) and sewerage, and does not increase lot frontage to waterways and the creation of Basic Landholder Rights (BLR).

In objective (a) change “allotments will, in the opinion of the Council, minimise the impact on” to “allotments will not, in the opinion of the Council, have a detrimental impact on”.

In clause 4.1A (3) refer to “waterway” rather than “watercourse” and add reference to riparian land and groundwater in (a). Add addition provisions relating to riparian land and groundwater, sustainable water supply, and non-proliferation of Basic Landholder Rights.

In (3)(a) change “allotments will,

*DoPI response*

It is noted that Council has chosen not to include a local provision for riparian land or waterways. Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment.

Not needed, objectives already refer to protection of waterways etc. Council may wish to consider adding a reference to lots needing water supply (similar to current reference to effluent disposal needs). BLR issue unable to be addressed in the Standard Instrument.

Council to consider amending references to watercourses to read ‘waterways’.

*Council response*

types of structures within and near the Hawkesbury River.

This could be investigated as a possible future amendment to the draft plan and/or DCP. No amendment has been made to the draft plan.

This could be investigated as a possible future amendment to the draft plan.

In objective (a) “watercourse” has been changed to “waterways” and reference to “groundwater” has been added.

Riparian reference to be considered as part or broader riparian clause and mapping investigations.

Water supply issue can be dealt with by the DCP.

BLR is not a matter for this plan.

The proposed “no detrimental impact” word change is considered to be too restrictive. The current wording of the objective recognises that subdivisions will have some environmental impact and that Council’s objective is to minimise this impact. The current wording in the draft plan is consistent with wording in Clauses 11 and 41AA of HLEP 1989.

In (3)(a) “watercourse” has been changed to “waterways” and reference to “groundwater” has been added.

Riparian reference to be considered as part or broader riparian clause and mapping investigations.

Water supply matter can be dealt with by DCP.

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in the opinion of the Council, minimise the impact on" to "allotments will not, in the opinion of the Council, have a detrimental impact on".

In 4.1C (4) refer to "waterway" rather than "watercourse" and add reference to riparian land and groundwater in (a) and (b). Add additional sustainable water supply, and non-proliferation of Basic Landholder Rights.

In (4)(a) change "allotments will, in the opinion of the Council, minimise the impact on" to "allotments will not, in the opinion of the Council, have a detrimental impact on".

In 4.1C (5) (c) add requirement to consider "the rehabilitation of local native riparian vegetation"

*DoPI response*

Council may wish to consider whether objectives are needed under these clauses.

*Council response*

BLR is not a matter for this plan.

The proposed "no detrimental impact" word change is considered to be too restrictive. The current wording of the objective recognises that subdivisions will have some environmental impact and that Council's objective is to minimise this impact. The current wording in the draft plan is consistent with wording in Clauses 11 and 41AA of HLEP 1989.

In (4)(a) "watercourse" has been changed to "waterways" and reference to "groundwater" has been added.

Reference to groundwater in 4(b) is not necessary as "best practice" would require consideration of a wide range of environmental matters including groundwater. The "Effluent Disposal" chapter of the Hawkesbury DCP requires consideration of groundwater location and impacts.

Riparian reference to be considered as part or broader riparian clause and mapping investigations.

Water supply matter can be dealt with by DCP.

BLR is not a matter for this plan.

The proposed "no detrimental impact" word change is considered to be too restrictive. The current wording of the objective recognises that subdivisions will have some environmental impact and that Council's objective is to minimise this impact. The current wording in the draft plan is consistent with wording in Clauses 11 and 41AA of HLEP 1989.

The draft plan has been amended accordingly.

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Under clause 5.3 Development near zone boundaries, the clause should not apply to land identified on a riparian land map.

Under clause 5.9 Preservation of trees, the clause should refer to enhancement and rehabilitation of native vegetation and riparian land.  
Under clause 6.7 Flooding, insert in the Heads of Consideration references to the restoration and establishment of riparian vegetation.  
Insert sample riparian clause

Insert sample wetland clause.

Insert sample groundwater clauses.

Under the Exempt and Complying development schedule for E&C development, rainwater tanks should not be erected on riparian land.  
Make amendments to the dictionary definitions of *waterbody* and *watercourse*.

*DoPI response*

It is noted that Council has chosen not to include a local provision for riparian land or waterways. Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment.

Clause 5.9, while optional, if included can't be amended.

Clause 6.7 is a model clause.

Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment.

Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment.

Such provisions are optional only. It is open to Council, subsequent to the finalisation of the draft plan, to undertake the necessary strategic work (including mapping) to include such a provision in the plan as an amendment.

*SEPP (Exempt and Complying) 2008* applies to rainwater tanks.

Definitions cannot be amended within the Standard Instrument.

*Council response*

No amendment has been made to the draft plan.

This could be investigated as a possible future amendment to the draft plan.

No amendment has been made to the draft plan.

No change possible as the provision is a model provision. No amendment has been made to the draft plan.

No change possible as the provision is a model provision. No amendment has been made to the draft plan.

See later discussion regarding E2 Environmental Conservation zone and wetland clause.

DoPI sample wetland clause has been used in lieu of E2 zone for some properties/wetlands. No amendment has been made to the draft plan.

No amendment has been made to the draft plan.

No change possible as the provision is a model provision. No amendment has been made to the draft plan.

No changes possible as the definitions are determined by DoPI.

**University of Western Sydney**

Submission

Comments regarding zoning:

*The map prescribes Special Activities – Education for the University land. The only uses considered permissible with consent in Council’s draft LEP for the Special Activities zone are roads and the use listed on the map, education.*

*The University is very committed to its Hawkesbury campus. More flexible zoning would allow the University to create a more dynamic precinct. For example, at other campuses we have investigated the creation of ‘partner precincts’ for the location of commercial research and development facilities.*

*We request that the Council introduce more flexibility into the draft Special Uses zone SP1.*

*In making the SP1 zone more flexible, Council has suitable control of activities through development application merit assessment. Council’s expectation can also be framed in the zone objectives.*

*For University land, at Hawkesbury, it is pertinent that agriculture is listed as permissible in the SP1 zone generally, particularly to explicitly allow UWS to explore commercial agricultural partnerships. Another use that makes sense to be permissible in the special use one is office buildings. The University has a number of not-for-profit and government tenants and it would make sense that purpose built facilities could be built for them. Our tenants include Taronga Zoo, Greening Australia, the EPA, Department of Industry and Investment, and the NSW Police Force.*

*The University is currently preparing a tender for a detailed masterplans to be prepared for the Hawkesbury campus. The brief is to provide spatial guidance to the location of any new building within the core built part of the campus. The secondary part of the brief is to provide guidance for the different agricultural environmental precinct that currently comprises the wider campus. The brief also seeks solutions to the isolation of the built campus from Richmond and the weak structural linkage towards the heart of Richmond.*

*The University requires that the masterplanner explore a range of built solutions to create a strong fabric in the vacant paddocks between the academic core and the heart of Richmond.*

*There are already significant vacant building sites in the academic core. Thus we specifically propose that it be rezoned Mixed Use (B4). This would give flexibility within the new standard template for the University and Council to explore opportunities to meet any demand for additional office premises, retail and higher quality accommodation. As well as to deliver a dynamic partner precinct alongside the academic pursuits of the University.*

Comments regarding Biodiversity protection:

*The map shows proposed bushland regeneration areas extending northward into vacant land within the heart of the Hawkesbury campus. In this particular instance the mapping of ‘connectivity’ has gone beyond its basic intention and does not connect between vegetation. That aspect of the mapping is untenable to the University.*

*Some of the land treated as “Significant Vegetation” on the Biodiversity Protection Map is a transposition of areas currently identified by Council such as Shale Plains Woodland on its existing Remnant Vegetation mapping. We note some of that mapping within the core academic campus is based again on broad brush exercises without the benefit of any substantial groundtruthing. The University has procured such research for its submission and now submits this rigorous vegetation mapping to Council.*

The University provided revised mapping for consideration.

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The submission also notes the conflicting reference of “environmentally sensitive land – biodiversity” on the map and the references to “Significant Vegetation” and “Connectivity between Significant Vegetation” in Clause 6.9, the need for a flora and fauna report in the “Connectivity between Significant Vegetation” areas, and reference to “high biodiversity significance” in 3.3(2)(g).

Comment regarding heritage:

*In the case of our main academic campus, it contains four heritage items listed in the draft LEP. The heritage map shades the entire lot on which they are located. This method of shading the full lot is common practise for land on which a heritage item is located. However, in this instance, the subject lot (2/DP1051798) is some 292ha. It is impractical for heritage provisions to affect such a large area. The mapping also does not do justice to locating the items.*

The University provided a revised map for consideration.

*Response*

The land uses contained in the SP1 Special Activities “Permitted with consent” part of the Land Use Table are as a result of instructions from the DoPI. In particular DoPI have advised that no additional land uses can be added to the mandated uses which are:

*“Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose”*

The words “incidental” and “ancillary” can be read in a broad sense and given the definition of educational establishment being:

**educational establishment** means a building or place used for education (including teaching), being:

- (a) a school, or
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.

It is considered that most of the activities undertaken at the University would be permissible under the draft plan.

Further discussions were held with the author of the University’s submission and in order to allow a degree of flexibility the University is seeking the purpose shown on the map has been expanded to include *agriculture* and *research station*. These are defined as follows:

**agriculture** means any of the following:

- (a) animal boarding or training establishments,
- (b) aquaculture,
- (c) extensive agriculture,
- (d) farm forestry,
- (e) intensive livestock agriculture,
- (f) intensive plant agriculture.

**research station** means a building or place operated by a public authority for the principal purpose of agricultural, environmental, fisheries, forestry, minerals or soil conservation research, and includes any associated facility for education, training, administration or accommodation.



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The request to rezone part of the University to B4 Mixed Use is beyond the conversion intent of the draft plan and any consideration of this should be made after the University has finalised its master planning exercise.

The University's request regarding amendments to the Biodiversity Map and Heritage Map is considered reasonable and the maps have been amended accordingly.

### ***RailCorp - RailCorp Property***

#### *Submission*

No objections to proposed change in zone for 14A Racecourse Road, Clarendon from 6(a) Open Space to SP2 Infrastructure - Electricity Generating Works.

Zone of 6 Church Street, Windsor should be changed to match the adjoining RailCorp landholding. This land was purchased by RailCorp to facilitate the bus interchange.

Land located on the southern side of the rail corridor fronting Church Street, Windsor has been identified as a possible future disposal site. The zoning of this portion of the land should be changed to match the adjoining residential zone.

#### *Response*

6 Church Street, Windsor has now been fully developed as part of the new bus interchange for Windsor Railway Station. The Land Zoning map has been amended to show this land being zoned SP2 Infrastructure - Railways.

The land located on the southern side of the rail corridor fronting Church Street, Windsor is a triangular piece of land immediately north-east of 21 Church Street. The land is partially below the 1 in 100 year flood level, is within the 25-30 ANEF contour and RailCorp has provided no details regarding the potential for the land to be contaminated. It is considered that the proposed rezoning to R2 Low Density Residential is beyond the conversion intent of the draft plan. Any rezoning proposal for this land should be prepared by the landowner for consideration by Council in the context of the recently adopted Hawkesbury Residential Land Strategy.

Rezoning this land to R2 Low Density Residential would not be consistent with the conversion intent of the draft plan. This could be investigated as a possible future amendment to the draft plan.

### ***Transport and Infrastructure***

#### *Submission*

Recommends consideration be given to *NSW State Plan - Investing in a Better Future*, *Metropolitan Transport Plan: Connecting the City of Cities*, *Sydney Metropolitan Strategy*, and forthcoming *NSW Bike Plan*.

Encourages land use and transport measures that will facilitate greater mode shift away from car usage to public transport, walking and cycling,

Requests the inclusion of integrated land use and transport principle as set out in the *Integrating Land Use and Transport Policy Package*, within the overall aims of the draft plan and objectives of zones such as the enterprise corridor, centres, mixed use and medium density residential.

#### *Response*

No amendment has been made to the draft plan.

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Including detailed provisions relating to the abovementioned plans would not be consistent with the conversion intent of the draft plan. It would be more appropriate for these to be considered in light of more specific and strategic orientated LEPs such as those dealing with residential lands and employment lands.

### **Cessnock City Council**

#### *Submission*

Supports the use of the E1 National Parks and Nature Reserves zone for the land within the Yengo National Park and adjoining the Cessnock LGA. The draft Cessnock LEP also proposes the E1 zone for this area.

#### *Response*

No action required.

### **NSW Rural Fire Service**

#### *Submission*

Suggests that Council prepare a local policy/guideline in respect to bush fire protection measures that takes a strategic approach to the planning of Special Fire Protection Purpose developments in residential areas. Council can take a strategic approach to bushfire protection by considering zoning land to reflect the hazard/risk posed to the proposed land use (e.g. zoning land for Special Fire Protection Purposes developments in areas at a lower risk of bush fire). Exclusion of development in certain areas is an option where the risk from bush fire is high or environmental and access constraints cannot be easily overcome.

#### *Response*

No amendment has been made to the draft plan.

It is considered that the suggested site and development specific provisions are best dealt with via *Planning for Bushfire Protection 2006* or the DCP. Given the vast area covered by some zones and the unique nature of each property within the respective zone it would be inappropriate to simply prohibit certain types of development due to possible bush fire hazard or risk. A better approach would be to allow for site by site assessment of the need for bush fire protection measures via *Planning for Bushfire Protection 2006* or a DCP at the development application stage.

### **Roads and Traffic Authority**

#### *Submission*

Concern raised regarding the accuracy of the Land Zoning Map and Land Reservation Acquisition Map as it relates to proposed RTA road widening.

#### *Response*

Following the receipt of the RTA submission, a meeting with Council and RTA staff was held to discuss the Land Zoning Map and Land Reservation Acquisition Map. The key issue appeared to be discrepancies between the RTA's cadastral information and Council's cadastral information (which is based on the Land and Property Management Authority's cadastral information). Hence, the discrepancies are a matter for the RTA and LPMA to resolve. The RTA was requested to provide further information to Council including specific details of discrepancies. Despite repeated requests over many months the RTA has not provided this information. In general DoPI is aware of the RTA's concerns as the RTA has raised similar concerns with other councils. So as not to further delay the finalisation of draft plan, it is

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No objection to proposed rezoning of 62 Day Street, 27A Bridge Street, or 347A George Street, Windsor.

Objection to proposed E2 Environmental Conservation zone affecting parts of 14 Old Pitt Town Road and Lot 1 DP 107709, Wellesley Street, Pitt Town, requests land be zoned SP2 Infrastructure – Classified Road.

Requests that only classified state roads be zoned as SP2 Infrastructure – Classified Roads, all other roads, including unclassified/classified regional roads should adopt the adjacent land use zone.

The key design considerations found in the *Premiers Council for Active Living – Designing Places for Active Living* should be taken into consideration in the preparation of the LEP.

Recommends that *roads* be included as “Permitted with Consent” in all zones.

Recommends that floor space ratio bonuses be given in B6 Enterprise Corridor zones in order to promote rear lane accesses and limit individual site accesses to arterial roads.

Requests direct vehicular access from developments fronting classified roads is prohibited where access can be gained via an alternative non classified road.

*Response*

recommended that the draft plan be forwarded to DoPI for finalisation and, if considered necessary, DoPI co-ordinate resolution of any discrepancies.

Notwithstanding this, known discrepancies/errors in the Land Zoning Map and Land Reservation Acquisition Map have been corrected.

No action required.

The RTA's objection to proposed E2 zone affecting parts of 14 Old Pitt Town Road and Lot 1 DP 107709, Wellesley Street, Pitt Town is supported and the land has been zoned SP2 Infrastructure – Classified Road. Detailed discussion regarding the proposed E2 zone is included in a later section of this report.

The Land Zoning Map and other associated maps have been amended accordingly.

No amendment has been made to the draft plan.

Including detailed provisions relating to this plan would not be consistent with the conversion intent of the draft plan. It would be more appropriate for these to be considered in light of more specific and strategic orientated LEPs such as those dealing with residential lands and employment lands.

No amendment has been made to the draft plan.

Making roads permitted with consent in all zones is not required as this is dealt with by *SEPP (Infrastructure) 2007*.

No amendment has been made to the draft plan.

The draft plan does not contain floor space ratios hence bonuses within the B6 Enterprise Corridor zones in order to promote rear lane accesses is not possible. B6 Enterprise Corridor zoned land between Groves Avenue and Curtis Road, Vineyard is substantially developed with all properties being accessed from Groves Avenue, Curtis Road and Industry Road and not Windsor Road.

No amendment has been made to the draft plan.

The RTA's suggestion to prohibit direct vehicle access to/from classified road is similar to Clause 22 in HLEP 1989. During the preparation of the draft plan, DoPI did not allow Clause 22 to be carried over to the draft plan as this would introduce a prohibition outside of the land use table. DoPI have further advised that this matter can be dealt with via a DCP and the provisions of *SEPP (Infrastructure) 2007*.

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### *Submission*

Requests *child care centres* are prohibited in all zones where such properties have direct frontage to a classified road.

Development within the LGA should aim to minimise vehicles kilometres travelled by private vehicles by providing higher density and mixed use development around public transport infrastructure (i.e rail corridors).

Where applicable, the draft plan should make provisions for developer funding of required transport infrastructure improvements that may be required as a result of additional development in the LGA.

Advises that the RTA would require planning controls for acoustic privacy on development to achieve required noise criteria for developments impacted by traffic noise.

### *Response*

No amendment has been made to the draft plan.

DoPI advise that the proposed prohibition of *child care centres* which have direct frontage to a classified road is not permitted in the Standard Instrument and that road safety is a matter to be considered at development application stage. No amendment has been made to the draft plan.

The draft plan does seek to minimise vehicles kilometres travelled by private vehicles by providing higher density and mixed use development around public transport infrastructure.

No amendment has been made to the draft plan.

DoPI advise that the RTA should identify what works are planned for or required to justify their request.

This can be investigated as a possible future amendment to the plan and in light of the DoPI's forthcoming amendments to the development contributions system in the *Environmental Planning and Assessment Act 1979*.

No amendment has been made to the draft plan.

DoPI advise that the RTA suggestion for traffic noise planning controls can be dealt with via a DCP and the provisions of *SEPP (Infrastructure) 2007*.

## Submissions received from the Public

### ***Various respondents - Proposed IN1, IN2 and B6 zones and inclusion of B5 zone***

#### *Background*

Land which is currently zoned 4(a) Industry General under HLEP 1989 is proposed to be zoned IN1 General Industrial under the draft plan. 4(a)/IN1 zoned land is located at Mulgrave, Vineyard, Windsor, South Windsor, and Wilberforce.

Land which is currently zoned 4(b) Industry Light under HLEP 1989 is proposed to be zoned IN2 Light Industrial under the draft plan. 4(b)/IN2 zoned land is located at Clarendon, Mulgrave, Vineyard, Windsor, South Windsor, Richmond and North Richmond.

Land which is currently zoned 3(b) Business General under HLEP 1989 is proposed to be zoned B6 Enterprise Corridor. 3(b)/B6 zoned land is located at Mulgrave/Vineyard between Curtis Road and Groves Avenue.

At present the Land Use Matrix of HLEP 1989 is written in a "closed" fashion whereby specific land uses are nominated as exempt development, complying development, permitted without consent or permissible with consent and therefore all other land uses are prohibited. Conversely, as a result of instruction from DoPI, the Land Use Table in the draft plan for the business and industrial zones is written in an "open" fashion whereby specific land uses are nominated as prohibited and therefore all other land uses are either exempt development, complying development, permitted without consent or permissible with consent. As a result the draft plan will permit more land uses in the business and industrial zones than HLEP 1989.

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There is however some notable land uses which are currently permissible within these zones that, as a result of instruction from DoPI, will now be prohibited. For the IN1 and IN2 zones, *bulky goods premises* and *tourist and visitor accommodation* are prohibited in the draft plan whereas they are currently permissible within the 4(a) and 4(b) zones. In the B6 zone, *shops*, types of *residential accommodation* and types of *tourist and visitor accommodation* are prohibited in the draft plan whereas they are currently permissible within the 3(b) zone.

*Bulky goods premises* are defined in the draft plan as:

*a building or place used primarily for the sale by retail, wholesale or auction of (or for the hire or display of) bulky goods, being goods that are of such size or weight as to require:*

- (a) a large area for handling, display or storage, or*
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,*

*but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods.*

Examples of *bulky goods premises* are whitegoods stores, bedding and furniture stores, hire premises, and some electrical stores. Note hardware stores, tile and carpet showrooms are not *bulky goods premises* under the draft plan as these are separately defined as *timber and buildings supplies*, and these are permissible in the proposed IN1 and IN2 zones.

*Shops* are defined in the draft plan as:

*retail premises that sell groceries, personal care products, clothing, music, homewares, stationery, electrical goods or other items of general merchandise, and may include a neighbourhood shop, but does not include food and drink premises or restricted premises.*

During the preparation of the draft plan, Council staff raised particular concern with DoPI regarding the prohibition of *bulky goods premises* in the IN1 and IN2 zone given the conversion intent of the plan. Council staff were advised that, given the state-wide policy position of DoPI regarding *bulky goods premises* and DoPI's desire to uphold the standardised nature of LEPs across the state, they would not allow *bulky goods premises* as a permissible use in industrial zones.

As a result of the proposed land use changes approximately 450 letters were sent to all owners of 4(a), 4(b) and 3(b) zoned land advising of the exhibition of the draft plan.

### *Submissions*

31 submissions were received from the following:

Mr Ken Hardaker, Macquarie Towns Property, McGraths Hill

Mr Graeme Latta and Mrs Wendy Latta, Teletana Pty Ltd, Vineyard

Mr Allan Coles, Allyns Carpet Court, McGraths Hill

Mr George Stanley, Stanley Superannuation Fund, Oakville

Ms Linda Curry, Kresta Blinds and Curtains, Mulgrave

Mr David Coaldrake, Coldys Towbars and Bullbars, Mulgrave

Mrs Natalie Coaldrake, Coldys Towbars and Bullbars, Mulgrave

Mr Bruno Crosato, Garden Elements, Mulgrave

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Mr Ken Dobson, Design Building Services, North Richmond

Mr Mark Halford, Pipedan Trust, Mulgrave

Mr Dominic Barba, Ryde

Mr Wolfgang Kohnertz, Vineyard

Mr Stewart Wilkins, Stewart Wilkins Rallying Pty Ltd, Mulgrave

Mr Pat Ferris, Sandrick Enterprises, Oakville

Mr Ken Ferris, Ferris Property Holdings, Mulgrave

Mr Girolamo Fontana, R.W. Stanley & Co Pty Ltd

Mr Eddy DeMarco, Grewlan Investments, Kellyville

Mr Kym Greentree, Macquarie Towns Glass, McGraths Hill

Mr Robert Montgomery, Montgomery Planning Solutions on behalf of Bastian Sales Pty Limited, McGraths Hill

Mr Patrick Hurley, PGH Environmental Planning on behalf of Valad Property Group, Mulgrave

Mr Patrick Hurley, PGH Environmental Planning on behalf of Mr M Moit, Mr G Moit and Mr T Moit, Mulgrave

Mr Patrick Hurley, PGH Environmental Planning on behalf of Regenta Pty Ltd, Mulgrave

Mr Robert Montgomery, Montgomery Planning Solutions on behalf of Bettergrow, Grewlan Investments and Mr P and Mr A Tosti, Mulgrave

Mr Mark Grayson, CB Richard Ellis on behalf of Winford Holdings Pty Limited, Mulgrave

Mr Peter Tosti and Mr Andrew Tosti, Mulgrave

Mr David Adlington, Airtraders Pty Limited, Mulgrave

Mr Warren Goldsworthy and Mrs Carol Goldsworthy, Mulgrave

Ms Philippa Kelly, Bulky Goods Retailers Association, Victoria

S & A Dermelkonian, Syndian Natural Food Products, Mulgrave

Ms Rachel Goldsworthy, Windsor

Mr Chris Hayer, Chris Heyer Promotions Pty Limited, Mullaley

Council also received a petition from Mr Pat Ferris, Ferris Property Holdings with 281 signatures.

