



# Hawkesbury Local Planning Panel Meeting

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Date of meeting: 19 January 2023  
Location: By audio-visual link  
Time: 10:00 a.m.

**BUSINESS PAPER**



**HAWKESBURY LOCAL PLANNING PANEL MEETING**

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Hawkesbury  
Local Planning  
Panel

Section **1**

Reports  
for advice

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## HAWKESBURY LOCAL PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

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### SECTION2 – Reports for Advice

**Item: 001**                    **CP - Planning Proposal - LEP005/22 - 6/21 Vincents Road, Kurrajong - Community Title Subdivision - (124414)**

**Directorate:**                City Planning

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#### PLANNING PROPOSAL INFORMATION

**File Number:**                    LEP005/22  
**Property Address:**                6/21 Vincents Road, Kurrajong  
**Applicant:**                        Sutherland & Associates Planning Pty Ltd  
**Owner:**                            P D Bennett  
**Date Received:**                    2/12/2022  
**Current Zone:**                    RU1 Primary Production  
**Site Area:**                        5.389Ha

**Key Issues:**

- ◆ Land & Environment Court Judgement
- ◆ Existing Use Rights
- ◆ Community Title Subdivision

#### EXECUTIVE SUMMARY

Council is in receipt of a Planning Proposal from Sutherland & Associates Planning Pty Ltd for land described as Lot 6 DP 270827 at 6/21 Vincents Road, Kurrajong (subject site). The Planning Proposal is seeking an amendment to the Hawkesbury Local Environmental Plan (LEP) 2012 to allow a 19-lot community title subdivision of a seniors housing development, and extension of a private cemetery which has been approved by the Land & Environment Court.

The Planning Proposal seeks to achieve the above intended outcome by inserting an additional local provision under Part 6 of the Hawkesbury LEP 2012 to allow the proposed community title subdivision of the subject site. This report provides an overview of the Planning Proposal which is considered to be generally consistent with the relevant NSW State and Local planning framework.

#### RECOMMENDATION:

That the Hawkesbury Local Planning Panel provide advice on the Planning Proposal which seeks to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow a community title subdivision of a 19 lot seniors housing development, and an extension of a private cemetery at 6/21 Vincents Road, Kurrajong.

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#### Purpose of the Report

The purpose of this report is to seek advice from the Hawkesbury Local Planning Panel on the Planning Proposal which seeks to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow a community title subdivision of 19 lot seniors housing development, and an extension of a private cemetery at 6/21 Vincents Road, Kurrajong.

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#### Background

In June 1999, Development Application M844/98 for 19 Old Bells Line of Road, Kurrajong was approved under the provisions of State Planning Policy No 5 – Housing for Older People and People with Disabilities (SEPP 5). The Development Application was for the construction of aged/disability housing development accommodating 18 dwellings, and a community building development known as “Tallowood”.

Subsequently, in September 2012, Council approved a Development Application (DA0014/12) for a 19-lot community title subdivision of Lot 6 DP270827 accommodating the existing Tallowood Seniors Housing Development and the private cemetery. Figure 1 shows the 19 lot community title subdivision.

On 8 March 2021, a Development Application (DA0055/22) seeking approval for the following proposed works on Lot 6 DP270827, Lot 1 in DP 270827 and Lot 300 in DP 1184237, 6/21, 1/21 and 7 Vincents Road, Kurrajong respectively, was lodged with Council for:

- seniors housing development accommodating Nineteen (19) self-contained dwellings with attached garages;
- an extension to existing private cemetery;
- a community title subdivision of the subject site; and
- other ancillary development works including demolition of existing structures, earthworks, tree removal and conversion of an existing barn to a men’s shed.

Given the proposed seniors housing development is not a permitted land use within the RU1 Primary Production Zone (note that there were changes as a consequence of the introduction of the Metropolitan Rural Area Exemption introduced by the NSW Government in 2020), the Development Application relied upon the ‘existing uses’ provisions in Division 4.11 of the Environmental Planning & Assessment Act 1979 to sustain the permissibility of the proposed development on the subject site.

The proposed seniors housing development accommodating 19 self-contained dwellings with attached garages and the private cemetery are located on the subject site as shown in Figure 2.

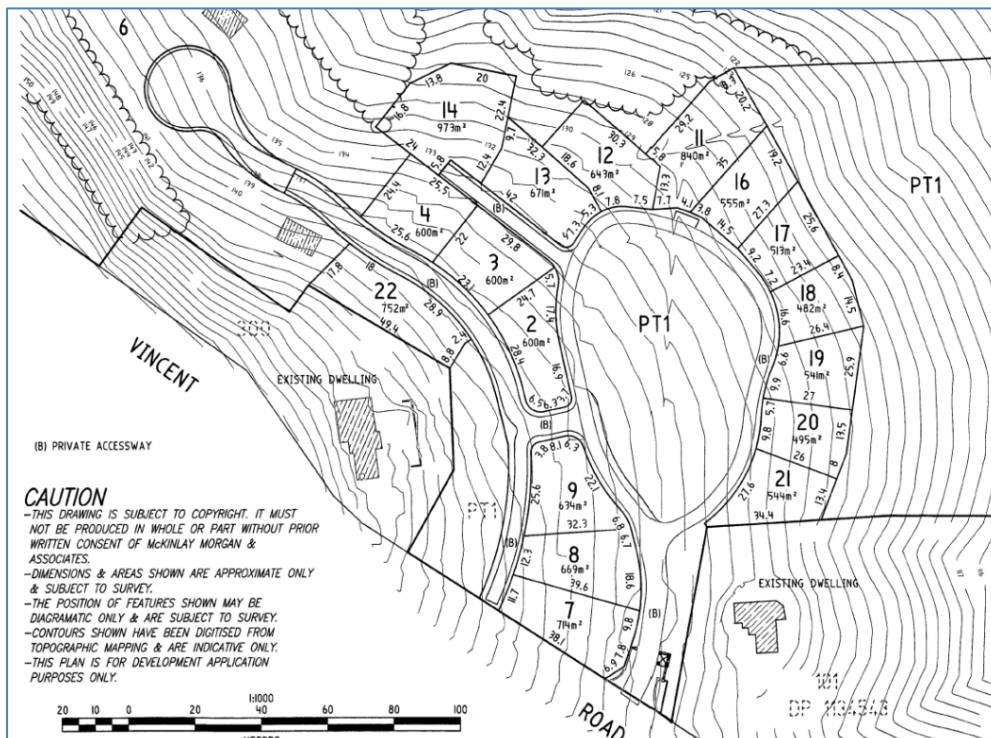


Figure 1: Council Approved 19-lot Community Title Subdivision



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**Figure 2: Proposed Seniors Housing Development and the Existing Cemetery on Lot 6**

Council was not convinced in terms of the application of existing use provisions in support of the proposed development on the subject site, and as such was unable to determine DA0055/22 within the assessment period specified in Clause 91 of the Environmental Planning & Assessment Regulation 2021. In November 2021, the property owner/developer lodged a Class 1 Appeal with the Land & Environment Court NSW against the Council's deemed refusal of the Development Application (DA0055/22).

On 15 November 2022, the Court concluded that the subject site is a resultant lot of the previously approved 19-community title subdivision (M844/98) and therefore has existing use rights. Further, the Land and Environment Court recognised that the proposed seniors housing development on the subject site as an extension of the existing Tallowood Seniors Living development as defined in s4.65(b) of the Environmental Planning and Assessment Act 1979 (EP& A Act 1979). Therefore, the Land and Environment Court upheld the Appeal and granted consent for DA0055/22 except for the proposed community title subdivision which is shown in Figure 3 below.

The Land and Environment Court was of the opinion that subdivision does not fall within the scope of 'enlargement, expansion or intensification' as referred to in s 4.67(2) of the EP& A Act 1979 or clause 42 of the repealed Environmental Planning & Assessment Regulation 2000 (Clause 164 of the current Regulation 2021). Therefore, the Land and Environment Court determined that subdivision is not a use of land and, in any event, is not the 'enlargement, expansion' nor 'intensification' of the 'existing use' which is for seniors housing alone. A copy of the Land and Environment's Court Determination with respect to Development Application (DA0055/22), and a copy of the Land and Environment Court approved Architectural Plans showing the proposed development are attached to this report as Attachments 1 and 2 respectively. Attachment 3 shows the proposed Community Title Subdivision.

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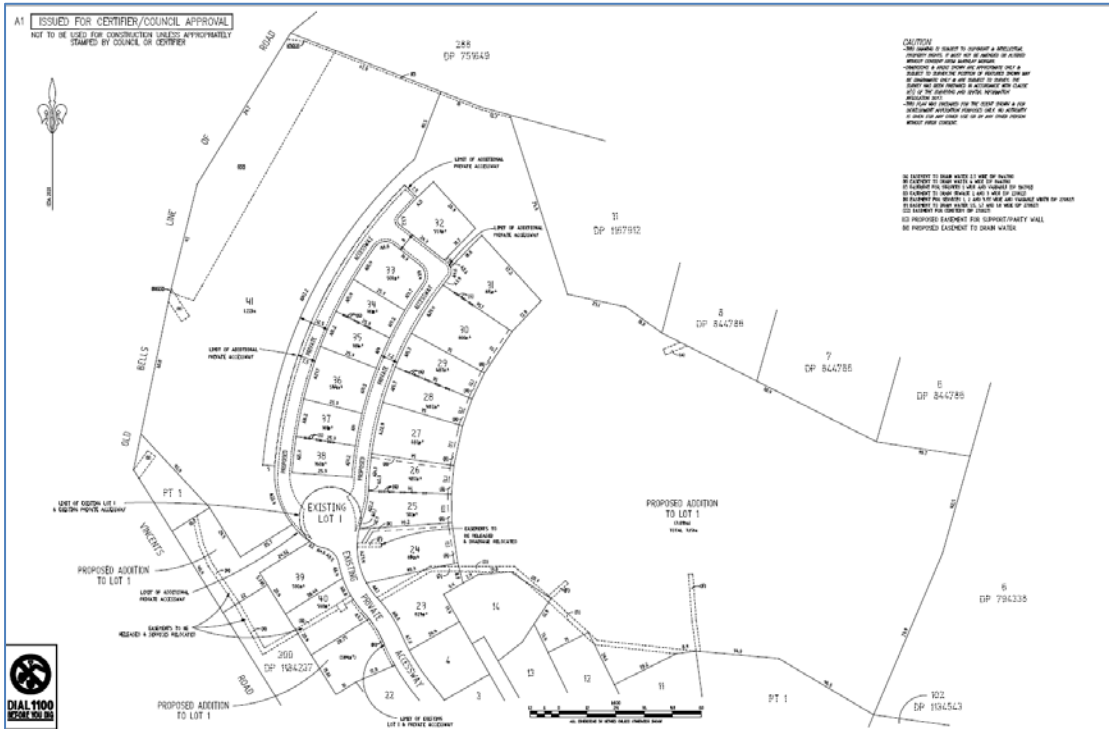


Figure 3: Proposed Community Title Subdivision Not Approved by the Court

### Planning Proposal

On 2 December 2022, Council received a Planning Proposal seeking an amendment to the Hawkesbury Local Environmental Plan 2012 in order to allow the proposed community title subdivision of the seniors housing development, and an extension to the existing private cemetery on the subject site from Sutherland & Associates Planning Pty Ltd (the applicant).

### Objectives and Intended Outcome of the Planning Proposal

The objective of the Planning Proposal is to include a site-specific additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow a community title subdivision of the Land and Environment Court approved seniors housing development, and extension of a private cemetery on the subject site. The Planning Proposal aims to achieve this objective by inserting the following additional local provision after the current local provision 6.15 into Part 6 of the Hawkesbury LEP 2012:

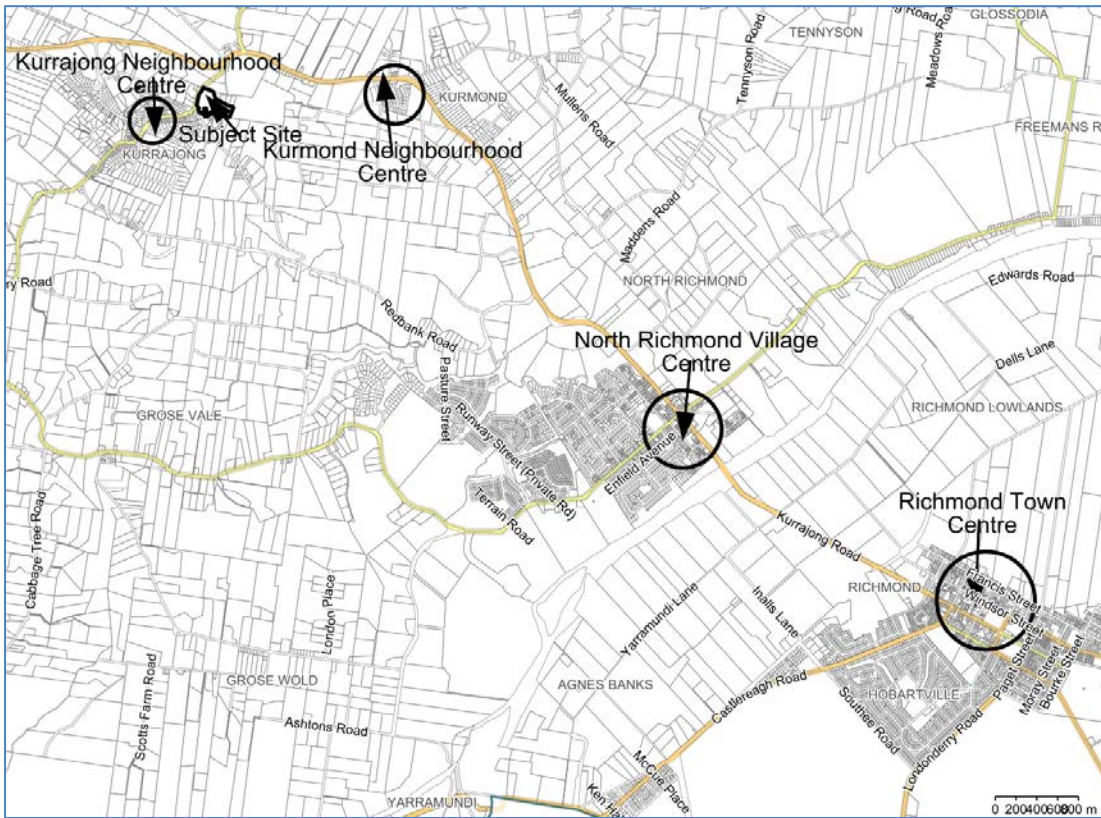
#### “6.16 Development of land at 6/21 Vincents Road, Kurrajong

1. This clause applies to Lot 6 in DP 270827, 6/21 Vincents Road, Kurrajong
2. Despite any other provision of this Plan, consent may be granted under this clause to a community title subdivision of Lot 6 in DP 270827 subject to subclause (3).
3. Development consent must not be granted for the purposes of a community title subdivision on land to which this clause applies, unless the community title subdivision:
  - a. is for the subdivision of development for the purposes of seniors housing development and extension of private cemetery following the completion of the senior housing development; and
  - b. the number of residential lots created by the subdivision does not exceed 19, and
  - c. each lot created has a lot size of 360m<sup>2</sup> or greater.”

A copy of the Planning Proposal is attached to this report as Attachment 4.

**Subject Site and Surrounds**

The subject site is located within approximately 500m walking distance from the Kurrajong Rural Neighbourhood Centre, approximately 3kms from the Kurmond Neighbourhood Centre, and 7kms from the North Richmond Village Centre, and 10.5kms from the Richmond Town Centre (Figure 4).



**Figure 4: Subject Site Location Map**

The subject site is legally described as Lot 6 DP 270827 and is an irregular shape with an area of approximately 5.4ha. The subject site has approximately 183m frontage to Old Bells Line of Road and 40m frontage to Vincents Road. It is bounded by Old Bells Line of Road to the North-West, Vincents Road to the South-West, the existing Tallowood Seniors Housing Development to the South, rural residential properties to the north-east and St Gregory’s Catholic Church to the North as shown in Figure 5.



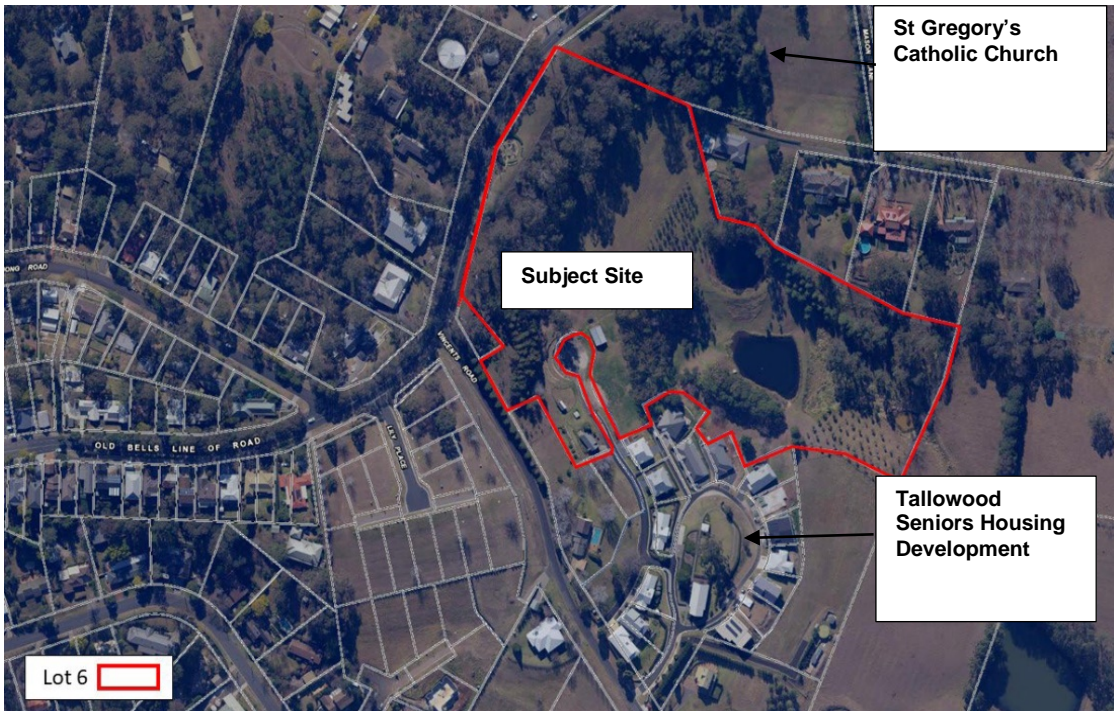


Figure 5: Aerial View of the Subject Site

The subject site is not flood affected, and is not listed as a heritage item or located within or near a heritage conservation area.

