



Hawkesbury City Council

Attachment 1  
to  
item 038

Assessment Report - 9 Industry Road  
and 312 Windsor Road,  
Vineyard

date of meeting: 10 March 2020  
location: council chambers  
time: 6:30 p.m.



## PLANNING PROPOSAL INFORMATION

**File Number:** LEP001/19  
**Property Address:** 9 Industry Road and 312 Windsor Road, Vineyard  
**Applicant:** Hawkesbury City Council  
**Owner:** Hawkesbury City Council  
**Date Received:** 29 April 2019  
**Current Zone:** B5 Business Development  
**Site Area:** 3.097ha

**Key Issues:**

- ◆ Reclassification of Land
- ◆ Hawkesbury Local Planning Panel Advice

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## EXECUTIVE SUMMARY:

Council seeks to amend the *Hawkesbury Local Environmental Plan 2012* to:

- (a) Reclassify Lot 9 DP 1149340, 9 Industry Road, and Lot 13 DP 815849 and Lot 6 DP 777933, 312 Windsor Road, Vineyard from 'Community' land to 'Operational' land

The purpose of this report is to:

- Advise Council of the recommendation of the Hawkesbury Local Planning Panel in respect of this matter;
- Provide an assessment of the merits of the Planning Proposal; and
- Recommend that the Planning Proposal be forwarded to the Department of Planning, Industry and Environment for a 'Gateway Determination'.

In accordance with the Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the Planning Proposal was referred to the Hawkesbury Local Planning Panel for comment.

The Panel recommended that the Planning Proposal proceed for a 'Gateway' determination subject to meeting certain requirements as outlined in this report.

The report demonstrates that the Planning Proposal is considered to be consistent with relevant legislation and considerations including, the *Local Government Act 1993*, *Environmental Planning and Assessment Act 1979* and Practice Note PN16-001 - *Classification and reclassification of public land through a local environmental plan* in relation to the reclassification of the subject sites. In addition, the Planning Proposal is considered to be consistent with the aims, objectives and requirements of the relevant State, Regional and Local strategies/strategic plans, State Environmental Planning Policies and Section 9.1 Ministerial Directions.

The Officers report is divided into the following sections to assist in its explanation and consideration:

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## 1. BACKGROUND

### Reclassification of Land

The *Local Government Act 1993* requires that all Council-owned land be classified as either 'Community' or 'Operational' land. Under the provisions of the *Local Government Act 1993*, Community Land cannot be sold, exchanged or otherwise disposed. Once the land is reclassified to Operational, it will no longer be protected under the *Local Government Act 1993* from potential future sale or development. The change in classification from Community to Operational land will remove this restriction and allow Council to deal in the land on a commercial basis. This may include development, leasing or disposal. The reclassification does not commit council to the sale or development of the land, nor does it remove the land from Council's ownership or prevent the current use of the land from continuing.

The reclassification of Council land must be undertaken in accordance with the *Local Government Act 1993*, *Environmental Planning and Assessment Act 1979* and Practice Note PN16-001 - *Classification and reclassification of public land through a local environmental plan* issued by the Department of Planning and Environment (October 2016).

The mechanism to reclassify land by way of a planning proposal is to amend Schedule 4 of the *Hawkesbury Local Environmental Plan 2012* to identify the land as reclassified to Operational Land.

An independently facilitated public hearing is required to be held as part of the community consultation process for any planning proposal seeking to reclassify land from 'Community' to 'Operational'.

### Practice Note PN16-001 - Classification and reclassification of public land through a local environmental plan

Schedule 1 of Practice Note PN16-001 lists a number of matters that are to be addressed for Gateway consideration. The Planning Proposal has addressed these matters, which have been discussed further within this report. In particular, the Practice Note requires that a summary of council's interest in the land be provided, and that any rezoning of the land is consistent with an endorsed Plan of Management or Strategy. Table 1 below summarises Council's interests in the subject sites.

Legal Description	Street Frontage	Land Size m <sup>2</sup>	Date Acquired	Transfer No.	Price	Comments
9/1149340	9 Industry Road, Vineyard	12,270	22/10/2010	N/A	Dedicated to Council on Deposited Plan	Lot 9 DP1149340 was dedicated on Deposited Plan 1149340 as a public reserve by the developers GT Lingard Holdings Pty Ltd, Neil, Patricia and Alexander Schembri, Rabobi Pty Ltd, W & G Lambris & Sons Pty Ltd. The Certificate of Title was issued to Council on 22 October 2010.
13/815849	312 Windsor Road, Vineyard	3,646.3	26/11/1993	1867135	\$1.00	Lot 13 DP 815849 was acquired from Capital Commercial Pty Limited (formerly Chris Heyer Promotions Pty Limited) for \$1.00 by Transfer dated 26 November 1993 1867135. The Certificate of Title was issued to Council on 10 December 1993.
6/777933	312 Windsor Road, Vineyard	1,204	17/10/1988	N/A	Dedicated to Council on Deposited Plan	Lot 6 DP777933 was dedicated on Deposited Plan 777933 as a public reserve by the developers CR Enterprises Pty Limited. The Certificate of Title was issued to Council on 17 October 1988.

**Table 1: Summary of Council's Interests in the Subject Site**

Council's generic Plan of Management Park applies to 9 Industry Road and 312 Windsor Road, Vineyard. The public reserve status of the subject site will be retained. It is considered that the reclassification of the subject site, and continued use for advertising will not prevent the core objectives of the Plan of Management Park being met.