Most of the submissions objected to the prohibition of *bulky goods premises* in the proposed IN1 and IN2 zones, particularly at McGraths Hill, Mulgrave and Vineyard and the prohibition of *shops* in the B6 zone. The submissions either related to comments about the affect of the prohibition in general or were site-specific submissions. A summary of these submissions follows.

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### General Comments

Comments received included:

Change in zoning is unfair, prohibition of *bulky goods premises* will devalue properties by 30-40% with mortgage to valuation ratios being too highly geared. What compensation can land owners expect?

Most development over the past few years has been purpose built glass fronted high quality buildings suitable for multiple purposes, in particular showrooms and bulky goods. Vineyard, Mulgrave and McGraths Hill is predominantly occupied by bulky goods occupiers and demand for *bulky goods premises* is increasing. Proposed population growth in surrounding areas justifies the retention of *bulky goods premises*.

The retail areas of Windsor and Richmond are small areas with no growth potential that cannot cater for a major retail centre, the current bulky goods area gives the Hawkesbury the opportunity of retaining local expenditure by way of servicing what cannot be serviced within the retail areas. The draft plan in its current form will restrict *bulky goods premises* to one small area of approximately 6ha (the proposed B6 zone between Groves Avenue and Curtis Road) which is already mostly developed. Proposed changes will force current and future *bulky goods premises* out of the Hawkesbury LGA resulting in loss of diversity of occupants and businesses, economic stagnation, loss of jobs, and land owners will find it difficult to secure replacement tenants and loose rental income.

There is not a big demand for dedicated industrial land due to decline in manufacturing industry. The area is under serviced for industrial development with lack of electrical power and low water pressure. Industrial zonings/land uses are unattractive, polluting and require heavy transport that result in costly damage to surrounding roads. South Windsor and areas around Mulgrave that have purpose built industrial usage type buildings are empty and have been that way since they were built.

Windsor Road is the main gateway to the Hawkesbury with great growth potential, the visual appearance of an industrial only area will adversely affect the visual amenity of the "Gateway". Loss of attraction of "draw" to an otherwise more economically successful area, eg Rouse Hill Regional Shopping Centre. Council should allocate a commercial precinct to accommodate national retail outlets.

Existing use rights limit any occupier to the bounds of their current approval with no real scope for expansion or further development and create an ongoing source of tension and uncertainty for both Council and property owners.

The proposed IN1 and IN2 zone is contrary to the conversion intent of the plan.

Council should consider the B6 Enterprise Corridor or B5 Business Development zones for the recognition of existing *bulky goods premises* and the encouragement of future *bulky goods premises*, in particular the area between Groves Ave and Park Road.

### Site Specific Comments

130 Windsor Road, McGraths Hill - This land is proposed under Hawkesbury Local Environmental Plan 1989 (Amendment 157) to be, in part, zoned 4(b) which will then be IN2 under draft plan. The removal of *bulky goods premises* as a permissible use from this site will also remove much of the incentive for its redevelopment as a suitable gateway to Windsor. Request that the B5 Business Development zone be applied to this site. (Note: since the receipt of this submission Amendment 157 has been gazetted and the land is now zoned 4(b) Industry Light.)

"Home Central" 264 - 272 Windsor Road, Mulgrave (now known as 10 - 16 Industry Road) - This land is currently zoned 4(b) and proposed to be zoned IN2. The land comprises 16,750m<sup>2</sup> of retail type floor space containing a number of tenants, most notably Bunning's Warehouse, Harvey Norman, Whitewood Warehouse, Repco, and Petbarn. Concerned about potential loss of property value of around 45% if bulky goods were prohibited and tenancies converted to an industrial usage, loss in value will reduce borrowing capacity and thus opportunities to expand businesses. The draft plan will force tenants to relocate which indirectly can have an adverse affect upon the wider community through loss of income and

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unemployment. The draft plan will create numerous occurrences of existing use rights and effectively freezes existing *bulky goods premises* whilst sterilising any future growth of this industry within the Hawkesbury. The effect of existing use rights is a major concern with respect to day-to-day operations and the long-term usage and ownership of the centre e.g change to tenancies and/or minor internal alterations as currently, and with existing use rights, will automatically require the submission of a development application. The amendment to the heritage listing will allow these minor changes to be exempt development. The centre is a large development and its' operation under existing use rights is not within the spirit or intent of the legislation. Request that the site be rezoned B5 Business Development or B6 Enterprise Corridor, or the site be included in "Schedule 1 Additional permitted uses" of the draft plan.

34 Curtis Road and 73 Mulgrave Road, Mulgrave - This land is currently zoned 4(a) and proposed to be zoned IN1. 34 Curtis Road is occupied by an industrial building containing eight mixed sized factory units all occupied by tenants such as boats and associated equipment. 73 Mulgrave Road is occupied by an industrial building containing eight mixed sized factory units plus approximately 15,000m<sup>2</sup> of land approved for a waste recycling facility, transport depot and portable building storage. Concerned about prohibition of *bulky goods premises* as such uses were considered a potential option when land was purchased. 73 Mulgrave Road lends itself to this type of use or similar due to its size and location. Concerned about potential loss of property value, loss in value will reduce borrowing capacity and thus opportunities to expand businesses. The draft plan will create numerous occurrences of existing use rights and effectively freezes existing bulky goods retailing whilst sterilising any future growth of this industry within the Hawkesbury. Request that Council make suitable provision for, and accommodate the continued growth and expansion of *bulky goods premises* within the Hawkesbury.

269, 286, 302 Windsor Road, 1 Rob Place and Part 81 Railway Road North, Vineyard - These properties are currently zoned 4(b) and proposed to be zoned IN2. The properties front Industry Road between Groves Avenue and Park Road. The area bounded by Industry Road, Groves Avenue and Park Road has very few industrial activities, the most dominant use of the area is for *bulky goods premises* including Bunning-Home Central, large furniture showrooms and a variety of smaller bulky goods operators. A significant area remains vacant which provides opportunities for new *bulky goods premises* to be established. The land satisfies the compulsory objectives of the B5 zone as the location is close enough to Windsor Town Centre to support the viability of that centre. Prohibition of *bulky goods premises* will have a significant negative effect on land values for both vacant and development land. The land is suitable for *bulky goods premises* due to the excellent traffic management facilities which are in place. The land is the first urban area within the LGA seen by motorists travelling north along Windsor Road, *bulky goods premises* will provide a much more suitable gateway in terms of built form than industrial activities. Request that the proposed IN2 zoned land between Groves Avenue and Park Road be zoned B5 or B6.

8 Groves Avenue, Mulgrave - This land is currently zoned 3(b) and proposed to be zoned B6. Although the site has a development consent approved by Council on 14 July 2009 for development of "hotel and shops", there is no physical development at this stage. The approved development comprises a hotel/restaurant on the upper level and eight shops on the ground level with a gross floor area of 2.054m<sup>2</sup> and car parking for 105 vehicles. Concerned that *shops* will be prohibited in the B6 zone. Concerned about potential loss of property value, loss in value will reduce borrowing capacity and thus opportunities to expand businesses. The effect of existing use rights is a major concern with respect to day-to-day operations and the long-term use of the shops e.g change to tenancies and/or minor internal alterations will, unlike now, automatically require the submission of a development application. The operation of the approved development under existing use rights is not within the spirit or intent of the legislation. Due to the existing use rights provisions of the EP & A Act, the draft plan, if made, will reduce the time available to physically commence the development by potentially two years. Request that *shops* be made permissible within the B6 zone or the development as approved be listed as a permitted land use under "Schedule 1 Additional permitted uses" of the draft plan.

230 Windsor Road, 5 and 5B Curtis Road, Vineyard - These properties are currently zoned 3(b) and proposed to be zoned B6. 230 Windsor Road contains the Winford Motor Group, 5 Curtis Road is vacant, 5B Curtis Road contains a number of units used for a variety of retail, professional offices, bulky goods and motor vehicle orientated uses. No strategic planning documentation or rationale provided to justify the proposed prohibition on *shops* within the B6 zone or removal of Clause 52 of HLEP 1989. Economic advice supports the retention of retailing on the subject site, further retail expansion in Windsor is constrained and with forecast population growth, it is inadvisable for Council to reduce the area of land in



which retailing is permissible. The strength of both the Windsor and Richmond centres is the variety of functions available - retail, commercial and cultural; a role which could not be replicated by allowing *shops* to be developed on the subject lands. Certain *shops* may complement rather than compete with the existing town centres, certain *shops* may be more appropriately located in an out of centre location. Retailing in this precinct is considered to be consistent with State and Regional strategic directions including the Metropolitan Strategies, the subject site is within 800m of a transport node being Mulgrave Station and also bus services along Windsor Road, *shops* in the B6 zone will promote permanent employment opportunities and will not result in a loss of employment land. Prohibition is contrary to the mandatory objective which seeks to promote a range of retail uses. Owner of land was not consulted regarding the zoning change or provided with reasons for the prohibition. Proposed prohibition is inconsistent with the conversion intent of the draft plan and will have significant adverse financial implications for owner in terms of limiting new development and potentially jeopardising the viability of the approved retail complex along the western edge of the site. Proposed zoning will result in a number of existing and approved uses to become subject to existing use rights provisions of the EP & A Act. Request that *shops* be made permissible within the B6 zone with possible additional objective to ensure Windsor and Richmond remain the main focus of commercial and retail activity in the LGA, or 3(b) zone be made into a B2 Local Centre zone, or the subject properties be included in "Schedule 1 Additional permitted uses" of the draft plan with *shops* being made permissible with consent.

*Response regarding proposed IN1 and IN2 zoned land*

The primary concern of the respondents was the proposed loss of *bulky goods premises* from the IN1 and IN2 zones and as stated above this was due to direction from the DoPI. This direction is consistent with the DoPI's *Metropolitan Strategy Cities of Cities A Plan for the Sydney's Future, 2005* (Metropolitan Strategy), *North West Subregion Draft Subregional Strategy, 2007* (Subregional Strategy) and *Draft Centres Policy Planning for Retail and Commercial Development, 2009* (Centres Policy)

The Metropolitan Strategy 2005 states on page 105 that:

*The new Standard LEP template will limit retail and office activity to core commercial and mixed use zones, business development zones and in some circumstances enterprise corridors.*

*Councils will be required to undertake forward structure planning to identify land in these zones to accommodate all commercial activity and retailing, including large floor area retailing.*

*Retailing has encroached into some industrial areas. This has displaced legitimate light industry and related uses and created excess trip generation to out of centre locations.*

(The revised Metropolitan Strategy "*Metropolitan Plan for Sydney 2036*" does not make this specific statement as the Standard Instrument Order was made in 2006 and the new revised document, on the assumption that the Order will be fully implemented, builds upon this previous provision to progress the Strategy.)

The Subregional Strategy examined the existing development and land uses within the industrial land at Mulgrave/Vineyard, North Richmond, Richmond, Windsor/South Windsor and Wilberforce and concluded that these lands should be retained for industrial purposes [pages 38 and 40].

The Centres Policy states that retail and commercial development is not appropriate in most IN1 and IN2 zones with the possible exceptions of *neighbourhoods shops, industrial retail outlets, wholesale supplies/distribution of goods, large floor space timber and building supplies and landscape and garden supplies* [page 19] and *bulky goods premises* should be accommodated in zones B2-B4 in centres, or where this is not realistic, they should be clustered together in an appropriate B5 zone in an edge-of-centre location [page 20].

Hence, it is clear that DoPI, for a variety of reasons, will not allow *bulky goods premises* within the IN1 or IN2 zones. The public submissions received identify potential impacts of this prohibition and in light of this the application of IN1 and IN2 zones was reconsidered and the possibility of using an alternative zone was investigated. In doing so guidance was obtained from the Centres Policy, the Hawkesbury Employment Land Strategy 2008 (ELS), the previously mentioned letter from DoPI encouraging consideration of the B5

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zone, investigation of the current and future development potential of the IN1 and IN2 zones, and examination of opportunities for *bulky goods premises* outside of these proposed zones.

The Centres Policy identifies the Standard LEP as the key document for ensuring the supply of floor space in centres accommodates market demand. The Centres Policy also states:

*this policy sets out that the planning system should rezone land to exceed the aggregate demand for retail and commercial floorspace [page 4]*

*large floor plate offices, high traffic generating developments or bulky development would typically be more suitable to major centres or town centres [page 15]*

*Councils should aim to accommodate retail and commercial development within centres. However, there will be circumstances where this may not be realistic or desirable and therefore other zones may need to be considered to accommodate development in the edge-of-centre or out-of-centre locations. Options include:*

- *Zone B5 (Business Development)*
- *Zone B6 (Enterprise Corridor)*
- *Zone B7 (Business Park)*
- *IN1 (General Industrial), or*
- *IN2 (Light Industrial) zones. [page 16]*

Furthermore, the Centres Policy identifies the approach that councils should adopt for consideration of centres. This is to examine the existing networks of centres, undertake a floor space supply and demand assessment, set retail and commercial floor space targets, then identify land, zones, heights and floor space ratios to cater for the forecast demand and floor space targets. With the exception of setting height limits and floor space ratios, Council has already undertaken this work in the ELS which was adopted by Council in December 2008.

The ELS was undertaken in the context of the then developed and vacant land in the business and industrial zones of HLEP 1989, the permissible and prohibited uses within these zones, and DoPI's Metropolitan Strategy and North West Subregion Draft Subregional Strategy.

HLEP 1989 allows *bulky goods room and showroom* within the 4(a) and 4(b) zones and *shops* within the 3(b) zone. It was in light of this that the ELS concluded that there was no immediate shortage of industrial or business zoned land. It is considered that the proposed prohibition of *bulky goods premises* could put this finding at risk for this particular land use.

The ELS also nominated Windsor Road, Mulgrave and Bells Line of Road, North Richmond as "Gateway" areas with the recommendation that these areas be provided with a boulevard treatment with higher amenity showrooms and larger format retailing. These areas are proposed to be zoned IN2. The proposed prohibition of *bulky goods premises* in the IN2 zone may jeopardise the achievement of this recommendation.

As previously mentioned in this report, DoPI have provided the following comments with respect to the proposed prohibition of *bulky goods premises* in the IN1 and IN2 zones:

*"The Department is aware that there are difficulties regarding new prohibitions in the Mulgrave/Vineyard area, particularly along Windsor Road where bulky goods retail premises are currently located, and which have been exhibited as an industrial zone. It is understood there are existing approvals for a number of uses in this area which do not fit neatly within an industrial zone.*

*Given the existing nature of this area, and existing development approvals, it may be appropriate for Council to consider applying the B5 Business Development zone to this area in Mulgrave/Vineyard where there are existing bulky goods premises. This zone permits a broad range of use and can include bulky goods premises, as well as warehousing and distribution uses. Although this zone is primarily used in areas which are close to centres, in some instances where there is an existing*

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*cluster of bulky goods premises it is appropriate to zone such areas B5 - such as in the Mulgrave/Vineyard area. You may wish to refer to page 105 in the Metropolitan Strategy for further information regarding the B5 zone.*

*However, Council should be careful to ensure that the areas in Mulgrave/Vineyard which currently accommodate industrial use should remain under the IN1 or IN2 zone accordingly."*

The DoPI LEP Practice Note PN 06-002 provides the following comments regarding the general purpose of the IN1, IN2 and B5 zones.

### **IN1 General Industrial**

*This zone is generally intended to accommodate a wide range of industrial and warehouse uses. Councils could choose to supplement the existing mandated industrial and warehouse uses by permitting heavy, and offensive or hazardous industries, if appropriate. This zone would be suitable where a council wishes to have only one industrial zone.*

### **IN2 Light Industrial**

*This zone is generally intended for land that provides light industry, warehouse and distribution uses.*

### **B5 Business Development**

*This zone is generally intended for land where employment generating uses such as offices, warehouses, retail premises (including those with large floor areas) are to be encouraged. The zone may be applied to locations that are located close to existing or proposed centres, and which will support (and not detract from) the viability of those centres.*

The mandatory objective of the B5 zone is:

*To enable a mix of business and warehouse uses, and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of centres.*

The Centres Policy describes the B5 zone as follows:

*Business development zones are designed to offer more flexible planning controls and space for job generating uses. The B5 (Business Development) zone should be used for clusters of large floor plate bulky goods premises that cannot be accommodated in, or are not suited to, centres because of large floor space requirements or the need for direct vehicle access to load or unload goods. Councils should aim to create these clusters in accessible edge-of-centre locations. In addition, the B5 (Business Development) zone could be used for start up businesses and emerging industries, along with high technology research and development and warehousing uses. [page 16]*

Following the exhibition of the draft plan, all properties zoned 4(a) and 4(b) were inspected and the actual land uses recorded. The investigation revealed that the vast majority of uses in these zones were industrial type uses such as manufacturing, warehousing/distribution, vehicle repair stations or vehicle body repair workshops. It was noted that in terms of the number of *bulky goods premises* these were very few. There were however two areas where the majority of *bulky goods premises* were clustered. These were properties along Windsor Road, Vineyard/Mulgrave and properties along Bells Line of Road, North Richmond.

Windsor Road between Park Road and McGrath Road contains two distinct clusters of *bulky goods premises*. These are on land currently zoned 4(b) between Park Road and Groves Avenue and land currently zoned 4(a) between Curtis Road and McGrath Road.

Similarly, however on a smaller scale, the 4(b) zoned land along the north-eastern side of Bells Line of Road, North Richmond also contains a distinct cluster of *bulky goods premises* and/or relatively modern developments which could be readily used for *bulky goods premises*.

It is also noted that 126 and 130 Windsor Road (partly zoned 4(b)) and 234 Hawkesbury Valley Way, Clarendon (currently zoned 4(b) and vacant) both have development potential for *bulky goods premises*.

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It is considered that the above mentioned properties would be suitable for the B5 zone.

Alternatively, if the draft plan remains as exhibited, a key consideration for Council and DoPI must be where else within the LGA will the opportunity exist for new *bulky goods premises* to be established or existing ones to relocate to. Under the draft plan *bulky goods premises* are permissible in the B1 Neighbourhood Centre, B2 Local Centre and B6 Enterprise Corridor zones. The B1 and B2 zones have been applied to the major retail centres of Windsor and Richmond and the smaller retail centres of South Windsor, Bligh Park, and North Richmond, Kurmond, Kurrajong, Kurrajong Heights, Pitt Town, McGraths Hill, Glossodia and Wilberforce. Many respondents have commented that these areas are not suitable for *bulky goods premises*.

The ELS identifies the following key requirements/criteria for bulky goods retailing:

- large lots
- does not require in-centre location
- major road access

The land proposed to be zoned B1 or B2 does not have sufficient large lots to cater for *bulky goods premises*, many of the centres do not have major road access, and the centres of Windsor and Richmond have addition heritage significance considerations which may diminish development potential.

The proposed B6 Enterprise Corridor zoned land at Mulgrave does have some opportunity for *bulky goods premises* in the properties that are currently developed and the small number of vacant properties however that is a relatively small area and it would be difficult to cater to future demand for larger format *bulky goods premises*.

Taking into consideration the relatively modern bulky goods purpose built style of development of the previously mentioned areas at Mulgrave/Vineyard and North Richmond, the proximity of these areas to adjoining B1 and B6 zoned land, the development potential offered by 126 and 130 Windsor Road and 234 Hawkesbury Valley Way, the large undeveloped properties between Groves Avenue and Park Road, and the significantly limited opportunities for *bulky goods premises* elsewhere in the LGA, the draft plan has been amended by applying the B5 Business Development zone to the following properties/areas:

- land currently zoned 4(b) between Park Road and Groves Avenue, Vineyard/Mulgrave;
- land currently zoned 4(a) between Groves Road, Wingate Avenue, and McGrath Road, Vineyard;
- land currently zoned 4(b) between Bells Line of Road and western side of Terrace Road, North Richmond;
- part of 126 and 130 Windsor Road, McGraths Hill;
- 234 Hawkesbury Valley Way, Clarendon. Note, for consistency the adjoining land 244 Hawkesbury Valley Way which was to be zoned IN2 has also been rezoned B5.

One respondent provided a sample B5 Land Use Table for inclusion in the draft plan. The mix of permitted and prohibited land uses was based on the B6 Land Use Table in the draft plan. The B6 Land Use Table has substantial differences to the IN1 and IN2 Land Use Table and its adoption for the proposed B5 is not considered to be consistent with the conversion intent of the draft plan. Almost all of the land proposed to be zoned B5 is currently 4(b) hence the B5 Land Use Table shown in the draft plan is based on the IN2 Land Use Table with addition of *bulky goods premises* as being permissible with consent. It is considered that the zoning of these lands B5 instead of IN2 is an appropriate response to the submissions received from the public and DoPI, and is consistent with the conversion intent of the draft plan.

### *Response regarding proposed B6 zoned land*

The proposed prohibition of *shops* and *business special shops* within the proposed B6 zone was of key concern to some respondents. The prohibition of *shops* in the B6 zone and the non inclusion of *business special shops* in the draft plan was as a result of direction from DoPI.

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The B6 zone is located on the western side of Windsor Road between Groves Avenue and Curtis Road, Vineyard. The B6 zone was applied to this land because it was considered to be the closest match of the Standard Instrument zones, with respect to purpose and allowable land uses, to the current 3(b) Business Special.

The DoPI LEP Practice Note PN 06-002 provides the following comments regarding the general purpose the B6 zone:

### **B6 Enterprise Corridor**

*The zone is generally intended to be applied to land where commercial or industrial development is to be encouraged along main roads. The sales of food and clothing is to be limited to ensure that Enterprise Corridors do not detract from the viability of centres.*

The prohibition of *shops* in the B6 zone is state-wide and is reinforced by DoPI's Centres Policy which states:

***Principle 1** – Retail and commercial activity should be located in centres to ensure the most efficient use of transport and other infrastructure, proximity to labour markets, and to improve the amenity and liveability of those centres.*

*Corridors should be zoned B6 (Enterprise Corridor) zone when:*

- *in out-of-centre locations along busy roads in urbanised areas to provide, and make effective use of, land that acts as a 'buffer' to residential areas*
- *along the 'entrance' to regional towns and centres.*

*Typical uses in the B6 (Enterprise Corridor) zone are:*

- *hardware (timber) and building supplies, and landscape and garden supplies*
- *vehicle sales or hire premises*
- *industry and retailing associated with that industry*
- *warehouse and distribution centres*
- *business premises*
- *residential as part of a mixed use development*
- *motel accommodation*
- *service stations and fast food outlets.*

*As a general approach, the Department's preference is for retail and commercial development to be located in centres. However the Department also recognizes that there may be exceptions to this approach. In determining the types of retail and commercial development to permit in the B6 (Enterprise Corridor) zone, the key consideration for councils is ensuring that development in that area will not reduce the efficiency of the road, add traffic congestion or add road safety risks.[page 17]*

Current development within the proposed B6 zoned land primarily consists of fast food outlets, a small supermarket, a large motor showroom, and factory units/showrooms. The factory units/showrooms are typically used for *bulky goods premises, timber and building supplies, office premises, and vehicle repair stations*. All of these uses are permitted in the B6 zone. There are also some lands which are vacant or partially developed.

Lot 6 DP 270412, 5A Curtis Road (Aldi), SP 73477, 5B Curtis Road (factory units/showrooms) and Lot 1 DP 1038365, 8 Groves Avenue, Mulgrave (undeveloped) currently enjoy development consents for the purposes of *shops*. In order to recognise these existing development consents "Schedule 1 Additional permitted uses" of the draft plan has been amended to allow *shops* as permissible on these properties. Whilst a submission was received with respect to 230 Windsor Road and 5 Curtis Road, these have not been included in "Schedule 1 Additional permitted uses" as these sites do not currently enjoy development consents for *shops*.