The majority of the subject site is vacant, and a number of sheds are located adjacent to the access road to the subject site and the cul-de-sac head that is located within the subject site.

Currently the subject site is accessed via a cul-de-sac on Lot 1 DP 270827 off Vincents Road, and as shown in Figure 6.

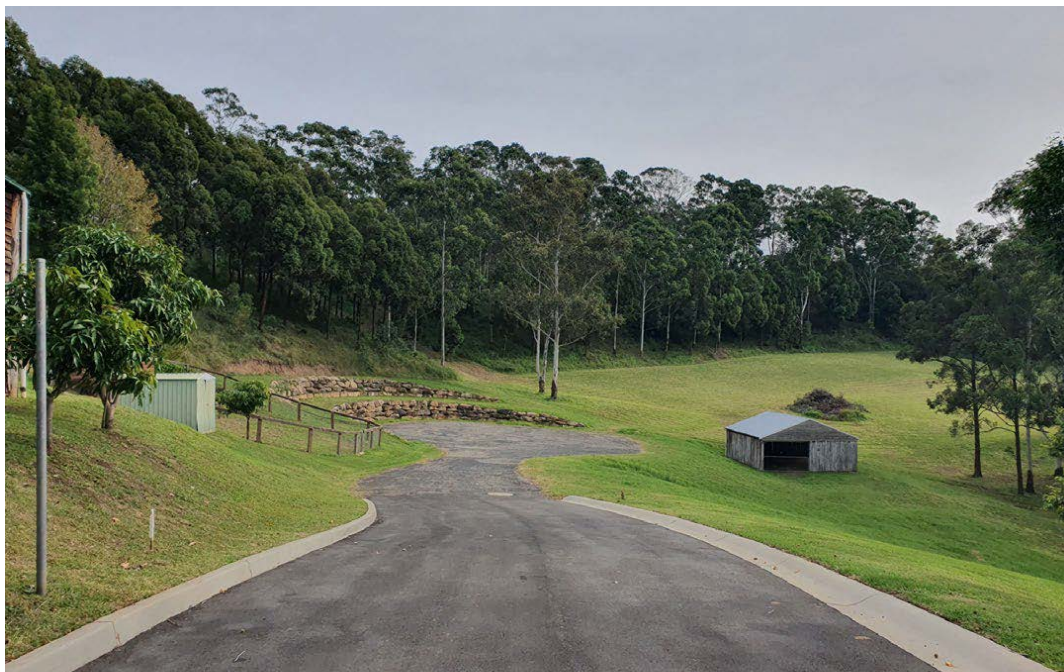


Figure 6: Current Access to the Subject Site via a Cul-de-sac

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The subject site is surrounded by a mix of land uses including rural residential properties, rural agricultural lands, seniors housing, St Gregory's Catholic Church and Cemetery and some remnant bushland.

#### Planning Provisions/Controls

The current planning provisions/controls that apply to the subject site under the Hawkesbury Local Environmental Plan 2012, and how the subject site complies/is affected by those is shown in Table 1.

**Table 1: Planning Provisions/Controls Applying to the Subject Site**

Planning Control	How the Subject is affected
Land Zoning	RU1 Primary Production
Lot Size	Minimum of 10Ha
Height of Buildings	Maximum 10M
Clause 4.1AA Minimum subdivision lot size for community title schemes	Not complied with this provision
Clause 4.6 Exceptions to development standards	Not complied with this provision
Acid Sulphate Soil	Class 5 – Acid Sulphate Soil
Bush Fire	Yes, containing designated Category 1 and Category 3 Vegetation
Clause 6.4 Terrestrial Biodiversity	Endangered Ecological communities and connectivity between remnant vegetation

#### Relationship to State and Local Strategic Framework

The following section discusses the consistency of the Planning Proposal with the relevant State and Local planning framework, strategic merits, site-specific merits, and the subject sites suitability and capability to achieve the intended outcomes of the planning proposal.

#### Greater Sydney Region Plan

On 18 March 2018, the NSW Government released A 'Metropolis of Three Cities' – the Greater Sydney Region Plan. The Greater Sydney Region Plan, along with Transport for NSW's Future Transport 2056, and Infrastructure NSW's State Infrastructure Strategy 2018-36 provide a vision for Greater Sydney as a Metropolis of Three Cities- the Western Parkland City, the Central River City and the Eastern Harbour City where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. The strategy outlines 38 objectives, 10 directions, and 42 objectives guiding the future of Sydney.

##### *Direction 4: Housing the City – giving people housing choices*

Direction 4 requires councils to investigate opportunities for the supply and a diversity of housing particularly around centres to create more walkable neighbourhoods. Objectives 10 and 11 of the Plan include:

*Objective 10: Greater Housing Supply - Providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's population. It needs to ensure steady supply of market housing in locations well supported by existing or planned services and amenity with an emphasis on public transport access.*

Objective 10 focuses on a range of housing types or the diversity for the needs of the community at different stages of life and caters for diverse household types. Diversity: including a mix of dwelling types, a mix of sizes, universal design, seniors and aged-care housing, student accommodation, group homes, and boarding houses. It means that as people age they can move into smaller homes and age in their own neighbourhoods.

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The NSW Government has identified that 725,000 additional homes will be needed by 2036 to meet demand based on current population projections. By 2056, it is anticipated that significant further housing supply will be required to meet Greater Sydney's continued strong population growth.

*Objective 11: Housing is more diverse and affordable – It is important that the supply of housing delivers the type of housing that communities and places need as they grow and change. A diversity of housing types, sizes and price points can help improve affordability.*

The planning proposal seeks to amend the Hawkesbury Local Environmental Plan 2012 to allow a community title subdivision of the Court approved Seniors Housing Development containing 19 self-contained dwellings with attached garages within a reasonable walking to the existing Kurrajong Neighbourhood Centre, and supporting more walkable neighbourhoods is considered to be generally consistent with Direction 4 Housing the City and objectives 10 and 11 of the Plan.

#### *Metropolitan Rural Area*

The Greater Sydney Region Plan and the Western City District Plan identify the whole Hawkesbury Local Government Area (except the Vineyard Precinct in the North West Growth Area) as a Metropolitan Rural Area. Objective 29 of The Greater Sydney Region Plan is to protect and enhance the environmental, social and economic values in rural areas.

The Plan acknowledges that the distinctive towns and villages of the Metropolitan Rural Area offer opportunities for people to live and work in attractive rural or bushland settings, close to a major city. They provide focal points for local communities and rural industries. Ongoing planning and management of rural towns and villages will need to respond to local demand for growth, the character of the town or village and the values of the surrounding landscape and rural activities.

The Planning Proposal enabling opportunities for seniors to live in an attractive rural or bushland setting and proximity to the existing Kurrajong Neighbourhood Centre, responding to senior housing demand and increasing economic viability and supporting ongoing management of rural neighbourhood centres is not considered to be inconsistent with the objectives of the Metropolitan Rural Area.

#### **Western City District Plan**

The Western City District Plan sets out planning priorities and actions for improving the quality of life for residents of the Western City District as the District grows and changes. The Western City District covers the Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly Local Government Areas. This 20-year Plan is to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney.

Of relevance to this planning proposal are the following directions and objectives of the District Plan:

- Directions for Liveability: A City for people, Housing the city- A City of Great Places,
- Planning Priority W5 – Providing housing supply and choice and affordability with access to jobs, services and public transport,
- Objective 10 – Greater housing supply and
- Objective 11 – Housing is more diverse and affordable.

The Planning Proposal enabling a seniors housing development containing 19 self-contained dwellings would help to achieve increased housing supply, choice and affordability within a reasonable walking distance (approximately 500m) to the established Kurrajong Neighbourhood Centre.

This centre meets the residents day-to-day shopping needs and provides local services. As such, the Planning Proposal is considered to be generally consistent with the Directions for liveability, Planning Priority 5 and Objectives 10 and 11 of the Western City District Plan.

### **State Environmental Planning Policies**

The following State Environmental Planning Policies are relevant to the Planning Proposal:

#### *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Chapters 4 and 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 apply to the subject site.

#### **Chapter 4 Koala habitat protection 2021**

The aim of this Chapter is to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range, and reverse the current trend of koala population decline.

A Biodiversity Development Assessment Report prepared by Ecological Consultants Australia, dated April 2022, which formed part of the Court approved Development Application (DA0055/21) for Seniors Housing Development confirmed, that the subject site does not contain areas of optimal koala habitat. Further, the report states that vegetation to be retained will be maintained and will satisfy APZ requirements. Patches of retained vegetation will also ensure that connectivity within the landscape is maintained. Tree removal will occur, however the development has been designed to ensure areas of native vegetation can be retained and enhanced.

#### **Chapter 6: Water Catchment (6.13 Hawkesbury-Nepean conservation area sub-catchments)**

The Land and Environment Court concluded that the proposed development will not adversely impact the environment and environmental amenity and the subject site has the environmental capacity to accommodate the proposed development. Therefore, it is considered that the proposed 19-lot community title subdivision of the subject site will be able to satisfy the planning principles, strategies and development controls contained in this Chapter or be able to appropriately minimise any adverse impacts. Should the Plan be made to give effect to the Planning Proposal, the above matters can be further considered at the development application stage.

#### *State Environmental Planning Policy (Housing) 2021*

There are number of principles of this Policy including the followings:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,
- (e) minimising adverse climate and environmental impacts of new housing development,
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

The Planning Proposal is generally consistent with the above principles.

However, Part 5 of the State Environmental Planning Policy (Housing) 2021 does not apply to rural zoned lands (other than RU5 Village zoned lands). This means housing for seniors and people with a disability is not a permitted land use on the subject site which is zoned RU1 Primary Production.

However, given the subject site has existing use rights as determined by the Land and Environment Court, the proposed seniors housing development can be accommodated on the subject site as an extension of the existing Tallwood Seniors Living development.

*State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to carrying out any development on that land and, if the land is contaminated, be satisfied that the land is suitable in its current state or will be after remediation for the purpose for which the development is proposed to be carried out.

A Detailed Site Investigation prepared by Martens Consulting Engineers, dated October 2021 which formed part of the Land and Environment Court approved Development Application (DA0055/21) for seniors housing development confirmed that the subject site is suitable for the proposed development. However, it is noted that the subject site has been previously used for agricultural and horticultural purposes that are listed in Table 1 – ‘Some activities that may cause contamination’ of the Managing Land Contamination Planning Guidelines. Therefore, this is a matter for the Department of Planning and Environment to consider at the Gateway Determination if the Planning Proposal is to proceed.

*State Environmental Planning Policy (Resources and Energy) 2021*

Chapter 3: Extractive Industries in Sydney

The Planning Proposal is only to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012, and the current RU1 Primary Production zoning of the subject site which allows extractive industries remains unchanged. Therefore, the Planning Proposal is consistent with the State Environmental Planning Policy (Resource and Energy) 2021.

**Local Planning Direction (Ministerial Directions)**

Relevant to the planning proposal are the following ministerial directions:

*Direction 1.1 Implementation of Regional Plans*

As outlined in the early part of this report, the Planning Proposal is consistent with the relevant regional plans.

*Direction 1.3 Approval and Referral Requirements*

The Planning Proposal does not require concurrence, consultation or referral of the development application to a minister or public authority therefore the Planning Proposal is consistent with this direction.

*Direction 1.4 Site Specific Provisions*

The objective of this Direction is to discourage unnecessary restrictive site-specific planning controls.

There are no other options or mechanisms other than the proposed amendment to the Hawkesbury Local Environmental Plan 2012 to facilitate a community title subdivision of the Court approved Seniors Housing Development.

The suitability of the subject site for Seniors Housing and the associated development works and the subject sites environmental capacity has been determined and approved by the Land and Environment Court. The proposed site-specific planning controls contained in the Planning Proposal are only to facilitate a community title subdivision of the Land and Environment Court seniors housing development, and therefore those planning controls are not considered to be unnecessary restrictive



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site-specific planning controls. Further, the Planning Proposal does not contain or refer to drawings that show details of the proposed development.

The above outlined circumstances provide sufficient justification for the inconsistency with the Direction. However, this is a matter for the Department of Planning and Environment to consider at the Gateway Determination, if the Planning Proposal is to proceed.

#### *Direction 4.3 Planning for Bushfire Protection*

The subject site is identified as being bushfire prone, containing Vegetation Categories 1 and 3 on the NSW Rural Fire Service's Bushfire Prone Land Map. The Planning Proposal is accompanied by a Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions Pty Ltd. The report concludes that the subject site and proposed Seniors Housing Development comply with the relevant specifications and requirements of the Planning for Bushfire Protection 2019. Therefore, the Planning Proposal is considered to be generally consistent with this Direction.

However, following receipt of a Gateway Determination from the Department of Planning and Environment advising Council to proceed with the Planning Proposal, consultation on the planning proposal will be undertaken with the NSW Rural Fire Service to ensure compliance with Planning for Bushfire Protection 2019, and compliance with various Asset Protection Zones, vehicular access, water supply, layout, and building material provisions in accordance with the Direction.

#### *Direction 4.4 Remediation of Contaminated Land*

A Detailed Site Investigation prepared by Martens Consulting Engineers, dated October 2021 which formed part of the Court approved DA0055/21 for Seniors Housing Development confirmed that the subject site is suitable for the proposed development. However, it is noted that the subject site has been previously used for agricultural and horticultural purposes that are listed in Table 1 - Some activities that may cause contamination of the Land Management Guideline. Therefore, this is a matter for the Department of Planning and Environment to consider at the Gateway Determination if the Planning Proposal is to proceed.

#### *Direction 4.5 Acid Sulfate Soils*

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.

The subject site is identified as containing "Class 5 acid sulfate soils on the Acid Sulphate Soils Planning Maps, and as such any future development on the land will be subject to Clause 6.1 Acid Sulfate Soils of the 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.

#### *Direction 5.1 Integrated Land Use and Transport*

This direction generally applies to urban land. However, the Planning Proposal enables Seniors Housing within a reasonable walking distance to the existing Kurrajong Neighbourhood Centre which generally serves the Kurrajong Residential Community's day-to-day needs and provides some local jobs and services. Therefore, there will be no adverse impacts on local transport or infrastructure.

Given the above circumstances, the Planning Proposal is considered to be generally consistent with this Direction.

#### *Direction 8.1 Mining, Petroleum production and Extractive Industries.*

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

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The Planning Proposal is consistent with this direction as the subject site is not located within an Identified Resource Area, Potential Resource Area or the 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 & 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).

#### *Direction 8.1 Rural Zones*

The objective of this direction is to protect the agricultural production value of rural land. The Direction requires councils to not rezone land from a rural zone to a residential, business, industrial, village or tourist zone and not contain provisions that will increase the permissible density of land within a rural zone.

The Planning Proposal retains the current RU1 Primary Production zoning of the subject site and seeks only to include a new local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow a community subdivision of the Land and Environment Court approved seniors housing development on the subject site.

There is a minor inconsistency with this direction as the Planning Proposal seeks to create 19 community title lots to accommodate the Land and Environment Court approved seniors housing development containing 19 self-contained dwellings and attached garages. Currently, the subject site is entitled or can be developed for a single dwelling or an attached dual occupancy. However, this inconsistency is considered to be warranted due to the following reasons:

- the Planning Proposal is only to facilitate the proposed community title subdivision of the Land and Environment Court approved seniors housing development on the subject site, and there are no other options to achieve this; and
- the proposed local provision ensures that no further increased density other than the Land and Environment Court approved density (19 community title lots) on the subject site.

Irrespective of the above comments, this is a matter for the Department of Planning and Environment to consider at the Gateway Determination if Council resolves to proceed with the Planning Proposal.

#### **Hawkesbury Local Strategic Planning Statement 2040**

The Hawkesbury Local Strategic Planning Statement 2040 prepared in response to the Greater Sydney Region Plan and Western City District Plan, provides a 20-year land use vision for the Hawkesbury Local Government Area. The Statement outlines Council's intended course of action in delivering the planning objectives.

The statement establishes the following clear vision for Hawkesbury Local Government Area to 2040.

*“Hawkesbury Local Government Area will provide a diversity of housing to meet the future needs of the community without compromising safety, environmental quality and local character”.*

Planning Priority 3 of this Statement is to provide a diversity of housing types to meet the needs of the changing population, and Planning Priority 5 is to manage rural lands.

The Planning Proposal enabling increased housing and housing choice to meet the demand and needs of the changing and vulnerable population with no adverse impacts on the natural environment and amenity, retaining rural character and zoning of the subject site is generally considered to be consistent with this Statement.

### **Hawkesbury Local Housing Strategy (December 2020)**

The Hawkesbury Local Housing Strategy provides a clear plan to deliver the housing vision in the Hawkesbury Local Government Area over the next 20 years. The Strategy identifies eight guiding principles, and Principle No 5 is as follows:

“5      *Increase housing diversity to deliver housing choice to meet the needs of the ageing population with more lone person households.*”

The Planning Proposal is in line with the Principle 5 of the Strategy, and therefore the Planning Proposal is considered to be generally consistent with the Strategy.

### **Hawkesbury Rural Lands Strategy**

Hawkesbury's rural land is an important resource. It comprises a number of land uses, landforms and vast areas of national parks and native vegetation. It is productive as a source of food and consumables; it is also important for biodiversity habitat and catchment management as well as a place for people to live and work.

However, planning for the preservation of rural land is a complex issue. The Hawkesbury Rural Lands Strategy provides Council with a planning framework for effective management and protection of rural lands with significant agricultural, environmental and biodiversity values whilst making provisions for ongoing planning and management of rural towns and villages for people to live and work in rural settings proximity to rural neighbourhoods, villages and towns.

The Planning Proposal enabling opportunities for senior people to live in attractive rural or bushland setting and proximity to the existing Kurrajong Neighbourhood Centre, responding to senior housing demand and increasing economic viability and supporting ongoing management of rural neighbourhood centres is not considered to be inconsistent with the Rural Lands Strategy.

### **Hawkesbury Community Strategic Plan 2022-2042**

The Hawkesbury Community Strategic Plan 2022-2042 outlines the key aspirations of the Hawkesbury Local Government Area and sets the essential direction for future Council activities and decision making. The Planning Proposal is consistent with the following long-term objective:

*Great place to live*

1.5      Provide the right places and spaces to serve our community

### **Hawkesbury Local Environmental Plan**

*Land Zoning*

The subject site is currently zoned RU1 Primary Production under the Hawkesbury Local Environmental Plan 2012 as shown in Figure 7, and seniors housing is a prohibited land use within this zone.