#### **Plan of Management Park**

*The core objectives of the Local Government Act 1993 in relation to land categorised as Park are as follows:*

- To encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and*
- To provide for passive recreational activities or pastimes and the casual playing of games, and*
- To improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.*

*These corporate goals and core objectives define the strategic framework under which management objectives have been developed. The implementation plan will refer to these management objectives from which performance targets can be set and the means of achieving and assessing these targets.*

#### **9 Industry Road and 312 Windsor Road, Vineyard**

At its Ordinary Meeting on 11 September 2018, Council considered a report seeking support for the reclassification of three parcels of land at 9 Industry Road and 312 Windsor Road, Vineyard from 'Community' land to 'Operational' land. The proposed reclassification of the land would allow Council to lease the existing advertising structures on the subject site.

When Council took ownership of the subject site, there was an advertising sign located on Lot 9 DP 1149340, 9 Industry Road, Vineyard which had been approved under DA0289/95. The owners of the sign, APN Outdoor, had an agreement with the previous owner of Lot 9 DP 1149340 to lease the area

where the sign is located. However, when Council took ownership of the subject site no agreement between Council and APN Outdoor was entered into.

Council has been approached by APN Outdoor and also neighbouring retailers to continue to utilise the space for advertising purposes. If Council were to reclassify the parcels of land it would create an opportunity to consider new advertising models, and hence an increased income stream for Council subject to necessary approvals.

Section 46 of the *Local Government Act 1993* deals with the leasing of 'Community' land and states that Council is not authorised to use public reserves for advertising structures regardless of the Plan of Management for the property.

To enable Council to enter into a lease agreement with APN Outdoor and other retailers, the subject site would need to be reclassified to 'Operational' land via a planning proposal.

At Council's Ordinary Meeting on 11 September 2018, Council supported the reclassification of the subject site and resolved:

- "1. *That Council lodge a Planning Proposal to reclassify the following properties from 'Community' land to 'Operational' land in accordance with the Local Government Act 1993.*
  - a) *Lot 9 in Deposited Plan 1149340*
  - b) *Lot 13 in Deposited Plan 815849*
  - c) *Lot 6 in Deposited Plan 777933*
2. *The Planning Proposal is prepared in accordance with the Environmental Planning and Assessment Act 1979 and the Department of Planning and Environments guidelines."*

## **2. SUBJECT SITE AND SURROUNDS**

The properties at 9 Industry Road and 312 Windsor Road, Vineyard comprise three parcels of land, including:

- (a) Lot 9 in Deposited Plan 1149340, 9 Industry Road, Vineyard
- (b) Lot 13 in Deposited Plan 815849, 312 Windsor Road, Vineyard
- (c) Lot 6 in Deposited Plan 777933, 312 Windsor Road, Vineyard

As shown in Figure 1, the subject site is a strip of land that separates Windsor Road and Industry Road. They are located adjacent to the Mulgrave Industrial and Business Precinct.



**Figure 1: Locality Map - 9 Industry Road & 312 Windsor Road, Vineyard**

Lot 9 DP 1149340 is the largest of the three parcels that are subject to this Planning Proposal, and is mostly occupied by vegetation (mainly stands of trees), drainage infrastructure, a footpath and cleared grass areas. The only substantial structure located on Lot 9 DP 1149340 is the existing approved billboard/advertising sign.

Lot 13 DP 815849 and Lot 6 DP 777933 are mostly occupied by vegetation, drainage infrastructure, a footpath and cleared grass areas. However, it is noted Lot 6 DP 777933 contains some flag/banner advertising structures.

Figure 2 below provides an aerial view of the subject site and surrounding uses.



**Figure 2: Aerial View of 9 Industry Road & 312 Windsor Road, Vineyard and Surrounding Properties**

The subject site is located within the Mulgrave Industrial and Business Precinct surrounded by a mix of business and industrial activities. The subject site forms a slither of generally flat land parallel to Windsor Road, with the low point being located on Lot 9 DP 1149340 where there is a culvert under Windsor Rd and existing vegetation. The location of the subject site gives it the potential to be used for advertising purposes to promote businesses within the Mulgrave Business Precinct.

The subject site is surrounded by B5 Business Development, IN1 General Industrial and across Windsor Road, the land is zoned RU4 Primary Production Small Lots. The subject site includes a footpath that forms part of the pedestrian network, generally connecting people between Vineyard and McGraths Hill.



### 3. CURRENT PLANNING CONTROLS

The subject site is owned by Council and is zoned B5 Business Development under *Hawkesbury Local Environmental Plan 2012*. The land is currently classified as 'Community' land and nominated as public reserve.

The subject site is affected by Class 5 Acid Sulfate Soils on the Acid Sulphate Soils Planning Maps contained within the *Hawkesbury Local Environmental Plan 2012*.

The subject site contains 'Significant Vegetation' as identified on the Terrestrial Biodiversity Map of the *Hawkesbury Local Environmental Plan 2012*. Council's vegetation mapping identifies this 'Significant Vegetation' as Shale Plains Woodland and Shale Gravel Transition Forest, which are a Critically Endangered Ecological Community and an Endangered Ecological Community respectively under the *Biodiversity Conservation Act 2016*. These communities are located on Lots 9 and 13, and generally correspond to the location of existing vegetation on these lots.