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Note the Standard Instrument does seek to differentiate large shops from smaller shops by way of the definition of *neighbourhood shops* which is:

*retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.*

The draft plan restricts *neighbourhood shops* to a maximum retail floor area of 200 square metres. *Neighbourhood shops* are permissible within the B6 zone hence not all *shops* are prohibited in the B6 zone.

Finally, with regard the respondents concern regarding *business special shops*, these are defined in the Clause 52 of HLEP 1989 as:

*a shop with a gross floor area of 200 square metres or less.*

*Business special shops* are permissible without consent in the 3(b) zone. DoPI instructions are that Council specific land use definitions cannot be included in the draft plan as land use definitions can only be the mandated definitions found in the dictionary at the end of the plan and local provisions can not introduce permissible or prohibited development outside of the Land Use Table. Accordingly, *business special shops* and Clause 52 has not been carried from HLEP 1989 to the draft plan.

### **Various respondents - Proposed E2 Environmental Conservation zone**

#### *Background*

The E2 zone was derived from land identified as a wetland in:

- the existing 7(a) (Environmental Protection (Wetlands)) zone (7(a)) of HLEP 1989;
- *Sydney Regional Environmental Plan No. 20 Hawkesbury - Nepean River (No.2 - 1997) (SREP 20)*; and
- vegetation mapping undertaken on behalf of Council by Eco Logical Australia (ELA).

HLEP 1989 currently zones 36 wetlands as 7(a). The objectives of this zone are to:

- (a) protect wetland areas from development that could adversely affect their preservation and conservation, and*
- (b) preserve wetland areas as habitats for indigenous and migratory wildlife.*

The number of permissible uses in the 7(a) zone is limited to *advertisements, dams, farm gate sales outlets, fences, landfilling, recreation areas* and existing approved land uses.

SREP 20 identifies a number of wetlands throughout the LGA. Not all SREP20 wetlands are currently zoned 7(a) in HLEP 1989. SREP 20 does not introduce any land use prohibitions with respect to wetlands however it does contain a number of matters for consideration that Council must address when assessing applications for development in wetlands.

Over the years it had become apparent that there were some inaccuracies associated with the boundaries of the 7(a) zone and the mapping of wetlands in SREP 20. The mapping was done in some instances over 20 years ago and at a scale of 1:25,000 with little ground truthing. As a result there are "designated" wetlands on land that should not be burdened by such a designation. Also the SREP 20 "designated" wetlands do not match up geographically in all cases with Council's 7(a) zone.

In 2005, Council engaged ELA to undertake an air photo interpretation and mapping project of vegetation, including wetlands, in the Hawkesbury LGA. Further, in 2006 Council engaged ELA to undertake field validation of the vegetation mapping as well as conduct a targeted field survey. This work was undertaken

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using Council's aerial photos, with the most updated aerial photos at the time being those flown in 2003. The ELA mapping was the primary source used in identifying the land to be zoned E2.

In constructing the E2 zone Council staff were also guided by DoPI Section 117 Direction 2.1 and LEP Practice Note *PN 06-002 Preparing LEPs using the standard instrument: standard zones*

Direction 2.1 at subclauses (4) - (6) states:

- (4) A draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas.
- (5) A draft LEP that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP shall not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).
- (6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:
  - (a) *justified by a strategy which:*
    - (i) *gives consideration to the objectives of this direction,*
    - (ii) *identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and*
    - (iii) *is approved by the Director-General of the Department of Planning, or*
  - (b) *justified by an environmental study prepared in accordance with section 57 of the Environmental Planning and Assessment Act 1979 which gives consideration to the objectives of this direction, or*
  - (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
  - (d) *is of minor significance.*

As a result of this direction the decision was made that the all wetlands which were zoned 7(a) were to be given an environmental protection zone. This however did not include lands which were incorrectly zoned 7(a) or where it was considered inappropriate to maintain the 7(a) zone due to existing land uses e.g. the 7(a) zoned land at the McGraths Hill Sewage Treatment Plant.

LEP Practice Note *PN 06-002 Preparing LEPs using the standard instrument: standard zones*, dated 12 April 2006 provided guidance on the four environmental protection zones available under the Standard Instrument and it was considered that the E2 zone was the most appropriate zone to be used for the conversion from the 7(a) zone. This zone being described in the Practice Note as:

### ***E2 Environmental Conservation***

*This zone is generally intended to protect land that has high conservation value. A number of land uses considered to be inappropriate for this zone have been mandated as prohibited uses.*

In preparing the draft plan Council was required to consult with public authorities and in response DECCW stated that Council should use the ELA mapping to provide for the protection of significant vegetation and wetlands.

ELA's wetland mapping included farm dams and mapped wetlands regardless of size. To produce the E2 zone map, ELA's mapping was checked against HLEP 1989, SREP 20 and Council's aerial photos with farm dams, wetlands less than 1ha in size or upon further investigation considered not to be wetlands, being excluded from the E2 zone.

The E2 land use table within the HLEP 2009 was derived from the current set of permissible and prohibited land uses within Land Use Matrix of HLEP 1989, this included a prohibition on all forms of agriculture. This includes *extensive agriculture* which is defined as:

- (a) *the production of crops or fodder (including irrigated pasture and fodder crops), or*

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- (b) *the grazing of livestock, or*
- (c) *bee keeping.*

*for commercial purposes, but does not include any of the following:*

- (a) *animal boarding or training establishments,*
- (b) *aquaculture,*
- (c) *farm forestry,*
- (d) *intensive livestock agriculture,*
- (e) *intensive plant agriculture.*

All E2 zoned land was given a 40ha lot size minimum for subdivision which is the current development standard for the 7(a) zone in Clause 11 of the HLEP 1989.

The E2 zone consisted of 124 wetlands and affected 374 properties. Letters advising of the draft plan were sent to owners of these properties as well as owners of 7(a) zoned land. In all approximately 400 letters were sent.

*Submissions*

Twenty one (21) submissions were received in regard to wetlands and the proposed E2 zone. Submissions were received from:

Sharon Exton Consultancy, 501 Laws Farm Road, Ebenezer

K. A Durrant & T. E. Campbell, 259 Cattai Road, Pitt Town

Mr J, Mr S, Mr S M, Mrs M A and Mrs F T Attard, 335 Sackville Road, Pitt Town

Mr David and Mrs Jillian Ritherdon, 430 Colo Heights Road, Upper Colo

P. W. Auld, 453 Tizzana Road, Ebenezer

Ms Dianne Chambers and Mr James Brigden, 250D Wollombi Road, St Albans

Mr Shaughn Morgan, NSW Farmers Association on behalf of Mr John Cox, 192 Kurmond Road, Freemans Reach and 68 Geakes Road, Wilberforce.

K & L Pilgrim, 183 Royerdale Place, East Kurrajong

Oonagh Sherrard, 1403A Putty Road, Blaxlands Ridge

W & O Bowden, 70 Uworra Road, Wilberforce

Mr Peter van Raalte, 249 Grono Farm Road, Wilberforce

M & V Jones, 199 Royerdale Place, East Kurrajong

Falson & Associates Pty Ltd on behalf of Town and Country Holdings Pty Ltd, 88 Spinks Road, Glossodia

Falson & Associates Pty Ltd on behalf of Mr and Mrs J Cox, 192 Kurmond Road, Freemans Reach and 88 Geakes Road, Wilberforce.

Mr Tony Rodgers and Mrs Paula Rodgers, 44 Garfield, Street, McGraths Hill

Mr Robert and Mrs Jenny Gibbs, 1193 St Albans Road, Central Macdonald



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Umwelt Environmental Consultants on behalf of Birdon Contracting Pty Limited, "Tinda Creek", 6102 Singleton Road, Colo Heights

Mr and Mrs Webster, 1552 Bells Line of Road, Kurrajong Heights

North Western Surveys Pty Ltd, Halls and Irwins Swamps, Putty Road. East Kurrajong  
D and S Pace, 201 Royerdale Place, East Kurrajong

Ronald S Czinner, 281 Grono Farm Road, Wilberforce

Three (3) submissions were received from government departments (DECCW, NSW Office of Water and Department of Industry and Investment) in relation to wetlands and the E2 zone

### General Comments

Comments received included:

The proposed E2 zoning is too restrictive and will not enable agricultural use of E2 zoned land or in some cases adjoining agricultural land. The E2 zoning will prohibit livestock using the affected land thereby restricting access to an established water supply. Livestock are also beneficial in reducing weed invasion in wetlands as they often prefer the weeds to indigenous wetland plants. In some cases it is necessary to traverse wetlands to gain access to other agricultural lands on the same property. The proposed E2 zoning would restrict such access.

Request that the boundaries of the proposed E2 be reviewed as the zone boundary does not accurately reflect the boundary of the wetland. The land zoned E2 is not a wetland but a farm dam.

Environmental protection of wetlands needs to be done in cooperation with existing agricultural enterprises and must not attempt to totally exclude such enterprise. Hard and fast rules must be replaced with more flexible provisions.

The E2 zone will cause uncertainty in so far as on-going land uses with associated social and economic impacts. This would include a lessening of land value and a difficulty in selling the land in the future with an environmental zone that conflicts with the remainder of the land zone that is primarily for farming.

The proposed E2 zone with a 40ha minimum will reduce the subdivision potential of surrounding rural zoned lands.

The broad application of the E2 zone is not consistent with the conversion intent of the draft plan. The E2 zones should be deleted from the draft plan.

Two respondents supported the draft E2 zone as it applied to their land and one of these respondents (owner of 453 Tizzana Road, Ebenezer) requested it be extended onto adjoining lands to the south.

DECCW strongly recommended that there should be no downgrading of environmental protection for wetlands through the draft LEP. DECCW does not support grazing (*extensive agriculture*) in wetlands nor does it support the construction of levees or dams within wetlands as both activities have the potential to degrade the environmental attributes of wetlands. The DECCW position can be summarised as follows:

- an E2 zone should be applied to all public lands in the Hawkesbury LGA with high conservation values. This should include vacant crown lands and include bushland reserves.
- Council consider extending an E2 zone to other areas in the LGA. The practicability of this may be easier through the use of split zones to enable only those areas of high conservation value on single lots to be zoned E2, permitting more extensive uses on other parts of the lot. Council may also need to include roads and recreational Areas with consent to cover high conservation areas where these uses already exist.
- not altering the E2 zone to permit *extensive agriculture*. To ensure these areas do not have illegal grazing, landowners should be advised to fence outside the E2 zone boundaries to exclude stock.

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- the E2 zone should only include *environmental protection works* as a permitted use.

The NSW Office of Water (NOW) recommends that riparian buffer zones 50 metres wide be established around E2 zones. NOW also recommends that the E2 zone be extended to apply to waterways, riparian lands and groundwater resources. The E2 zone should only include *environmental protection works* as a permitted use.

The Department of Industry and Investment NSW noted that the E2 zoned land at Tinda Creek adjoins an operational quarry site and advised that there are potential sand reserves within the E2 zone. They requested Council review the appropriateness of the E2 zone in these circumstances.

### *Department of Planning advice and actions subsequent to initial development of E2 zone*

On 30 April 2009 DoPI issued LEP Practice Note PN09-002 which provided further guidance as to the application of the Environmental Protection zones. Specifically the Practice Note states:

#### **E2 Environmental Conservation**

*This zone is for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides the highest level of protection, management and restoration for such lands whilst allowing uses compatible with those values.*

*It is anticipated that many councils will generally have **limited areas** displaying the characteristics suitable for the application of the E2 zone. Areas where a broader range of uses is required (whilst retaining environmental protection) may be more appropriately zoned E3 Environmental Management.*

*Use of the zone will depend on land capabilities and the proposed future uses based on environmental protection values and strategic directions.*

*The use of the E2 zone needs to be supported by an appropriate assessment of the area meeting the zone objectives of high ecological, scientific, cultural or aesthetic values of this zone.*

*The following are examples of where the E2 zone should also be applied:*

- *lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing endangered ecological communities*
- *land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas.*

*There are no mandatory permitted uses for this zone. Councils should carefully choose uses that protect the high conservation value of the land and avoid adverse effects in relation to natural hazards.*

*It is important that councils maintain the integrity of the E zones by including only uses consistent with the zone objectives. As well, **councils should, wherever appropriate, retain existing uses that maintain conservation land capabilities.***

*In selecting additional uses, the following are unlikely to be suitable in the E2 zone:*

- *intensive agriculture*
- *rural industry*
- *signage (other than as ancillary to environmental facilities).*

*Where conservation is not the main objective, another zone series is appropriate, e.g. the residential or rural zone series.*

#### **Use of alternative zones**

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*Where the primary focus is not the conservation and/or management of environmental values, a different zone type should be applied. Such zones may be applied in conjunction with local environmental provisions and maps in the principal LEP to identify any special considerations.*

### **Local environmental provisions**

*Local environmental provisions may be applied where zone provisions need to be augmented in order to ensure that special environmental features are considered. For example, rural land that is still principally for agriculture but which contains environmentally sensitive areas may be zoned RU1 or RU2 and the environmental sensitivities managed through a local provision and associated ('overlay') map.*

*The benefits of this approach include:*

- *The intended conservation or management outcomes for land can be clearly articulated in the LEP.*
- *Areas are clearly defined and controls streamlined.*
- *Sub-zones are not created. (These are not permitted under the standard instrument).*

*Provisions for environmentally sensitive areas may include multiple natural resource or other features such as acid sulfate soils and riparian land. A local provisions clause may include objectives and, where the sensitivity is a mappable attribute, a map would accompany the provision.*

*Any local provision will apply in addition to the objectives and land use table for zones. The local provision must be consistent with mandated objectives and permissible or prohibited uses of the relevant zone/s.*

Hence, in this practice note councils are encouraged to carefully use the E2 zone both in its extent and selection of permitted land uses, use it for wetlands and land currently zoned for environmental protection, however also consider the use of alternative zones with local environmental provisions identifying any special considerations. At the time of preparing and exhibiting the draft plan, DoPI had not provided a wetland related local provision.

In July 2010, the DoPI advised Council that a draft wetland related local provision had been prepared for inclusion into the Standard Instrument. This provision provides specific criteria for the assessment of a proposed development in an identified wetland. The application of the provision is to ensure consideration of the ecological and hydrological impacts development on the wetland. The details of the draft provision are as follows:

*When assessing a development application, the consent authority must consider potential adverse impacts from the proposed development on:*

- the growth and survival of native flora and fauna,*
- the condition and significance of the native flora on the land and whether it should be substantially retained,*
- the provision and quality of habitats for indigenous and migratory species,*
- the surface and groundwater characteristics of the site, including water quality, natural water flows and salinity, and*
- any wetland in the vicinity of the proposed development, and*

*any proposed measures to minimise or mitigate those impacts.*

*Before granting consent to development to which this clause applies the consent authority must be satisfied that:*

- the development is sited, designed and managed to avoid potential adverse environmental impacts, or*

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- (b) *where an impact cannot be avoided, and having taken into consideration feasible alternatives, the proposed design, construction and operational management of the development will mitigate and minimise those impacts to a satisfactory extent.*

This local provision would be accompanied by a map and the effects of it would be the introduction of a more flexible, merits based planning assessment linked to environmental impact rather than relying on the rigid prescribed permissible and prohibited land uses contained in the zoning approach. This local provision has encouraged a reconsideration of the extent of application of the E2 zone.

Finally, on 30 April 2010 DoPI made mandated amendments to Clause 5.3 of the Standard Instrument which will remove the flexibility in the draft plan for the application of the E2 zone. Whilst producing an accurate zoning map was of fundamental importance it was appreciated that there is the potential for debate over the actual extent of the zone where zone boundaries are derived from natural features such as vegetation, water bodies, escarpments etc. Typically, these are harder to define than zone boundaries based on property boundaries, roads and suburb boundaries. Accordingly, Clause 5.3 in the draft plan provided flexibility of up to 50m in the application of E2 zone and the opportunity, where considered appropriate, to adopt the provisions of the respective adjoining zone. The mandated change to the Standard Instrument, which is now incorporated into the draft plan, removes this flexibility for the E2 zone. This amendment has also encouraged a reconsideration of the extent of application of the E2 zone.

### *Response to Submissions*

Due to the nature of the submissions received and the above mentioned DoPI advices and actions, all lands proposed to be zoned E2 were re-investigated. This was done by revisiting the 7(a) zoned land in HLEP 1989, SREP 20 wetlands, ELA mapping and Council's aerial photos which included updated 2008 photos. Importantly, the 2008 photos provided an improved tool for defining the mapping of wetlands.

The recent DoPI actions were also instrumental in re-examining the approach taken to protecting wetlands within the LGA. Instead of solely relying on a zoning approach (E2) to protect wetlands, Council now has the ability to use both the zoning approach as well as the planning merits approach to wetlands protection.

The outcome of the review can be summarised as follows:

1. The re-examination resulted in a number of the wetlands (21) being recognised as farm dams, too small to warrant mapping or not meeting the criteria of a wetland. In these instances the E2 zoning has been changed to the surrounding zoning and the land will not be included in the proposed wetland based local provisions map. This includes land the subject of submissions received from the owners of: 88 Spinks Road, Glossodia, 192 Kurmond Road, Freemans Reach, 68 Geakes Road, Wilberforce, 335 Sackville Road, Ebenezer, 44 Garfield Road, McGraths Hill, 259 Cattai Road, Pitt Town, 249 Grono Farm Road, Wilberforce.
2. The mapping of some of the wetlands has been amended utilising the updated images from the 2008 aerial photos. In the vast majority of cases these amendments have been of a relatively minor nature. This includes land the subject of submissions received from the owners of: 501 Laws Farm Road, Ebenezer, 430 Colo Heights Road, Upper Colo, 250D Wollombi Road, St Albans, 1403A Putty Road, Blaxlands Ridge, 1193 St Albans Road Central MacDonald, 1552 Bells Line of Road, Kurrajong Heights and Halls and Irwins Swamps, East Kurrajong. The submission made by the owner of 453 Tizzana Road, Ebenezer to extend the wetland to the south has not been supported as the owners of this land have not been given an opportunity through the exhibition process to provide comment. This however can be considered as a possible future amendment to the plan.
3. In general all land that was correctly zoned 7(a) in HLEP 1989 has been zoned E2. The retention of the E2 zone in this circumstance continues the current land use prohibitions and is consistent with the conversion intent of the draft LEP. An exception to this is the St Albans Common where all of the Common is currently somewhat artificially zoned 7(a). The draft plan showed various portions of land within the Common zoned E2 surrounded by E4 zoned land. Closer inspection has revealed that the majority of the wetlands within the Common are ephemeral and subject to grazing which is the historical purpose of the Common. Consequently all but the largest wetland, which is permanent,

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have been zoned E4. Finally, land currently zoned 7(a) that is within a National Park (eg Long Neck Lagoon) has been zoned E1 National Parks and Nature Reserves.

4. All remaining wetlands which were zoned E2 in the exhibited version of the draft plan have been zoned the adjoining zone and will be subject to the adjoining minimum lot size provisions for subdivision. This includes land the subject of submissions received from the owners of 430 Colo Heights Road, Upper Colo, 250D Wollombi Road, St Albans, 183, 199 and 201 Royerdale Place, East Kurrajong, 70 Uworra Road, Wilberforce, 1193 St Albans Road, Central MacDonald, 6102 Singleton Road, Colo Heights, Halls and Irwins Swamps, East Kurrajong, 281 Grono Farm Road, Wilberforce. This approach accords with DoPI's merits approach to wetland protection. This approach eliminates many of the respondent's concerns that *extensive agriculture* (grazing) would become prohibited on land where it is currently permissible as it will allow these traditional agricultural pursuits to continue. The amendment to the minimum lot size provisions retains the subdivision potential of the relevant land.
5. A wetland based local provision with accompanying map has been included in the draft plan. The amended wetlands produced by outcome 2 have been used to produce the wetland map. Any development that is permissible with consent and is within a wetland shown on the map will have to be assessed against the provisions of the local clause.

The review of the E2 zone has resulted in a more merits based approach which is consistent with the DoPI's policy directives. This approach also addresses the respondent's concerns and enables traditional agricultural pursuits to continue. On the other hand, the merits based approach is in opposition with DECCW's position that Council increase the extent of the E2 zone and prohibit *extensive agriculture* in wetlands. Given that Council is following good planning practice, as advocated by DoPI, as well as positively addressing resident's concerns, it is recommended that the extent of the E2 zone be reduced in accordance with the abovementioned review.

The NSW Office of Water (NOW) submission to create 50 metres wide riparian buffer zones around E2 zones is not supported because the heads of consideration in the proposed wetlands clause will address the potential for significant environmental impact.

In response to Department of Industry and Investment NSW submission regarding Tinda Creek, the E2 zone has been changed to RU1 and the land has been identified on the wetland local provision map and therefore the heads of consideration, discussed above, will apply to any proposal to utilise that land for any permissible purpose.

### ***Various respondents - Clause 6.9 Environmentally sensitive land – biodiversity and Biodiversity Protection Map***

#### *Submission*

Eight (8) submissions were received with respect to Clause 6.9 and the associated map. Note Clause 6.9 as exhibited is now Clause 6.8 in the draft plan attached to this report, however for consistency with the submissions received this discussion will refer to the clause as Clause 6.9. Submissions were received from:

Johnson Property Group regarding land with the Pitt Town Residential Precinct. This submission is dealt with separately in this report.

Ms Elizabeth Hanlon, Bilpin

JBA Urban Planning Consultants on behalf of owners of 33 Old Bells Line of Road, and 17, 18, 29, 30, 32, 35, 38, 41, 42, 51, 53 and 59 Vincent Road.

PGH Environmental Planners, on behalf of DJL Management Pty Ltd owners of 306 racecourse road, South Windsor

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PGH Environmental Planners, on behalf of DJL Management Pty Ltd owners of 6 Speedwell Place, South Windsor

PGH Environmental Planners, on behalf of McKenzie Hall representing Valad Property Group owners of Home Central, 264 - 272 Windsor Road, Mulgrave (now known as 10 - 16 Industry Road)

PGH Environmental Planners, on behalf of Michael Moit, George Moit and Tony Moit owners of 34 Curtis Road and 73 Mulgrave Road, Mulgrave

PGH Environmental Planners, on behalf of Henry Brothers Saws Pty Ltd and Vineyard Hardware Pty Ltd owners of 533 - 547 Windsor Road and 541 Old Hawkesbury Road, Vineyard

Clause 6.9 refers to “environmentally sensitive land - biodiversity” on the Biodiversity Map however the map does not use the term “environmentally sensitive land - biodiversity”. Instead the terms “biodiversity protection - significant vegetation” and “biodiversity protection - connectivity between significant vegetation” are used. Request that the clause and the map be made consistent.

The scale and extent of the mapping is broad, resulting in some inaccuracies such as the inclusion of non-native and vegetation known to be noxious or environmental weeds.

The clause requires the submission of a report with a development application. Clarification is required on what detail needs to be included in the report and who is required to prepare the report.

It would be useful to include more detailed requirements in Council’s DCP to explain how the clause will be implemented, including the opportunity for an initial, on-ground, assessment to determine the requirements of the report.

The extent of land identified on the Biodiversity Protection Map does not give a clear indication of what is really significant.

In respect of 306 Racecourse Road, South Windsor the site is devoid of any vegetation. The Biodiversity Protection Map identifies the majority of the site as being affected by *connectivity between significant vegetation* with *significant vegetation* around the permitter. Request that the maps be updated.

In respect of 264 - 272 Windsor Road, Mulgrave (now known as 10 - 16 Industry Road) the site is fully developed as a bulky goods centre and devoid of any remnant vegetation. The Biodiversity Protection Map identifies 272 Windsor Road as being affected by *significant vegetation* over the entire allotment. Request that the map be updated.

In respect of 73 Mulgrave Road, Mulgrave the site is devoid of any remnant vegetation. The Biodiversity Protection Map identifies the land as being affected by *significant vegetation* along a section of its northern boundary. Request that the map be updated.