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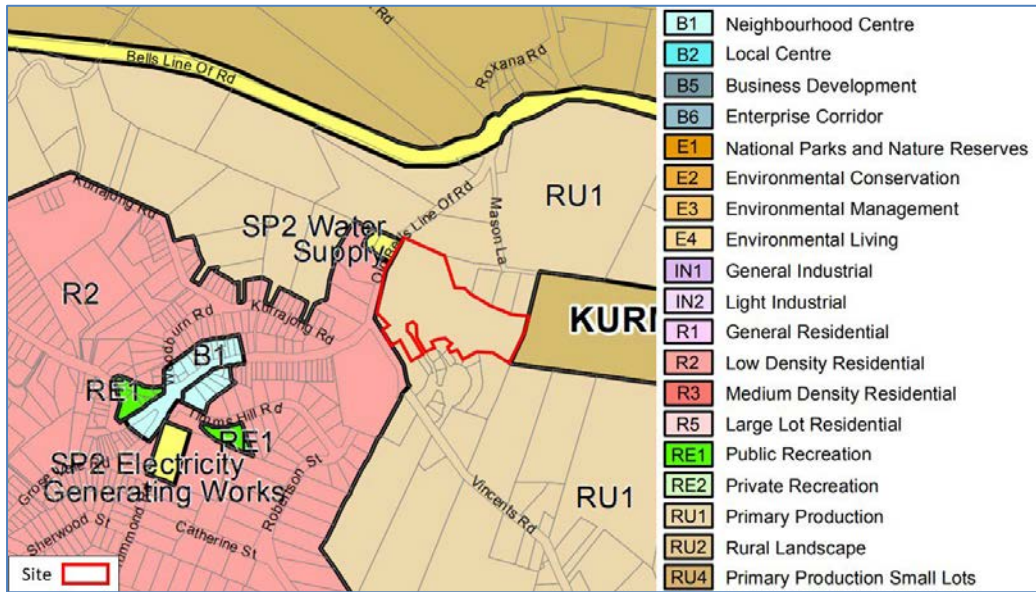


Figure 7: Extract of the Land Zoning Map

Given the Planning Proposal is relying upon the existing use rights, the proposed Seniors Housing can be accommodated on the subject site.

Lot Size Map

The current minimum lot size for subdivision of the subject site is 10ha as shown in Figure 8. Given the subject site has an area of approximately 5.4ha, it cannot be subdivided. Therefore, the Planning Proposal seeks to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow the proposed community title subdivision comprising of 19 lots with a minimum lot size not less than 360m<sup>2</sup>.

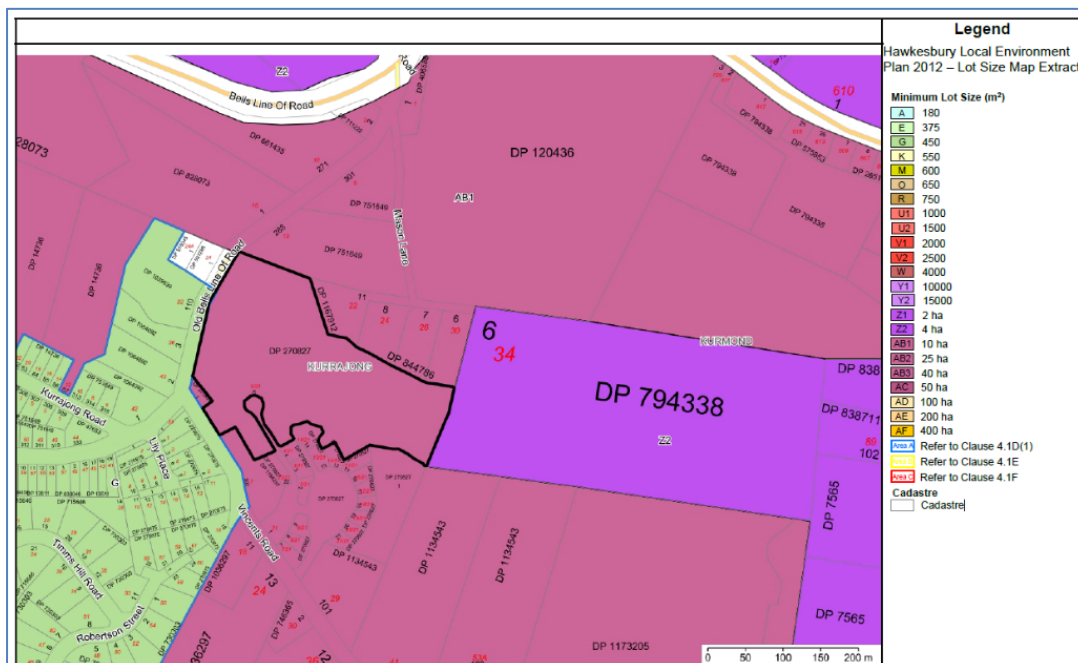


Figure 7: Extract of the Lot Size Map

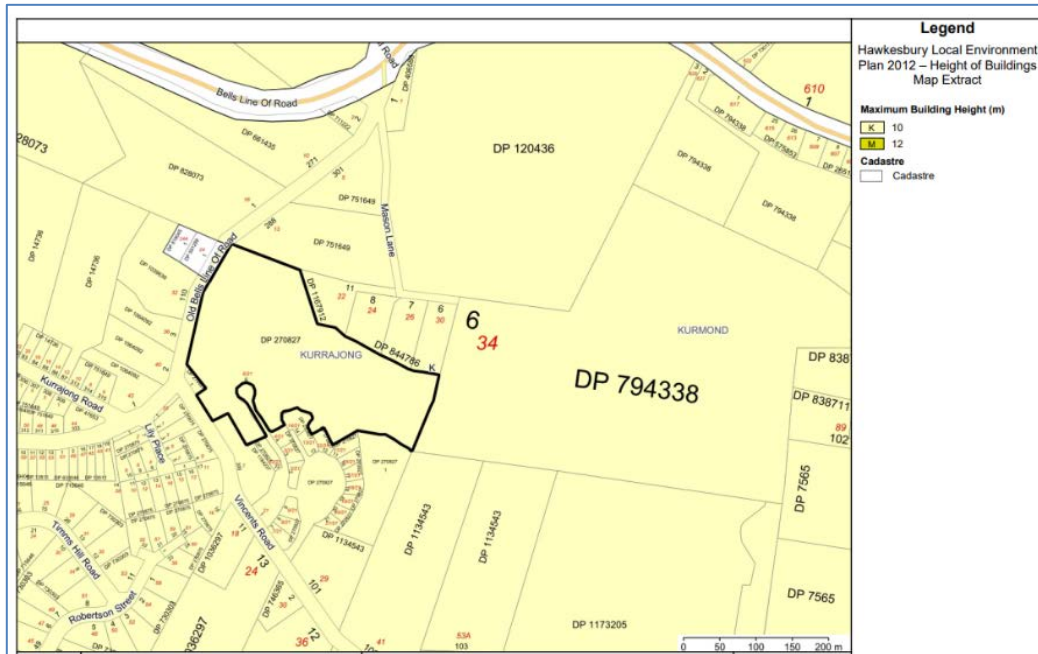
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#### Height of Buildings Map

A 10m maximum height of buildings provision applies to the subject site as shown in Figure 8.



**Figure 8: Extract of the Height of Buildings Map**

The architectural plans of the proposed development prepared by Environa Studio depict that the proposed development complies with the 10-metre height limit.

#### Clause 6.4 Terrestrial biodiversity

The primary aim of Clause 6.4 of the Hawkesbury Local Environmental Plan 2012 is to maintain terrestrial biodiversity protecting native fauna and flora.

As shown in Figure 9, the subject site contains 'Shale Sandstone Transition Forest and Connectivity between Remnant Vegetation' as identified on the Terrestrial Biodiversity Map of the Hawkesbury Local Environmental Plan 2012. Council's vegetation mapping depicts the concentration of Shale Sandstone Transition Forest, which is a Critically Endangered Ecological Community under the Biodiversity Conservation Act 2016 mainly along the North-Western boundary.

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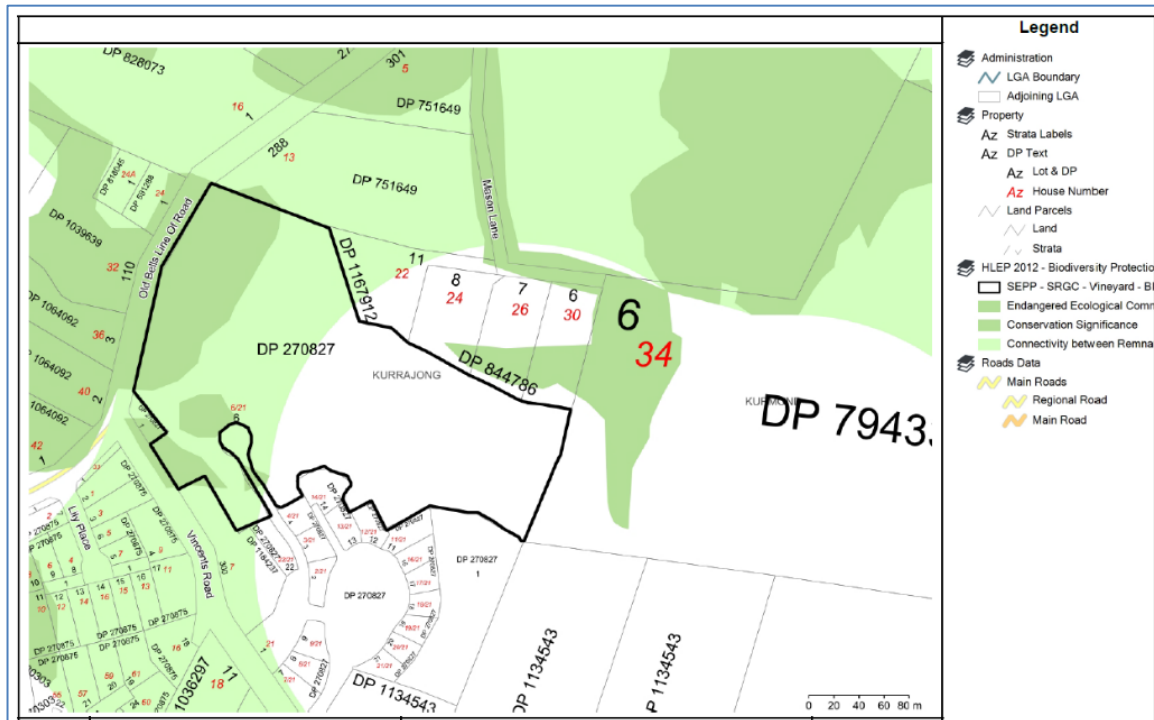


Figure 9: Extract of the Terrestrial Biodiversity Map

The Biodiversity Development Assessment Report prepared by Ecological Consultants Australia prepared to accompany DA0055/211 describes the vegetation on the subject site as follows:

*“The site has been managed for agricultural and horticultural purposes (stone fruit orchards) since the 1800s. Native vegetation would have once covered the area although due to modification and disturbance, the site has lost many natural attributes. The site has been significantly altered and degraded from its natural state due to a long history of vegetation clearing, habitat fragmentation and on-going disturbance, via agricultural practices. A majority of vegetation on the site is regrowth or has been planted by the property owner. There is little to no remnant vegetation left on the property. Exotic species are dominant across the site and are preventing the recruitment or the original vegetation community.”*

*Vegetation to be retained will be maintained and will satisfy APZ requirements. Patches of retained vegetation will also ensure that connectivity within the landscape is maintained. Tree removal will occur however the development has been designed to ensure areas of native vegetation can be retained and enhanced.*

### Strategic and Site-specific Merits

The Planning Proposal is consistent with the relevant State and Local planning framework. The subject site has frontages to both Bells Line of Road and Vincents Road, has existing use rights as determined by the Land and Environment Court, and is located immediately north of the existing Tallowood Seniors Living development and within a walking distance to the Kurrajong Neighbourhood Centre. It is considered that it has clear merits to accommodate the proposed community title subdivision of the Land and Environment Court approved seniors housing development.

The Land and Environment Court determined that the subject site has the environmental capacity with easy access to all necessary infrastructure services, and is capable of accommodating the proposed Seniors Housing Development as an extension to the existing Tallowood Seniors Living development with no adverse impacts on the immediate surrounding and the amenity of the locality.

### **Environmental, Social and Economic Impacts**

The proposed development will not adversely impact the natural environment as determined by the Land and Environment Court. The proposed development can be accommodated on the vacant land area free of any significant vegetation with no adverse impacts on critical habitat or populations, or ecological communities. Further the Land and Environment Court stated that there will be appropriate measures in order to ensure that there are no adverse impacts resulting from the proposed development on the natural environment. A Bushfire Assessment Report prepared by Building Code and Bushfire Hazard Solutions concludes that the subject site and proposed Seniors Housing Development comply with the relevant specifications and requirements of the Planning for Bushfire Protection 2019.

The Planning Proposal enabling increased housing and housing choice for seniors, economic viability of the existing Kurrajong Neighbourhood Centre, local jobs and services are considered to be positive social and economic impacts.

### **Discussion**

The Land and Environment Court approved the proposed development other than the community title subdivision of the seniors housing development. This is because the Land and Environment Court determined that subdivision is not a use of land and, in any event, is not the 'enlargement, expansion' nor 'intensification' of the 'existing use' which is for seniors housing alone.

In accordance with clause 2.6 – 'Subdivision - consent requirements' and clause 4.1AA – 'Minimum subdivision lot size for community title schemes' of the Hawkesbury Local Environmental Plan 2012, a consent cannot be granted for the proposed community title subdivision of the Land and Environment Court approved seniors housing development proposing 19 community title lots with minimum lot size of not less than 360m<sup>2</sup>.

This is because these two clauses state that the size of any lot resulting from a subdivision of land is not to be less than the minimum size shown on the Lot Size Map in relation to that land. According to clause 4.1AA, this minimum lot size requirement is not applying to any lot comprising association property within the meaning of the Community Land Development Act 2021.

The predominant minimum lot size within the immediate vicinity of the subject site is 10Ha. Therefore, any amendment to the Lot size Map in order to allow a 360m<sup>2</sup> minimum lot size provision for subdivision of the subject site to enable the proposed community title subdivision of the Seniors Housing is considered to be inappropriate, undesirable planning outcome for rural lands and is unwarranted.

Further, it is expected that the Department of Planning and Environment will not support that approach for rural lands and it also creates a significant lot size anomaly in the locality and a precedent.

There are no provisions in the Hawkesbury Local Environmental Plan 2012 or any other existing State planning instrument other than an insertion of an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to enable the proposed community title subdivision of the Land and Environment Court approved seniors development as proposed in the Planning Proposal.

However, a Planning Proposal containing or referring to drawings that show details of the proposed development is inconsistent with the section 9.1 Ministerial Directions. Therefore, it is proposed to include an additional subclause in the proposed additional local provision in order to ensure amalgamation of the remainder of the subject site with the existing Lot 1 DP 270827 to serve as the association property of the entire seniors' development comprising of the existing Tallowood Seniors Living development and the proposed Seniors Housing Development on the subject site. This would help avoid any uncertainty or speculations about the future use of the remainder of the subject site and provide certainty to the future senior users/owners of residential lots within the proposed seniors housing development that the remainder of the subject site will be amalgamated with the existing Lot 1 DP 270827 to form as the association property for the entire seniors' development.



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Therefore, consideration of the inclusion of an additional subclause (3d.) in the proposed local provision as follows is warranted:

**“6.16 Development of land at 6/21 Vincents Road, Kurrajong**

1. *This clause applies to Lot 6 in DP 270827, 6/21 Vincents Road, Kurrajong*
2. *Despite any other provision of this Plan, consent may be granted under this clause to a community title subdivision of Lot 6 in DP 270827 subject to subclause (3).*
3. *Development consent must not be granted for the purposes of a community title subdivision on land to which this clause applies, unless the community title subdivision:*
  - a. *is for the subdivision of development for the purposes of seniors housing development and extension of private cemetery following the completion of the senior housing development; and*
  - b. *the number of residential lots created by the subdivision does not exceed 19, and*
  - c. *each lot created has a lot size of 360m<sup>2</sup> or greater, and*
  - d. *enables amalgamation of the remainder of the land with Lot 1 DP 270827 to create an association property for the entire Seniors' Living development within the meaning of the Community Land Development Act 2021.*

**Conclusion**

The Planning Proposal seeks the insertion of a site-specific local provision under Part 6 of the Hawkesbury Local Environmental 2012 to enable the proposed community title subdivision of the Land and Environment Court approved seniors housing development, and an extension of the existing private cemetery has some merits.

The Planning Proposal will provide increased housing and housing choice as well as some form of affordability for local elderly people or seniors to live and enjoy in a rural setting in proximity to local shops and services. Also, the Planning Proposal enabling the proposed development on the subject site is considered to be generally compatible with the surrounding uses, there will be no adverse impact on the natural and built environment.

The Planning Proposal is also consistent with relevant State and Local planning framework, and also would help ongoing management and improved economic viability of the Kurrajong Neighbourhood Centre.

**ATTACHMENTS:**

- AT – 1** Land and Environment Court Judgement - *(Distributed under separate cover).*
- AT – 2** Court approved Architectural Plans - *(Distributed under separate cover).*
- AT – 3** Proposed Plan of Subdivision of Lot 6 DP270827 Tallowood Village Kurrajong - *(Distributed under separate cover).*
- AT – 4** Planning Proposal for 6/21 Vincents Road, Kurrajong - *(Distributed under separate cover).*

**oooO END OF REPORT Oooo**



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**Item: 002 CP - Planning Proposal - LEP001/23 - Hawkesbury Local Environmental Plan 2012 Review and Update - (124414)**

Directorate: City Planning

**PLANNING PROPOSAL INFORMATION**

**File Number:** LEP001/23  
**Property Address:** Various (LGA Wide)  
**Applicant:** Hawkesbury City Council  
**Owner:** Various  
**Proposal Details** To amend the Hawkesbury Local Environmental Plan (LEP) 2012, to introduce a number of land use planning controls associated with the Standard Instrument and the LEP Maps in order to align the LEP with the NSW Planning Framework, the Greater Sydney Region Plan and the Western City District Plan.  
**Date Received:** 28 November 2022  
**Current Minimum Lot Size:** Various  
**Proposed Minimum Lot Size:** Various  
**Current Zone:** Various  
**Site Area:** Various

**Key Issues:** ♦ Various matters as stated below.

**RECOMMENDATION:**

That the Hawkesbury Local Planning Panel provide advice on the planning proposal to amend the Hawkesbury LEP 2012 to deliver the following land use planning development controls associated with the Standard Instrument and the LEP Maps as indicated in Table 1 below:

**Table 1: Proposed amendment to the Hawkesbury LEP 2012**

<b>Proposed Amendment</b>	<b>How</b>
<b>Amendment of existing zone objectives of certain zones</b>	Alignment of Zone objectives with the zones and its intended purposes.
<b>Amendment of Land Use Table to allow and remove certain uses from each zone</b>	Aligning permitted uses within each zone with the zone objectives. Introducing some new uses to certain zones.
<b>Secondary dwelling provisions in rural zones.</b>	Allow secondary dwelling development in RU2, RU4, RU5, C3 and C4 zones which are above 1 in 100 ARI.
<b>Detached dual-occupancy provisions in rural zones.</b>	Allow detached dual occupancy development in rural zones.
<b>Secondary dwelling provisions in residential zones.</b>	Allow secondary dwelling development in R1, R2, R3 and R5 zones which are above 1 in 100 ARI.
<b>Seniors Housing Provisions – in areas above 1in100 ARI.</b>	Allow Seniors Housing developments in R2, and RU5 zones.
<b>Introduce Design Excellence Clause</b>	Adopting model clause from Standard Instrument Order.