The lots are located on the floodplain (that is below the Probable Maximum Flood) and are affected by the 1 in 100 year flood in the following manner:

- Lot 9 is below the 1 in 100 year flood level of approximately 17.3m AHD, having land levels between 12.5 – 15m AHD
- Lot 13 is partially below the 1 in 100 year flood level of approximately 17.3m AHD, having land levels between 15.5 – 18.5m AHD
- Lot 6 is above the 1 in 100 year flood level of approximately 17.3m AHD, having land levels between 18 – 18.5m AHD

### 4. PLANNING PROPOSAL

The planning proposal seeks to amend the *Hawkesbury Local Environmental Plan 2012* to enable the development and management of the Council owned subject site by:

- reclassifying 9 Industry Road and 312 Windsor Road, Vineyard to 'Operational' land to permit Council to lease the use of the existing signs on the subject site;

The Planning Proposal aims to achieve the intended outcomes by amending the *Hawkesbury Local Environmental Plan 2012* as follows:

1. Amend *Hawkesbury Local Environmental Plan 2012*, Schedule 4, Part 1 - *Land classified, or reclassified, as operational land - no interests changed* to insert the following into the table in alphabetical order:

Column 1	Column 2
Locality	Description
Vineyard, 9 Industry Road	Lot 9 DP 1149340
Vineyard, 312 Windsor Road	Lot 13, DP 815849 and Lot 6, DP 777933

### 5. JUSTIFICATION OF PROPOSAL

The planning proposal is justified for the following reasons:

- The reclassification of 9 Industry Road and 312 Windsor Road would enable Council to manage the site in line with its existing use for advertising purposes.
- The reclassification of 9 Industry Road and 312 Windsor Road, Vineyard will not change the use of the subject site as a public reserve and will have no impact on the environmental attributes of the subject site.

- The reclassification of 9 Industry Road and 312 Windsor Road, Vineyard will enable Council to lease the subject site, allowing flexibility to retain ownership whilst providing an income source. This will enable Council to enter into lease agreements for existing signage on the land and explore new advertising models that might be appropriate for the site subject to appropriate approvals.

The reclassification of the subject site is considered to be the best means of achieving the objectives and intended outcomes of the Planning Proposal, given that, as Community Land the subject site cannot be leased, sold or developed. Reclassifying the whole or part of the subject site to Operational Land will facilitate the use, and management of the subject site.

## 6. POLICY CONSIDERATIONS

The Department of Planning, Industry and Environment's '*A guide to preparing planning proposals*' August 2016 (the Guidelines) requires the applicant to demonstrate that a planning proposal is consistent with applicable local strategies/ strategic plans, State Environmental Planning Policies and Section 9.1 Ministerial Directions.

In accordance with a Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, a planning proposal is required to be referred to the local planning panel for advice prior to the planning proposal being forwarded to the Minister under Section 3.34 of the *Environmental Planning and Assessment Act 1979* for a 'Gateway' determination. The Planning Proposal was presented to the Hawkesbury Local Planning Panel Meeting of 21 November 2019.

At that Meeting, the Hawkesbury Local Planning Panel recommended referral of the Planning Proposal to the Department of Planning, Industry and Environment for a 'Gateway' determination.

An assessment of the Planning Proposal against the relevant State Planning framework including *A Plan for Growing Sydney*, *Greater Sydney Region Plan - A Metropolis of Three Cities*, *Western City District Plan*, State Environmental Planning Policies and Section 9.1 Ministerial Directions and Local Planning/policy Framework contained within this report demonstrates that the planning proposal is considered to be consistent with both the State and Local Planning Framework.

### A Plan for Growing Sydney

*A Plan for Growing Sydney* was released in December 2014 and is the NSW Government's 20-year plan for the Sydney Metropolitan Area. It provides direction for Sydney's productivity, environmental management, and liveability, and for the location of housing, employment, infrastructure and open space.

*A Plan for Growing Sydney* contains the following Vision for Sydney.

A strong global site, a great place to live

The Vision is supported by the following four goals and three principles:

- Goal 1: A competitive economy with world-class services and transport.
- Goal 2: A city of housing choices with homes that meet our needs and lifestyle.
- Goal 3: A great place to live with communities that are strong, healthy and well connected.
- Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.
- Principle 1: Increasing housing choice around all centres through urban renewal in established areas.
- Principle 2: Stronger economic development in strategic centres and transport gateways.
- Principle 3: Connecting centres with a networked transport system.

*A Plan for Growing Sydney* divides Sydney into six subregions: Central; West Central; West; North; South West; and South. The Hawkesbury Local Government Area is in the West subregion along with the Penrith and Blue Mountains Local Government Areas.

The Draft North West Subregional Planning Strategy was released by the NSW Government in December 2007. The Strategy covers the Local Government Areas of The Hills, Blacktown, Blue Mountains, Hawkesbury and Penrith and set broad directions for additional dwelling and employment growth.

The Key Directions of the draft Strategy are:

- plan to meet employment and housing capacity targets
- develop Penrith as a Regional City
- strengthen the roles of centres
- improve access to, from and within the subregion
- protect rural resource lands
- promote the environmental and scenic qualities of the region
- improve access to open space and recreation opportunities.

The Planning Proposal is considered to be consistent with *A Plan for Growing Sydney* as it will:

- promote the business unlocking capacity for economic activity in the Mulgrave precinct; and
- support the Infrastructure Directions and Liveability Directions included in the Greater Sydney Region Plan, by collaborating with communities to see increased provision and use of community facilities and providing those services and infrastructure that meet the changing needs of the community.

#### Greater Sydney Region Plan - A Metropolis of Three Cities

In March 2018, the NSW Government released the vision for Greater Sydney as a Metropolis of Three Cities - the Western Parkland City, the Central River City and the Eastern Harbour City.

This strategic framework aspires to transform land use and transport patterns and boost Greater Sydney's liveability, productivity and sustainability by spreading the benefits of growth to all its residents.

The emerging Western Parkland City with the Western Sydney Airport and Badgerys Creek Aerotropolis as a catalyst for the city cluster will grow a strong trade, logistics, advanced manufacturing, health, education and science economy and be the most connected place in Australia. It will produce knowledge-intensive jobs close to new well-designed neighbourhoods. Liveability for residents will be key - such as more trees to provide shade and shelter and walkable neighbourhoods within easy reach of shops and services.