In respect of 533 Windsor Road, Vineyard the site is partly developed by way of a large shed and car park area with pockets of remnant vegetation. The Biodiversity Protection Map identifies the land as being affected by *significant vegetation* over where the parking area currently is. Request that the map be updated.

Request that clause 6.9 be amended so that suitable flexibility exists in the interpretation to ensure that appropriate consideration is given to on-site characteristics before insisting that a report is required for any land affected by the maps.

### *Response*

Clause 6.9 as exhibited was derived from DoPI’s local model clause for biodiversity protection and the mismatch in the vegetation classifications between the clause and map was as a result of a drafting error.

Since exhibition, DoPI has prepared a revised biodiversity protection clause. The new clause is merits based, has standardised wording that applies state-wide, has no requirement for a specialised report and

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allows for initial on ground assessment to determine whether further information is required from an applicant. The new clause is preferred over the exhibited clause and the draft plan and map have been amended accordingly.

The inaccuracies in the Biodiversity Protection Map are mainly as a result of certain sites being developed after the collection and interpretation of vegetation data upon which the maps were prepared. Given the development of 306 Racecourse Road, South Windsor, 264 - 272 Windsor Road, Mulgrave (now known as 10 - 16 Industry Road), 73 Mulgrave Road, Mulgrave, and 533 Windsor Road, Vineyard, the maps have been amended accordingly.

Given the flexibility in the new clause, any inaccuracies in the map can be dealt with at development application stage without cost implications for applicants.

***Mr Tom Lonsdale - Rezoning request - area bounded by George Street, Brabyn Street, Cox Street and the Windsor Railway Station***

*Submission*

Requests 5 Brabyn Street, Windsor (previously known as the Windsor Skatel) or more broadly the area bounded by George Street, Brabyn Street, Cox Street and the Windsor Railway Station car park be zoned for commercial purposes.

*Response*

No amendment has been made to the draft plan.

The land is zoned Housing under HLEP 1989 and has been zoned R2 Low Density Residential under the draft plan. Rezoning the land to a business zone would not be consistent with conversion intent of the draft plan and therefore the request is not supported.

Council's ELS identifies land around Windsor Station as a possible area for minor commercial and retail development. This can be investigated, at the landowner's expense, as part of implementing the recommendations of the ELS. Any necessary amendments to the new LEP should occur after these investigations have been completed.

***Mr Anthony Scelzi - Additional permitted land uses - 723 - 725 George Street, South Windsor***

*Submission*

Request that the land have the same permissible uses as the Baptist Church property at 739 George Street, South Windsor. The property and surrounding properties should be zoned neighbourhood business and have smaller lot sizes.

*Response*

No amendment has been made to the draft plan.

Both the respondent's land and the Baptist Church land are proposed to be zoned RU4 Rural Small Holding. "Schedule 1 Additional permitted uses" of the draft plan will allow the Baptist Church site to be used for a *service station*. This is as a result of the incorporation of draft HLEP 1989 (Amendment 156) into the plan. Any consideration of permitting 723 - 725 George Street to be used for a *service station* should be undertaken as a separate matter to this draft plan.

Council's ELS identifies this land as part of a possible gateway area with suggested uses being low impact visitor, tourist and commercial uses with complementary community activities. This can be investigated, at the landowner's expense, as part of implementing the recommendations of the ELS. Any necessary amendments to the LEP should occur after these investigations have been completed.

**Mr Keith Willoughby - Additional permitted land uses - 729 George Street, South Windsor**

*Submission*

Requests that the land have the same permissible uses as the Baptist Church property at 739 George Street, South Windsor.

*Response*

No amendment has been made to the draft plan.

Both the respondent's land and the Baptist Church land are proposed to be zoned RU4 Rural Small Holding. "Schedule 1 Additional permitted uses" of the draft plan will allow the Baptist Church site to be used for a *service station*. This is as a result of the incorporation of draft HLEP 1989 (Amendment 156) into the plan. Any consideration of permitting 729 George Street to be used for a *service station* should be undertaken as a separate matter to this draft plan.

Council's ELS identifies this land as part of a possible gateway area with suggested uses being low impact visitor, tourist and commercial uses with complementary community activities. This can be investigated, at the landowner's expense, as part of implementing the recommendations of the ELS. Any necessary amendments to the LEP should occur after these investigations have been completed.

**Ms E Hanlon - Various matters**

*Submission*

*Food and drink premises* should not be included as a permissible use in the RU2 Rural Landscape zone as such a definition would introduce *pubs* and *take away food and drink premises* in the zone. *Pubs* or *hotels* are currently not a permissible use in the Environmental Protection - Agriculture Protection (Scenic) (i.e the equivalent to the RU2 zone). It is suggested that the wider definition of *food and drink premises* be replaced with the definition of *restaurants*.

Given the uncertainty around proposal for upgrading Bells Line of Road, if additional land is identified by the RTA for road widening on or adjacent to Bells Line of Road the community should be given an opportunity to comment on the road widening proposals.

*Response*

In the draft plan the definition of *food and drink premises* includes other defined uses of *restaurants*, *take away food and drink premises* and *pubs*. *Restaurants* are equivalent to *refreshment rooms* in HLEP 1989, *pubs* are equivalent to *hotels* in HLEP 1989, *take away food and drink premises* do not have a direct equivalent however could be considered to be similar to a *refreshment room* or *shop*. In the Environmental Protection - Agriculture Protection (Scenic) zone, *refreshment rooms* are permissible while *hotels* and *shops* are prohibited. The respondent's submission is therefore supported and the RU2 Land Use Table has been amended by deleting *food and drink premises* and inserting *restaurants*. Note in the other rural and environmental zones where both *refreshment rooms* and *hotels* are currently permitted, *food and drink premises* have been made a permissible use in the equivalent zone of the draft plan.

Whilst the RTA has raised concern regarding the accuracy of the Land Zoning Map and Land Acquisition Map they have failed to provide additional information requested by Council. As previous discussed this matter is to be resolved by DoPI and RTA. In finalising the draft plan DoPI will be provided with a copy of this report and therefore will be aware of this submission.



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***Ms Christine Mead - Support for zone conversion - Kurrajong***

*Submission*

Supports zone conversion approach in the Kurrajong village. Objects to proposal to rezone land premises at 87 Old Bells Line of Road, Kurrajong (corner of Timms Hill Road and Old Bells Line of Road) for commercial purposes.

*Response*

No amendment has been made to the draft plan.

The draft LEP does not propose to rezone 87 Bells Line of Road to a business zone and there are currently no applications lodged with Council to amend the zoning of this land.

***Mr Larry Lane - Proposed retail development - Kurrajong***

*Submission*

Objects to the possible development of retail premises at 87 Old Bells Line of Road, Kurrajong (corner of Timms Hill Road and Old Bells Line of Road).

*Response*

No amendment has been made to the draft plan.

The draft LEP does not propose to rezone 87 Bells Line of Road to a business zone.

***Falson & Associates Pty. Ltd - Rezoning request - 77 - 87 Old Bells Line of Road, Kurrajong***

*Submission*

Submission lodged on behalf of a number of land owners in Kurrajong village.

Proposal is to rezone 77 - 87 Old Bells Line of Road, Kurrajong from R2 Low Density Residential to B2 Local Centre or B3 Commercial Core. These properties are currently respectively used as an antique shop, café, bed and breakfast, café, restaurant, and a vacant property used as a car park in association with a real estate office opposite. Opposite these properties is the business zoned land of Kurrajong village. The properties should be rezoned to reflect their uses and location within the village centres.

*Response*

No amendment has been made to the draft plan.

The land is zoned Housing under HLEP 1989 and has been zoned R2 Low Density Residential under the draft plan. Rezoning the land to a B2 or B3 would not be consistent with the conversion intent of the draft plan and therefore the request is not supported.

This proposal may have merit and should the landowners wish to pursue this matter, a separate rezoning application, addressing the provisions of the adopted Hawkesbury Employment Land Strategy, would need to be prepared at the landowner's expense and submitted to Council for consideration and public exhibition.

***Windsor RSL - Rezoning request - 36 Argyle Street, South Windsor***

*Submission*

Request that surplus land on their site at the corner of Mileham and Argyle Streets, South Windsor be rezoned to permit industrial land uses that are permissible on surrounding lands. Developing the surplus land for alternative uses would assist in ensuring the long term viability of the RSL, the proposed rezoning represents a logical and minor expansion of the industrial zones and would be consistent with land use on adjacent land.

*Response*

No amendment has been made to the draft plan.

The land subject to the submission is zoned 6(c) Open Space (Private Recreation) under HLEP 1989 and has been zoned RE2 Private Recreation under the draft plan. Rezoning the land to IN1 or IN2 would not be consistent with the conversion intent of the draft plan and therefore the request is not supported.

Council's ELS does recommend investigations be carried out for the provision of additional industrial land in South Windsor however the area identified is to the east of Fairey Road. The subject site is to the west of Fairey Road and not in the investigation area.

***Mr Ken Ridge - Objection to proposed heritage listing - 374 Freemans Reach Road, Freemans Reach***

*Submission*

Request Lot 2 DP 77951, 374 Freemans Reach Road is not heritage listed as the buildings on the land are in an advanced state of decay, uninhabitable and unrepairable. They are causing financial hardship and restriction in terms of saleability of the land. The buildings are unstable and are considered to be a risk to workers on the land.

*Response*

No amendment has been made to the draft plan.

Council's Heritage Advisor has inspected the property and confirms that the buildings have heritage significance and should remain in "Schedule 5 Environmental heritage". Economic hardship is not a planning ground in determining whether a building or buildings should be heritage listed. To use economic hardship as criteria for decision making with respect to heritage listing would set an undesirable precedent for the remainder of the community.

***Mr and Mrs Crouch - Objection to proposed heritage listing - 353 Freemans Reach Road, Freemans Reach***

*Submission*

Objection to Lot 4 DP 538611, 353 Freemans Reach Road being listed in the draft plan as a heritage item. Concerned about negativity in the community and in financial institutions about a heritage listing.

*Response*

No amendment has been made to the draft plan.

In reviewing HLEP 1989 it became evident that there was an error in the description of this property. This anomaly was corrected and as a result the property has been correctly identified and denoted as a heritage item. Council's Heritage Advisor has confirmed that the subject land contains a heritage item.

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***Mr Chris Kersen - Prohibition of vehicular access from Anschau Crescent, Windsor - Hawkesbury Valley Holden***

*Submission*

Concerned that an existing prohibition contained in Schedule 3 of HLEP 1989 (shown below) has not been carried across into the draft plan.

The relevant part of Schedule 3 of HLEP 1989 is:

*Lots 4 and 5, DP 31098, Anschau Crescent, Windsor -parking, washing and cleaning of motor vehicles in conjunction with an adjacent car sales yard but only if access is prohibited to Anschau Crescent.*

This prohibition was put in place as a means to protect residential amenity from the expansion of the motor showroom business.

*Response*

No amendment has been made to the draft plan.

In preparing the draft plan, DoPI advised that they will not allow prohibitions outside of the Land Use Table. The structure of the Standard Instrument does not allow this prohibition to be carried across from HLEP 1989. However, this prohibition is also included in the development consent relating to the property and, should Council see fit, this prohibition could be enforced via the development consent.

***Mr Trevor Devine - Rezoning request - Various lands in South Windsor and Bligh Park***

*Submission*

Requests that land bounded by Rifle Range Road, Collith Avenue, Woods Road, Berger Road and Fairey Road, South Windsor be zoned R1 or R2 Low Density Residential and not RU1. Such an approach would assist in the generation of funds to augment and update infrastructure needed to safely evacuate existing and future residents in times of flood crises.

Concerned that the primary schools in Bligh Park, South Windsor and Windsor area are to be rezoned from Special Uses to Residential and that a "level playing field" regarding flood evacuation and residential rezoning opportunities is not available to landowners in the area mentioned above. Questions whether DoPI and Council consider that flood evacuation issues have been satisfactorily resolved and whether the State Emergency Service (SES) has been consulted regarding the zone changes.

Requests Bounty Reserve in Bligh Park, the strip of vegetated land along George Street between Colonial Drive and Windsor Leagues Club, and the vegetated land to the east of Windsor Leagues Club facing Rifle Range Road be zoned RE1 Public Recreation not R2 and R3 as shown in the draft plan.

*Response*

No amendment has been made to the draft plan.

The area bounded by Rifle Range Road, Collith Avenue, Woods Road, Berger Road and Fairey Road land subject to the submission is zoned Mixed Agriculture and 6(b) Open Space (Proposed Recreation) under HLEP 1989 and has been zoned RU1 and RE1 Public Recreation under the draft plan. Rezoning the land to R1 or R2 would not be consistent with the conversion intent of the draft plan and therefore the request is not supported.

In June 2010 Council received a planning proposal to rezone this land to Housing under HLEP 1989. DoPI have instructed Council that the proposal should not proceed until flooding and flood evacuation issues have been resolved.

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Bligh Park, South Windsor and Windsor primary schools to have been rezoned to R2, R2 and R3 respectively as a result of DoPI direction outlined in their circulars of March 2008 and December 2010 relating to the zoning of infrastructure/special use lands. The SES was consulted with prior to the draft plan being exhibited and during the exhibition period. No responses were received from the SES.

Bounty Reserve (Lot 454 DP 749371, 37 Wetherill Crescent, Bligh Park) is currently zoned Multi Unit Housing under HLEP 1989. As per the conversion intent of the draft plan this land has been zoned R3 Medium Density Residential.

The strip of vegetated land along George Street between Colonial Drive and Windsor Leagues Club (Lot 89 DP 709025, 2 Colonial Drive, Bligh Park) is currently zoned Housing under HLEP 1989. As per the conversion intent of the draft plan this land has been zoned R2 Low Density Residential.

The vegetated land to the east of Windsor Leagues Club facing Rifle Range Road (Lot 1 DP 849074, 1B Rifle Range Road, Bligh Park) is currently zoned Housing under HLEP 1989. As per the conversion intent of the draft plan this land has been zoned R2 Low Density Residential.

Rezoning these lands to RE1 Public Recreation would not be consistent with the conversion intent of the draft plan and therefore the request is not supported. The zoning of these lands could be investigated as a possible future amendment to new LEP.

### ***Mr Ross Tubnor - Additional rural residential development***

#### *Submission*

Requests Council consider zoning more land to enable small lot rural residential developments.

#### *Response*

No amendment has been made to the draft plan.

Given the conversion intent of the draft plan consideration of providing more rural residential development should be undertaken as a separate matter to the draft plan. This can be investigated by relevant landowners as part of implementing Council's recently adopted Hawkesbury Residential Land Strategy.

### ***Ms Lesley Thorpe - Truck depots***

#### *Submission*

Request that the draft guidelines be prepared for the garaging or storing of heavy machinery such as trucks and the like in residential areas. Concerned about trail bikes with loud mufflers ridden in residential areas.

#### *Response*

No amendment has been made to the draft plan.

Amenity issues associated with particular land uses are best addressed in the DCP.

### ***Various respondents – Zoning of Wilberforce cemetery***

#### *Submission*

Submissions received from:

Ms Jill Vincent, on behalf of the Friends of Wilberforce Cemetery  
Mr Ian Nicolls, Baukham Hills  
Ms Marilyn Long  
Mr Tony and Mrs Margaret Hart, Wilberforce

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A and N Robinson, Wilberforce  
Mrs Betty Dunns, Port Lincoln (SA)  
Mr Graham and Mrs Pam Galloway, Windsor  
Mrs Ellen Batman, Bidwill (QLD)  
Mr Charles Phillips, Currabubula  
Ms Geraldine Starbrook, Nunawading, (VIC)  
Mrs Susan Hamilton, Ebenezer

The respondent's are concerned that the northern part of cemetery (known as Lot 7015 DP 1032360, 39 Clergy Road, Wilberforce) has been zoned RE1 Public Recreation whereas there is historical evidence that the land has been set aside and used for cemetery purposes for over 100 years. The respondent's request that the northern part of the cemetery be zoned the same as the southern part of the cemetery, i.e. SP1 Special Activities – Cemetery.

*Response*

The land is zoned 6(a) Open Space (Existing Recreation) under HLEP 1989 and has been zoned RE1 Public Recreation under the draft plan. The land has an area of 4047 m<sup>2</sup> and is not used for active recreation purposes. Given the historic linkage of the land to the adjoining cemetery the respondent's submissions are supported. The land has therefore been zoned SP1 Special Activities (Cemetery) with the Land Zoning Map and other affected maps amended accordingly.

***Gadens Lawyers - Prohibition of tourist and visitor accommodation -1 Menin Road, Oakville***

*Submission*

Submission lodged on behalf of Peter and Janette Norris owners of 15 Menin Road, Oakville.

The owners of 15 Menin Road are concerned that the A-Vina Van Village may expand their activities onto 1 Menin Road, an adjoining lot, with the result that the amenity enjoyed by adjoining residents will be decreased. Recommend a buffer between A-Vina Van Village and 15 Menin Road should be created via the draft plan.

Recommend 1 Menin Road be rezoned to SP1 Special Activities and specify that the special activity permitted is low density residential or prohibit *tourist and visitor accommodation* in the RU4 Rural Small Holdings zone.

*Response*

No amendment has been made to the draft plan.

The land is zoned Rural Living under HLEP 1989 and has been zoned RU4 Rural Small Holdings under the draft plan.

It would be imprudent to exclude *tourist and visitor accommodation* from this one parcel of land based on suspected decrease in amenity. Rather the zoning and permissible land uses should remain as exhibited as Council has the discretion to consider amenity and other environmental impacts under section 79C of the EP & A Act, if or when a development application for *tourist and visitor accommodation* is lodged.

DoPI have instructed that the SP1 Special Activities zone is generally intended for special land uses or sites with special characteristics that cannot be accommodated in other zones, for example a major scientific research facility, a major defence or communications establishment or an international sporting facility. Rezoning 1 Menin Road to SP1 Special Activities would not be consistent with the conversion intent of the draft plan or this instruction.

*Tourist facilities* are currently permitted with consent in the Rural Living zone of HELP 1989. Prohibiting *tourist and visitor accommodation* throughout the entire RU4 Rural Small Holding would not be consistent with the conversion intent of the draft plan.

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### ***Pirasta Pty Ltd - Incorporation of HLEP 1989 (Amendment 154) into draft plan - Johnston and new Streets, Windsor***

#### *Submission*

Requests that the rezoning of land in Johnston and New Streets, Windsor proposed by HLEP 1989 (Amendment 154) be incorporated into the draft plan.

#### *Response*

Amendment 154 has been forwarded to DoPI for finalisation and gazettal. DoPI has made some amendments to the plan and at present the plan has not been gazetted. The draft plan has been amended to include relevant provisions of Amendment 154.

### ***Johnson Property Group - Various matters - Pitt Town Residential Precinct***

#### *Submission*

The land behind the Pitt Town Primary School has been zoned R2 Low Density Residential as opposed to Special Uses (School) under the existing zoning. The change introduces a number of permissible land uses, such as residential, that were not permissible before the R2 zoning change.

The proposed SP2 Infrastructure (Local Road) zone fronting Bathurst Street was not identified in the Section 94 plan applying to the land as a piece of land needing to be acquired. JPG is a commercial enterprise and has no obligation to dedicate the land to Council free of charge.

Land affected by the Hawkesbury Section 94 Contributions Plan 2008 Land Acquisition Map should be in Land Reservation Acquisition Map of the draft plan.

The draft plan should make allowance for infrastructure projects to be situated on appropriate land and capable of being subdivided off larger land parcels even though the lot size will be less than the minimum lot size shown on the Lot Size Map.

The Lot Size Map should be amended so that the minimum lot size for the Bona Vista Park area, the residual lot to the south-east (known as Lot 1062 DP 1131838, 43 Bootles Lane) and the Fernadell Playing Fields is changed from 10 ha to 2ha. The principal reason for reducing the lot size is to enable future subdivisions for public purposes.

#### *Response*

No amendment has been made to the draft plan.

The rezoning of the Pitt Town Primary School to R2 is as a result of DoPI direction outlined in their circulars of March 2008 and December 2010 relating to the zoning of infrastructure/special use lands.

The proposed SP2 Infrastructure (Local Road) zone adjacent to Bathurst Street is a mapping error. The draft plan has been amended by zoning this land the adjoining zone of R5 Large Lot Residential. Where relevant other maps of the draft plan have been amended as well to reflect this zone change.

No amendment has been made to the draft plan.

The exact location of some of the land to be acquired under the Section 94 plan is currently being finalised with the Johnson Property Group. It is recommended that inclusion of such land in the Land Reservation Acquisition Map of the LEP not occur until after these discussions have been finalised.

No amendment has been made to the draft plan.

The draft plan contains clause 2(6)(f) which states that development consent is not required for the subdivision of land in the circumstance where the subdivision is for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets. Hence the minimum lot size shown on the Lot Size Map is not applicable in these cases.

No amendment has been made to the draft plan.

The lands in question are zoned Environmental Protection- Agricultural Protection (Scenic) under HLEP 1989 with a minimum lot size for subdivision of 10ha. The land has been zoned RU2 and ascribed a 10 ha minimum lot size in accordance with the conversion intent of the draft plan. As mentioned previously clause 2(6)(f) of

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*Submission*

The Biodiversity Protection Map should not apply to the approved subdivision over the Bona Vista Precinct or 43 Bootles Lane.

Clause 6.8(4)(c) which states:

*Before granting consent to development on land to which this clause applies that is likely to have an impact on a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance, the Council must:*

..

*(c) be satisfied that any necessary consent or permission under the National Parks and Wildlife Act 1974 has been granted.*

should be deleted as DECCW have advised that they are unable to issue a permit under their legislation until such times as development consent is granted, however this clause requires a permit under the NPWS Act 1974 to be issued prior to development consent being granted.

***Urbis - Reduction in minimum lot size provision -108 Grose Vale Road, North Richmond***

*Submission*

Submission lodged on behalf of the North Richmond Joint Venture Consortium.

Requests that the Lot Size Map be amended to reduce the minimum lot size of 200ha to 2ha in recognition of the site's location adjacent to urban and rural residential development, land use context and viability, and consistency of land use zoning.

*Response*

No amendment has been made to the draft plan.

The subject land is zoned Consolidated Land Holdings under HLEP 1989. Pursuant to Clause 11(7) of HLEP 1989 subdivision of Consolidated Land Holding zoned land, apart from minor boundary adjustments, is prohibited. In the conversion process, the minimum lot size was set at 200ha, being the approximate size of the land. The effect of this large minimum lot size at that the current prohibition on subdivision continues.

*Response*

the draft plan enables subdivision for public purposes on the land in question without the need for development consent.

Given the extent and density of residential allotments in the approved subdivision the Biodiversity Protection Map has been amended and no longer applies to the Bona Vista Precinct.

Whilst 43 Bootles Lane has been or is to be developed for the purposes of water and drainage infrastructure the remaining vegetation is considered to be significant and hence the Biodiversity Protection Map has not been amended.

This clause is equivalent to Clause 54 of HLEP 1989. Clause 54 was included in HLEP as a result of public authority requirements relating to HLEP 1989 (Amendment 145) and then SEPP (Major Projects) Amendment (Pitt Town) 2008.

In light of this, it is recommended that DoPI be made aware of the respondent's submission and DoPI make any necessary amendments to this clause prior to gazettal of the draft plan.

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The proposal is not consistent with the conversion intent of the draft plan and therefore the request is not supported.

The subject land is being considered by DoPI as a land release area for urban development and the land is also included for investigation in the recently adopted Hawkesbury Residential Land Strategy. Any required change to the LEP should occur after DoPI has made a determination.

**JBA Urban Planning Consultants - Various matters - Various sites**

*Submission*

*Response*

***Site adjacent to Kurrajong Village - submission lodged on behalf of owners of 33 Old Bells Line of Road, and 17, 18, 29, 30, 32, 35, 38, 41, 42, 51, 53 and 59 Vincent Road.***

Requests that nine properties which are currently zoned Mixed Agriculture under HLEP 1989 and RU1 under the draft plan be zoned either RU5 or a mixture of R2 and RU6 with a corresponding minimum lot size of 4000m<sup>2</sup> in the RU5 and RU6 zones.