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<b>Proposed Amendment</b>	<b>How</b>
<b>Rezoning of various land to correct spot zone anomalies within Richmond Town Centre.</b>	To correct zones by rezoning spot zones to adjacent zones and meet the Strategic Centre objectives.
<b>Rezoning of various land to E2 Commercial Centre zone to create consistency of zone and zone objectives within the Windsor Town Centre.</b>	To rezone certain residential and recreational zones within the Windsor Town Centre to meet the Strategic Centre objectives.
<b>Rezoning land and amendment of Minimum Lot size provisions to correct anomalies.</b>	To correct anomaly from the initial roll of LEP 89 to standard instrument LEP. This will align the zone objectives to the current use and create development opportunities for lands that are locked due to incorrect planning controls at the moment.
<b>Rezoning land to RE1 for a number of open spaces to correct anomalies.</b>	Rezoning land to RE1 from other zones as the land is used for open space purpose – an anomaly created during the rollover of LEP 89 to Standard Instrument LEP.
<b>Amendment of clause 4.1 Minimum subdivision lot size and 4.1C Exception to minimum subdivision lot size for rural and large lot residential zones.</b>	Amend clause 4.1 and 4.1C to emphasise that an original lot cannot be further subdivided using Lot Averaging alternative if the lot is a result of a lot averaging subdivision.
<b>Amendment of Minimum Lot Size provision of RU1, RU2 and RU4 zones.</b>	Increase the Lot Size provisions of certain RU1, RU2 and RU4 lands to maintain it for agricultural related activities.
<b>Introduce Architectural Roof Features Clause 5.6 provisions in the <i>Hawkesbury LEP 2012</i>.</b>	Introducing Clause 5.6 will enable consent to be granted to development that includes an architectural roof feature which exceeds the height limit set elsewhere in the Hawkesbury LEP 2012.
<b>Introduce Urban Heat Clause within the <i>Hawkesbury LEP 2012</i>.</b>	Introducing an Urban Heat Clause will ensure that development within the Hawkesbury LGA will mitigate urban heat through integrating planning and design measures into development.

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**REPORT**

The purpose of this report is to inform the Hawkesbury Local Planning Panel that Hawkesbury City Council is undertaking a Review and Update of the Hawkesbury Local Environmental Plan 2012 as part of the NSW Government's Roadmap Process.

The planning proposal seeks to amend various items within the Hawkesbury LEP 2012 and the associated maps. The list of items is provided in Table 1, and Attachment 1 includes the planning proposal.

**BACKGROUND**

The Hawkesbury City Council is undertaking a review and update of the Hawkesbury Local Environmental Plan (LEP) 2012 as part of the NSW Government's LEP Roadmap process. The amendments proposed in this report will align the Hawkesbury LEP 2012 with the planning priorities as detailed in the Greater Sydney Region Plan, Western City District Plan and Council's Local Strategic Plans.

Council was not considered by the NSW Government to be one of the fast-tracked councils to undertake the work associated with the review of the LEP, and as such did not receive the \$2.5M funding provided to other metropolitan Sydney councils to undertake this LEP Review work. As such, the review of the LEP and the development of this Planning Proposal has been undertaken in-house by Council staff.

**Hawkesbury LEP 2012 Review and Update:**

The Hawkesbury Local Environmental Plan 2012 is Council's principle planning instrument. There are a number of state, regional and local strategies that have been developed since the adoption of the LEP 2012 that influence land use planning decisions, including:

- A Metropolis of Three Cities – the Greater Sydney Region Plan;
- Western City District Plan;
- Hawkesbury Local Strategic Planning Statement;
- Hawkesbury Local Housing Strategy;
- Hawkesbury Employment Lands Strategy, and;
- Hawkesbury Rural Lands Strategy.

Council has previously considered amendments to the LEP 2012;

- At its meeting 23 November 2021;
- At a meeting between Councillors and the LEP-DCP Reference Group (including professionals from within the development sector) 12 April 2022, and;
- Following informal feedback received from the Department of Planning and Environment.

Most recently, Council considered a report on the Review and Update of the Hawkesbury Local Environmental Plan 2012 at its meeting on 22 November 2022, where it resolved:

*"That Council:*

1. *Endorse the preparation of the Planning Proposal included as Attachment 2 of the report to amend the Hawkesbury Local Environment Plan 2012 and commence the Local Environmental Plan Amendment process, with the following amendments:*
  - *Delete the following new proposed zone objectives (in the order they appear):*
    - *To retain and enhance the river valley systems, panoramic and scenic landscape corridors, tree canopies, wooded ridges, escarpments, environmentally sensitive areas and other features of scenic quality*
    - *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems*
    - *To ensure that any new development does not create unreasonable demand for the provision or extension of public amenities and services*
    - *To ensure that any development does not have adverse impact on the natural environment and ecological system*
    - *To enable local business development to achieve the Strategic Centre objectives and optimise the economic and social benefits for the Hawkesbury community.*

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- *To enable other land uses that strengthen the economic viability of the Hawkesbury*
  - *To support the health and wellbeing of employees by permitting facilities that provide daily recreation and landscape features within the industrial zones*
  - *To ensure development enhances and delivers optimum public benefits*
  - *To ensure development is consistent with the physical characteristics of the environment and is within the scope of bushfire risk management capabilities.*
- *Amend the proposed Secondary Dwellings (Clause 5.4) to make it clear that they must be on land greater than 1 in 100 flood planning level.*
  - *Amend Part (b) of the proposed Secondary Dwellings provision Rural zones Clause 5.5 to read (b) The distance between the secondary dwelling and the principal dwelling must not exceed 50 metres.*
  - *Amend Table 3 – Proposed Land Use Table (R2 Low Density Residential) by removing Veterinary hospitals from the 'Permitted with consent to be omitted' column.*
2. *Seek advice from the Hawkesbury Local Planning Panel on the Planning Proposal as required by the Environmental Planning and Assessment Act and Regulation.*
  3. *Subject to the advice provided by the Hawkesbury Local Planning Panel, submit the Planning Proposal to the Department of Planning and Environment, requesting a Gateway Determination.*
  4. *Receive a report regarding opportunities and constraints for the use of R5 Large Lot Residential zoning in parts of Oakville."*

The proposed amendments contained in this report reflect the outcomes of the stakeholder engagement, further planning framework review, and Council resolution of 22 November 2022.

#### **Planning Context:**

The Planning Proposal to amend the LEP will enable Council to give effect to the priorities, objectives and actions of the Regional, District and Local Plans and Strategies as outlined below:

#### *Metropolis of Three Cities (Greater Sydney Region Plan):*

The Greater Sydney Region Plan is a 40-year vision of the three cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. The vision brings new thinking to land use and transport patterns to boost Greater Sydney's liveability, productivity, and sustainability by spreading the benefits of growth.

*The Western City District Plan:*

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 Western City District Plan collectively classifies Windsor and Richmond as a strategic centre, recognising its expanded role as a hub for retail and commercial services including the health, defence and education precinct.

The District Plan has set a dwelling target of 1,150 for the first 5 years and the remaining targets to be achieved by 2036. Hawkesbury has the capacity to meet its housing targets for the first five years and beyond through the Greenfield release areas including Vineyard Precinct Stage 1, Redbank, and Jacaranda. Housing opportunities beyond 2031 may be realised through the consideration of densities within existing town centres.

Council has to facilitate an increase of 37.6% of employment opportunities to meet its employment target within Richmond and Windsor. In order to meet this increase, Council will need to increase its non-residential gross floor area by an additional 20%, which is achievable through expanding the employment lands in the amended LEP.

*Hawkesbury Local Strategic Planning Statement 2040:*

The Hawkesbury Local Strategic Planning Statement (LSPS) 2040 is a 20-year land use vision for Council that provides a line-of-sight between the State, District and Local Level (Community Strategic Plan 2017-2036) Planning Framework.

The Hawkesbury Local Strategic Planning Statement 2040 is based on the 10 Directions and four themes identified through the Sydney Region Plan and the Western City District Plan. The four themes being:

- Infrastructure and Collaboration
- Liveability
- Productivity
- Sustainability.

The Hawkesbury LEP 2012 review and update is a means of implementing the actions of the Hawkesbury Local Strategic Planning Statement 2040.

*Hawkesbury Local Housing Strategy:*

The aim of the Hawkesbury Local Housing Strategy is to set a clear plan for housing in the Local Government Area for the next 10 and 20 years. The Hawkesbury Local Housing Strategy aligns the anticipated housing growth with supporting and necessary infrastructure and social services such as educational facilities, health facilities, open spaces and public transport.

The Hawkesbury Local Housing Strategy recognises the background, constraints and opportunities, heritage values, rural character, flood impacts and heritage of the Hawkesbury Local Government Area, and incorporates the community's vision and aspirations for the future development of land use in the Local Government Area. The Hawkesbury LEP 2012 review and update has been undertaken with consideration to the constraints and opportunities as highlighted in the Hawkesbury Local Housing Strategy.

*Hawkesbury Employment Lands Strategy:*

The Hawkesbury Employment Lands Strategy outlines the role that Council will play in driving economic growth in the Hawkesbury. It also provides an opportunity to bridge any gaps and aligns with the NSW Planning Framework, including the Sydney Region Plan - 'A Metropolis of Three Cities'

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and the 'Western City District Plan', and enables Council to deliver these objectives and actions at a local level.

Key Recommendations of the Hawkesbury Employment Lands Strategy include:

- Agribusiness: working with stakeholders in Clarendon to progress the agricultural strength of the local government area and developing new research, development, employment and career pathways for local residents and students, particularly in relation to sustainable fresh produce processing. The Hawkesbury Rural Lands Strategy provides further detail with respect to the wider local government area opportunities associated with agribusiness.
- Supermarket, hospitality, and bulky good floor space: as population projections and retail spending analysis indicates these types of commodity goods will be in the most demand in the future.
- Small scale healthcare providers: to support the local population as it ages.
- Small scale commercial services: such as local accounting and law firms, that provide a 'population serving commercial role' in centres.
- Light industry and urban services: given the wealth of industrial lands in the local government area the focus should be towards developing a diversity of lots and attracting smaller operators in order to be in a position to address the competition from other industrial lands in Western Sydney that are better connected.
- Tourism: given the existing strategic intent in planning documents to grow this industry and the wealth of assets (nature/fresh produce/heritage) that already exist in the local government area.

The Hawkesbury LEP 2012 review and specific changes to the zones and associated land use table are consistent with the recommendations of the Hawkesbury Employment Lands Strategy.

*Hawkesbury Rural Lands Strategy:*

The Hawkesbury Rural Lands Strategy provides an opportunity to bridge gaps and enable an alignment of the Hawkesbury LEP 2012 with the NSW Planning Framework, including the Greater Sydney Region Plan - A Metropolis of Three Cities, and the Western City District Plan.

Key focus areas of the Hawkesbury Rural Lands Strategy include:

- Growth Management
- Rural Lands Preservation
- Economic Development
- Land Use Planning.

The Hawkesbury LEP 2012 review and specific changes to the zones and associated subsequent changes to the Development Control Plan will support Council to deliver the recommendations from the key focus areas within the Hawkesbury Rural Lands Strategy.

The specific amendments that are included in the Draft Planning Proposal are as follows:

- 3.1 Additional zone objectives for certain zones
- 3.2 Amendment of Land Use Table to allow and remove certain uses from each zone
  - 3.2 (a) Seniors Housing
  - 3.2 (b and d) Secondary Dwellings (Urban and Rural)
  - 3.2 (c) Artisan Food and Drink Premises
  - 3.2 (e) Dual Occupancy (Attached & Detached)
- 3.3 Introduce Design Excellence Clause
- 3.4 Introduce B3 Commercial Core zone
- 3.5 Correcting spot zone anomalies within Richmond Town Centre
- 3.6 Rezoning certain land in Glossodia to R5
- 3.7 Rezoning of Richmond Lowlands to RU1

- 3.8 Rezoning land in Windsor Station Precinct to B1 Neighbourhood Centre
- 3.9 Rezoning land adjacent to the Mulgrave Precinct
- 3.10 Correcting zoning anomalies within open spaces
- 3.11 10 Bridge Street, Windsor – removal of land acquisition
- 3.12 Correction of Height of Buildings Map anomaly of South Windsor Town Centre
- 3.13 Minimum Lot Size provisions for larger RU1 and RU2 lots
- 3.14 Introduce Floor Space Ratio provisions (deleted based on Council resolution 22 November 2022)
- 3.15 Adjust Heights of Building for B2 and B3 zones (deleted based on Council resolution 22 November 2022)
- 3.16 Amend Clause 4.1 Minimum Subdivision Lot Size and 4.1C Exceptions to Minimum Subdivision for rural and large lot residential zones
- 3.17 Introduce Architectural Roof Features Clause 5.6 provisions
- 3.18 Introduce Urban Heat Clause

These amendments will align Council's principle planning instrument in accordance with the planning priorities in these Regional, District and Local Plans and Strategies.

**Discussion:**

**3.1 Additional zone objectives to certain zones:**

A review of the zone objectives has been undertaken to provide clear guideline for each zone. Where required, additional zone objectives have been added to align the Hawkesbury LEP 2012 with the Sydney Region Plan and the Western City District Plan.

**3.2 Amendment of Land Use Table to allow and remove certain uses from each zone:**

A review of the land use table was undertaken to identify the appropriate permitted and prohibited uses, so that the land use table provides flexibility of uses, especially new and innovative uses which are not already captured through the Standard Instrument Dictionary. This work also ensured that the land use table met the requirements of the Employment Zones Reforms. New uses were introduced such as 'tourist visitor accommodation' provisions in the R5 Village zones and 'Artisan and cultural activities' in zones except in Environmental, Waterway and infrastructure zones. Sex services premises, Seniors Housing and secondary dwellings in urban and rural zones are also introduced. Detached dual-occupancy provisions in rural zones is also proposed through the planning proposal.

**Seniors Housing** - The LEP 2012 amendment also introduces seniors housing restricted to Residential Care Facilities in R1 and R2 zones in areas connected to reticulated water and sewerage, within 50 kilometres of a 24- hour health services facility and not mapped by the Metropolitan Rural Area exclusion area.

Part 6 of the LEP Standard Instrument will include local provisions for seniors housing which will further limit this development to land that is above the 1 in 100 Flood Average Recurrence Interval (ARI).

**Secondary Dwellings** - The LEP 2012 amendment proposes to introduce secondary dwellings in R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R5 Large Lot Residential zones. The LEP Standard Instrument is proposed to include Clause 5.4 (9) to set a standard of total floor area of 60m<sup>2</sup>, or 10% of the total floor area of the principle dwelling, whichever is greater.

Such development would be restricted to land that is above the 1 in 100 ARI.

**Artisan Food and Drink Premises** - The LEP Amendment proposes controls on gross floor area for this emerging land use.

**Secondary Dwellings in Rural Zones** - The LEP 2012 amendment proposes to introduce secondary dwellings in RU2, RU4, RU5, C3 and C4 rural zones. The secondary dwellings provisions will be limited to the floor area of 120m<sup>2</sup>, or 25% of the principle dwelling, whichever is greater.

The secondary dwelling will be restricted to land above 1 in 100 ARI.

**Dual Occupancy** – Currently, only ‘attached’ dual occupancy development is permitted in rural zones. Given that it is proposed to introduce secondary dwelling provisions to rural zones, it is not practical to limit dual occupancy to only ‘attached’ in the rural zones. As secondary dwellings are both ‘attached’ and ‘detached’ development, it is proposed that the LEP 2012 is amended to expand the dual occupancy provision to both ‘attached’ and ‘detached’ within the proposed amended secondary dwellings zones.

### **3.3 Introduce Design Excellence Clause:**

The term ‘Design Excellence’ emerged as a term in the 2000’s at the City of Sydney to describe an optional competitive design process to be undertaken at the concept design stage of new projects, in return for additional Floor Space Ratio or height. This competitive design process was aimed at both lifting the design of significant buildings and diversifying the field of architectural practise engaged in its design. Design Excellence provisions were applied to any development exceeding 55 metres in height or with a site area larger than 1,500m<sup>2</sup>.

Whilst the development constraints due to flooding in the Hawkesbury Local Government Area will not generate comparable outcomes to those in growth councils such as City of Sydney, City of Blacktown, or the City of Parramatta, the Design Excellence provisions can still be included in an amended LEP 2012 to regulate an expected design quality that reflects the highest standard of architectural, urban and landscape design.

Design Excellence provisions would apply to development involving the erection of a new building or external alterations to an existing building within the Windsor, South Windsor and Richmond town centres that is between 12 metres and 14 metres.

Inclusion of Design Excellence provisions will ensure that development in these town centres meets the standard of work as delivered through Council’s Liveability Project which includes Masterplans for Richmond, Windsor and South Windsor.

### **3.4 Introduce B3 Commercial Core:**

Rezoning land from B2 Local Centre to B3 Commercial Core within the Windsor Town Centre is consistent with the NSW Planning Framework and aligns the town centres hierarchy. The B3 Commercial Core zone will enable a wider range of retail, business, office and entertainment uses within the Windsor town centre that will enable Windsor town centre to achieve its strategic centre goals by creating appropriate employment opportunities for the LGA.

It should be noted that work associated with the Employment Zones reform may not necessitate the inclusion of this item within the planning proposal ie. to be zoned E2 Commercial Core.

### **3.5 Correcting spot zone anomalies within Richmond Town Centre:**

The review of the LEP 2012 identified a number of spot zones within the Richmond Town Centre. Spot zoning is not supported by the Department of Planning and Environment as it creates precedence and can result in land use conflicts. It is intended to correct this anomaly to ensure that the zones within the town centre transition appropriately as per relevant town planning principles.

Correction of these zone anomalies will create zone consistency within the Richmond Town Centre and limit land use conflicts. The zones that are proposed to be rezoned will continue to have ‘existing use rights’ until these lands are developed in accordance with the amended zone objectives.