It is the first plan to be prepared concurrently with *Future Transport 2056* and the State Infrastructure Strategy, aligning land use, transport and infrastructure planning to reshape Greater Sydney as three unique but connected cities.

The objectives and metrics of 'A Metropolis of three Cities' are based on Ten (10) Directions:

- (a) A city supported by infrastructure;
- (b) A collaborative City;
- (c) A city for people;
- (d) Housing the city;
- (e) A city of great places;
- (f) A well connected city;
- (g) Jobs and skills for the city;
- (h) A city in its landscape;
- (i) An efficient city; and
- (j) A resilient city.

These Directions are supported by objectives and strategies. Relevant to the Planning Proposal are the strategies relating to:

- *Retain, review and plan industrial and urban services land in accordance with the principles for managing industrial and urban services land*

The planning proposal is considered to be consistent with the abovementioned relevant strategies of the Greater Sydney Region Plan as follows:

- The reclassification of 9 Industry Road and 312 Windsor Road, Vineyard to 'Operational' land will enable Council to lease the subject site for advertising purposes to promote existing and future commercial and industrial activities within the Mulgrave Industrial and Business Precinct.

#### Western City District Plan

The Western City District Plan is a guide for implementing the Greater Sydney Region Plan - 'A Metropolis of Three Cities'. The District Plan is a bridge between regional and local planning.

The Western City District covers the Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly local government areas. The Western City District Plan is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney.

The District Plan also assists Councils to plan for and support growth and change, and aligns their local planning strategies to place-based outcomes. It guides the decisions of State Agencies and informs the private sector and the wider community of approaches to manage growth and change.

The Western City District Plan focuses on identifying the Planning Priorities to achieve a liveable, productive and sustainable future for the District. Relevant Objectives, Strategies and Actions from *A Metropolis of Three Cities* are embedded in each of the Planning Priorities, to integrate the District's challenges and opportunities with the Greater Sydney vision of the metropolis of three cities.

Relevant to the Planning Proposal are the actions relating to:

- *Provide access to jobs, goods and services in centres by attracting significant investment and business activity in strategic centres to provide jobs growth;*

The planning proposal is considered to be consistent with the abovementioned relevant actions of the Western City District Plan for the reasons outlined in the previous section of this Report relating to the Greater Sydney Region Plan.

The Hawkesbury Local Government Area (other than the Vineyard Growth Centre Precinct) is identified as part of the Metropolitan Rural Area under the Western City District Plan. The Western City District's rural areas contribute to habitat and biodiversity, support productive agriculture, provide mineral and energy resources, and sustain local rural towns and villages.

The Western City District Plan recognises that increased urban development is not appropriate within the Metropolitan Rural Area so as to support agriculture and mineral resources. In addition, support for increased rural residential development will only be considered where it meets local demand, and there are no adverse impacts on the amenity and character of the local area and the development provides incentives to maintain and enhance the environmental, social and economic values of the Metropolitan Rural Area.

It is considered that the Planning Proposal is consistent with policy intent for the Metropolitan Rural Area as:

- *the reclassification of 9 Industry Road and 312 Windsor Road, Vineyard will not result in a change in use of the subject sites, which is to remain as a public reserve and to continue the use of the existing advertising structures on the subject sites for advertising purposes*

### Section 9.1 Directions (Formerly Section 117 Directions)

Section 9.1 Directions are issued by the Minister for Planning and apply to planning proposals.

Section 9.1 Directions require certain matters to be complied with and/or require consultation with government agencies during the preparation of the planning proposal. However, these Directions permit variations subject to meeting certain criteria. The principal criterion for variation to a 9.1 Direction is consistency with an adopted Local or Regional Strategy. A summary of the key Section 9.1 Directions are as follows:

#### ***Direction 1.1 Business and Industrial Zones***

This Direction is relevant to the component of the planning proposal to reclassify land at 9 Industry Road and 312 Windsor Road, Vineyard from 'Community' to 'Operational' land.

The objectives of this direction are to:

- (a) *encourage employment growth in suitable locations;*
- (b) *protect employment land in business and industrial zones, and*
- (c) *support the viability of identified strategic centres.*

The proposed reclassification will support the promotion of business and industrial activities located within the locality, and as 'Operational' land, Council has the means to lease the land and develop it further for the purposes of advertising.

The planning proposal does not propose any changes to the current B5 Business Development zoning of the subject sites, thereby protecting existing employment land in business zones by retaining the zone. It will not reduce the total potential floor space area for employment uses and related public services.

For the above reasons, it is considered that the planning proposal is consistent with this Direction.

#### ***Direction 1.3 Mining, Petroleum Production and Extractive Industries***

The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

This Direction applies when a planning proposal is prepared that would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or obtaining extractive materials, or would restrict the potential development of these resources which are of state or regional significance by permitting land uses that are likely to be incompatible with such development.

The planning proposal is consistent with Direction 1.3 as the subject sites are not located within an identified Resource Area, Potential Resource Area or Transition Area which is adjacent to identified Resource Areas as identified by mineral resource maps provided by the NSW Resource & Energy Division of NSW Trade and Investment.

Additionally, the subject site is not located within or in the vicinity of land described in Schedule 1, 2 and 5 of the *Sydney Regional Environmental Plan No. 9 – Extractive Industry (No 2 – 1995)* nor will the proposed development restrict the obtaining of deposits of extractive material from such land.

Regardless of the above comments, should the planning proposal proceed to a Gateway Determination, the NSW Department of Industry will be consulted in accordance with Direction 1.3(4) during the relevant government agency consultation period.

#### **Direction 4.1 Acid Sulfate Soils**

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. This Direction requires consideration of the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning, Industry & Environment.