No amendment has been made to the draft plan.

Rezoning the land to RU5, R2 or RU6 would not be consistent with the conversion intent of the draft plan and therefore the request is not supported.

The proposed RU1 zone to the south, east and north of the Kurrajong village is inappropriate and should be reversed so that the RU4 zone adjoins the village and an RU1 zone applies to land in the hinterland of the village. The RU4 zone should have a minimum allotment size of 4000m<sup>2</sup> and the RU1 zone a minimum allotment size of 2.5 hectares.

The landowners, at their own expense, can lodge a suitably prepared rezoning application so that the land can be considered by Council as part of implementing the recently adopted Hawkesbury Residential Land Strategy.

No amendment has been made to the draft plan.

The requested change to zone and minimum subdivision standard is not consistent with the conversion intent of the draft plan and therefore the request is not supported.

Clause 4.6(6) not be applicable to the RU1 zone.

The landowners, at their own expense, can lodge a suitably prepared rezoning application so that the land can be considered by Council as part of implementing the recently adopted Hawkesbury Residential Land Strategy.

No amendment has been made to the draft plan.

Clause 4.6(6) is a mandatory clause within the Standard Instrument and cannot be changed by Council

***Site on south-western corner of Bourke and Windsor Streets, Richmond - affects properties known as 72 – 78 and 82 March Street, 1 – 5 Bourke Street, 9 – 13 William Street, Richmond***

The height limit for the R3 zone be increased from 10 metres to 12 metres to be the same as the R1 zone.

No amendment has been made to the draft plan.

The difference in the height limit between the two zones relates to the fact that residential flat buildings are permissible in the R1 zone and they are not permissible in the R3 zone. Twelve (12) metres is an appropriate height limit for a three storey flat building. On the other hand three storey dwelling houses or town houses are not the norm in Richmond or Windsor. The ten (10) metre height standard is appropriate for two storey townhouses and the like.



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*Submission*

Medical centres be made a permissible use in the R3 zone and/or on the lands subject to the submission.

The cottage at 82 Windsor Street, Richmond should be deleted from "Schedule 5 Environmental heritage" as the building's heritage value is questionable and it is in poor condition.

*Response*

No amendment has been made to the draft plan.

*Medical centres* are a permissible in the R3 zone use by virtue of Clause 56 of *State Environmental Planning Policy (Infrastructure) 2007*.

No amendment has been made to the draft plan.

82 Windsor Street, Richmond is currently listed as a heritage item in HLEP 1989. The respondent has provided no evidence that the heritage status of the land is erroneous. Council's heritage advisor has inspected the property and confirms that the building has heritage merit and should remain in "Schedule 5 Environmental heritage".

***PGH Environmental Planning - Rezoning request - 6 Speedwell Place, South Windsor***

*Submission*

Submission lodged on behalf of DJL Management Pty Ltd.

Requests a 6.5ha (approx) extension of the IN1 zone at 6 Speedwell Place, South Windsor. Land is currently zoned 4(a) towards Speedwell Place with Mixed Agricultural zoned land beyond. The adjoining land to the north and south is proposed to be zoned IN1 and there is no physical or environmental impediments that would prevent this area of the site from being rezoned industrial. Minor expansion of the industrial area will not contradict any of the nominated directions to the extent that it could not be considered by Council.

*Response*

No amendment has been made to the draft plan.

The land subject of the submission is zoned Mixed Agriculture under HLEP 1989 and has been zoned RU1 under the draft plan. Rezoning the land to IN1 would not be consistent with the conversion intent of the draft plan and therefore the request is not supported.

The land proposed to be rezoned would extend beyond the adjoining industrial land to the north and south by approximately 100m and 200m respectively. The proposed rezoning would also include land as low as 5m AHD (approximately) which, given the 1 in 100 year flood event level of 17.3m AHD, is significantly flood liable and inconsistent with Council's current flood related development controls.

***PGH Environmental Planning - Rezoning request - 533 - 547 Windsor Road and 541 Old Hawkesbury Road, Vineyard***

*Submission*

Submission of behalf of Henry Brothers Saws Pty Ltd and Vineyard Hardware Pty Ltd.

The draft plan proposes to change the zoning from Rural Living under the HLEP1989 to RU4 Rural Small Holdings.

The site contains a number of commercial/industrial buildings (sawmill, manufacture and maintenance of industrial saws and knives, and storage and sale of hardware products) as well as a brick veneer residence and block of residential units.

The site is best characterised as mixed residential/commercial rather than rural.

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Request that Council resolve to investigate and review the RU4 zoning and the range of permitted uses on the subject land as well as for properties on Windsor Road within the Vineyard Release Area precinct.

*Response*

No amendment has been made to the draft plan.

Council is in receipt of a planning proposal for this land and this matter will be separately reported to Council.

***Don Fox Planning - Rezoning request - various lands on fringe of Richmond***

*Submission*

Submission lodged on behalf of EquitiTrust Ltd.

Requests certain land of northern edge of the Richmond township be zoned R2 rather than RU2. The land proposed to be zoned R2 are 2 Dight Street (two parts of the site with areas of 1.44 ha and 1.38ha) and 177 Francis Street (0.25 ha). This represents a total area of 3.07 ha with likely yield of 22 residential lots.

The land is contiguous with the existing urban settlement of Richmond. The current zoning and permissible land uses do not encourage any improvement to the dilapidated state of the land. The land consists of three small knolls of high ground which are insignificant in the context of surrounding agricultural land holdings. Council has previously rezoned land in the immediate vicinity, being fringe land on high ground.

*Response*

No amendment has been made to the draft plan.

The land is zoned Environmental Protection - Agricultural Protection under HLEP 1989 and has been zoned RU2 under the draft plan. Rezoning the land to R2 would not be consistent with the conversion intent of the draft plan and therefore the request is not supported.

Notwithstanding this the respondent's proposal may have some merit. These portions of land are included in Council's recently adopted Hawkesbury Residential Land Strategy. A separate rezoning application, prepared at the applicant's expense, would be required to be lodged with Council for consideration. Any necessary amendments to the new LEP should occur after such consideration and public consultation has been completed.

***Don Fox Planning - Additional permitted land use in RU2 Rural Landscape zone -Richmond Lowlands***

*Submission*

Submission lodged on behalf of EquitiTrust Ltd.

Request that the RU2 Rural Landscape zone be amended to include *recreational facility (outdoor)* as a permissible land use. In particular for the Richmond lowland area.

*Recreation facility (outdoor)* is defined as:

*a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).*

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Such a change would make equestrian centres a permissible use. Land use activity in the Richmond lowland area is now generally characterised by equestrian related activities and the future prohibition of such use is inconsistent with this existing character. Equestrian facilities allow for continuing agricultural production and are likely to aid in the retention and enhancement of the scenic qualities of the area.

To make these uses prohibited development would mean that many of these existing operations would become non-conforming uses, which would be an undesirable outcome.

If additional permitted use in RU2 zone not supported then request that "Schedule 1 Additional permitted uses" of the draft plan be amended to allow equestrian related facilities on the RU2 land north of Richmond township.

### *Response*

No amendment has been made to the draft plan.

The Richmond lowland area is currently zoned Environmental Protection- Agricultural Protection (Scenic) under HLEP 1989. HLEP 1989 (Amendment 108) created this zone and at the time of endorsing Amendment 108 Council resolved not to support *recreational establishments* in the zone because of the potential conflict with existing or future agricultural enterprises. *Recreation facility (outdoor)* is the closest equivalent to *recreational establishments* in HLEP 1989. Given the conversion intent of the draft plan, *recreation facility (outdoor)* has been made a prohibited land use in the RU2 zone.

Given the existing equestrian activity in the Richmond lowlands the permissibility of such uses could be investigated as a possible future amendment to the new LEP subject to the appropriate strategic analysis of the locality has been completed.

### ***Don Fox Planning - Deferral of draft plan - The Islands, Hermitage Road, Kurrajong Hills***

#### *Submission*

Submission on behalf of Mountain Island Pty. Ltd.

Request that the proposed zoning of Lot 1 DP 184741, Lots 181 DP 701978 and Lot 200 DP 1012480, 278 and 278A Hermitage Road be deferred until a detailed submission is lodged as to the future zoning and development of this land.

#### *Response*

No amendment has been made to the draft plan. The draft plan should not be deferred.

Given that the draft plan is nearing final stages of completion it would be more appropriate for the respondent to lodge a separate planning proposal to Council for consideration. However, any such proposal must fully address the provisions of Council's recently adopted Hawkesbury Residential Land Strategy and other relevant Strategies and documents as part of that application.

### ***Montgomery Planning Solutions, Mr Alan Currall, and Mr and Mrs Snedden - Various matters Hadden Farm, Wilberforce***

#### *Submissions*

These submissions relate to a 377 hectare agricultural property at Wilberforce known as "Hadden Farm". In summary the submissions deal with three issues.

The first issue relates to lot averaging provisions and argues that the 2.5 hectare minimum lot size in a lot averaging subdivision is too large and that a 1 hectare minimum lot size should apply in the case of "Hadden Farm".

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The second issue deals with the proposed E2 zone over part of the land, the resultant reduction in potential lot yield as a result of increasing the minimum lot size from 10ha to 40ha, and the permissibility of grazing livestock in the E2 zone.

The third issue relates to the need for the inclusion of a savings clause to protect the rights of applicants who have lodged development applications under HLEP 1989 prior to the gazettal of the draft plan.

### *Response*

These submissions were lodged with Council prior to Council issuing Development Consents DA0036/10, DA0037/10 and DA0057/10 on the 10 June 2010 for a total of 38 lots on land known as "Hadden Farm". Thirty five (35) of these lots were for rural-residential purposes with many of these lots having an area of 1.0 -1.5 hectares. The remaining three (3) lots contained the agriculturally productive land and a regionally significant wetland. The approval of these applications negates the respondents concerns about the 2.5 hectare minimum lot size and how it may affect the subdivision potential of "Hadden Farm".

Under Clause 11 of HLEP 1989 the minimum lot size for a lot averaging subdivision in Mixed Agriculture (unhatched) zone is 2.5ha. In certain limited cases this can be reduced to 1ha. Under the draft plan the minimum lot size for lot averaging subdivisions is shown on the Lot Averaging Map. DoPI will not allow more than one minimum lot size per property to be shown on the Lot Averaging Map, hence the 2.5ha minimum has been adopted.

The proposed E2 zone and 40ha lot size minimum has been removed from the affected properties as per the previous discussion regarding the E2 zone.

The respondent's suggestion for a savings clause is supported and DoPI's standard savings clause has been added to the draft plan.

### ***Montgomery Planning Solutions - Amendment to Heritage map - Richmond Marketplace***

#### *Submission*

Submission on behalf of owners and operators of the Richmond Marketplace in regard to eight (8) heritage items contained within Lot 21, DP 872925, 78 March Street, Richmond.

Request that the Heritage Map and "Schedule 5 Environmental heritage" be amended to specifically relate to the heritage items on the land rather than applying to the entire land parcel. If the draft plan is not amended then the heritage related provisions of the draft plan will apply to the modern Richmond Marketplace building. This means that minor changes to tenancies or shop fit-outs will require a development application and assessment under Clause 5.10 Heritage Conservation of the draft plan rather than be subject to the more streamline process complying development provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

#### *Response*

Numerous heritage items on individual allotments were incorporated and conserved as part of the redevelopment of the entire site in the mid 1990's. All landholdings affected by the Richmond Marketplace development were subsequently consolidated into one allotment. The respondent's case is supported in the circumstance of this case and the Heritage Map and "Schedule 5 Environmental heritage" have been amended to apply only to the relevant heritage properties in the March and Lennox Street frontages. As a result the modern part of Richmond Marketplace will be excluded from the heritage provisions of the draft plan.

### ***Montgomery Planning Solutions - Rezoning request - 25, 29, 31 and 35 Chapel Street, Richmond***

#### *Submission*

Submission lodged on behalf of Mr P & Mrs K Smith, the owners of 35 Chapel Street, Richmond being an 8.1 hectare property which adjoins a seniors living development at 25 Chapel Street, Richmond.

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The eastern portion of 25 Chapel Street is proposed to be partly zoned R2 and partly zoned RU2 however the site has been developed for the purposes of a seniors living development. The split zoning is an anomaly and should be removed from this property and replaced with the R2. The R2 residential zone is in this case the most appropriate zone for seniors living development. Also requests that adjoining 29 Chapel Street and 31 Chapel Street be rezoned from RU2 to R2.

Rectifying the zoning anomaly would also remove any doubt as to whether 35 Chapel Street "adjoins land that is zoned primarily for urban purposes" as defined by *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

The existing seniors living development is a significant facility however there is no (or very limited) unused space on the site for future expansion. It would be a sound strategic action for Council to remove any doubt about the ability of 35 Chapel Street to fall within the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. This would provide area for future expansion or augmentation of the existing facilities.

### *Response*

The eastern portion of 25 Chapel Street is currently zoned Environmental Protection - Agricultural Protection and 5(a) Special Uses - Retirement Village under HLEP 1989 and has been zoned RU2 and R2 respectively under the draft plan.

This part of the property has been substantially developed and it is considered that moving the zone boundary to conform to the cadastral boundary will not increase its development potential. The submission is supported in this regard and the Land Zoning Map and other affected maps have been amended.

It should be noted that by removing the split zoning, 35 Chapel Street will now adjoin land that is zoned primarily for urban purposes hence a senior living development would be permissible on this land by way of the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

29 and 31 Chapel Street are currently zoned Environmental Protection - Agricultural Protection and under HLEP 1989 and have been zoned RU2 under the draft plan. As there is no split zoning issue, rezoning the land to a R2 would not be consistent with conversion intent of the draft plan. Hence, the request is not supported.

### **Montgomery Planning Solutions - Rezoning request - Mushroom substrate production facility, 84 Mulgrave Road, Mulgrave**

#### *Submission*

Submission on behalf of Mr R and Mrs N Tolson.

Request that Council extend the northern boundary of the proposed IN2 zone to correspond with the northern boundary of 84 Mulgrave Road as the zone boundary does not reflect the current area being filled for future expansion. If the boundary between the IN2 and RU4 zone is to remain in the location proposed in the draft plan, an anomaly will be created whereby this major development will have a split zoning and will rely on existing use rights for the portion of the land which is within the RU4 zone.

#### *Response*

The exhibited northern boundary of the IN2 zone on the subject land corresponded to Council's 2005 resolution to rezone the land. Since this resolution, Council approved a development application in 2006 to fill the land between the proposed zone boundary and the cadastral boundary of 84 Mulgrave Road. The actual description of the development in the consent was "*Land filling - storage and manoeuvring area for mushroom and substrate plant.*" This consent has been secured, the land has been filled and is being used for the approved use.

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The respondent's request is supported because the area in question is not large (approximately 2ha), the land is being used for mushroom growing purposes pursuant to an existing consent, and moving the zone boundary approximately 60 metres to the north will eliminate a split zoning on the developable part of the land. The Land Zoning Map and other affected maps have been amended.

### **Montgomery Planning Solutions - Savings clause and addition permitted land use - 122 - 130 Macquarie Street, Windsor**

#### *Submission*

Submission on behalf of Mr V and Mrs L Morgan.

Request Council insert a savings clause to protect the rights of applicants who have lodged development applications under HLEP 1989 prior to the gazettal of the draft plan.

Concerned about loss of *professional and commercial chambers* as a permissible use within the R1 General Residential zone and requests that the site's current commercial premises development consent be reflected in "Schedule 1 Additional permitted uses" of the draft plan.

#### *Response*

The respondent's suggestion for a savings clause is supported and DoPI's standard savings and transition clause has been added to the draft plan.

The respondent has requested that the additional permitted use in "Schedule 1 Additional permitted uses" be *business premises* with a qualifier that the business premises be limited to "services provided by an occupation, profession or trade". Council has received advice from DoPI that definitions cannot be split or conditioned. Accordingly the definition of *business premises* is considered to be too broad as it allows uses such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities and the like which were not part of the development consent which limited the commercial premises to professional chambers. More appropriate definitions to be included as additional uses in Schedule 1, for the subject land, would be *office premises* and *medical centre*. These definitions cover, in the most part, the list of permissible uses listed in Schedule 2 - Professionally qualified practitioners in HLEP 1989.

"Schedule 1 Additional permitted uses" of the draft plan has been amended to include the subject land with the additional permitted use of *office premises* and *medical centre*.

### **Montgomery Planning Solutions - Rezoning request - Industry Road**

#### *Submission*

Submission on behalf of Mr N Schembri, Mr E Demarco and Messrs P and A Tosti.

Requests that for 63, 73 and 81 Railway Road North, Mulgrave and 48 Industry Road, Vineyard the north eastern boundary of the IN1 General Industry zone be moved so as to align with the majority of property boundaries.

The boundary between IN1 and IN2 creates a split zoning over 63, 73 and 81 Railway Road North, Mulgrave. Moving the IN1 General Industry zone to the north east will create a split zoning over 48 Industry Road however the existing building and its surrounds on this property would be totally within the IN1 zone.

#### *Response*

The current zone boundary appears to have been derived from a local road reservation in Hawkesbury Local Environmental Plan 1984 (HLEP 1984). This reservation was either abandoned during the life of HLEP 1984 or upon the gazettal of HLEP 1989 whereby the land the subject of the reservation was zoned 3(b) Business Special. The zone boundary followed the line of the reservation rather than the generally

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preferred approach of following property boundaries. The submission is to move this zone boundary approximately 60m to the north-east.

63 and 73 Railway Road North are used for the purposes of manufacturing various concrete products and under the draft plan this use would fall within the definition of an *industry* or possibly a *heavy industry*. Both of these uses are prohibited in the IN2 Light Industry zone yet permissible in the IN1 General Industry zone. Given the current use of the properties, it is considered appropriate that the split zoning be removed and all the land be zoned IN1 General Industry. Accordingly, the Land Zoning Map and other affected maps have been amended.

81 Railway Road North has been developed for the purposes of factory units however the rear of the property that is the subject of this submission is undeveloped. Moving the IN1 General Industry zone to the north east is considered appropriate as it will remove the split zone from this property. Accordingly, the Land Zoning Map and other affected maps have been amended.

The rear of 48 Industry Road which is the subject of this submission has been granted development consent for a food product recycling. This consent was issued on the basis that the development fell into the general categorisation of a *light industry*. Moving the IN1 General Industry zone to the north east will create a split zone from this property which in general terms is to be avoided. The respondent states that the owner of 48 Industry Road also owns adjoining properties (believed to be 81 and 87 Railway Road) which are to be zoned IN1 General Industry and that zoning part of 48 Industry Road to IN1 General Industry will facilitate the owner's future development plans. It is recommended that the zone boundary not be amended now. However, this matter be reconsidered once the owner's future development plans are known. A separate rezoning application, prepared at the applicant's request, can then be submitted for consideration by Council.

### ***Falson & Associates Pty Ltd - Rezoning request - 24 Greenway Crescent, Windsor***

#### *Submission*

Submission on behalf of Mr Terry Allen.

Subject site is approximately 1.6ha in area has frontage to Greenway Crescent and is situated adjacent to residential, religious, tourist accommodation and is close to shops, transport and recreational facilities. The site contains a site office, dwelling and variety of sheds, the bulk of the land is above 15.2m in height. Agricultural use of this land is inappropriate given its proximity to surrounding uses and potential of land use conflicts.

Request that the land be rezoned from RU2 Rural Landscape to R2 Low Density Residential thus allowing residential use including seniors housing.

#### *Response*

No amendment has been made to the draft plan.

The land is zoned Environmental Protection - Agricultural Protection (Scenic) under HLEP 1989 and has been zoned RU2 Rural Landscape under the draft plan. Rezoning the land to R2 Low Density Residential would not be consistent with the conversion intent of the draft plan and therefore the request is not supported.

The zoning of this land could be investigated, at the applicant's expense, as part of implementing Council's recently adopted Hawkesbury Residential Land Strategy.

### ***Falson & Associates Pty Ltd - Rezoning request - Part of Pitt Town Residential Precinct***

#### *Submission*

Submission on behalf of Triston Pty Limited and Mr B and Mrs M Ghantous.

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The submission relates to 26, 28, 30A, 30B, 30C and 34 Mitchell Road, part of 32 Mitchell Street, part of 14 Mitchell Street, and part of 130 Hall Street, Pitt Town.

Requests that the minimum lot size be decreased from 2500m<sup>2</sup> to 1000m<sup>2</sup> or 1500m<sup>2</sup>. Increasing the number of lots will increase housing supply and lot size choice, assist in containing development costs, assist in the provision of infrastructure, will comply with the "Desired Character" statement of the Pitt Town chapter of the Hawkesbury DCP and relevant Section 117 directions, SEPPs and SREPs. The additional number of lots is within the upper limit of lots proposed in the Connell Wagner reports of April and November 2003 and SES flood evacuation limit of January 2007. The land is not conducive to primary production, not visible from Cattai Road, flood free, has no heritage, bushfire, or flora/fauna constraints and is immediately adjacent to the proposed emergency evacuation route.

The draft plan should be amended to enable *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1) to be used in regard to minimum allotment sizes.

*Response*

The minimum allotment sizes in the Pitt Town Residential Precinct have been set as part of a Part 3A approval issued by the Minister of Planning. Given the conversion intent of the draft plan no changes have been made to the lot sizes set by the Minister.

The reference to SEPP 1 in Clause 6.4 (6) has been deleted from the draft plan. This is not required as the mandatory Clause 1.9(2) states that SEPP 1 does not apply to land to which the plan applies.

***Falson & Associates Pty. Ltd - Proposed heritage listing - 452 Greggs Road, Kurrajong***

*Submission*

Submission of behalf of Ms Nicole Hatherly.

Request that the older dwelling on the land be included as an item of environmental heritage in the draft plan so that it can be used for habitable purposes and thus retain its historic character.

*Response*

No amendment has been made to the draft plan.

Council's Heritage Advisor has advised that although there would appear a reasonable case for listing the item, the physical evidence exhibited by the building is not clear and it would be prudent to undertake a detailed heritage assessment of the site and the building.

It is recommended that this property be investigated as part of a future review of the heritage schedule. At present it is expected that this review will be one of the first amendments to the new LEP.

***Falson & Associates Pty. Ltd - Rezoning request - Hillcrest and Springwood Roads, Yarramundi***

*Submission*

Submission lodged on behalf of a number of land owners in Hillcrest and Springwood Roads, Yarramundi, adjacent to land known as "Nepean Park".

Request that draft plan zone be changed or include an enabling clause to allow the land to be subdivided. The proposal is for a community title subdivision in the order of 25 allotments with lots ranging from 1486m<sup>2</sup> to 10.12 hectares with most lots being in the order of 1.5 hectares.

*Response*

No amendment has been made to the draft plan.



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The land is currently zoned Mixed Agriculture under HLEP 1989 with a minimum lot size of 10ha or 2.5ha if from a "lot averaging" subdivision. Under the draft plan the land is proposed to be zoned RU1 Primary Production and the minimum lot sizes of 10ha and 2.5ha have been retained. The proposal is not consistent with the conversion intent of the draft plan and therefore the request is not supported.

The future zoning and/or minimum lot sizes for this land would need to be investigated, at the landowner's expense, as part of implementing Council's recently adopted Hawkesbury Residential Land Strategy.