### **3.6 Rezoning certain land in Glossodia to R5:**

During the conversion of the Hawkesbury LEP 1989 to the Hawkesbury LEP 2012, an anomaly between the zone objectives and minimum lot size provision occurred for certain R2 Low Density Residential zones in the Glossodia area. The current R2 zone and the minimum lot size of 40 hectares is inconsistent with the R2 zone objectives. A 40-hectare minimum lot size is mostly applicable to rural zones such as RU1, RU2 or RU4.

As the RU1, RU2 and RU4 zones within the LEP 2012 mostly have a minimum lot size provision of 10 hectares, this anomaly requires rectification. It should be noted that whilst the lots that are an anomaly lack sewer connection, the infrastructure to provide the subject sites with connection to Sydney Water exists.

Given the constraints of amenity and being isolated during flood events, it is not viable for Council to allow minimum lot size provisions of 2,000m<sup>2</sup> or 4,000m<sup>2</sup> for these subject sites.

To provide a level of balance in terms of the R2 Low Density Residential zone planning controls, it is proposed to rezone certain larger R2 lots within Glossodia to R5 Large Lot Residential with the minimum lot size of 4 hectares, and the rest of the smaller R2 lots to have a minimum lot size of 2 hectares.

These provisions will allow a slight increase in lot yield should landowners of larger lots seek to subdivide in the future. These additional lots will not have any significant impact on the current infrastructure at Glossodia.

### **3.7 Rezoning of Richmond Lowlands to RU1:**

The Hawkesbury Rural Lands Strategy identified that the alluvial agricultural lands of the Richmond Lowlands were under-optimised due to its zoning of RU2 Rural Landscape and that this zone did not support agricultural activities within the Hawkesbury Local Government Area.

There are a number of equine related activities being undertaken from the Richmond Lowlands. These activities have existed historically and have gradually expanded over much of the Richmond Lowlands. The Richmond Lowlands is a current RU2 Rural Landscape zone that does not support equine activities.

The Hawkesbury Rural Lands Strategy recommends that the Richmond Lowlands be rezoned to RU1 Primary Industry to better reflect the agricultural capacity of the land, and continue the historic land uses of the Richmond Lowlands, which was to generate agricultural production.

Whilst it is understood that the parts of the Richmond Lowlands where equine activities are being undertaken is unlikely to revert back to agricultural use, the Department of Primary Industries' 'primefacts 932 – August 2009, Planning for Horse Establishment' plan states that intensive horse establishments are better suited to rural production zones with appropriate separation from residences and smallholdings. 'Primefacts' also provided examples of horse establishments under the Standard LEP definition and the types of development suited under each use.

Given the Standard Instrument definition and the types of development, rezoning of the subject site from RU2 Rural Landscape to RU1 Primary Production zone will align the current equine uses on the Lowlands with the zone objectives of the Hawkesbury Rural Lands Strategy.

It is also recommended that the land use table for the Richmond Lowlands be amended to add the definitions of Recreation Facility (major) and Recreation facility (outdoor) but restricted to show jumping, dressage, and polo.

### 3.8 Rezoning land in Windsor Station Precinct to E1 Local Centre:

The Hawkesbury Employment Lands Strategy identified the business zone gap that currently exists within the Windsor Town Centre and the Windsor Train Station. The Windsor Town Centre is formed in a linear fashion along George Street, connecting the train station to Thompson Square. However, there are zone consistency issues to consider.

There are a number of retail uses occurring in the R2 Low Density Residential zones within the Windsor train station precinct, which is inconsistent with the town centre principles.

It is recommended to correct the inconsistency by rezoning these sites to B1 Neighbourhood Centre (E1 Local Centre) which will address business zone gap and create a higher level of economic activity (and by virtue, surveillance) within the train station precinct.

### 3.9 Rezoning land adjacent to the Mulgrave Precinct:

The Mulgrave Industrial Precinct is the gateway to the Hawkesbury from Windsor Road, an arterial road. The Mulgrave Precinct has a train station and General Industrial activities that include mechanical repairs workshops, building supplies, and food and drink premises. The Mulgrave Precinct is a major contributor to the Local Government Area economy.

The Western City District Plan sets an employment target of 12,000 to 16,500 jobs for the Hawkesbury Local Government Area to be achieved by 2036.

The Greater Sydney Commission (through the NSW Planning Framework) highlighted:

- **Retain and manage:** Protect all existing industrial and urban services land from competing pressures, especially residential and mixed-use zones. This principle applies in the Eastern City, North and South Districts, the **North West Growth Area**, and the established areas of the Western City.
- **Review and manage:** Review all industrial and urban services land to either confirm its retention or manage uses to allow sites to transition to higher-order employment activities (such as business parks). Seek appropriate controls to maximise business and employment outcomes.
- **Plan and manage:** In land release areas, there is a need for additional industrial and urban services land to support projected population growth and economic development. The District Plan further designated industrial and urban services land in the lower north-east portion (Mulgrave Precinct) of the Hawkesbury Local Government Area to be “retained and managed”.

The Hawkesbury Employment Lands Strategy recommends:

- Considering industrial land expansion that is aligned with demand for floorspace;
- Consider how greater use of these lands can be achieved;
- That the Local Government Area supports industries that can leverage aerotropolis and associated economic activities: and
- Developing capacities for agribusiness and fresh produce processing capacities, associated freight and logistics requirements to implement the initiatives of the ‘NSW food and beverage manufacturing industry development strategy’.

Land adjacent to the Mulgrave Industrial Precinct has had interest from landowners for rezoning to industrial zones as these lands are not used for any agricultural related activities. Potential sites have been identified to be rezoned to industrial and business lands.

Once the Western Sydney Airport and the associated aerotropolis activities are fully operational and the north west growth area fully developed, there will be greater demand for the industrial lands in the Hawkesbury Local Government Area. As such, the strategic location of the Local Government Area will enable the Hawkesbury's industrial lands to become a 'last mile' hub for many regional producers.

It is considered as crucial for the Hawkesbury to make its employment lands ready now to take advantage of the opportunities that the near future will bring. A viable option for Council to expand its industrial lands and employment lands is to rezone certain lands adjacent to the Mulgrave Precinct to industrial and business zones.

Adjacent to the Mulgrave Precinct is Windsor High School which is currently zoned RU4 Primary Industry Small Lots zone. The zone objective is inconsistent with the use of the site for school purposes. It is recommended to rezone the subject site to SP2 Infrastructure to be consistent with the rest of land parcels within the school premises.

### **3.10 Correcting zoning anomalies within open spaces:**

During the Hawkesbury LEP 1989 conversion into LEP 2012, an anomaly occurred in respect to the open space zones in that a number of open space parcels were not rezoned RE1.

The planning proposal seeks to correct the anomalies by rezoning all the open space lots which are not zoned RE1 to RE1. Most of these parcels of land are Crown Lands with a gazetted purpose of public recreation. This amendment will ensure a clear identification of RE1 Public Recreation lands within the LEP 2012, enabling the relevant Sections to deliver open space related projects and tasks more efficiently, and ready identification of RE1 spaces for the community.

### **3.11 10 Bridge Street, Windsor – removal of land acquisition:**

A portion of the front corner of this site (Lot A DP 381403) was previously designated for acquisition for road widening purposes. Given Transport for NSW have indicated that the portion of the subject site is no longer required for road widening purposes, it is proposed to amend the Hawkesbury LEP 2012 to remove the SP2 Infrastructure zone from part of the subject site and rezone it to R2 Low Density Residential (as the rest of the parcel is zoned).

The relevant section of the LEP 2012 Land Reservation Acquisition Map must be amended to remove the land acquisition over the subject site. Therefore, an amendment to this map is also recommended to reflect the changes.

### **3.12 Correction of Height of Buildings Map anomaly of South Windsor Town Centre:**

During the conversion of Hawkesbury LEP 1989 to Hawkesbury LEP 2012 a map error occurred where the Height of Building (HOB) provision of B1 Neighbourhood Centre in the South Windsor Town Centre was incorrectly reflected on the adjacent sites. This error needs to be rectified to ensure that the correct planning controls are provided for the relevant zones.

It is recommended to amend the Hawkesbury LEP 2012, Height of Buildings Map to reflect the HOB provision correctly for the subject site.

### **3.13 Minimum Lot Size provisions for larger RU1 and RU2 lots:**

An intention of the LEP 2012 review is to align the zone objectives with the uses and to restrengthen the rural lands capacity, specifically, for RU1 and RU2 zoned lands along the Hawkesbury River for agricultural purposes. It is also envisaged to reinforce some of the intentions of the Hawkesbury LEP 1989 which had fallen off during the rollover to the Standard Instrument.

The Review of the LEP 2012 identified that there are several very large RU1 Primary Production and RU2 Rural Landscape zoned lots with inconsistent Minimum Lot Size provisions that contradict with the intention of the zone of these lots, and would enable further subdivisions of these lots.

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LEP 2012 has provisions for subdivision of rural lands. Clause 4.10, prescribes that where the original parcel has already been subdivided and the maximum subdivision yield has been achieved, Council prefers to retain these lots from further subdivision and to retain it for primary production and agricultural purposes.

In some instances, the larger lots with inconsistent Minimum Lot Size provisions can have an area of approximately 90 hectares even after an original subdivision. With the Minimum Lot Size provision of 10 hectares (which is currently mostly the case for the RU1 Lots in the Local Government Area), the landowners may have impetus to lodge applications for further subdivision.

To rectify this matter it is considered appropriate to increase the Minimum Lot Size provisions for some of these very large RU1 lots to ensure that the sites are not further subdivided into multiple smaller lots.

#### **3.14 Introduce Floor Space Ratio provisions**

Deleted based on Council resolution 22 November 2022.

#### **3.15 Adjust Heights of Building for B2 and B3 zones**

Deleted based on Council resolution 22 November 2022.

#### **3.16 Amend Clause 4.1 Minimum Subdivision Lot Size and 4.1C Exceptions to Minimum Subdivision for rural and large lot residential zones:**

There are some large rural lot landowners who have already subdivided their land to achieve the maximum lot yield under the Hawkesbury LEP 1989, however, the LEP 2012 allows for these landowners lodge further applications for further subdivision of their land. The LEP 2012 contains a gap in the Minimum Lot Size provisions of these rural lands and does not properly reflect the intentions of no 'double dipping' if owners have already taken the full advantage of subdivision in the previous LEP 1989.

The intention of the Lot Averaging Provision (Clause 4.1C) is that an "original lot" can be subdivided once only using this provision. If an original lot was subdivided using the Lot Averaging provision through LEP 1989, the lot resulted from the subdivision (even if it is a large lot approximately 100 Hectares) cannot be further subdivided using that provision.

To rectify this issue, it is proposed to amend Clause 4.1 (2) and Clause 4.1C (3). It is crucial that the clause 4.1 has greater emphasis on the term "original lot". It is important to amend the Minimum Lot Size Maps for RU1, and RU2 in certain areas within the Local Government Area to prohibit any further 'double dipping' in terms of land subdivision and to give impetus to agricultural activities.

#### **3.17 Introduce Architectural Roof Features Clause 5.6 provisions:**

Hawkesbury is the third oldest European Settlement in Australia. There are a number of heritage significant building structures in the Local Government Area. Some of these building structures demonstrate architectural roof features of the late 1800s building designs. This clause enables consent to be granted to development that includes an architectural roof feature which exceeds the height limit set elsewhere in the LEP 2012.

In order to maintain the local character and built form and to ensure that this character is inherent within the future building developments, it is recommended to introduce the Architectural Roof Features provisions- Clause 5.6 within the LEP 2012.

**3.18 Introduce Urban Heat Clause:**

Hawkesbury City Council was a partner in the preparation and recent release of the Western Sydney Regional Organisation of Councils Ltd (WSROC) Urban Heat Planning Toolkit to assist local government strengthen their planning provisions to reduce the impacts of urban heat and help people adapt. Western Sydney is particularly exposed to heat due to:

- Its geography and weather patterns which intensifies the urban heat island effect in the west due to the prevalence of hot westerly winds and lack of cooling sea breezes.
- The area is urbanising rapidly with an associated increase in hard and impervious surfaces and decrease in vegetation cover.

Urban heat and heatwaves cannot be eliminated; there is a need to take a resilience approach responding with strategies that minimise the impacts of intense shocks such as heatwaves and the ongoing stress of frequent hot and very hot weather.

The Western Sydney's heat is recognised as a challenge and the Western Sydney District Plan establishes three key priorities related to urban heat:

1. Adapting to the impacts of urban and natural hazards and climate change;
2. Reducing carbon emissions and managing energy, water and waste efficiency;
3. Increasing urban tree canopy cover and delivering Green Grid connections.

The WSROC Urban Heat Planning Toolkit has been used as a guide to preparing the Urban Heat Clause.

**Consistency with the State Environmental Planning Policies:**

The planning proposal is generally consistent with the State Environmental Planning Policies

**Consistency with the Local Planning Directions:**

The planning proposal is generally consistent with the local planning directions.

**Conclusion:**

The planning proposal is a requirement under section 3.8 of the Environmental Planning and Assessment Act 1979. The requirement of the section is to review the existing Hawkesbury LEP 2012 against the relevant District Plan and update the LEP to bridge any gaps.

The Hawkesbury LEP 2012 Review and Update Planning Proposal has been undertaken to align the LEP with the NSW Planning Framework. The planning proposal also corrects the LEP, enables opportunities to meet the housing and employment targets set for the Hawkesbury, leverages tourism opportunities, restrengthenes the agricultural objectives of the LGA, streamlines the Strategic Centre opportunities for Windsor and Richmond, reviews and brings forward the intention of the Hawkesbury LEP 1989 provisions which was an oversight during the rollover into the standard instrument, rectifies minor anomalies within the Hawkesbury LEP 2012 and authenticate the Hawkesbury LEP 2012.

**ATTACHMENTS:**

- AT - 1** Planning Proposal - Hawkesbury LEP 2012 Review and Update - *(Distributed under separate cover).*

**oooO END OF REPORT Oooo**

**HAWKESBURY LOCAL PLANNING PANEL MEETING**

**SECTION 1 – Reports for Advice**

**Meeting Date:** 19 January 2023

**Item: 003**                      **CP - Planning Proposal - LEP003/23 - 7 and 9 Fitzgerald Street, Windsor –  
Rezone from SP2 Infrastructure to E2 Commercial Core - (124414)**

**Directorate:**                City Planning

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**PLANNING PROPOSAL INFORMATION**

**File Number:**                      LEP003/23  
**Property Address:**                7 and 9 Fitzgerald Street, Windsor  
**Legal Description:**                Lot C DP 331895, Lot D DP 360127, Lot 1 DP 1087936  
**Applicant:**                            Hawkesbury City Council  
**Owner:**                                Mrs AC Hayes, Mr JS Hayes, Mr MJ Hayes & Mrs M King  
**Current Zone:**                        SP2 – Infrastructure  
**Proposed Zone:**                      E2 Commercial Core  
**Site Area:**                             1,764 m<sup>2</sup>

**Key Issues:**

- ◆ Anomaly occurred in the adoption of the Hawkesbury local Environmental Plan 2012
- ◆ Previously zoned MU Multi Unit Housing under the Hawkesbury Local Environmental Plan 1989
- ◆ Proposed E2 Commercial Core to align zoning with present use.

**EXECUTIVE SUMMARY**

Hawkesbury City Council seeks to amend the Hawkesbury Local Environmental Plan 2012 by rezoning 7 and 9 Fitzgerald Street, Windsor to E2 Commercial Core and introduce and associated planning control of a 10m Height of Buildings to resolve an anomaly that occurred from the transition from the previous Hawkesbury Local Environmental Plan 1989 to the current Hawkesbury Local Environmental Plan 2012.

**RECOMMENDATION:**

That the Hawkesbury Local Planning Panel provide advice on the Planning Proposal seeking to rezone 7 and 9 Fitzgerald Street, Windsor (Lot C DP 331895, Lot D DP 360127, Lot 1 DP 1087936) from SP2 Infrastructure to E2 Commercial Core, and introduce associated planning controls of a Height of Buildings of 10m.

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**Purpose of the Report**

The purpose of the planning proposal is to correct an anomaly that occurred as a result of the adoption of the Hawkesbury Local Environmental Plan 2012. To correct the anomaly, the planning proposal is seeking to rezone 7 and 9 Fitzgerald Street, Windsor (Lot C DP 331895, Lot D DP 360127, Lot 1 DP 1087936) from SP2 Infrastructure to E2 Commercial Core, and introduce the associated planning control of a 10m Height of Building.

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#### Background

Under the Hawkesbury Local Environmental Plan 1989, the subject sites (7 and 9 Fitzgerald Street, Windsor) were zoned MU – Multi Unit Housing. On 21 September 2012, Hawkesbury City Council adopted the Hawkesbury Local Environmental Plan 2012, replacing the Hawkesbury Local Environmental Plan 1989. This adoption of the new LEP was instructed by the Standard instrument 2006 and involved the conversion to a standardised zoning system and updating and replacing of associated LEP maps. In this process an anomaly occurred whereby the subject sites, were incorrectly zoned SP2- Infrastructure. With both sites previously being zoned Multi Unit Housing, the standard conversion into present zoning should have been R3 Medium Density.

Given that the subject sites are currently used for commercial purposes, discussions with the owners of the property included whether the subject sites should be rezoned to E2 Commercial Core as the R3 Medium Density zone would create a spot zone in the Windsor Town Centre which is mostly zoned E2 Commercial Core. The E2 zone is supported in order to maintain the zone consistency in the Windsor Town Centre.

#### Objectives and Provisions of the Planning Proposal

The objective of the planning proposal is to amend the Hawkesbury Local Environmental Plan 2012 to correct an anomaly resulting from the conversion to this plan, by rezoning 7 and 9 Fitzgerald Street to E2. The planning proposal seeks to achieve the objectives and intended outcomes through amending the following maps of the Hawkesbury Local Environmental Plan 2012.

Map Name	Map Number	Current Control	Proposed Control
Land Zoning Map	LZN_008DB	SP2 Infrastructure	E2 Commercial Core
Height of Building	HOB_008DB	Nil	10m

#### Existing Planning Controls

**Table 2 Hawkesbury Local Environment Plan 2012 – Relevant Clauses**

Zone	SP2 Infrastructure
Minimum Lot Size	Nil
Height of Buildings	Nil
Acid Sulfate Soils	Class 5 – Acid Sulfate Soil.
Flood	The site is entirely inundated in the 1:100 ARI Flood Event.
Biodiversity	A small portion of the subject site is categorised a connectivity between remnant vegetation.
Bushfire Prone Land	The subject site contains no bush fire prone land.
Sewer Scheme	The subject site is serviced by the Hawkesbury City Council reticulated sewer service.
Sydney Water	The subject site is serviced by Sydney Water supply.
Heritage	The subject site does not contain any items of environmental heritage.