The subject site is identified as containing “Class 5 Acid Sulfate Soils” on the Acid Sulphate Soils Planning Maps contained within the *Hawkesbury Local Environmental Plan 2012*, and as such any future development on the land will be subject to Clause 6.1 Acid Sulfate Soils of the *Hawkesbury Local Environmental Plan 2012* which has been prepared in accordance with the Acid Sulfate Soils Model Local Environmental Plan provisions within the Acid Sulfate Soils Planning Guidelines adopted by the Director General.

This Direction requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soil study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act. An acid sulfate soil study has not been included in the planning proposal but the Department of Planning, Industry and Environment will consider this as part of their ‘Gateway’ determination, and if required can request further information/consideration of this matter.

#### **Direction 4.3 Flood Prone Land**

The objectives of this Direction are to:

- (a) ensure that development of flood prone land is consistent with the NSW Government’s Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and
- (b) Ensure that the provisions of an LEP on flood prone land are commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

This direction applies to ‘flood prone land’, which means “*land susceptible to flooding by the PMF (Probable Maximum Flood) event.*” All of the subject site is located on flood prone land.

Clause 6.3 – *Flood planning* of the Hawkesbury Local Environmental Plan 2012 and Council’s Development of Flood Liable Land Policy will apply to future development of the subject site.

This direction does not permit the rezoning of land within flood planning areas (land below the flood planning level) from a Rural Zone to a Residential, Business, Industrial, Special Use or Special Purpose Zone.

In accordance with this Direction, the Planning Proposal will not change the existing flooding provisions of the Hawkesbury Local Environmental Plan 2012, which give effect and are consistent with the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*. In addition, no new provisions are proposed which would permit or intensify development in floodway or high hazard areas, increase flood impacts on other properties or result in increased demand for government spending on flood mitigation measures infrastructure or services.

Given the above, the Planning Proposal is considered to be consistent with Direction 4.3.

#### **Direction 4.4 Planning for Bushfire Protection**

This Direction applies to planning proposals that will affect, or is in the proximity to land mapped as bushfire prone land.

The subject site is shown as being either partially bushfire prone, or within the immediate vicinity of bushfire prone land, on the NSW Rural Fire Service's Bushfire Prone Land Map. This Direction requires consultation with the NSW Rural Fire Service following receipt of a 'Gateway' determination, and compliance with Planning for Bushfire Protection 2006, and various Asset Protection Zone, vehicular access, water supply, layout, and building material provisions.

#### ***Direction 6.1 Approval and Referral Requirements***

It is considered that the planning proposal is consistent with this Direction as it does not contain provisions requiring the concurrence, consultation or referral of development applications to a Minister or public authority, and does not identify development as designated development.

#### ***Direction 6.3 Site Specific Provisions***

The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls. The planning proposal is consistent with Direction 6.3 as the proposal seeks an amendment to *Hawkesbury Local Environmental Plan 2012* to amend the Land Zoning Map, Lot Size Map and Schedule 4 only and does not intend to propose any site specific provisions.

#### ***Direction 5.10 Regional Plans***

This Direction requires planning proposals to be consistent with a Regional Plan that has been released by the Minister for Planning. As discussed previously in this Report, the Planning Proposal is consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities.

#### ***Direction 7.1 Implementation of 'A Plan for Growing Sydney'***

The objective of this Direction is to give legal effect to the planning principles, directions, and priorities for subregions, strategic centres and transport gateways contained in 'A Plan for Growing Sydney'.

The planning proposal is consistent with Direction 7.1 as the planning proposal is consistent with 'A Plan for Growing Sydney' as previously discussed in this Report.

#### **State Environmental Planning Policies**

The planning proposal has been considered against the applicable State Environmental Planning Policies. The State Environmental Planning Policies most relevant to the planning proposal are:

- *State Environmental Planning Policy No. 19 - Bushland in Urban Areas,*
- *State Environmental Planning Policy No. 55 - Remediation of Land,*
- *State Environmental Planning Policy No. 64 - Advertising and Signage,*
- *Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995) and*
- *Sydney Regional Environmental Plan No. 20 - Hawkesbury - Nepean River (No.2 - 1997).*

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

This Policy aims to protect and preserve bushland within urban areas. When preparing draft local environmental plans for any land to which this Policy applies, other than rural land, the council shall:

- (a) have regard to the general and specific aims of the Policy, and
- (b) 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.

Although the subject site is not within an open space zone, it is a Council owned public reserve, and the status of this land as a public reserve is not changing with the reclassification.

The subject site contains 'Significant Vegetation' as identified on the Terrestrial Biodiversity Map of the *Hawkesbury Local Environmental Plan 2012*. Council's vegetation mapping identifies this 'Significant Vegetation' as Shale Plains Woodland and Shale Gravel Transition Forest, which are a Critically Endangered Ecological Community and an Endangered Ecological Community respectively

under the *Biodiversity Conservation Act 2016*. These communities are located on Lots 9 and 13, and generally correspond to the location of existing vegetation on these lots.

Council's consulting ecologist (Eco Logical Australia, 2018) has advised:

- *"The majority of the reserve is cleared with a mown understory including a number of exotic grasses.*
- *Small patch of Cumberland Plains Woodland (Shale Plains Woodland) in relatively good condition (rated as high biodiversity priority rank) at the northern parts of Industry Reserve.*
- *Small clump of trees aligning with Shale Gravel Transition Forest in a disturbed condition with an exotic understory towards the southern parts of the Reserve.*
- *No connectivity with adjoining habitat.*
- *No recorded threatened flora or fauna species.*
- *Longer term viability of the existing Cumberland Plains Woodland (Shale Plains Woodland) is low."*

Given that the majority of the reserve is cleared, it is considered that future development of the subject site for advertising structures can be located so as to have no adverse impact on the existing native vegetation on the subject site. In this regard, the general and specific aims of the *State Environmental Planning Policy No. 19 – Bushland in Urban Areas* can be met.