**Falson & Associates Pty. Ltd - Various matters**

*Submission*

The draft plan name be changed to reflect the year of gazettal.  
Clause 1.9A(2)

No reason why the suspension of covenants should not apply to Council. Otherwise Council could impose a restriction that is of no good planning purpose and which would have force that is not able to be enjoyed by a private developer etc. Recommend that clause 1.9A(2)(a) be deleted.  
Clause 2.6A

Why does all demolition require consent? Whilst the Exempt and Complying provisions can relate to "demolition", Schedule 2 of the draft plan does not include "demolition" of any category as either "exempt development" or "complying development" meaning that for even the demolition of minor structures (such as carports, kennels, etc), formal development consent is required. This would seem to be overly restrictive. Recommend that clause 2.6A be deleted or alternatively that the exempt/complying provisions be worded to incorporate relevant "demolition" types.  
Clause 2.6C(2)

This requires consent for all earthworks unless Council is satisfied that they are of a minor nature. This would seem to place the onus on Council to investigate all earthworks no matter how minor to ascertain if they are "minor". Recommend that there be some sort of definition of what is "minor" or not, perhaps within the exempt and/or complying provisions. If the clause is to stand as is then "earthworks" as a landuse should be inserted into all zones as "permissible with consent" otherwise all earthworks will be prohibited.  
RU1 Primary Production zone - Objectives

The objective "to prevent the establishment of traffic generating development..." is too onerous. Recommend that it read "to control ..." rather than to "prevent".

RU1 Primary Production zone - Permitted without

*Response*

The draft plan has been updated from "2009" to "2011"  
No amendment has been made to the draft plan.

Clause 1.9 is a mandated compulsory clause that is to be adopted without amendment or alteration.

Clause 2.6A as exhibited is now Clause 2.6AA in the draft plan. This clause is a mandated compulsory clause that is to be adopted without amendment or alteration.

*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* allows for the demolition of numerous types of minor structures without consent.

In accordance with instruction from DoPI this clause has been amended and the "minor nature" provision has been replaced with a numerical standard and other prescriptive criteria.

In accordance with instruction from DoPI this objective has been removed from the draft plan.

The RU1 zone is derived from the Mixed

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*Submission*  
consent

Recommend that the following be permitted without consent:

*Agriculture, bed and breakfast accommodation, building identification sign, business identification sign, dairy (pasture based), home occupation, and viticulture.*

*Response*  
Agriculture zone of HLEP 1989.

*Agriculture* is a group term which includes *animal boarding or training establishments, aquaculture, extensive agriculture, farm forestry, intensive livestock agriculture* and *intensive plant agriculture*. Under HLEP 1989 most of the land uses equivalent to these uses requires development consent. Permitting all of these uses without consent would not be consistent with the conversion intent of the draft plan.

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *Bed and breakfast accommodation* has been included in the "Permitted without consent" section of the RU1 zone.

*Building identification signs* and *business identification signs* are equivalent to *Advertisements* in HLEP 1989 which are either "Exempt" or "Development that requires consent". The draft plan allows for certain business related signs to be "Exempt" with all other *Business identification signs* require consent. *Building identification signs* were incorrectly omitted from the permitted with consent section of this zone. This error has been corrected.

*Dairy (pasture based)* is a subset of *extensive agriculture* which is permitted without consent.

*Home occupation* is permitted without consent.

*Viticulture* is a subset of *intensive plant agriculture*. Therefore permitting *viticulture* without consent would not be consistent with the conversion intent of the draft plan.

No amendment has been made to the draft plan.

*Extensive agriculture* is permitted without consent because this is a mandated compulsory provision which must adopted by council without amendment or alteration.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. The Standard Instrument requires that this land use be permitted without consent or permitted with consent in the RU1 zone. Given the nature of these works it is considered reasonable that these works be permitted without consent.

RU1 Primary Production zone - Permitted without consent

Recommend that *environmental protection works* and *extensive agriculture* be permitted with consent rather than without consent.

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RU1 Primary Production zone - Permitted with consent

*Agriculture* requires consent but *extensive agriculture* does not. The definition of *agriculture* includes *extensive agriculture*. There is a conflict of definitions and also what would be perceived as permissible with consent and permissible without consent.

Detached *dual occupancies* are not permitted but attached ones are. A detached *dual occupancy* is suitable for rural properties where there can be better siting and detachment of separate families. If Council is concerned about subsequent pressures for subdivision then all it need do is put a covenant on the title as well as a consent condition denying any future subdivision ability.

In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the "permitted with consent" they would be prohibited within this rural zone as it is currently written:

*Advertising structure, agricultural produce industries, air transport facilities, airstrip, animal boarding or training establishment, backpacker's accommodation, boat launching ramp, boat shed, caravan park, cellar door premises, cemetery, charter and tourism boating facility, child care centre, clearing native vegetation, correctional centre, dairy (pasture based), drainage, earthworks, electricity generating works, emergency services facility, environmental protection works, excavation, exhibition home, feedlot, fill, filming, flood mitigation work, freight transport facility, group home, health services facility, highway service centre, home business, home occupation, home occupation (sex services), hospital, hotel or motel accommodation, information and education facility, intensive livestock agriculture, intensive plant agriculture, jetty, landscape and garden supplies, livestock processing industry, marina, market, medical centre, mixed use development, mooring, moveable dwelling, natural water-based aquaculture, neighbourhood shop, office premises, Parking space, pond-based aquaculture, port facilities, private open space, public administration building, public utility undertaking, rainwater tank, recreation facility (major), research station, restricted dairy, restriction facilities, road, roadside stall, rural industry, rural supplies, sawmill or log processing works, school, secondary dwelling, sewage*

### *Response*

The inclusion of *extensive agriculture* and *agriculture* in the Land Use Table is as per DoPI instruction.

Detached *dual occupancies* are currently prohibited in the Mixed Agriculture zone of HLEP 1989. Permitting detached *dual occupancies* with consent would not be consistent with the conversion intent of the draft plan.

*Dairy (pasture based), environmental protection works, and home occupations*, are permitted without consent either individually or because they are a subset of a group term which is permitted without consent.

*Agricultural produce industries, animal boarding or training establishment, backpacker's accommodation, cemetery, child care centre, correctional centre, feedlot, flood mitigation work, hospital, hotel or motel accommodation, intensive livestock agriculture, intensive plant agriculture, landscape and garden supplies, livestock processing industry, natural water-based aquaculture, pond-based aquaculture, public administration building, restricted dairy, road, roadside stall, rural industry, rural supplies, sawmill or log processing works, school, stock and sale yard, tank-based aquaculture, veterinary hospital, viticulture, waterbody (artificial) and wetland (artificial)* are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.

*Clearing native vegetation, drainage, earthworks, electricity generating works, emergency services facility, excavation, fill, filming, parking space, private open space, public utility undertaking, rainwater tank, restriction facilities, sewerage system, sewage reticulation system, sewage treatment plant, spa pool, swimming pool, telecommunications facility, waste or resource management facility, waste or resource transfer station, waste disposal facility, waste management facility, water recycling facility, water reticulation system, water storage facility, water supply system, water treatment facility waterbody (natural) and wetland (natural)* are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses are explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.

*Air transport facilities, airstrip, caravan park, cellar door premises, exhibition home, freight transport facility, group home, health services facility, highway service centre, home business, home*

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*Submission*

*reticulation system, sewage treatment plant, sewerage system, signage, spa pool, stock and sale yard, swimming pool, tank-based aquaculture, telecommunications facility, veterinary hospital, viticulture, waste disposal facility, waste management facility, waste or resource management facility, waste or resource transfer station, water recreation structure, water recycling facility, water reticulation system, water storage facility, water supply system, water treatment facility, waterbody, wetland.*

The following should be removed from permitted with consent as being more in keeping with a business zone, *recreation facilities (indoor)* and *registered clubs*.

RU2 Rural Landscape zone - Objectives

The objective to “prevent” traffic generating development should be to “control” otherwise all development that generates traffic however small is not permitted.

RU2 Rural Landscape zone - Permitted without consent

*Environmental protection works* should require consent and so should be moved into the appropriate section.

*Response*

*occupation (sex services), information and education facility, marina, market, medical centre, mixed use development, moveable dwelling, office premises, port facilities, recreation facility (major), research station, and secondary dwelling* are not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

The draft plan has been amended by making *Boat launching ramp, boat shed, charter and tourism boating facility, jetty, mooring, and water recreation structure* permitted with consent, either individually or as part of a group term, in the RU1 zone. These uses are permitted with consent in the W1 and/or W2 zones and the RU1 zoned land that adjoins W1 and/or W2 zoned land. Given that the above mentioned uses typically require some form of connection or access between the waterway and adjoining land, and are generally of a small scale it is considered appropriate that these uses be permitted with consent in the RU1 zone.

*Advertising structure and signage* are not permitted with consent as doing so could permit signage on properties that are not related to the use of the land. *Building identification signs* and *business identification signs* have been made permitted with consent instead as these must be related to the use of the land.

*Neighbourhood shops* are prohibited in the zone due to instruction from DoPI.

The HLEP 1989 equivalent to *recreation facilities (indoor)* and *registered clubs* are permitted in the Mixed Agriculture zone and hence have been made permitted with consent as per the conversion intent of the draft plan.

In accordance with instruction from DoPI this objective has been removed from the draft plan.

No amendment has been made to the draft plan.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. The Standard Instrument requires that this land use be permitted without consent or permitted with consent in the RU2 zone. Given the nature of

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RU2 Rural Landscape zone - Permitted without consent

Recommend that the following be permitted without consent:

*Agriculture, bed and breakfast accommodation, building identification sign, business identification sign, dairy (pasture based), home occupation, viticulture.*

RU2 Rural Landscape zone - Permitted with consent

In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the "permitted with consent" they would be prohibited within this rural zone as it is currently written:

*Advertising structure, agricultural produce*

*Response*

these works it is considered reasonable that these works be permitted without consent. The RU2 zone is derived from the Environmental Protection – Agriculture Protection (Scenic) zone (EP – AP) of HLEP 1989.

*Agriculture* is a group term which includes *animal boarding or training establishments, aquaculture, extensive agriculture, farm forestry, intensive livestock agriculture* and *intensive plant agriculture*. Under HLEP 1989 most of the land uses equivalent to these uses requires development consent. Permitting all of these uses without consent would not be consistent with the conversion intent of the draft plan.

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *Bed and breakfast accommodation* has been included in the permitted without consent section of the RU2 zone.

*Building identification signs* and *business identification signs* are equivalent to *advertisements* in HLEP 1989 which are either "Exempt" or "Development that requires consent" The draft plan allows for certain business related signs to be "Exempt" with all other *Business identification signs* require consent. *Building identification signs* were incorrectly omitted from the permitted with consent section of this zone. This error has been corrected.

*Dairy (pasture based)* is a subset of *extensive agriculture* which is permitted without consent.

*Home occupation* is permitted without consent.

*Viticulture* is a subset of *intensive plant agriculture*. Therefore permitting *viticulture* without consent would not be consistent with the conversion intent of the draft plan.

*Dairy (pasture based), environmental protection works, and home occupation* are permitted without consent either individually or because they are a subset of a group term which is permitted without consent.

*Agricultural produce industries, animal boarding or training establishment, cemetery, flood mitigation work, intensive livestock agriculture, intensive plant agriculture, landscape and garden supplies, natural water-based aquaculture, pond-based aquaculture, road, roadside stall, rural*

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*industries, animal boarding or training establishment, backpacker's accommodation, boat launching ramp, boat shed, caravan park, cellar door premises, cemetery, charter and tourism boating facility, child care centre, clearing native vegetation, dairy (pasture based), drainage, earthworks, electricity generating works, emergency services facility, environmental protection works, excavation, exhibition home, fill, filming, flood mitigation work, group home, health services facility, highway service centre, home business, home occupation, home occupation (sex services), hospital, hotel or motel accommodation, information and education facility, intensive livestock agriculture, intensive plant agriculture, jetty, landscape and garden supplies, marina, market, medical centre, mixed use development, mooring, moveable dwelling, natural water-based aquaculture, neighbourhood shop, office premises, parking space, pond-based aquaculture, port facilities, private open space, public administration building, public utility undertaking, rainwater tank, recreation facility (major), research station, restricted dairy, restriction facilities, road, roadside stall, rural industry, rural supplies, school, secondary dwelling, sewage reticulation system, sewage treatment plant, sewerage system, signage, spa pool, swimming pool, tank-based aquaculture, telecommunications facility, veterinary hospital, viticulture, water recreation structure, water recycling facility, water reticulation system, water storage facility, water supply system, water treatment facility, waterbody, wetland*

### *Response*

*industry, rural supplies, school, tank-based aquaculture, viticulture, waterbody (artificial), and wetland (artificial) are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.*

*Clearing native vegetation, drainage, earthworks, electricity generating works, emergency services facility, excavation, fill, filming, parking space, private open space, public utility undertaking, rainwater tank, restriction facilities, sewerage system, sewage reticulation system, sewage treatment plant, spa pool, swimming pool, telecommunications facility, water reticulation system, water storage facility, water supply system, water treatment facility, water recycling facility, waterbody (natural) and wetland (natural) are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses are explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.*

*Backpacker's accommodation, caravan park, cellar door premises, child care centre, exhibition home, group home, health services facility, highway service centre, home business, home occupation (sex services), hospital, hotel or motel accommodation, information and education facility, marina, market, medical centre, mixed use development, moveable dwelling, office premises, port facilities, public administration building, recreation facility (major), research station, secondary dwelling, and veterinary hospital are not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.*

The draft plan has been amended by making *boat launching ramp, boat shed, charter and tourism boating facility, jetty, mooring, and water recreation structure* permitted with consent, either individually or as part of a group term, in the RU2 zone. These uses are permitted with consent in the W1 and/or W2 zones and the RU2 zoned land that adjoins W1 and/or W2 zoned land. Given that the above mentioned uses typically require some form of connection or access between the waterway and adjoining land, and are generally of a small scale it is considered appropriate that these uses be permitted with consent in the RU2 zone.

*Advertising structure and signage* are not permitted with consent as doing so could permit

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RU4 Rural Small Holdings zone - Objectives

The objective to “prevent” traffic generating development should be to “control” otherwise all development that generates traffic however small is not permitted.

RU4 Rural Small Holdings zone - Permitted without consent

*Environmental protection works* should require consent and so should be moved into the appropriate section. Otherwise anybody could carry out works under the guise of “environmental protection” as a subterfuge for filling, excavation, clearing, etc.

RU4 Rural Small Holdings zone - Permitted without consent

Recommend that the following be permitted without consent:

*Agriculture, bed and breakfast accommodation, building identification sign, business identification sign, home occupation, and viticulture.*

*Response*

signage on properties that are not related to the use of the land. *Building identification signs* and *business identification signs* have been made permitted with consent instead as these must be related to the use of the land.

*Neighbourhood shops* are prohibited in the zone due to instruction from DoPI.

In accordance with instruction from DoPI this objective has been removed from the draft plan.

No amendment has been made to the draft plan.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. Given the nature of these works it is considered reasonable that these works be permitted without consent.

The RU4 zone is derived from the Rural Living and Consolidated Land Holdings zones of HLEP 1989.

*Agriculture* is a group term which includes *animal boarding or training establishments, aquaculture, extensive agriculture, farm forestry, intensive livestock agriculture* and *intensive plant agriculture*. Under HLEP 1989 most of the land uses equivalent to these uses require development consent or are prohibited. Permitting all of these uses without consent would not be consistent with the conversion intent of the draft plan.

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *Bed and breakfast accommodation* has been included in the permitted without consent section of the RU4 zone.

*Building identification signs* and *business identification signs* are equivalent to *advertisements* in HLEP 1989 which are either “Exempt” or “Development that requires consent” The draft plan allows for certain business related signs to be “Exempt” with all other *Business identification signs* require consent. *Building identification signs* were incorrectly omitted from the permitted with consent section of this zone. This error has been corrected.

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RU4 Rural Small Holdings zone - Permitted with consent

In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the "permitted with consent" they would be prohibited within this rural zone as it is currently written:

*Advertising structure, backpacker's accommodation, boat launching ramp, boat shed, cellar door premises, charter and tourism boating facility, clearing native vegetation, drainage, earthworks, electricity generating works, emergency services facility, environmental protection works, excavation, exhibition home, fill, filming, group home, health services facility, highway service centre, home business, home occupation, home occupation (sex services), hospital, hotel or motel accommodation, information and education facility, intensive plant agriculture, jetty, landscape and garden supplies, marina, market, medical centre, mixed use development, mooring, moveable dwelling, natural water-based aquaculture, neighbourhood shop, office premises, parking space, pond-based aquaculture, private open space, public administration building, public utility undertaking, rainwater tank, research station, road, roadside stall, rural industry, rural supplies, school, secondary dwelling, signage, spa pool, swimming pool, tank-based aquaculture, telecommunications facility, veterinary hospital, viticulture, water recreation structure, water recycling facility, water reticulation system, water storage facility, water supply system, water treatment facility, waterbody, wetland.*

The following land uses included within the "permitted with consent" should be removed as inappropriate within the zone:

*Entertainment facilities, food and drink premises, intensive livestock agriculture, recreation facilities (indoor), recreation facilities (outdoor), registered clubs.*

Response

*Home occupation* is permitted without consent.

*Viticulture* is a subset of *intensive plant agriculture*. Therefore permitting *viticulture* without consent would not be consistent with the conversion intent of the draft plan.

*Environmental protection works* and *Home occupation* are permitted without consent.

*Backpacker's accommodation, hotel or motel accommodation, intensive plant agriculture, landscape and garden supplies, public administration building, road, roadside stall, rural supplies, school, veterinary hospital, viticulture, waterbody (artificial), and wetland (artificial)* are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.

*Clearing native vegetation, drainage, earthworks, electricity generating works, emergency services facility, excavation, fill, filming, health services facility, hospital, medical centre, natural water-based aquaculture, parking space, pond-based aquaculture, private open space, public utility undertaking, rainwater tank, spa pool, swimming pool, tank-based aquaculture, telecommunications facility, water reticulation system, water storage facility, water supply system, water treatment facility, water recycling facility, waterbody (natural) and wetland (natural)* are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses are explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.

*Cellar door premises, exhibition home, group home, highway service centre, home business, home occupation (sex services), information and education facility, marina, market, mixed use development, moveable dwelling, office premises, research station, rural industry, and secondary dwelling*, are not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

The draft plan has been amended by making *boat launching ramp, boat shed, charter and tourism boating facility, jetty, mooring, and water recreation structure* permitted with consent, either individually or as part of a group term, in the RU4 zone. These uses are permitted with consent in the W1 and/or W2 zones and the RU4 zoned land



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*Response*

adjoins W1 and/or W2 zoned land. Given that the above mentioned uses typically require some form of connection or access between the waterway and adjoining land, and are generally of a small scale it is considered appropriate that these uses be permitted with consent in the RU4 zone.

*Advertising structure and signage* are not permitted with consent as doing so could permit signage on properties that are not related to the use of the land. *Building identification signs* and *business identification signs* have been made permitted with consent instead as these must be related to the use of the land.

*Neighbourhood shops* are prohibited in the zone due to instruction from DoPI.

The equivalent to *entertainment facilities, food and drink premises, intensive livestock agriculture, recreation facilities (indoor), recreation facilities (outdoor), registered clubs* are permitted in the Rural Living and/or Consolidated Land Holdings zones and hence have been made permitted with consent as per the conversion intent of the draft plan.

RU5 Village zone -Permitted without consent

No amendment has been made to the draft plan.

*Environmental protection works* should require consent and so should be moved into the appropriate section. Otherwise anybody could carry out works under the guise of "environmental protection" as a subterfuge for filling, excavation, clearing, etc.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. Given the nature of these works it is considered reasonable that these works be permitted without consent. The RU5 zone is derived from the Rural Village zone of HLEP 1989.

RU5 Village zone - Permitted without consent

Recommend that the following be permitted without consent in this rural zone:

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *bed and breakfast accommodation* has been included in the permitted without consent section of the RU4 zone.

*Bed and breakfast accommodation, building identification sign, business identification sign, home occupation, viticulture*

*Building identification signs* and *business identification signs* are equivalent to *advertisements* in HLEP 1989 which are either "Exempt" or "Development that requires consent" The draft plan allows for certain business related signs to be "Exempt" with all other *business identification signs* require consent. *Building identification signs* were incorrectly omitted from the permitted with consent section of this zone. This error has been corrected.

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RU5 Village zone - Permitted with consent

In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the "permitted with consent" they would be prohibited within this rural zone as it is currently written:

*Advertising structure, affordable housing, attached dwelling, backpacker's accommodation, bed & breakfast accommodation, biosolid waste application, biosolids treatment facility, boat launching ramp, boat shed, brothel, building identification sign, canal estate development, car park, caravan park, cellar door premises, clearing native vegetation, community facility demolish, drainage, dual occupancy, earthworks, electricity generating works, emergency services facility, environmental protection works, excavation, exhibition home, exhibition village, fill, filming, group home, health care professional, health consulting rooms, health services facility, home business, home occupation (sex services), horticulture, hostel, hotel or motel accommodation, information and education facility, jetty, kiosk, marina, market, medical centre, mixed use development, mooring, moveable dwelling, natural water-based aquaculture, night club, office premises, parking space, place of public worship, pond-based aquaculture, private open space, pub, public administration building, public utility undertaking, public reserve, rainwater tank, research station, residential accommodation, residential care facility, restaurant, restricted premises, rural industry, rural workers dwelling, secondary dwelling, semi-detached dwelling, seniors housing, service station, sewage reticulation system, sewage treatment plant, sewerage system, sex services premises, shop, signage, spa pool, swimming pool, take away food and drink premises, tank-based aquaculture, telecommunications facility, viticulture, water recreation structure, water reticulation system, water storage facility, water supply system, water treatment facility, wetland.*

Response

*Home occupation* is permitted without consent.

*Viticulture* is a subset of *intensive plant agriculture* which is prohibited in the RU5 and Rural Village zones. Therefore permitting *viticulture* without consent would not be consistent with the conversion intent of the draft plan.

*Bed & Breakfast accommodation, environmental protection works* and *home occupation* are permitted without consent.

*Backpacker's accommodation, building identification sign, community facility, dual occupancy (attached), hotel or motel accommodation, place of public worship, pub, public administration building, restaurant, take away food and drink premises, and wetland (artificial)* are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.

*Affordable housing, car park, clearing native vegetation, demolish, drainage, earthworks, electricity generating works, emergency services facility, excavation, fill, filming, health care professional, health consulting rooms, health services facility, medical centre, parking space, private open space, public utility undertaking, public reserve, rainwater tank, residential care facility, seniors housing spa pool, swimming pool, telecommunications facility, and wetland (natural)* are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.

*Attached dwelling, biosolid waste application, biosolids treatment facility, brothel, canal estate development, caravan park, cellar door premises, dual occupancy (detached), exhibition home, exhibition village, group home, home business, home occupation (sex services), horticulture, hostel, information and education facility, kiosk, marina, market, mixed use development, moveable dwelling, natural water-based aquaculture, night club, office premises, pond-based aquaculture, research station, residential accommodation, restricted premises, rural industry, rural workers dwelling, secondary dwelling, semi-detached dwelling, service station, sewage reticulation system, sewage treatment plant, sewerage system, sex services premises, shop, tank-based aquaculture, viticulture, water reticulation system, water storage facility, water supply system, and water treatment facility* are

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R1 General Residential zone - Permitted without consent

*Environmental protection works* should require consent and so should be moved into the appropriate section. Otherwise anybody could carry out works under the guise of "environmental protection" as a subterfuge for filling, excavation, clearing, etc.

R1 General Residential zone - Permitted without consent

Recommend that the following be permitted without consent in this residential zone:

*Bed and breakfast accommodation and home occupation (sex services)* [If you make consent required for this use then the reality is that applications will be refused on moral/social grounds. If you just let it happen without consent then the reality is that it will be discreet and not offensive as most people won't know about it]

R1 General Residential zone – Permitted with consent

*Response*

not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

The draft plan has been amended by making *boat launching ramp, boat shed, jetty, mooring, and water recreation structure* permitted with consent, either individually or as part of a group term, in the RU5 zone. These uses are permitted with consent in the W1 and/or W2 zones and the RU5 zoned land that adjoins W1 and/or W2 zoned land. Given that the above mentioned uses typically require some form of connection or access between the waterway and adjoining land, and are generally of a small scale it is considered appropriate that these uses be permitted with consent in the RU5 zone.