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The following maps highlight the subject site

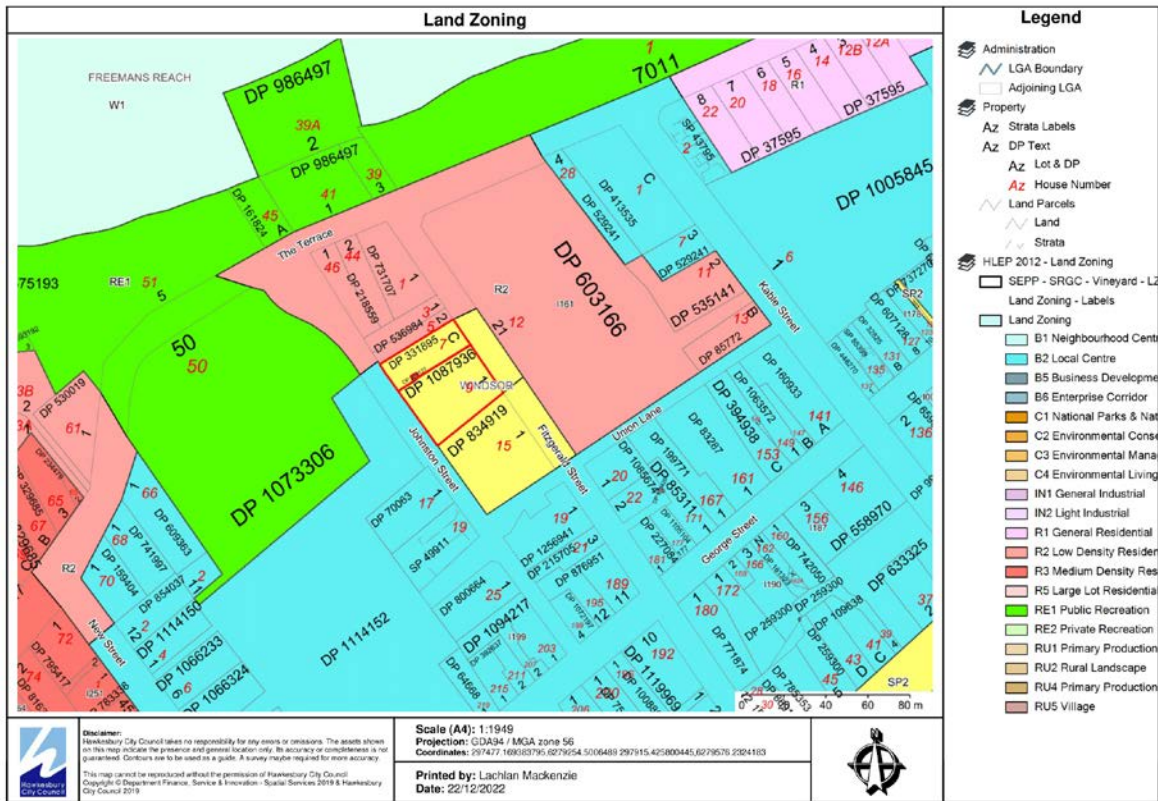


Figure 1: HLEP 2012 Land Zoning Source: Hawkesbury IntraMaps



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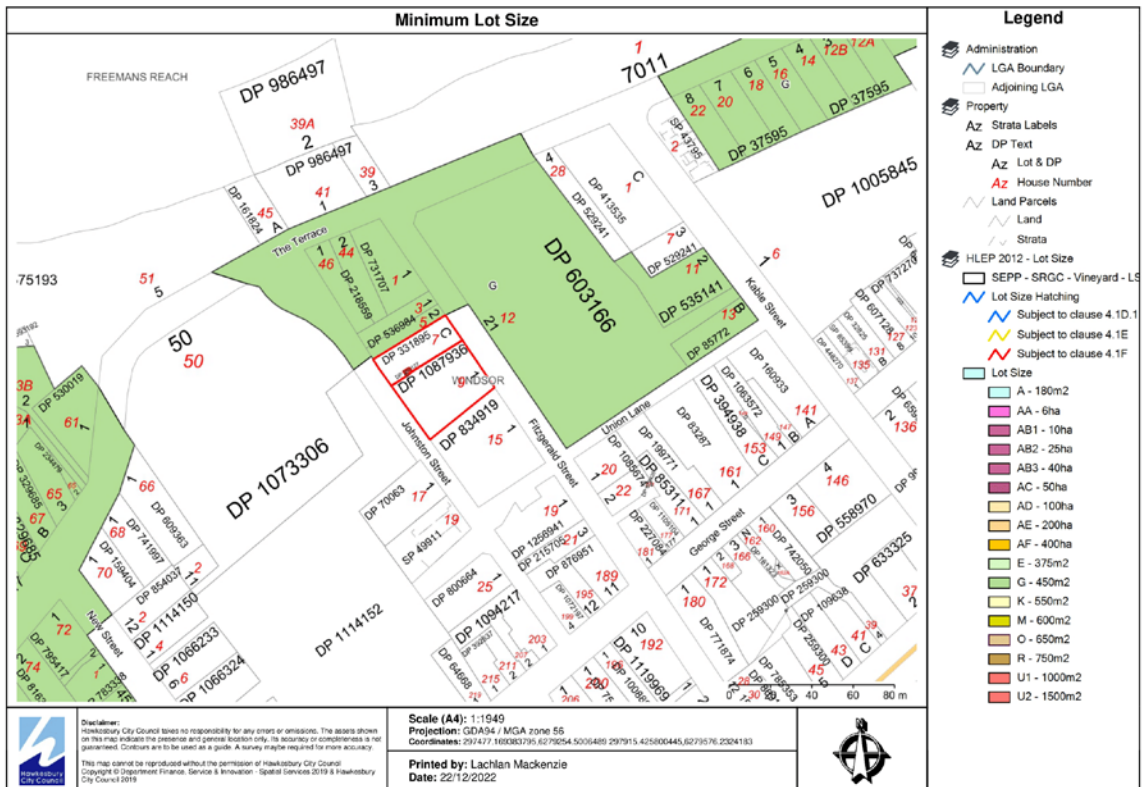


Figure 2: HLEP 2012 Minimum Lot Size Source: Hawkesbury IntraMaps

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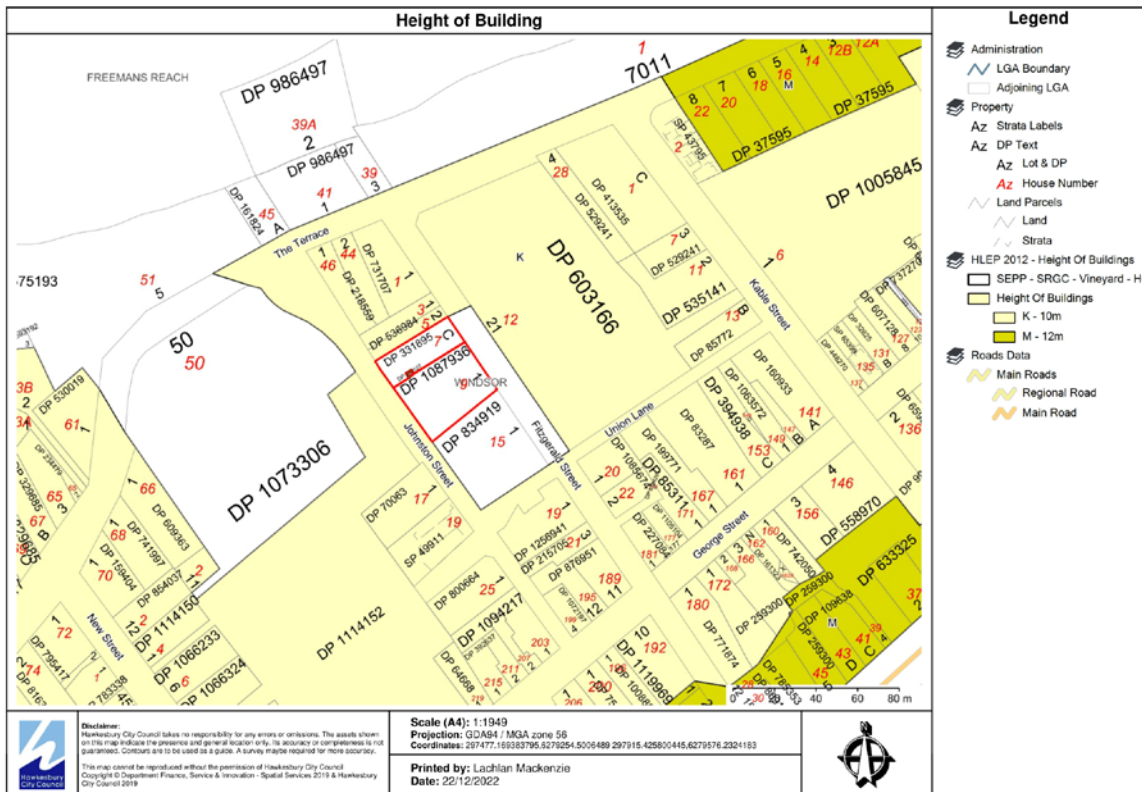


Figure 3: HLEP 2012 Height of Building Source: Hawkesbury IntraMaps

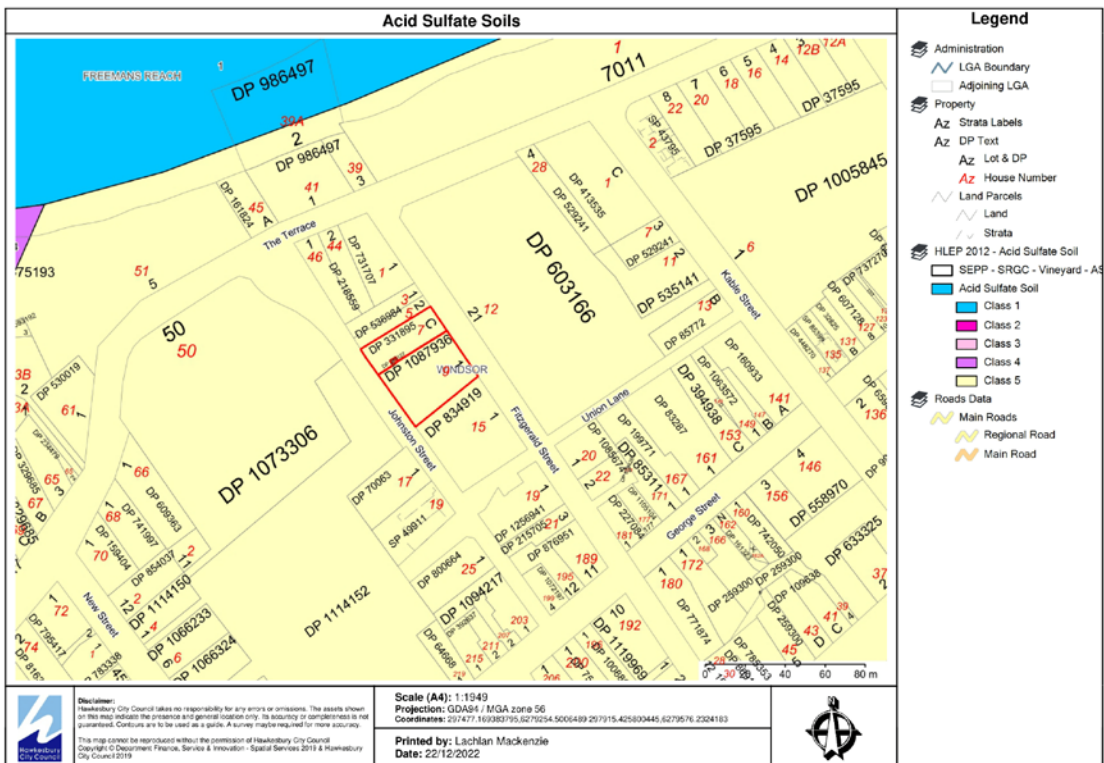


Figure 4: HLEP 2012 Acid Sulfate Soils Source: Hawkesbury IntraMaps

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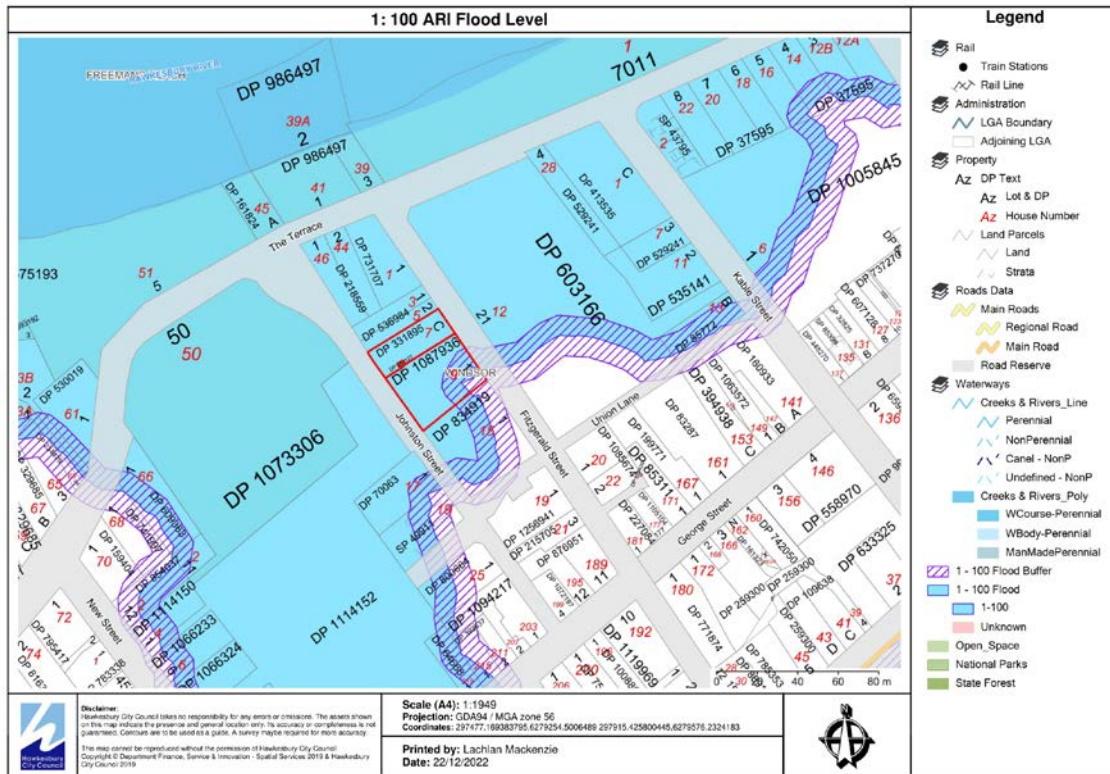


Figure 5: HLEP 2012 Flood Prone Land Source: Hawkesbury IntraMaps



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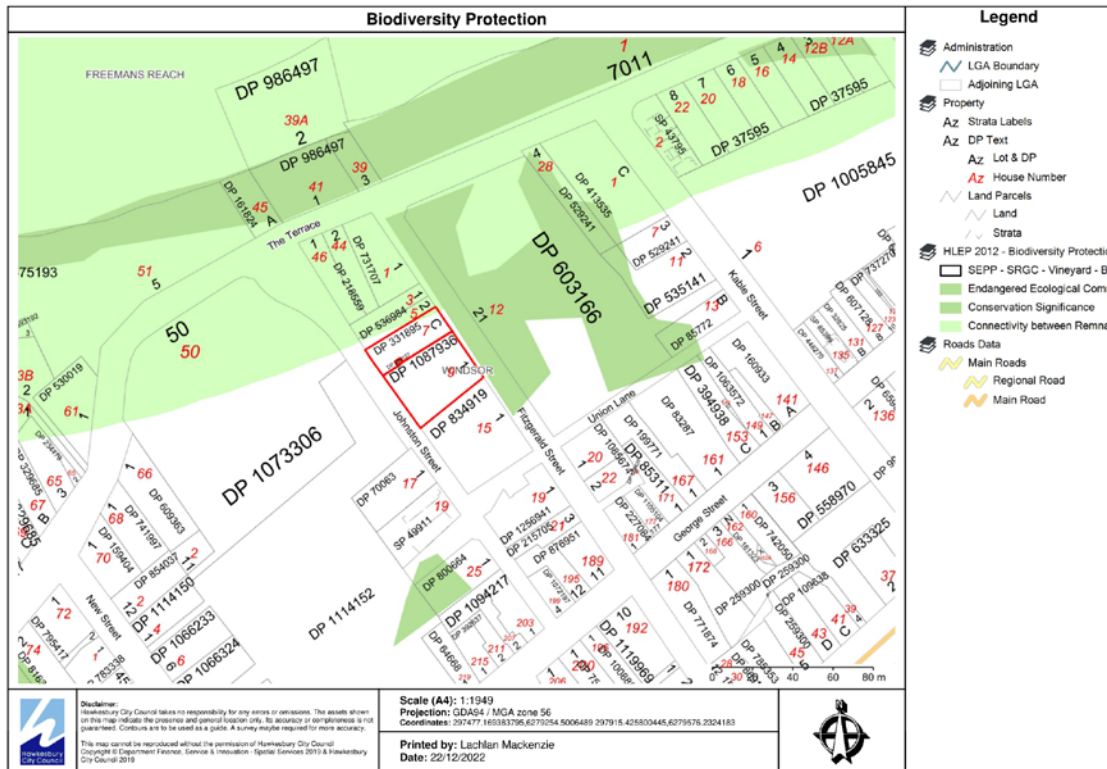