#### ***State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)***

*State Environmental Planning Policy No. 55* requires consideration as to whether or not land is contaminated and, if so, is it suitable for future permitted uses in its current state or whether it requires remediation. This Policy may require Council to obtain, and have regard to, a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

Consideration of potential contamination will be subject to the usual investigations to be carried out with the lodgement of a development application for any future development.

#### ***State Environmental Planning Policy No. 64 – Advertising and Signage***

This Policy is relevant to the component of the planning proposal relating to 9 Industry Road and 312 Windsor Road, Vineyard, as it is the intention of the reclassification of this land to 'Operational' land to enable use of the land for advertising signs.

Any future signage on the subject sites can be designed to achieve consistency with this Policy. This can be assured through the development application process.

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

The primary aims of *Sydney Regional Environmental Plan No. 9* are to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance and to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential. The site is not within the vicinity of land described in Schedule 1 and 2 of the Plan, nor will the proposed development restrict the obtaining of deposits of extractive material from such land.

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

The aim of *Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)* is to protect the environment of the Hawkesbury - Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. This requires consideration of the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, impacts of the development on the



environment, the feasibility of alternatives and consideration of specific matters such as total catchment management, water quality, water quantity, flora and fauna, agriculture, rural residential development and the metropolitan strategy.

Specifically the Plan encourages Council to consider the following:

- rural residential areas should not reduce agricultural viability, contribute to urban sprawl or have adverse environmental impact (particularly on the water cycle and flora and fauna);
- develop in accordance with the land capability of the site and do not cause land degradation;
- the impact of the development and the cumulative environmental impact of other development proposals on the catchment;
- quantify and assess the likely impact of any predicted increase in pollutant loads on receiving waters;
- consider the need to ensure that water quality goals for aquatic ecosystem protection are achieved and monitored;
- consider the ability of the land to accommodate on-site effluent disposal in the long term and do not carry out development involving on-site disposal of sewage effluent if it will adversely affect the water quality of the river or groundwater. Have due regard to the nature and size of the site;
- minimise or eliminate point source and diffuse source pollution by the use of best management practices;
- site and orientate development appropriately to ensure bank stability;
- protect the habitat of native aquatic plants;
- locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land;
- consider the range of flora and fauna inhabiting the site of the development concerned and the surrounding land, including threatened species and migratory species, and the impact of the proposal on the survival of threatened species, populations and ecological communities, both in the short and longer terms;
- conserve and, where appropriate, enhance flora and fauna communities, particularly threatened species, populations and ecological communities and existing or potential fauna corridors;
- minimise adverse environmental impacts, protect existing habitat and, where appropriate, restore habitat values by the use of management practices;
- consider the impact on ecological processes, such as waste assimilation and nutrient cycling;
- consider the need to provide and manage buffers, adequate fire radiation zones and building setbacks from significant flora and fauna habitat areas;
- consider the need to control access to flora and fauna habitat areas;
- give priority to agricultural production in rural zones;
- protect agricultural sustainability from the adverse impacts of other forms of proposed development;
- consider the ability of the site to sustain over the long term the development concerned;

- maintain or introduce appropriate separation between rural residential use and agricultural use on the land that is proposed for development;
- consider any adverse environmental impacts of infrastructure associated with the development concerned.

The site falls within the Middle Nepean and Hawkesbury River Catchment Area of *Sydney Regional Environmental Plan No.20 Hawkesbury - Nepean River (No.2 - 1997)*.

The likely future land uses, being community and recreational facilities, or advertising, are considered able to satisfy the planning policies, strategies and development controls contained in the Plan. As planning continues for the site the impacts on the Hawkesbury-Nepean will continue to be considered, and ultimately addressed in a future development application.

## 7. DISCUSSION

### Hawkesbury Local Environmental Plan 2012

Clause 5.2 of the *Hawkesbury Local Environmental Plan 2012* applies to the classification and reclassification of public land. It requires public land that is to be reclassified to be described in Schedule 4 of the *Hawkesbury Local Environmental Plan 2012*.

It is intended to reclassify properties 9 Industry Road and 312 Windsor Road, Vineyard to 'Operational' land, however the subject site will remain as public reserve and will continue to be affected by trusts, estates, interests, dedications, conditions, restriction or covenants that currently affect the land.

As a result, the subject site is required to be listed in Part 1 to Schedule 4 of the *Hawkesbury Local Environmental Plan 2012*.