*Advertising structure and signage* are not permitted with consent as doing so could permit signage on properties that are not related to the use of the land. *Building identification signs and business identification signs* have been made permitted with consent instead as these must be related to the use of the land.

No amendment has been made to the draft plan.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. Given the nature of these works it is considered reasonable that these works be permitted without consent.

The R1 zone is derived from the Multi Unit (hatched) zone of HLEP 1989.

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *bed and breakfast accommodation* has been included in the permitted without consent section of the R1 zone.

*Home occupation (sex services)* are not permitted because they have no equivalent in HLEP 1989 and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

*Bed and breakfast accommodation, environmental protection works and home occupation* are permitted without consent.

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In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the "permitted with consent" they would be prohibited within this residential zone as it is currently written:

*Affordable housing, backpacker's accommodation, bed & breakfast accommodation, building identification sign, clearing native vegetation, demolish, drainage, dual occupancy, dwelling, earthworks, emergency services facility, entertainment facility, environmental protection works, excavation, exhibition village, fill, filming, health care professional, health consulting rooms, health services facility, home business, home occupation, hospital, information and education facility, medical centre, moveable dwelling, office premises, parking space, private open space, public reserve, rainwater tank, research station, residential care facility, school, sewage reticulation system, sewage treatment plant, sewerage system, signage, spa pool, swimming pool, telecommunications facility, water recycling facility, water supply system.*

Query why the following land uses are "permitted with consent"?

*Animal boarding and training establishments, helipads, passenger transport facilities, public administration buildings, recreation facilities (indoor), recreation facilities (outdoor), registered club, shop top housing.*

*Response*

*Backpacker's accommodation, dual occupancy, dwelling, and school* are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.

*Affordable housing, clearing native vegetation, demolish, drainage, earthworks, emergency services facility, excavation, fill, filming, health care professional, health consulting rooms, health services facility, hospital, medical centre, parking space, private open space, public reserve, rainwater tank, residential care facility, spa pool, swimming pool, and telecommunications facility* are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.

*Entertainment facility, exhibition village, home business, information and education facility, moveable dwelling, office premises, research station, sewage reticulation system, sewage treatment plant, sewerage system, water recycling facility, and water supply system* are not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

*Signage* is not permitted with consent as doing so could permit signage on properties that are not related to the use of the land. *Building identification signs* and *business identification signs* have been made permitted with consent instead as these must be related to the use of the land.

The HLEP 1989 equivalent to *animal boarding and training establishments, public administration buildings, recreation facilities (indoor), recreation facilities (outdoor), and registered club* are permitted in the multi unit Housing (hatched) zone and hence have been made permitted with consent as per the conversion intent of the draft plan.

Whilst the HLEP 1989 equivalent to *helipads* and *passenger transport facilities* are permitted with consent in the Multi Unit Housing (hatched) zone, it is considered that these uses are inappropriate in the R1 zone and hence have been deleted from the permitted with consent section of R1 zone.

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*Submission*

R2 Low Density Residential zone – Permitted without consent

*Environmental protection works* should require consent and so should be moved into the appropriate section. Otherwise anybody could carry out works under the guise of “environmental protection” as a subterfuge for filling, excavation, clearing, etc.

R2 Low Density Residential zone – Permitted without consent

Recommend that the following additional uses be permitted without consent in this residential zone:

*Bed and breakfast accommodation and home occupation (sex services).*

R2 Low Density Residential zone – Permitted with consent

In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the “permitted with consent” they would be prohibited within this residential zone as it is currently written:

*Advertising structure, affordable housing, attached dwelling, backpacker’s accommodation, bed & breakfast accommodation, biosolid waste application, biosolids treatment facility, building identification sign, car park, clearing native vegetation, demolish, drainage, dual occupancy, dwelling, earthworks, electricity generating works, emergency services facility, environmental protection works, excavation, fill, filming, function centre, health care professional, health services facility, home business, home occupation, horticulture, hostel, information and education facility, market, medical centre, mixed use development, moveable dwelling, natural water-based aquaculture, parking space, private open space, public utility undertaking, public reserve, rainwater tank, recreation area, research station, residential accommodation, residential care*

*Response*

*Shop top housing* is a mandated permissible land use that must be adopted without amendment or alteration.

No amendment has been made to the draft plan.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. Given the nature of these works it is considered reasonable that these works be permitted without consent.

The R2 zone is derived from the Housing zone of HLEP 1989.

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *bed and breakfast accommodation* has been included in the permitted without consent section of the R2 zone.

*Home occupation (sex services)* are not permitted because they have no equivalent in HLEP 1989 and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

*Bed and breakfast accommodation, environmental protection works and home occupation* are permitted without consent.

*Backpacker’s accommodation, dwelling, recreation area, school, and wetland (artificial)* are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.

*Affordable housing, car park, clearing native vegetation, demolish, drainage, earthworks, electricity generating works, emergency services facility, excavation, fill, filming, health care professional, health services facility, mixed use development, natural water-based aquaculture, parking space, private open space, public utility undertaking, public reserve, rainwater tank, residential care facility, seniors housing, spa pool, swimming pool, tank-based aquaculture, telecommunications facility, and wetland (natural)* are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.

*Attached dwelling, biosolid waste application, biosolids treatment facility, dual occupancy*

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*facility, school, secondary dwelling, semi-detached dwelling, seniors housing, sewage reticulation system, sewage treatment plant, sewerage system, signage, spa pool, swimming pool, tank-based aquaculture, telecommunications facility, viticulture, water recreation structure, water recycling facility, water reticulation system, water storage facility, water supply system, water treatment facility, wetland.*

Query why the following land uses are “permitted with consent”?

*Animal boarding and training establishments, extensive agriculture, farm buildings, helipads, passenger transport facilities, public administration buildings, recreation facilities (indoor), recreation facilities (outdoor), registered club.*

R3 Medium Density Residential zone – Permitted without consent

*Environmental protection works* should require consent and so should be moved into the appropriate section. Otherwise anybody could carry out works under the guise of “environmental protection” as a subterfuge for filling, excavation, clearing, etc.

R3 Medium Density Residential zone – Permitted without consent

Recommend that the following additional uses be permitted without consent in this medium residential zone:

*Bed and breakfast accommodation and home occupation (sex services)*

*Response*

*function centre, home business, horticulture, hostel, information and education facility, market, medical centre, moveable dwelling, research station, residential accommodation, secondary dwelling, semi-detached dwelling, sewage reticulation system, sewage treatment plant, sewerage system, viticulture, water recreation structure, water recycling facility, water reticulation system, water storage facility, water supply system, and water treatment facility* are not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

*Advertising structure and signage* are not permitted with consent as doing so could permit signage on properties that are not related to the use of the land. *Building identification signs and business identification signs* have been made permitted with consent instead as these must be related to the use of the land.

The HLEP 1989 equivalent to *animal boarding and training establishments, extensive agriculture, farm buildings, public administration buildings, recreation facilities (indoor), recreation facilities (outdoor), registered club* are permitted in the housing zone and hence have been made permitted with consent as per the conversion intent of the draft plan.

Whilst the HLEP 1989 equivalent to *helipads and passenger transport facilities* are permitted with consent in the Housing zone, it is considered that these uses are inappropriate in the R2 zone and hence have been deleted from the permitted with consent section of R2 zone.

No amendment has been made to the draft plan.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. Given the nature of these works it is considered reasonable that these works be permitted without consent.

The R3 zone is derived from the Multi Unit Housing zone of HLEP 1989.

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *bed and breakfast*

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R3 Medium Density Residential zone – Permitted with consent

In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the “permitted with consent” they would be prohibited within this residential zone as it is currently written:

*Advertising structure, affordable housing, backpacker’s accommodation, building identification sign, car park, clearing native vegetation, demolish, drainage, dwelling, earthworks, electricity generating works, emergency services facility, environmental protection works, excavation, fill, filming, health care professional, health consulting rooms, health services facility, home business, hospital, information and education facility, medical centre, mixed use development, moveable dwelling, parking space, private open space, public utility undertaking, public reserve, rainwater tank, research station, residential accommodation, residential care facility, residential flat building, school, serviced apartment, sewage reticulation system, sewage treatment plant, sewerage system, signage, spa pool, swimming pool, telecommunications facility, timber and building supplies, water reticulation system, water storage facility, water supply system.*

Query why the following land uses are “permitted with consent”?

*Animal boarding and training establishments, helpads, passenger transport facilities, public administration buildings, recreation facilities (indoor), recreation facilities (outdoor), registered club.*

*Response*

*accommodation* has been included in the permitted without consent section of the R2 zone.

*Home occupation (sex services)* are not permitted because they have no equivalent in HLEP 1989 and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

*Environmental protection works* are permitted without consent.

*Backpacker’s accommodation, dwelling, school, and serviced apartment* are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.

*Affordable housing, car park, clearing native vegetation, demolish, drainage, earthworks, electricity generating works, emergency services facility, excavation, fill, filming, health care professional, health consulting rooms, health services facility, hospital, medical centre, mixed use development, moveable dwelling, parking space, private open space, public utility undertaking, public reserve, rainwater tank, residential care facility, spa pool, swimming pool, and telecommunications facility* are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.

*Home business, information and education facility, research station, residential accommodation, residential flat building, sewage reticulation system, sewage treatment plant, sewerage system, timber and building supplies, water reticulation system, water storage facility, and water supply system* are not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

*Advertising structure and signage* are not permitted with consent as doing so could permit signage on properties that are not related to the use of the land. *Building identification signs* and *business identification signs* have been made permitted with consent instead as these must be related to the use of the land.

The HLEP 1989 equivalent to *animal boarding and training establishments, public administration buildings, recreation facilities (indoor), recreation*

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R5 Large Lot Residential zone – Permitted without consent

*Environmental protection works* should require consent and so should be moved into the appropriate section. Otherwise anybody could carry out works under the guise of “environmental protection” as a subterfuge for filling, excavation, clearing, etc.

R5 Large Lot Residential zone – Permitted without consent

Recommend that the following additional uses be permitted without consent in this large lot residential zone:

*Bed and breakfast accommodation and home occupation (sex services).*

R5 Large Lot Residential zone – Permitted with consent.

In addition to the land uses indicated there appears to be a number of land uses that are not included within this section and that should be. For example unless the following are included within the “permitted with consent” they would be prohibited within this large lot residential zone as it is currently written:

*Advertising structure, attached dwelling, backpacker’s accommodation, biosolid waste application, biosolids treatment facility, boarding house, building identification sign, canal estate development, car park, clearing native vegetation, demolish, drainage, dual occupancy, dwelling,*

*Response*

*facilities (outdoor), registered club* are permitted in the Multi Unit Housing zone and hence have been made permitted with consent as per the conversion intent of the draft plan.

Whilst the HLEP 1989 equivalent to *helipads* and *passenger transport facilities* are permitted with consent in the Multi Unit Housing zone, it is considered that these uses are inappropriate in the R3 zone and hence have been deleted from the permitted with consent section of R3 zone. No amendment has been made to the draft plan.

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. Given the nature of these works it is considered reasonable that these works be permitted without consent.

The R5 zone is a combination of the Rural Housing, Mixed Agriculture, Rural Living and 7(d) Environmental Protection (Scenic) zones of HLEP 1989 with most of the permitted and prohibited land uses being derived from the Rural Housing zone.

*Bed and breakfast accommodation* up to four bedrooms is permitted without consent in HLEP 1989. Clause 5.4 of the draft plan restricts *bed and breakfast accommodation* to four bedrooms. To ensure consistency with the conversion intent of the draft plan, *bed and breakfast accommodation* has been included in the permitted without consent section of the R5 zone.

*Home occupation (sex services)* are not permitted because they have no equivalent in HLEP 1989 and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.

*Environmental protection works* are permitted without consent.

*Backpacker’s accommodation, Dwelling, School, Waterbody (artificial) and Wetland (artificial)* are permitted with consent either individually or because they are a subset of a group term which is permitted with consent.

*Affordable housing, car park, clearing native vegetation, demolish, drainage, earthworks, electricity generating works, emergency services facility, excavation, fill, filming, health care professional, health consulting rooms, health services facility, hospital, medical centre, mixed use development, moveable dwelling, parking space, private open space, public utility*



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*Submission*

*earthworks, electricity generating works, emergency services facility, environmental protection works, excavation, fill, filming, group home, health care professional, health consulting rooms, health services facility, home business, horticulture, hostel, hospital, information and education facility, medical centre, mixed use development, moveable dwelling, neighbourhood shop, parking space, private open space, public utility undertaking, public reserve, rainwater tank, residential accommodation, residential care facility, school, secondary dwelling, semi-detached dwelling, seniors housing, sewage reticulation system, sewerage system, spa pool, swimming pool, telecommunications facility, viticulture, water recreation structure, water reticulation system, water storage facility, water supply system, waterbody, wetland.*

*Response*

*undertaking, public reserve, rainwater tank, spa pool, swimming pool, telecommunications facility, waterbody (natural) and wetland (natural) are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.*

*Attached dwelling, biosolid waste application, biosolids treatment facility, boarding house, canal estate development, dual occupancy, group home, home business, horticulture, hostel, information and education facility, neighbourhood shop, residential accommodation, residential care facility, secondary dwelling, semi-detached dwelling, seniors housing, sewage reticulation system, sewerage system, viticulture, water recreation structure, water reticulation system, water storage facility, and water supply system are not permitted with consent because they either have no equivalent in HLEP 1989 or the equivalent in HLEP 1989 is prohibited in the zone and therefore allowing these uses would not be consistent with the conversion intent of the draft plan.*

*Advertising structure and signage are not permitted with consent as doing so could permit signage on properties that are not related to the use of the land. Building identification signs and business identification signs have been made permitted with consent instead as these must be related to the use of the land.*

No amendment has been made to the draft plan.

B1 Neighbourhood Centre zone – Permitted without consent

*Environmental protection works* should require consent and so should be moved into the appropriate section. Otherwise anybody could carry out works under the guise of “environmental protection” as a subterfuge for filling, excavation, clearing, etc.

B1 Neighbourhood Centre zone – Permitted with consent

*Environmental protection works* are works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation. Given the nature of these works it is considered reasonable that these works be permitted without consent.

The B1 zone is derived from the 3(a) Business General zone of HLEP 1989.

The table should be put into alphabetical order.

The table has been placed in alphabetical order.

Query why the following land uses are “permitted with consent”?

*Helipads, heliports, home industries.*

The equivalent HLEP 1989 to *helipads, heliports, home industries* are permitted in the 3(a) Business General zone and hence have been made permitted with consent as per the conversion intent of the draft plan.

B1 Neighbourhood Centre zone – Permitted with consent

This section has been drafted as per instruction from DoPI. In finalising the draft plan, DoPI may remove some or all of the non-mandatory land uses.

The “permitted with consent” column only needs to say “any other development not specified in

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Item 2 above and Item 4 below". No other permitted land uses are required to be stated.

Query why the following are "prohibited"?

*Home occupation (sex services), restricted premises, sewerage systems, sex service premises, water supply systems.*

*Response*

*Home occupation (sex services), restricted premises, sex service premises* are prohibited because they are considered to be inappropriate land uses in the zone.

*Sewerage system* is a group term consisting of *biosolids treatment facility, sewage reticulation system, sewage treatment plant and water recycling facility*. With the exception of *sewage reticulation system* it is considered that these uses are inappropriate in the B1 zone. The Land Use Table has been amended to permit *sewage reticulation system* whilst retaining the prohibition of *biosolids treatment facility, sewage treatment plant and water recycling facility*. For consistency the Land Use Table for the B2, B5, B6 and IN2 zones has been similarly amended.

*Water supply system* is a group term consisting of *water reticulation system, water storage facility and water treatment facility*. It is considered that these uses are appropriate in the B1 and B2 zones. The Land Use Table has been amended to permit with consent *water supply systems* in the B1 and B2 zones.

B2 Local Centre zone – Permitted with consent

No amendment has been made to the draft plan.

The "permitted with consent" column only needs to say "any other development not specified in Item 2 above and Item 4 below". No other permitted land uses are required to be stated.  
B6 Enterprise Corridor zone – Permitted with consent

This section has been drafted as per instruction from DoPI. In finalising the draft plan DoPI may remove some or all of the non-mandatory land uses.

The B6 zone is derived from the 3(b) Business Special zone of HLEP 1989.

The "permitted with consent" column only needs to say "any other development not specified in Item 2 above and Item 4 below". No other permitted land uses are required to be stated.

This section has been drafted as per instruction from DoPI. In finalising the draft plan DoPI may remove some or all of the non-mandatory land uses.

Query why the following are "prohibited"?

*Backpackers accommodation, bed & breakfast accommodation, cellar door premises, farm stay accommodation, highway service centres, roadside stalls, sex service premises, sewerage systems.*

*Backpackers accommodation, bed and breakfast accommodation and farm stay accommodation* are prohibited due to instruction from DoPI.

*Cellar door premises* are prohibited because there is no vineyard or winery activity on the land zoned B6 and there is unlikely to be such activity in the future.

*Roadside stalls* are prohibited because *roadside stalls and farm gate sales outlets* in HELP 1989 are prohibited in the 3(b) zone and because there is agricultural activity on the land zoned B6 and there is unlikely to be such activity in the future.

*Highway service centres* are prohibited because this use must be located on or within immediate vicinity of a highway. The roads surrounding the B6 zone are not highways.

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IN1 General Industrial zone

The “permitted with consent” column only needs to say “any other development not specified in Item 2 above and Item 4 below”. No other permitted land uses are required to be stated.

Query why *bulky goods premises* would not be permissible within this zone. Clearly bulky goods are of a size and require loading/unloading that makes it cost prohibitive for them to locate within a business zone. If the draft LEP is gazetted as it is written then all of the existing bulky goods outlets in industrial zones will become non-conforming existing uses. Recommend that Council make bulky goods permissible with consent in all industrial zones.

*Sex service premises* are best located in an industrial zone and should be permissible with consent.

IN2 Light Industrial zone.

The “permitted with consent” column only needs to say “any other development not specified in Item 2 above and Item 4 below”. No other permitted land uses are required to be stated.

Query why *bulky goods premises* would not be permissible within this zone. Clearly bulky goods are of a size and require loading/unloading that makes it cost prohibitive for them to locate within a business zone. If the draft LEP is gazetted as it is written then all of the existing bulky goods outlets in industrial zones will become non-conforming existing uses. Recommend that Council make bulky goods permissible with consent in all industrial zones.

*Sex service premises* are best located in an industrial zone and should be permissible with consent.

RE1 Public Recreation zone - Permitted with consent

The following additional land uses should be “permissible with consent”.

*Boat launching ramp, car park, drainage,*

*Response*

*Sex service premises* are only permitted in the B2 Local Centre zone as per Council resolution of 11 December 2007.

*Sewerage systems*, see above discussion in B1 Neighbourhood Centre zone – Permitted with consent section. The Land Use Table has been amended accordingly.

This section has been drafted as per instruction from DoPI. In finalising the draft plan DoPI may remove some or all of the non-mandatory land uses.

The permissibility of *bulky goods premises* has been discussed in a previous section of this report.

*Sex service premises* are only permitted in the B2 Local Centre zone as per Council resolution of 11 December 2007.

This section has been drafted as per instruction from DoPI. In finalising the draft plan DoPI may remove some or all of the non-mandatory land uses.

The permissibility of *bulky goods premises* has been discussed in a previous section of this report.

*Sex service premises* are only permitted in the B2 Local Centre zone as per Council resolution of 11 December 2007.

The RE1 zone is derived from the 6(a) Open Space (Existing Recreation) and 6(b) Open Space (Proposed Recreation) zones of HLEP 1989.

*Boat launching ramp and jetty* are permissible because they are a subset of *water recreation*

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*earthworks, filming, jetty, market, public reserve, road, swimming pool.*

*Response*

*structures which are permissible with consent.*

*Road is permissible with consent.*

*Carpark, drainage, earthworks, filming, public reserve and swimming pool and are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.*

*Market is considered to be an appropriate land use in the RE1 zone and is similar to a carnival in HLEP 1989 which is permissible in the 6(a) and 6(b) zones. The Land Use Table has been amended to include markets as permitted with consent.*

*The RE2 zone is derived from the 6(c) Open Space (Private Recreation) zones of HLEP 1989.*

*Boat launching ramp and jetty are permissible because they are a subset of water recreation structures which are permissible with consent.*

*Road is permissible with consent.*

*Carpark, drainage, earthworks, filming, and swimming pool and are either dealt with by another clause in the draft plan, by one or more SEPPs, or DoPI have advised that these uses explanatory terms or are ancillary to another use and therefore are not to be included in the Land Use Table.*

*Market is considered to be an appropriate land use in the RE1 zone and is similar to a carnival in HLEP 1989 which is permissible in the 6(c) zones. The Land Use Table has been amended to include markets as permitted with consent. No amendment has been made to the draft plan.*

RE2 Private Recreation RE2 zone

The following additional land uses should be permissible with consent.

*Boat launching ramp, car park, drainage, earthworks, filming, jetty, market, road, swimming pool.*

*This is a mandated provision that cannot be amended or altered.*

*No amendment has been made to the draft plan.*

*The wording of the subclause is considered to be satisfactory.*

*The subclause has been amended accordingly. This amendment is consistent with the wording of subclauses (f) and (h).*

*No amendment has been made to the draft plan.*

*This is a mandated provision that cannot be amended or altered.*

E2 Environmental Conservation E2 zone

There is no need to identify prohibited land uses in column 4. All that is needed is "any other development not specified in item 2 or 3". Clause 4.3(1)(a)

Suggest that the word "protect" be altered to "control" or perhaps "reasonably protect".

Clause 4.3(1)(c)

Suggest that the word "appropriate" be inserted between "allow" and "sunlight".

Clause 4.6(4)(b)

The way this is written it is not clear whether an applicant applies for the Director's concurrence

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and, if forthcoming, makes the application to Council or whether a DA is made and Council refers it to the Director prior to its determination. One of the difficulties as an applicant is that in the past if an officer doesn't like a proposal it is either not referred to the Director (and rejected by the officer) or if referred it contains the officer's view rather than the Council's view (by resolution). Recommend that if a DA is lodged that requires concurrence that if the officer doesn't support the proposal then it is automatically referred to Council for decision prior to requesting concurrence. This way it is above board without any avenue for criticism.  
Clause 4.6(6)(b)

This clause is compulsory however recommend that Council request an alteration to it on the following grounds:

Why should the concurrence line be drawn at 90%? Why not 89% or 91%? Or for that matter why not some other percentage? The reason is that there may well be a subdivision where a lesser lot size is appropriate, meets all environmental objectives and in the circumstances of the case is perfectly acceptable. The original intent of SEPP1 was not to specify a numerical requirement beyond which something was either ok or not ok. It was to judge each case on its merits and recognised that sometimes a very small numerical departure of a standard might not be ok whereas sometimes a significant departure would be ok.  
Clause 5.3(1)

This sub-clause makes good sense however why restrict it by reference to any zone as has been done with sub-clause (3)?  
Clause 5.4(8)

75m<sup>2</sup> is too large for a *roadside stall*. Suggest it should be similar to the size of *home industries*, i.e. 50m<sup>2</sup>. It is evident that *roadside stalls* often sell produce and items not produced on site and are akin to a *shop*. The larger the permitted size then the greater potential there is for abuse.

Clause 6.1

The way this clause is written would permit private advertisements on land that is not associated with the land on which the tourist activity is located. If gazetted as written then there would be great pressures on any land that is prominent to display advertisements.

*Response*

The operation of this sub-clause will be governed by direction from DoPI.

No amendment has been made to the draft plan.

This is a mandated provision that cannot be amended or altered.

The respondent's comment will be forwarded onto DoPI.

No amendment has been made to the draft plan.

This is a mandated provision that cannot be amended or altered.

No amendment has been made to the draft plan.

*Roadside stalls* in the draft plan are akin to *farm gate sales outlets* in HLEP 1989.

The maximum area of a *farm gate sales outlet* in HLEP 1989 is 75m<sup>2</sup>.