Figure 6: HLEP 2012 Biodiversity Protection Source: Hawkesbury IntraMaps

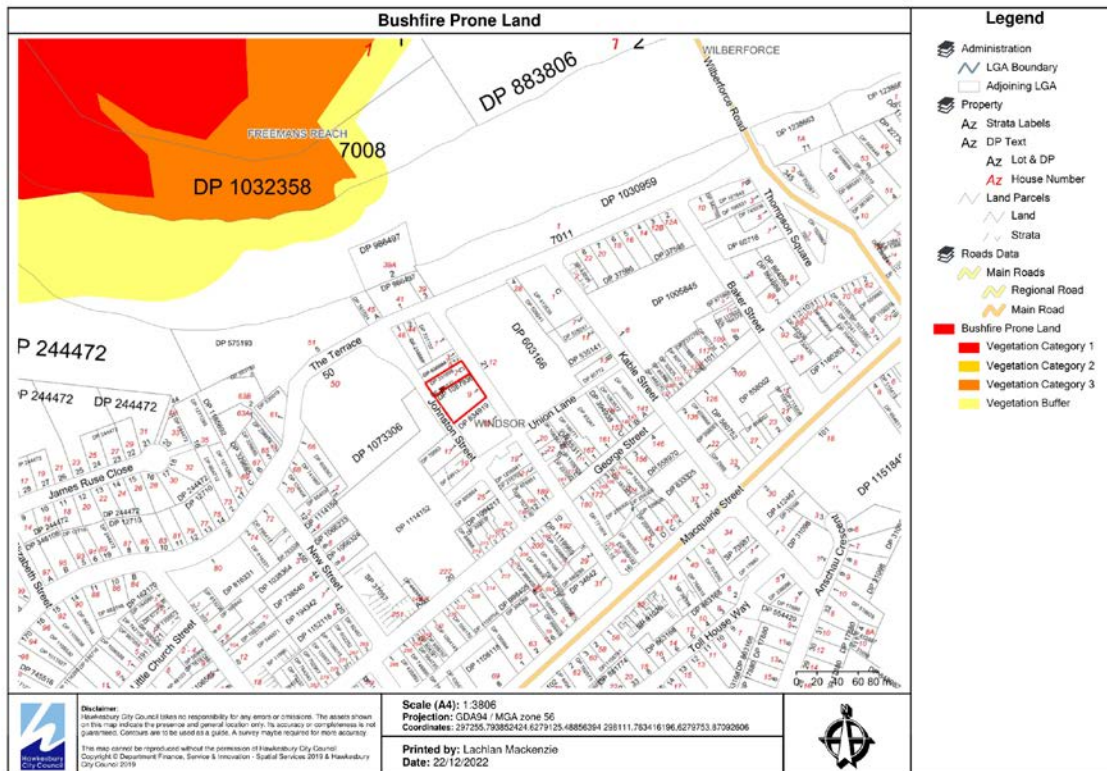


Figure 7: HLEP 2012 Bushfire Prone Land Source: Hawkesbury IntraMaps

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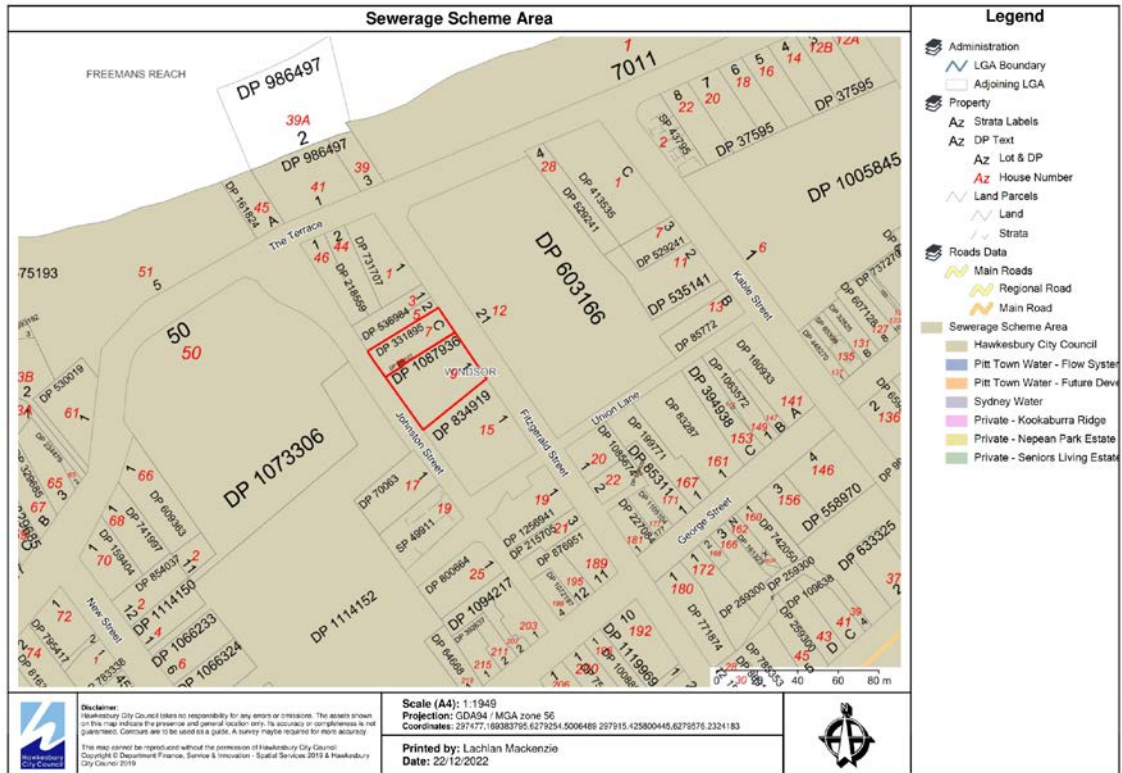


Figure 8: HLEP 2012 Sewer Scheme Area Source: Hawkesbury IntraMaps

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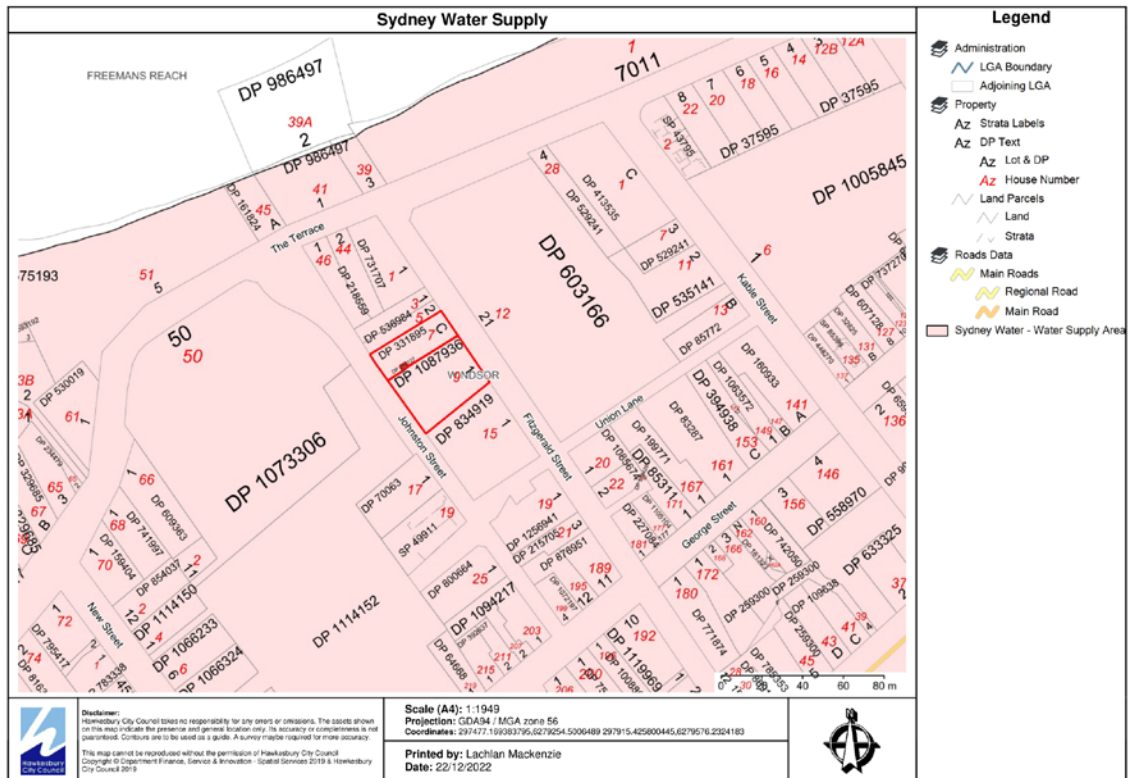


Figure 9: HLEP 2012 Sydney Water Supply Source: Hawkesbury IntraMaps



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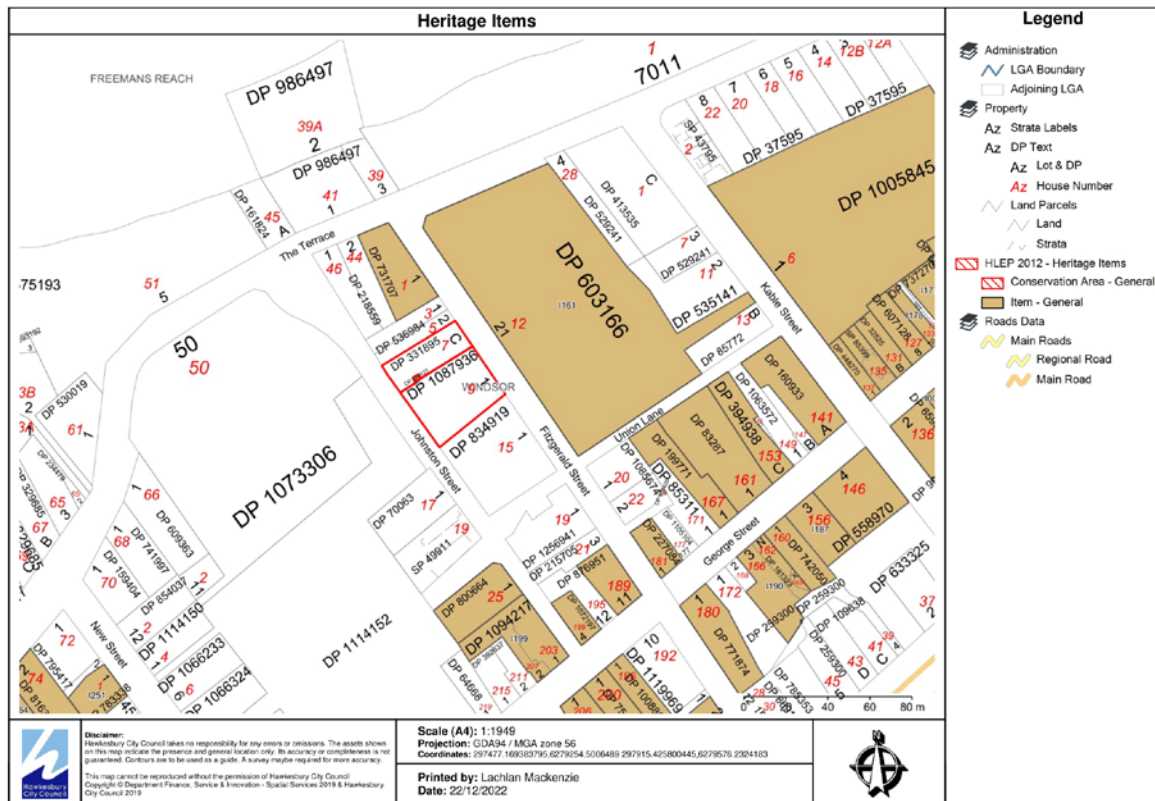


Figure 10: HLEP 2012 Environmental Heritage Items Source: Hawkesbury IntraMaps

### Site Context and Characteristics

The subject site is located within the Windsor Town Centre, which features a diverse range of commercial uses including retail, hospitality, office space and other business activities. The present land uses of the subject sites include Fitzgerald Motors on 9 Fitzgerald Street, a lawn mower retail and service store that has been in operation for over 50 years, and a second-hand furniture store on 7 Fitzgerald Street. Surrounding land uses include a Sydney Water owned water reservoir on the adjacent SP2 Infrastructure zoned land, and an office building and boarding house on the site of the former Windsor Fire Station, which was originally zoned 5A Special Uses under the Hawkesbury Local Environmental Plan 1989.

Due to the subject sites location within the Windsor Town Centre, several listed items of environmental heritage are located within the vicinity of the subject site including 'Sunny Brae' a Victorian era house and garden located opposite Fitzgerald Street. Significantly, the subject sites are situated on flood prone land, affected in the event of a 1:100 ARI flood event.

### Relationship to Strategic Framework

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

The Greater Sydney Region Plan, established by the Greater Sydney Commission, is the key strategic plan governing the direction and objectives of the future of Sydney. The plan envisions a 'City of Three Cities', a multcentred future for Sydney that facilitates and co-ordinates the growth of

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Greater Sydney. The strategy outlines 10 directions, and 42 objectives guiding the future of Sydney. The following objectives are considered of particular relevance to the planning proposal.

#### *Objective 22 – Investment and business activity in centres*

This objective aims to foster and promote commercial activity consistent with the hierarchy of centres as established within the plan. The planning proposal is consistent with this objective as it strengthens the commercial core of Windsor, a key strategic centre within the region plan, and aligns present use with land use objectives.

#### *Objective 23 – Industrial and urban service land is planned, retained and managed*

This objective emphasises the need to protect and maintain industrial and urban services land in Greater Sydney. Considering the current land use which can be categorised as urban services, the planning proposal is consistent with this objective through the alignment of this use with appropriate zoning and planning controls to best manage the urban service land.

#### *Objective 29 – Environmental, social and economic values in rural areas are protected and enhanced*

The Greater Sydney Region Plan categorises all of the Hawkesbury local Government Area except for Vineyard the Precinct within the North West Growth area as Metropolitan Rural Area. The objective of this categorisation is to protect the environmental, social and economic values of rural areas. Accordingly urban development is not consistent with the objectives of Sydney's Metropolitan Rural Areas. With this considered, the planning proposal is consistent with this objective as it does not facilitate further development, rather aligning zoning with current commercial land uses within an existing commercial area of a strategic centre.

#### Western City District Plan

The Western Sydney District Plan provides planning priorities and objectives targeted and in consideration of the unique context of Western Sydney. The following planning priorities are considered of particular relevance to the planning proposal.

#### *Planning Priority W11 Growing investment, business opportunities and jobs in strategic centres*

With Richmond-Windsor as a strategic centre, the planning proposal is consistent with this direction as it contributes to maintaining and supporting local employment lands. Facilitating the investment and business activity in an area with existing services and infrastructure.

#### Hawkesbury Local Strategic Planning Statement 2040

The Hawkesbury Local Strategic Planning Statement 2040 responds to objectives in the Western City District Plan, to localise the strategic vision. The planning proposal is consistent with Planning Priority 7 Promote and support all sectors of industry and business in the Hawkesbury to meet current and future demands and trends, through the retention and enhancement of existing employment lands.



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#### Hawkesbury Community Strategic Plan 2022-2042

The Hawkesbury Community Strategic Plan 2022-2042 is the central strategic plan for Council, outlining the key aspirations and sets the direction for future Council activities and decision making. The planning proposal is not inconsistent with the objectives of the community strategic plan.

#### Hawkesbury Employment Lands Strategy

The Hawkesbury Employment Land Strategy provides an strategy to managing Hawkesbury's business and industrial lands, identifying opportunities and direction to protect and maximise the productivity of these lands. The strategy identifies a frequent mismatch in current use and zoning in lots adjacent to business zones in Windsor, and expansion of business zones should be considered. The planning proposal seeks to correct an anomaly through the alignment of land use, subsequently expanding the employment zoned land and as such is consistent with this strategy.

#### State Environmental Planning Policies

The planning proposal is assessed to be consistent with relevant State Environmental Planning Policies as detailed in Attachment 1. The following State Environmental Planning Policies are of particular importance to the planning proposal.

##### *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

##### Chapter 4: Koala habitat Protection 2021

The subject site is less than 1 ha, not within an area with a koala plan of management and within an existing commercial area. Accordingly the planning proposal is not subject to part 4.2 development controls for koala habitats.

##### Chapter 6: Water Catchment (6.13 Hawkesbury-Nepean conservation area sub-catchments)

The planning proposal is not anticipated to have any adverse impacts on the Hawkesbury-Nepean River or its sub catchments, as it seeks to correct a zoning anomaly and align the current land use.

##### *State Environmental Planning policy (Resource and Energy)*

##### Chapter 3: Extractive Industries in Sydney

The subject site of the planning proposal is in an existing commercial area and is not to facilitate expansion of urban land. As result, the proposal is not impacted by or impedes extractive industries

#### Local Planning Direction (Ministerial Directions)

The planning proposal is assessed to be consistent with relevant Ministerial Directions as per Attachment 2. The following are of particular relevance to the planning proposal.

##### 4.1 Flooding

The planning proposal is not to facilitate further development of the site, instead it is to correct an anomaly from the conversion of the LEP, and align zoning to present land use.

7.1 Business and Industrial Zones

The planning proposal is consistent with this direction as the alignment of land use and zoning assists in protecting business zones and supports the viability of business and industrial centres.

**Environmental, Social and Economic Impact**

No adverse environmental, social, or economic impacts are anticipated as result of the planning proposal due to the existing commercial use of the site.

**Site and Strategic Merit**

The planning proposal contains site specific and strategic merit, in consideration of the correction of an anomaly within Hawkesbury Local Environmental Plan 2012 through the alignment of the current land use with an appropriate zoning. With the subject sites having existing commercial uses, the rezoning to E2 Commercial Core demonstrates strategic consistency across state and local planning strategies that identify the need to protect and manage employment areas to support local industry and productivity. The alignment of the zoning with the current land use in the context of Windsor as a strategic centre contributes to this objective. The zoning of the subject sites as E2 Commercial Core rather than R3 Medium Density Residential prevents an isolated zone from occurring, while providing a broader range of land use permissibility that includes all permissible uses in R3 Medium Density Residential. While the subject sites are flood affected land, the planning proposal is only to align the existing use on the site to an appropriate zoning, and not to facilitate development. However, flood planning will be considered in the event of a future development application.

**Conclusion**

The planning proposal seeks to amend the Hawkesbury Local Environmental Plan 2012 through the rezoning of the subject site to E2 Commercial Core and introduces associated planning controls of a 10m building height limit. It provides an appropriate method of correcting the anomaly occurring from the transition to the current LEP. With the existing commercial use of the site and in context of being adjacent to the existing B2 Local Centre zoned area of Windsor, the proposed E2 Commercial Core zoning is site appropriate regarding the alignment of the current use with appropriate zoning. Additionally, the planning proposal demonstrates strategic consistency with local and state strategies that identify the need to maintain and support local employment land.