### Assessment of the Merits of the Planning Proposal

#### **Ecology**

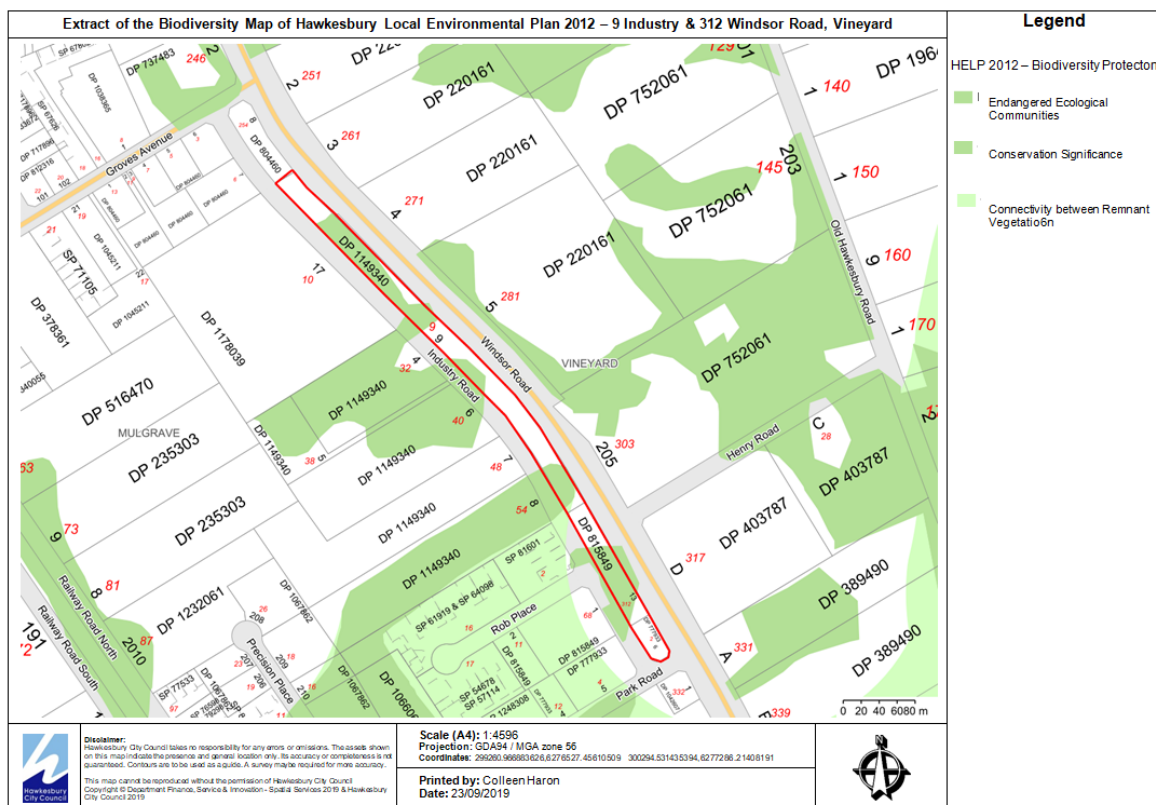
The subject site is largely cleared but does contain some vegetated areas, including exotic grasses and some stands of *Shale Plains Woodland* and *Shale Gravel Transition Forest*.

Council's consulting ecologist (Eco Logical Australia, 2018) has advised:

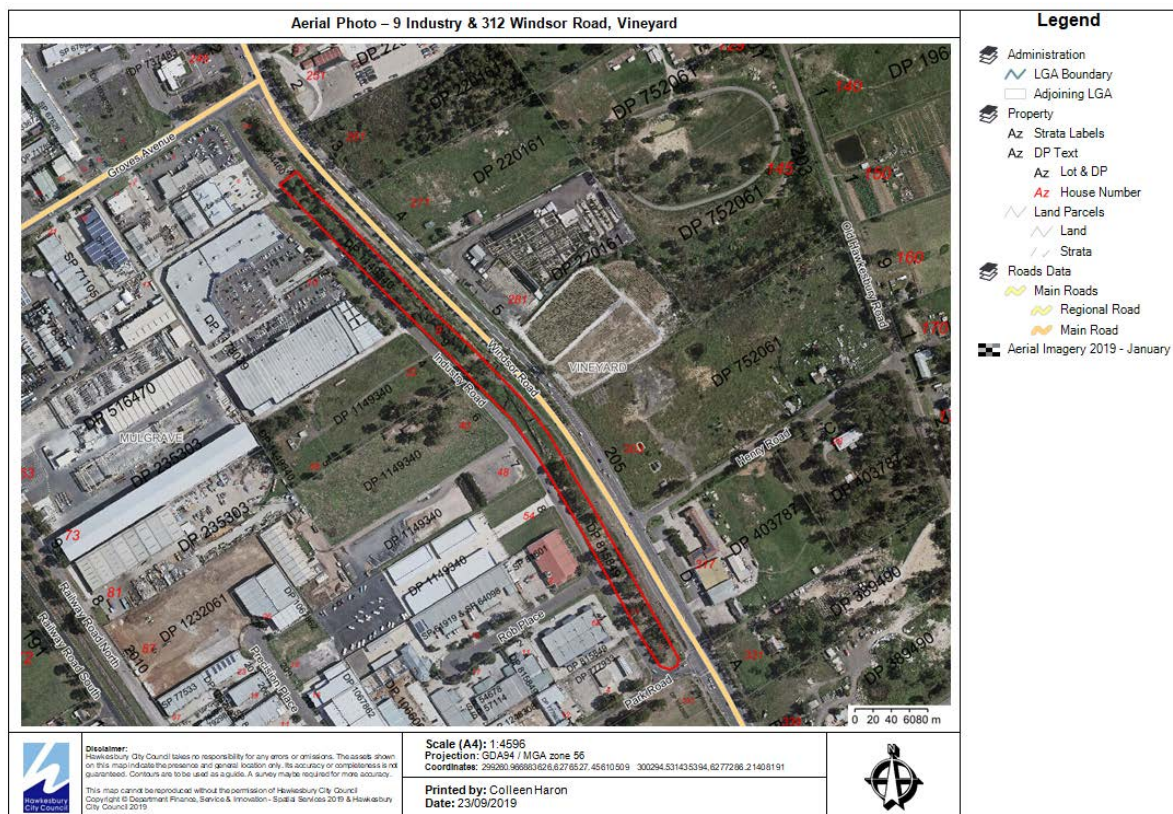
- *"The majority of the reserve is cleared with a mown understory including a number of exotic grasses.*
- *Small patch of Cumberland Plains Woodland (Shale Plains Woodland) in relatively good condition (rated as high biodiversity priority rank) at the northern parts of Industry Reserve.*
- *Small clump of trees aligning with Shale Gravel Transition Forest in a disturbed condition with an exotic understory towards the southern parts of the Reserve.*
- *No connectivity with adjoining habitat.*
- *No recorded threatened flora or fauna species.*
- *Longer term viability of the existing Cumberland Plains Woodland (Shale Plains Woodland) is low."*

Therefore, there are no likely impacts on threatened species or ecological communities that would preclude the reclassification of the subject site. Any future development of the land is similarly unlikely to have such impacts and these can be appropriately managed through Council's development assessment processes.