The operation of a *roadside stall* can be controlled by way of its definition and conditions of consent.

In accordance with instruction from DoPI this clause has been removed from the draft plan.

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Clause 6.5

The words "urban release area" should be defined within the LEP and included within its Dictionary.

Clause 6.7(3)(a)

The word "significantly" should be inserted between "not" and "adversely" similar as has been done in sub-clause (b) below it.  
Schedule 1

This schedule should be critically looked at. The majority of these uses have either taken place or have been subsumed by another use. Why not just not make this schedule blank and have a clean start? The uses would then be governed by either current zones or existing uses.

Schedule 2

Insert "from" after "600mm" in sub-clause (3) of advertising requirements.

Schedule 4

It would be much easier to research and find properties if they were put into alphabetical street order regardless of their suburb.

"Schedule 5 Environmental heritage"

It would be much easier to research and find properties if they were put into alphabetical street order regardless of their suburb.

Definitions

*Animal boarding or training establishments* excludes "horses" but includes "riding schools". Is this for riding of donkeys, emus etc? What clause or definition covers horses? Or is to mean that if horses are kept (other than for agistment) it is caught by the definition and that horse agistment is in fact *agriculture*?

*Extensive agriculture* says that it is for "commercial purposes". What about private purposes or hobby farmers etc where the same activity might be carried out but not for profit?

*Response*

In accordance with instruction from DoPI this clause has been replaced with a standardised model local provision for "Essential services".

No amendment has been made to the draft plan.

This clause is a standardised model local provision.

The schedule has been amended by removing some additional permitted uses which are permissible in the respective zone of the property. Having a blank schedule would have the effect of prohibiting the uses on the subject properties. In the cases where development has occurred this will create the opportunity for the respective properties to be used for prohibited uses by way of the "existing use" provisions of the EPA Act and Regulations. This would not be consistent with the conversion intent of the draft plan. The draft plan has been amended accordingly.

No amendment has been made to the draft plan.

The Standard Instrument does not provide direction on how this schedule is to be presented in terms of ordering. Other Council's have presented this schedule by way of suburb. DoPI has not objected to the ordering of the list in the draft plan. The final presentation of the list will be a matter for DoPI and Parliamentary Counsel and it is expected the list will be reordered to be presented in alphabetical order according to suburb and then by street name and number within each such suburb.

No amendment has been made to the draft plan.

The Standard Instrument states that schedule be presented in alphabetical order according to suburb or locality name and then by street name within each such suburb or locality.

No amendment has been made to the draft plan.

These definitions are mandated provisions that cannot be amended or altered.

The agistment of horses for commercial purposes would fall within the definition of *extensive agriculture*. Agisting horses is a different activity to that of a riding school.

If the activities mentioned in the *extensive agriculture* definition are for private, hobby, not for profit purposes then they would not fall within the definition of *extensive agriculture*. It is

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### *Submission*

*Ground level* - should not this include an 'appointed day' provision?

### Maps

The draft plan was not to make any significant changes to current planning instrument provisions but, as an example, the zone maps rezone many dams and waterways as an environmental zone whereas no such zone or restriction of the particular properties currently exists?

If alterations to zones can take place then Council should look critically at all rezoning submissions that it has or will have as a result of draft plan exhibition. Some might be appropriate for inclusion if the proper analysis is undertaken.

### *Response*

understood that DoPI view these types of activities as not requiring consent or a definition.

The respondent's comment regarding an 'appointed day' provision will be forwarded onto DoPI.

The E2 Environmental Conservation zone and rezoning submissions has been examined and discussed earlier in this report.

## **Amendments to Draft Plan as a result of changes to Standard Instrument and Addition DoPI Instructions**

### *Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2010*

Amendments to the Standard Instrument were gazetted on 30 April 2010. These amendments relate to various administrative matters; mandatory model clauses relating to demolition and the temporary use of land; the removal of *canal estate development* from the W1 Natural Waterways and W2 Recreational Waterways zones; minor amendments to Clause 3.1 Exempt development; mandated provisions relating to Clause 5.3 Development near zone boundaries; and minor amendments to Schedule 2 Exempt development, Schedule 3 Complying development and some definitions.

These amendments have been incorporated into the draft plan.

### *Letter from DoPI dated 22 December 2010*

This letter followed a meeting with Council and DoPI staff regarding the draft plan. DoPI advice was as follows:

- The Council added exclusions in Clause 3.3 Environmentally sensitive land be reviewed to ensure they are not addressed under the *Environmental Planning and Assessment Act 1979* of the Exempt and Complying Development Codes SEPP.
- Clause 6.1 Tourism promotion in the Hawkesbury appears to be inconsistent with the Direction of Clause 2.1 of the Standard Instrument Order, in that it creates a subzone (a subzone is where a provision seeks to make development permissible that would otherwise be prohibited by the zoning of the land, or visa versa). Furthermore, the permissibility of *advertisements* is addressed via the land use table in the draft plan, and under SEPP 64 and the Infrastructure SEPP. Therefore it is not considered necessary to include this clause in the draft plan and Council should consider it's removal from the draft plan.
- The draft plan contains two local provisions for Pitt Town, one relating to heritage and one relating to subdivision and regional transport infrastructure. These clauses may require further review prior to finalisation of the plan to ensure consistency with current policy relating to infrastructure arrangements, and also to ensure the clauses are consistent with mandated clauses in the draft plan (such as clause 5.10 Heritage conservation).

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- In terms of “Schedule 1 Additional permitted uses”, Council should consider mapping the Windsor Downs properties and referring to the map in Schedule 1.

As a result of this advice the exclusions in Clause 3.3 have been re-considered and the draft plan amended accordingly, Clause 6.1 has been deleted and an Additional Permitted Land Uses Map prepared for the Windsor Downs area. DoPI’s advise regarding Pitt Town is noted and no action is required from Council at this stage.

DoPI has also provided general comments and directions regarding the form and content of the plan which have been included in the draft plan. These matters include:

- removing certain landuses from the Land Use table because they are dealt with by various SEPPs or a group term
- removing certain provisions from Schedule 2 Exempt development and Schedule 3 Complying development because these are dealt with by *SEPP (Exempt and Complying Development Codes) 2008* or are not development for the purposes of the EP & A Act
- tidying up the land use table with respect to the use of “group terms” and associated “individual terms’
- omission or amendment to certain zone objectives because they are dealt with by other objectives, are vague, or are matters for consideration as part of assessing a development application
- amendment to Clause 4.1B(5) to remove conflict with Clause 2.6(2)
- deletion of “Zone SP2 Infrastructure and marked “Drainage”” from Clause 5.1A as no such land is shown on the Land Reservation Acquisition Map
- inserting or amending certain model clauses
- removal of vague or subjective terms
- minor corrections throughout the draft plan

DoPI have also advised that Schedule 3 Complying development Part 2 Complying development certificate conditions will need to be amended in accordance with the provisions of *SEPP (Exempt and Complying Development Codes) 2008*. This matter will be dealt with by DoPI in the finalisation of the draft plan for gazettal.

*Standard Instrument (Local Environmental Plans) Amendment Order 2011*

These amendments to the Standard Instrument were gazetted on 25 February 2011.

Due to the recent nature of these amendments relative to the preparation of this report and amended draft plan, the amendments have not been incorporated into the draft plan attached to this report. These amendments are mandatory and will be included in the draft plan by DoPI, in consultation with Council staff, prior to the plan’s gazettal.

### **Other amendments to the draft plan**

The following amendments have been made to the draft plan.

Written instrument amendments:

- Correction to various typographical errors.



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- Re-ordering of some land uses in the Land Use Table so that they appear in alphabetical order.
- RU2 Rural Landscape zone “Permitted with Consent” land uses - deletion of *tourist and visitor accommodation*. The permitted and prohibited land uses of the RU2 zone is based on those of the Environmental Protection - Agricultural Protection (Scenic) zone (EP-AP) of HLEP 1989. In the EP - AP zone *tourist facilities* are prohibited. The draft plan as exhibited incorrectly included *tourist and visitor accommodation* in the permitted without consent section of the RU2 zone. This error has been corrected.
- Temporary use of land clause - increase the number of days a temporary use may occur from 14 days to 28 days. This is a new provision for the Hawkesbury as there is no equivalent in the HLEP 1989. A review of other Council’s Standard Instrument LEPs show that most councils allow for 28 days to 52 days. The increase in the number of days to 28 will provide for greater consistency with other Council’s and increased opportunity for this clause to be used.
- Inclusion of building identification signs as “Permitted with consent” in the E3 Environmental Management and E4 Environmental Living zones. This has been done to ensure consistency with other zones.
- Inclusion of bed and breakfast accommodation as “Permitted without consent” in the R5 Large Lot Residential, B1 Neighbourhood Centre, B2 Local Centre, E3 Environmental Management and E4 Environmental Living zones. This has been done to ensure consistency with other zones and conversion intent of the draft plan.
- Inclusion of boat shed, charter and tourism boating facility, mooring as “Permitted with consent” in the RE1 Public Recreation and RE2 Private Recreation zones. This has been done to ensure consistency with other zones that adjoin the W1 Natural Waterways and/or W2 Recreational Waterways.
- Inclusion of water recreation structure, boat shed, charter and tourism boating facility, mooring as “Permitted with consent” in the E4 Environmental Living zone. This has been done to ensure consistency with other zones that adjoin the W1 Natural Waterways and/or W2 Recreational Waterways.
- Deletion of home based child care centres from the RE1 Public Recreation and RE2 Private Recreation zones as dwellings are prohibited within these zones.
- Inclusion of definition of environmental constraint area in Clause 4.1C(2).
- “Schedule 1 Additional permitted uses” - inclusion of community facilities as a permissible use on land at Pitt Town as shown on the Additional Permitted Uses Map. This is to ensure that in the area proposed for a community facility as part of the DoPI issued Part 3A approval for the Pitt Town Residential Precinct will be permissible with consent in the location shown.
- Schedule 2 - change “Advertisements - signs behind the glass line of a shop window” to “Advertisements - shop window signs”. Requiring signs to be behind the glass line is considered to be too restrictive in that it would not allow for signs to be painted or affixed to the street front side of a glass shop front.
- Schedule 5 Environmental heritage
  - Change of significance of McQuade Park Lot 1 DP 556829, 361 George Street, Windsor and Lot 1 DP 995355, 41 George Street, Windsor from “Local” to “State” as a result of the NSW Government’s listing of these properties on the State Heritage Register in Government Gazettes 14 January 2011 and 4 February 2011.
  - Update of various property descriptions, addresses and suburbs and the re-ordering of some listings. The updating has been undertaken to ensure that the listings are consistent with

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Council's property information and mapping systems and because since the preparation of the draft plan some properties have been subdivided or had their legal description changed. In some cases the Heritage Map has also been updated.

- Deletion of Lot 1 DP 543262, 150 Hermitage Road, Kurrajong Heights. The building subject to the heritage listing is not on this property. The building was on a neighbouring property (244 Hermitage Road) and was demolished in the late 1990s. As a result the Heritage Map has also been amended.

Map amendments:

- Rezoning of Lot 79 DP 751632, 2192 Upper Colo Road, Upper Colo and part of Colo River to E1 National Parks and Nature Reserves. This is due to this land being made part of the Wollombi National Park by way of notice in Government Gazette of 24 December 2010.
- Increase in minimum lot size from 2ha to 10ha on land zoned RU5 Village at the Del Rio Resort, 77B, 77C and 77D Chaseling Road North, Webbs Creek. This amendment is required to maintain the current prohibition of subdivision in Rural Village zone of HLEP 1989. The land owner's planning consultant has been advised of this amendment and no objection has been raised.
- Minor topological corrections such as aligning zone boundaries with property boundaries.

### Public Hearing Report

The draft plan proposes to classify certain Council owned land as "operational". These lands are currently or intended for use as operational activities including sewer pumping stations and car parks.

In accordance with the provisions of the *Local Government Act 1993* (LG Act) and the EP & A Act a Public Hearing regarding the proposed reclassifications was held on 22 July 2010 at the Council Chambers. Notices regarding the public hearing were published on 17 and 24 June 2010.

The Public Hearing was chaired by Mr Vince Hardy of cityscapeplanning+projects with Council staff in attendance.

No members of the public attended the Public Hearing and no written submissions were received.

Mr Hardy has provided Council with a report regarding the Public Hearing and this report is attached. Mr Hardy concludes that Council's proposal to classify or reclassify the subject lands to "operational land" is in the public interest.

The draft plan as exhibited at Schedule 4 includes Lot 2 DP 827148, 820 Richmond Road, Richmond. This land is privately owned and therefore has been removed from the draft plan.

### Hawkesbury Development Control Plan 2002

As a result of the draft plan, amendments will need to be made to the Hawkesbury Development Control Plan 2002 (DCP). These amendments are currently being prepared and it is expected that a revised draft DCP will be reported to Council shortly. The draft DCP will need to be publicly exhibited and then reported to Council for adoption. At present it is hoped that this can be undertaken whilst DoPI are finalising the draft plan and that the new DCP will be adopted by Council at or about the same time as gazettal of the draft plan.

### Finalisation and Gazettal of Draft Plan

The draft plan is required to be forwarded to DoPI for finalisation and gazettal. In preparing the draft plan for gazettal, DoPI will incorporate the amendments required by *Standard Instrument (Local Environmental Plans) Amendment Order 2011*, carryout an assessment of the draft plan with respect to DoPI policies and directions, consider submissions received by Council, and seek advice from Parliamentary Counsel

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regarding the legality of the draft plan. This will result in further amendments to the draft plan and in some cases DoPI may seek Council's opinion as to proposed amendments. In order to progress the gazettal of the draft plan in a timely and efficient manner, and given that the amendments required will be mandatory, or consequential to those mandatory changes, it is recommended that Council provide the General Manager with delegated authority to approve amendments to the draft plan if the need arises.

### Conformance to Community Strategic Plan

The proposal is consistent with the Shaping Our Future Together Direction statements;

- A balanced set of decisions that integrate jobs, housing, infrastructure, heritage, and environment that incorporates sustainability principles.
- Have constructive and productive partnerships with residents, community groups and institutions

The Local Environmental Plan is the primary planning document for a Local Government Area. As such it, where possible, will be an important part of the suite of tools used to assist in the implementation of the Directions and Strategies contained in the Community Strategic Plan. Should the Directions and Strategies in the Community Strategic Plan change in the future, it will be possible to incorporate relevant changes into the LEP.

### Financial Implications

The preparation of the draft plan has been partly funded by a grant provided by DoPI under the NSW Planning Reform Fund. All the work undertaken for this project has been within past and current budget allocations.

### Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the *Local Government Act 1993*, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

### RECOMMENDATION:

That the:

1. Draft plan, now known as Hawkesbury Local Environmental Plan 2011, attached to this report be adopted and forwarded to the Department of Planning and Infrastructure for finalisation and gazettal.
2. General Manager be given delegated authority under the provisions of Section 377 of the Local Government Act to authorise Department of Planning and Infrastructure required amendments, and other consequential amendments, to the draft plan if the need arises.

### ATTACHMENTS:

- AT - 1 Draft Hawkesbury Local Environmental Plan 2011 - Written Instrument - (*Distributed Under Separate Cover*)
- AT - 2 Draft Hawkesbury Local Environmental Plan 2011 - Maps - (*Distributed Under Separate Cover*)
- AT - 3 Proposed Reclassification of Various Public Lands Public Hearing Report Submitted to Hawkesbury City Council, 26 July 2010

**AT - 3 Proposed Reclassification of Various Public Lands Public Hearing Report**

**Submitted to Hawkesbury City Council, 26 July 2010**

Public Hearing Report  
Various lands in Hawkesbury City Council

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**1.0 INTRODUCTION**

Hawkesbury City Council ("Council") has a proposal ("the proposal") to reclassify various land parcels, being "public land" within the meaning of the *Local Government Act 1993* (NSW), from "community land", within the meaning of that Act, to "operational land", again within the meaning of the *Local Government Act 1993*.

In accordance with the dual requirements of both the *Local Government Act 1993* and *Environmental Planning and Assessment Act 1979*, I was engaged to chair an independent public hearing held in relation to the proposed alteration of the classification of the subject lands.

This report seeks to document the events of that Public Hearing and make recommendations to Council with regard to the proposal.

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### 2.0 SUBJECT SITE

Lands subject to the Public Hearing includes sixty two (62) separate parcels, the locations of which are identified below:

- Windsor in Macquarie Street and George Street;
- Richmond in West Market Street, Windsor Street, Francis Street, Mussen Lane, and March Street;
- North Richmond in Riverview Street, Bells Line of Road, Grose Vale Road, and Elizabeth Street;
- McGraths Hill in Windsor Road;
- Windsor Downs in Burnside Grove and Nutwood Drive;
- Bligh Park in Peter Place;
- South Windsor in Berger Road; and,
- St Albans in St Albans Road.

A full list of each parcel is provided at Table 1.

Prior to the Public Hearing I undertook a site inspection of the relevant lands or reviewed site plans and aerial photos.

TABLE 1: LIST OF SITES SUBJECT TO PUBLIC HEARING

Site	Location		Classification	
	Street Address	Suburb	Current	Proposed
1	1672 St Albans Rd	St Albans	Community	Operational
2	22 Berger Rd	South Windsor	Community	Operational
3	11A Peter Pl	Bligh Park	Community	Operational
4	18 Nutwood Dr	Windsor Downs	Community	Operational
5	23 Burnside Grove	Windsor Downs	Community	Operational
6	254 Windsor Rd	Mulgrave	Community	Operational
7	5 Charles St	McGraths Hill	Community	Operational

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8	22 Elizabeth St	North Richmond	Operational	Operational
9	4 Riverview St	North Richmond	Community	Operational
10	2 Riverview St	North Richmond	Community	Operational
11	3 Grose Vale Rd	North Richmond	Community	Operational
12	5 Grose Vale Rd	North Richmond	Community	Operational
13	11 Grose Vale Rd	North Richmond	Community	Operational
14	9 Grose Vale Rd	North Richmond	Community	Operational
15	7 Grose Vale Rd	North Richmond	Community	Operational
16	3A Grose Vale Rd	North Richmond	Community	Operational
17	3B Grose Vale Rd	North Richmond	Community	Operational
18	31 Bells Line of Road	North Richmond	Community	Operational
19	33 Bells Line of Road	North Richmond	Operational	Operational
20	23 Bells Line of Road	North Richmond	Operational	Operational
21	22 Riverview St	North Richmond	Operational	Operational
22	20 Riverview St	North Richmond	Operational	Operational
23	24A Riverview St	North Richmond	Community	Operational
24	39A Bells Line of Road	North Richmond	Community	Operational
25	32A Riverview St	North Richmond	Community	Operational
26	47A Bells Line of Road	North Richmond	Community	Operational
27	49B Bells Line of Road	North Richmond	Community	Operational
28	10A Riverview St	North Richmond	Community	Operational
29	110 March St	Richmond	Operational	Operational
30	8 Mussen Lane	Richmond	Community	Operational
31	5 Mussen Lane	Richmond	Community	Operational
32	23 West Market St	Richmond	Operational	Operational
33	7 West Market St	Richmond	Community	Operational
34	255A Windsor St	Richmond	Community	Operational
35	257A Windsor St	Richmond	Community	Operational
36	124 Francis St	Richmond	Community	Operational
37	14D West Market St	Richmond	Community	Operational
38	128A Francis St	Richmond	Community	Operational
39	126 Francis St	Richmond	Community	Operational

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40	122 Francis St	Richmond	Community	Operational
41	7 West Market St	Richmond	Community	Operational
42	263A Windsor St	Richmond	Community	Operational
43	185A Windsor St	Richmond	Community	Operational
44	11 West Market St	Richmond	Community	Operational
45	11A West Market St	Richmond	Community	Operational
46	11B West Market St	Richmond	Community	Operational
47	11C West Market St	Richmond	Community	Operational
48	11D West Market St	Richmond	Community	Operational
49	11E West Market St	Richmond	Community	Operational
50	11F West Market St	Richmond	Community	Operational
51	11G West Market St	Richmond	Community	Operational
52	11H West Market St	Richmond	Community	Operational
53	11I West Market St	Richmond	Community	Operational
54	12 West Market St	Richmond	Operational	Operational
55	12A West Market St	Richmond	Community	Operational
56	12B West Market St	Richmond	Community	Operational
57	12C West Market St	Richmond	Community	Operational
58	12D West Market St	Richmond	Community	Operational
59	12E West Market St	Richmond	Community	Operational
60	12F West Market St	Richmond	Community	Operational
61	Lot 102-3 George St	Windsor	Operational	Operational
62	35 Macquarie St	Windsor	Community	Operational

### 3.0 CONTEXT

Pursuant to section 25 and 26 of the *Local Government Act 1993* the subject lands are currently variously classified either 'community land' or 'operational' land.

These classifications occurred in 1993 when broad classifications across the entire LGA were made as part of the introduction of the *Local Government Act 1993*.

At this time two errors were made in the broad classification process:

1. Certain lands that formed part of Council car parks were not correctly or completely described in the 1993 Council resolution
2. Inadvertently some lands were not identified in the broader classification process. By default these lands, irrespective of their current or intended use, are subsequently classified as 'community' land.

### 4.0 PROPOSED CLASSIFICATION

The Council now seeks to rectify these previous errors by classifying all identified lands 'operational' reflecting their existing and or proposed use.

### 5.0 STATUTORY SITUATION

By virtue of section 27 of the *Local Government Act, 1993* any reclassification of the subject land must proceed by way of a Local Environmental Plan made under the *Environmental Planning & Assessment Act, 1979*.



The relevant draft local environmental plan, was initially prepared as *Hawkesbury Draft Local Environmental Plan (Amendment 152)*. However, the Department of Planning have since requested that this Draft LEP be incorporated as part of the comprehensive draft planning instrument, *Draft Hawkesbury Local Environmental Plan (LEP) 2009*. This comprehensive draft plan has been publically exhibited for the period Friday 5 February 2010 to Monday 12 April 2010.

The effect of section 29 of the *Local Government Act, 1993*, is that Council must arrange a Public Hearing under section 68 of the *Environmental Planning & Assessment Act, 1979* in respect of its proposal to reclassify the subject land as operational land.

## 6.0 THE PUBLIC HEARING

The public hearing was convened at the Hawkesbury Council Chambers at 6.30 PM on the 22<sup>nd</sup> July 2010. A full list of meeting attendees is provided over page:

Vince Hardy (Chair)  
Matthew Owens (Hawkesbury City Council)  
Philip Pleffer (Hawkesbury City Council)

No members of the public attended the Public Hearing and no written submissions were received.

## 7.0 SUMMARY OF PROCEEDINGS

No members of the public attended the hearing and therefore no submissions were made with regard to the proposed reclassification.

## 8.0 COMMENT

In the case of the present proposal to reclassify the various land parcels, the following factors need to be kept in mind, which I have carefully weighed in the balance:

1. All subject lands are currently or intended for use as operational activities including sewer pumping station and car parks.
2. The lands are all currently zoned in a manner reflecting operational type uses
3. The classification process that occurred in 1993 has created uncertainty and ambiguity in the current and future use of those lands.
4. There is no public benefit in maintaining a *community land* classification on those lands that were classified as such by default in 1993.
5. Council's decision-making in respect of the subject matter has taken place in an openly transparent fashion in accordance with all relevantly applicable environmental planning legislation.

Given all these factors, I have come to the opinion that, on balance, Council's reclassification proposal is a suitable response for all of the subject lands.

## 9.0 CONCLUSION

On the material submitted to me at the public hearing, I formally conclude, for the reasons set out above, that, on balance, Council's proposal to classify or reclassify the subject land to "*operational land*" within the meaning of the *Local Government Act 1993* (NSW) is in the public interest.



Vince Hardy (BTP, MPIA, CPP)

Dated this 26<sup>th</sup> of July 2010

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**EXTRAORDINARY MEETING**

**Meeting Date: 7 June 2011**



extraordinary  
meeting

end of  
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paper

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