Figure 8 shows the areas of the subject site which contain significant vegetation. Figure 9 shows the corresponding vegetation that is located in these areas.



**Figure 8 – Mapped Significant Vegetation on the Subject Site**



**Figure 9 – Aerial Photo of the Subject Site**

### ***Flooding***

Part of the subject site is affected by the 1 in 100 year flood level, and as such Clause 6.3 – *Flood planning* of the Hawkesbury Local Environmental Plan 2012 and Council's Development of Flood Liable Land Policy will apply to future development of the subject site.

It is considered that the proposed uses of the subject site for recreation and advertising purposes are compatible with the flood affectation of the land, including the flood hazard classification.

### ***Bushfire Hazard***

The subject site is shown as being bushfire prone on the NSW Rural Fire Service's Bushfire Prone Land Map.

The planning proposal is not accompanied by a bushfire assessment report. Given that the subject site is identified as bushfire prone, the planning proposal will be referred to the NSW Rural Fire Service for comment following any 'Gateway' determination from The Department of Planning, Industry and Environment in accordance with the s.9.1 Direction 4.4.

### ***Agricultural Land Classification***

The subject site is shown as being Agriculture Land Classification 2 and 3 on maps prepared by the former NSW Department of Agriculture. These lands are described by the classification system as:

- "3. *Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production level is moderate because of edaphic factors or environmental constraints. Erosion hazard, soil structural breakdown or other factors including climate may limit the capacity for cultivation, and soil conservation or drainage works may be required.*"

Given the location and dimensions of the subject site, it is considered that it is unlikely the site could support a commercially sustainable agricultural enterprise.

### ***Services***

The subject site is located in an area that is well serviced by public infrastructure, including:

- Water: Water mains are located within the site.
- Drainage: A stormwater drain/culvert is located within the site.
- Electricity: Low voltage electricity is available to the site.
- Telecommunications: underground and mobile telecommunications are available at the site.
- Sewer: Sewer mains are located within the site, and a sewer pumping station is located adjacent to the site.
- Transport: Both subject properties are located within 1km of Mulgrave Train Station, and major bus routes operate within walking distance of the subject lands on Windsor Road.

### ***Heritage***

The subject site is not listed as heritage items under Schedule 5 *Environmental Heritage* of the *Hawkesbury Local Environmental Plan 2012*, nor are they located within the vicinity of any listed heritage items where future development of the land may have an impact on the significance of these items.

In addition, the subject site is not located within or adjoining a heritage conservation area and not identified as an archaeological site.

## 8. HAWKESBURY LOCAL PLANNING PANEL ADVICE

The Planning Proposal was reported to the Hawkesbury Local Planning Panel Meeting of 21 November 2019 for advice.

In respect to this Planning Proposal, the Panel recommended that:

1. Supports the Planning Proposal to amend the *Hawkesbury Local Environmental Plan 2012* in relation to the subject sites as follows:

- (a) Amend *Hawkesbury Local Environmental Plan 2012*, Schedule 4, Part 1 – Land classified, or reclassified, as operational land – no interests changed to insert the following into the table in alphabetical order:

Column 1	Column 2
Locality	Description
Vineyard, 9 Industry Road	Lot 9 DP 1149340
Vineyard, 312 Windsor Road	Lot 13, DP 815849 and Lot 6, DP 777933

2. Recommend that Council forward the planning proposal to the Greater Sydney Commission requesting a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*.

The planning proposal has not yet been exhibited as Council has not resolved to prepare the proposal. If the planning proposal is to proceed it will be exhibited in accordance with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) and associated Regulations, and as specified in any 'Gateway' determination.

An independently facilitated public hearing is required to be held as part of the community consultation process for any planning proposal seeking to reclassify land from 'Community' to 'Operational'.

## 9. CONCLUSION

The Planning Proposal was reported to the Hawkesbury Local Planning Panel for advice on 21 November 2019. The Panel recommended that the Planning Proposal proceed to a 'Gateway' determination.

As demonstrated in this Report, the Planning Proposal is considered to be consistent with relevant legislation and considerations including, the *Local Government Act 1993*, *Environmental Planning and Assessment Act 1979* and Practice Note PN16-001 - *Classification and reclassification of public land through a local environmental plan* in relation to the reclassification of the subject site. Additionally, the Planning Proposal is consistent with the aims, objectives and requirements of the relevant State, Regional and Local strategies/strategic plans, State Environmental Planning Policies and Section 9.1 Ministerial Directions.

In particular, the Planning Proposal has strategic merit, and is consistent with the objectives of the Sydney Region Plan and the Western City District Plan as:

- The reclassification of 9 Industry Road and 312 Windsor Road, Vineyard to 'Operational' land will enable Council to lease these sites for advertising purposes to promote existing and future commercial and industrial activities within the Mulgrave Industrial and Business Precinct.

The Planning Proposal is justified as it would:

- enable Hawkesbury City Council to develop and/or manage the sites in line with existing uses (advertising);
- increase the productivity of the Mulgrave Industrial and Business Precinct by facilitating the ongoing use of 9 Industry Road and 312 Windsor Road, Vineyard for advertising purposes; and
- have no adverse impact on the environmental attributes of the subject site.

It is therefore recommended that Council support the forwarding of the Planning Proposal to the Department of Planning, Industry and Environment requesting a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act, 1979*.