**ATTACHMENTS:**

**AT - 1** Assessment against State Environmental Planning Policy.

**AT - 2** Assessment against Local Planning (Ministerial) Directions.

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**AT - 1 Assessment against State Environmental Planning Policy**

State Environmental Planning Policy (Biodiversity and Conservation) 2021		
Vegetation in Non-Rural Areas	The aims of this Chapter are— a. to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and b. to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	Consistent  The planning proposal does not facilitate the clearance of vegetation, as it is only to rezone to correct an LEP anomaly
Koala habitat Protection 2020	This Chapter aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline— a. by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and b. by encouraging the identification of areas of core koala habitat, and c. by encouraging the inclusion of areas of core koala habitat in environment protection zones.	Does not Apply to Hawkesbury LGA
Koala habitat Protection 2021	This Chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.	Consistent  The subject site is less than 1 ha and not within an area with a koala plan of management, accordingly it is not subject to clause 4.2 development controls for koala habitats
River Murray Lands	The aims of this Chapter are to conserve and enhance the riverine environment of the River Murray for the benefit of all users.	Does not Apply to Hawkesbury LGA
Water Catchments	This Chapter applies to land in the following catchments—  the Sydney Drinking Water Catchment, the Sydney Harbour Catchment, the Georges River Catchment, the Hawkesbury-Nepean Catchment.	Consistent  The planning proposal does not have any adverse impacts on the Hawkesbury-Nepean River or its sub catchments

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State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004		
Building Sustainability Index: BASIX	<p>Regulations under the Act have established a scheme to encourage sustainable residential development (<i><b>the BASIX scheme</b></i>) under which:</p> <p>a. application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and</p> <p>b. the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.</p>	Consistent
State Environmental Planning Policy (Exempt and Complying Development) 2008		
Exempt and Complying development Codes	This Policy aims to provide streamlined assessment processes for development that complies with specified development standards	Consistent
State Environmental Planning Policy (Housing) 2021		
Affordable Housing	<p>a. enabling the development of diverse housing types, including purpose-built rental housing,</p> <p>b. encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,</p> <p>c. ensuring new housing development provides residents with a reasonable level of amenity,</p> <p>d. promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</p> <p>e. minimising adverse climate and environmental impacts of new housing development,</p> <p>f. reinforcing the importance of designing housing in a way that reflects and enhances its locality,</p> <p>g. supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,</p> <p>h mitigating the loss of existing affordable rental housing.</p>	Consistent

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Diverse Housing	<p>a. enabling the development of diverse housing types, including purpose-built rental housing,</p> <p>b. encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,</p> <p>c. ensuring new housing development provides residents with a reasonable level of amenity,</p> <p>d. promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</p> <p>e. minimising adverse climate and environmental impacts of new housing development,</p> <p>f. reinforcing the importance of designing housing in a way that reflects and enhances its locality,</p> <p>g. supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,</p> <p>h mitigating the loss of existing affordable rental housing.</p>	Consistent
State Environmental Planning Policy (Industry and Employment) 2021		
Western Sydney Employment Area	This Chapter aims to protect and enhance the land to which this Chapter applies (the <b>Western Sydney Employment Area</b> ) for employment purposes.	Does not Apply to Hawkesbury LGA
Advertising and Signage	<p>This Chapter aims—</p> <p>a. to ensure that signage (including advertising)—</p> <p>(i) is compatible with the desired amenity and visual character of an area, and</p> <p>(ii) provides effective communication in suitable locations, and</p> <p>(iii) is of high quality design and finish, and</p> <p>b. to regulate signage (but not content) under Part 4 of the Act, and</p> <p>c. to provide time-limited consents for the display of certain advertisements, and</p> <p>d. to regulate the display of advertisements in transport corridors, and</p> <p>e. to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.</p>	Consistent

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State Environmental Planning Policy No 65 (Design Quality of Residential Department Development) 2002		
Design Quality of Residential Department Development	This Policy aims to improve the design quality of residential apartment development in New South Wales.	Consistent
State Environmental Planning Policy (Planning Systems) 2021		
State and Regional Development	The aims of this Chapter are as follows— a. to identify development that is State significant development, b. to identify development that is State significant infrastructure and critical State significant infrastructure, c. to identify development that is regionally significant development	NA
Aboriginal Land	The aims of this Chapter are— to provide for development delivery plans for areas of land owned by Local Aboriginal Land Councils to be considered when development applications are considered, and to declare specified development carried out on land owned by Local Aboriginal Land Councils to be regionally significant development.	NA
Concurrences and Consents	Provide overview of when the Planning Secretary may act as concurrence authority	Consistent
State Environmental Planning Policy (Precincts – Central River City) 2021		
Central River City	Provide planning policies for the Central River City	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021		
Eastern Harbour City	Provides planning policies for the Eastern Harbour City	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Precincts – Regional) 2021		
Regional	Provides planning policies for the Regional NSW	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Precincts – Western Parkland City) 2021		
State Significant Precincts	The aims of this Chapter are as follows— a. to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the	Does not apply to Hawkesbury LGA

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	<p>orderly use, development or conservation of those State significant precincts for the benefit of the State,</p> <p>b.to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.</p>	
Sydney Region Growth Centres	<p>The aims of this Chapter are (in conjunction with amendments to the regulations under the Act relating to precinct planning) as follows—</p> <p>a. to co-ordinate the release of land for residential, employment and other urban development in the North West Growth Centre, the South West Growth Centre, the Wilton Growth Area and the Greater Macarthur Growth Area,</p> <p>b. to enable the Minister from time to time to designate land in growth centres as ready for release for development,</p> <p>c. to provide for comprehensive planning for growth centres,</p> <p>d. to enable the establishment of vibrant, sustainable and liveable neighbourhoods that provide for community well-being and high quality local amenity,</p> <p>e. to provide controls for the sustainability of land in growth centres that has conservation value,</p> <p>f. to provide for the orderly and economic provision of infrastructure in and to growth centres,</p> <p>g. to provide development controls in order to protect the health of the waterways in growth centres,</p> <p>to protect and enhance land with natural and cultural heritage value,</p> <p>h. to provide land use and development controls that will contribute to the conservation of biodiversity.</p>	<p>Consistent</p> <p>The planning proposal is not within and Sydney Region Growth Centres</p>
Western Sydney Aerotropolis	<p>The aims of this Chapter are as follows—</p> <p>a. to facilitate development in the Western Sydney Aerotropolis in accordance with the objectives and principles of the Western Sydney Aerotropolis Plan</p>	<p>Does not apply to Hawkesbury LGA</p>
Penrith Lakes Scheme	<p>The aims of this Chapter are as follows—</p> <p>a. to provide a development control process that ensures that environmental and technical matters are considered in the implementation of the Penrith Lakes Scheme,</p> <p>b. to identify and protect items of the environmental heritage,</p> <p>c. to identify certain land that may be rezoned for employment, environmental, parkland, residential, tourism and waterway purposes and land that will be rezoned as unzoned land,</p>	<p>Does not apply to Hawkesbury LGA</p>

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	<p>d. to permit interim development that will not detrimentally impact on the implementation of the Penrith Lakes Scheme,</p> <p>e. to ensure that the implementation of the Penrith Lakes Scheme does not detrimentally impact on the ongoing operation and use of olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.</p>	
St Marys	<p>The aims of this Chapter are to—</p> <p>a. support the <i>St Marys Environmental Planning Strategy, 2000</i> of the Department of Urban Affairs and Planning by providing a framework for the sustainable development and management of the land to which this Chapter applies</p>	Does not apply to Hawkesbury LGA
Western Sydney Parklands	<p>The aim of this Chapter is to put in place planning controls that will enable the Western Sydney Parklands Trust to develop the Western Parklands into a multi-use urban parkland for the region of western Sydney</p>	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Primary Production) 2021		
Primary production and Rural Development	<p>The aims of this Chapter are as follows—</p> <p>a. to facilitate the orderly economic use and development of lands for primary production,</p> <p>b. to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</p> <p>c. to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</p> <p>d. to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</p> <p>e. to encourage sustainable agriculture, including sustainable aquaculture,</p> <p>f. to require consideration of the effects of all proposed development in the State on oyster aquaculture,</p> <p>g. to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</p>	<p>Consistent</p> <p>The planning proposal does not impact the productivity and character of rural lands.</p>



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Central Coast Plateau Areas	The general aims of this Chapter are— a. to provide for the environmental protection of the Central Coast plateau areas and to provide a basis for evaluating competing land uses	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Resilience and Hazard) 2021		
Coastal Management	The aim of this Chapter is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the <i>Coastal Management Act 2016</i> , including the management objectives for each coastal management area	Consistent
Hazardous and offensive Development	This Chapter aims— a. to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and b. to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Chapter	Consistent
Remediation of Land	This Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment— a. by specifying when consent is required, and when it is not required, for a remediation work, and b. by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and c. by requiring that a remediation work meet certain standards and notification requirements.	Consistent
State Environmental Planning Policy (Resource and Energy) 2021		
Mining, petroleum, and Extractive Industries	The aims of this Chapter are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries— a. to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and b. to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and c. to promote the development of significant mineral resources, and d. to establish appropriate planning controls to encourage ecologically sustainable development	Consistent  The planning proposal does not impede existing extractive industries or the establishment of future extractive industries

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	<p>through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and</p> <p>e. to establish a gateway assessment process for certain mining and petroleum (oil and gas) development—</p> <p>(i) to recognise the importance of agricultural resources, and</p> <p>(ii) to ensure protection of strategic agricultural land and water resources, and</p> <p>(iii) to ensure a balanced use of land by potentially competing industries, and</p> <p>(iv) to provide for the sustainable growth of mining, petroleum and agricultural industries</p>	
Extractive industries in Greater Sydney	<p>This Chapter aims—</p> <p>a. 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</p>	<p>Consistent</p> <p>The planning proposal does not impede existing or the establishment of future extractive industries</p>
State Environmental Planning Policy (Transport and Infrastructure) 2021		
Infrastructure	The aim of this Chapter is to facilitate the effective delivery of infrastructure across the State	Consistent
Educational establishments and child care facilities	The aim of this Chapter is to facilitate the effective delivery of educational establishments and early education and care facilities across the State	Consistent
Major Infrastructure Corridors	<p>The aims of this Chapter are as follows—</p> <p>a. to identify land that is intended to be used in the future as an infrastructure corridor,</p> <p>b. to establish appropriate planning controls for the land for the following purposes—</p> <p>(i) to allow the ongoing use and development of the land until it is needed for the future infrastructure corridor,</p> <p>(ii) to protect the land from development that would adversely impact on or prevent the land from being used as an infrastructure corridor in the future.</p>	Consistent
Three ports – Port Botany, Port Kembla and port of Newcastle	<p>The aims of this Chapter are as follows—</p> <p>a. to provide a consistent planning regime for the development and delivery of infrastructure on land in Port Botany, Port Kembla and the Port of Newcastle,</p> <p>b. to allow the efficient development, re-development and protection of land at Port Botany, Port Kembla and the Port of Newcastle for port purposes</p>	Does not apply to Hawkesbury LGA

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**AT - 2 Assessment against Local Planning (Ministerial) Directions**

<b>Planning Systems</b>		
Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.	Consistent Planning proposal is assessed to be consistent with relevant regional plans
Development of Aboriginal land council	The objective of this direction is to provide for the consideration of development delivery plans prepared under chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 when planning proposals are prepared by a planning proposal authority.	NA
Approval and referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Consistent: The planning proposal does not anticipate to require concurrence with the Minister of Planning or another public authority
Site Specific provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	Consistent The planning proposal does not propose any site-specific provisions
<b>Planning Systems - Place Based</b>		
1.5-1.20	Site specific direction not relevant to the Hawkesbury LGA	Not Applicable to the Hawkesbury LGA
<b>Biodiversity and Conservation</b>		
Conservation Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	Consistent The planning proposal does not impact environmentally sensitive areas
Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Consistent
Sydney Drinking Water Catchments	The objective of this direction is to protect water quality in the Sydney drinking water catchment.	Not Applicable to the Hawkesbury LGA
Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	The objective of this direction is to ensure that a balanced and consistent approach is taken when applying conservation zones and overlays to land on the NSW Far North Coast.	Not Applicable to the Hawkesbury LGA
Recreation Vehicle Areas	The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles	Consistent
Strategic Conservation Planning	The objective of this direction is to protect, conserve or enhance areas with high biodiversity value.	Consistent
<b>Resilience and Hazards</b>		
Flooding	The objectives of this direction are to: (a) ensure that development of flood prone land is consistent	Consistent The planning proposal does

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	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 that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.	not intend to facilitate further development, only to correct an anomaly within the LEP
Coastal Management	The objective of this direction is to protect and manage coastal areas of NSW.	Consistent
Planning for Bushfire Protection	The objectives of this direction are to: (a) protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) encourage sound management of bush fire prone areas	Consistent
Remediation of Contaminated Land	The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.	Consistent
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	Consistent
Mine Substance and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	Consistent
<b>Transport and Infrastructure</b>		
Integrating land Use and Transport	The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives: (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight.	Consistent
Reserving Land for Public Purposes	The objectives of this direction are to: (a) facilitate the provision of public services and facilities by reserving land for public purposes, and (b) facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Consistent
Development Near Regulated Airports and defence Airfields	The objectives of this direction are to: (a) ensure the effective and safe operation of regulated airports and defence airfields; (b) ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the	Consistent

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	vicinity; and (c) ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.	
Shooting Ranges	The objectives are to: (a) maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range, (b) reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land, (c) identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.	Consistent
<b>Housing</b>		
Residential Zones	The objectives of this direction are to: (a) encourage a variety and choice of housing types to provide for existing and future housing needs, (b) make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) minimise the impact of residential development on the environment and resource lands.	Consistent
Caravan Parks and Manufactured Home Estates	The objectives of this direction are to: (a) provide for a variety of housing types, and (b) provide opportunities for caravan parks and manufactured home estates.	Consistent
Business and Industrial Zones	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 centres	Consistent The correction of the anomaly aids in protecting and supporting of employment land
Reduction in non-hosted short-term rental accommodation period	The objectives of this direction are to: (a) mitigate significant impacts of short-term rental accommodation where non-hosted short-term rental accommodation period are to be reduced, and (b) ensure the impacts of short-term rental accommodation and views of the community are considered.	Consistent
Commercial and Retail Development along Pacific Highway, North coast	The objectives for managing commercial and retail development along the Pacific Highway are to: (a) protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route, (b) prevent inappropriate development fronting the highway, (c) protect public expenditure invested in the Pacific Highway, (d) protect and improve highway safety and highway efficiency, (e) provide for the food, vehicle service and rest needs of travellers on the highway, and	Not Applicable to the Hawkesbury LGA

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	(f) reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.	
<b>Resources and Energy</b>		
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.	Consistent The planning proposal will not result in conflict with existing or future extractive industries
<b>Primary Production</b>		
Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	Consistent
Rural Lands	The objectives of this direction are to: (a) protect the agricultural production value of rural land, (b) facilitate the orderly and economic use and development of rural lands for rural and related purposes, (c) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State, (d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses, (e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land, (f) support the delivery of the actions outlined in the NSW Right to Farm Policy.	Consistent
Oyster Aquaculture	The objectives of this direction are to: (a) ensure that 'Priority Oyster Aquaculture Areas' and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal, and (b) protect 'Priority Oyster Aquaculture Areas' and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.	Consistent
Farmland of State and regional Significance on the NSW Far North Coast	The objectives of this direction are to: (a) ensure that the best agricultural land will be available for current and future generations to grow food and fibre, (b) provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning, and (c) reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas	Not Applicable to the Hawkesbury LGA

**oooO END OF REPORT Ooo**

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**Item: 004** CP - Planning Proposal - LEP002/23 – 1913 and 1905 Bells Line of Road, Kurrajong Heights – Reclassification to Operational Land - (124414)

**Directorate:** City Planning

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#### PLANNING PROPOSAL INFORMATION

**File Number:** LEP002/23  
**Property Address:** 1913 and 1905 Bells Line of Road, Kurrajong Heights  
**Applicant:** Hawkesbury City Council  
**Owner:** Hawkesbury City Council  
**Current Minimum Lot Size:** 40 ha  
**Proposed Minimum Lot Size:** Nil  
**Current Zone:** RU2 - Rural landscape  
SP2 – Infrastructure  
**Site Area:** 1913 Bells line of Road – 2731.5 m<sup>2</sup>  
1904 Bells line of Road – 2709.6 m<sup>2</sup>  
Total – 5441.1 m<sup>2</sup>  
**Key Issues:**

- ◆ Reclassification of Land
- ◆ Expiration of Clause 6.14 of the Hawkesbury local Environmental Plan 2012
- ◆ Operational history and Regularisation of Tutti Fruitti Café

#### EXECUTIVE SUMMARY

Hawkesbury City Council seeks to amend the Hawkesbury Local Environmental Plan 2012 by reclassifying Lot 1 and 3 DP 582878, 1913 and 1907 Bells Line of Road, Kurrajong Heights from 'Community Land' to 'Operational Land'

The report demonstrates that the planning proposal is considered to be consistent with relevant legislation, strategies and consideration. Despite this, a point for discussion and advice is the consideration of the planning proposal against other measures to reach the same outcome.

#### RECOMMENDATION:

That the Hawkesbury Local Planning Panel provide advice on the planning proposal seeking to amend the Hawkesbury Local Environmental Plan 2012 by reclassifying the subject site under Schedule 4 Classification and reclassification from 'Community land' to 'Operational Land'.

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#### Purpose of the Report

The purpose of this report is to inform the Hawkesbury Local Planning Panel of a Council initiated planning proposal for 1913 and 1905 Bells Line of Road, Kurrajong Heights seeking to amend the Hawkesbury Local Environmental Plan 2012 by reclassifying the subject site under Schedule 4 Classification and reclassification of public land.

#### Background

Lots 2 and 3 DP 582878 were created in 1976 with the intention to be used for future road purposes under the Main Roads Act Section 27E (6) Registered dealing L758309. These lots were transferred to Council in 1983. In 2010 verbal advice was received from the then Roads and Traffic Authority that there was no immediate intention to acquire the land for road widening. As result, the owners of the

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adjacent property 1917, the owners of the Tutti Fruitti Café expressed interest in purchasing the subject site, which encroaches upon the council land used by the café for parking and vehicular access.

In 2008 a development application was received for the Tutti Fruitti Café, seeking to regularise the use. This Development Application was unable to proceed due to unresolved access rights of the council owned subject site, and finally withdrawn in 2021 due to previous reliance upon structures destroyed in the summer bushfires of 2019-2020. In response to the property being severely impacted by the bushfires, the property at 1917 Bells Line of Road now benefits from Clause 6.14 of the Hawkesbury Local Environmental Plan 2012 Temporary use of structures for “Tutti Fruitti Café” on certain land at Kurrajong Heights. The clause permits the installation of temporary structures as exempt development to be used for the café, on condition that these structures are removed 2 years after installation. These structures were installed on the 2 December 2020.

A Pre-lodgement development application meeting was held in July of 2021 whereby the owners of Tutti Fruitti Café intend to construct a permanent structure for use as the Café. The advice from this meeting was that the development will be required to be located entirely within the Lot 1 DP 582878 and the owners intention to use Lot 2 DP 582878 for parking and access will be dependent on the reclassification of the land to ‘Operational Land’.

Despite the classification of the public land as ‘Community Land’, Council has no intention to use the subject site for public or community purposes.

The timeline for this matter is as follows:

- 18 March 1970 plans of acquisition were registered under the Main Roads Act Section 27E (6), Registered dealing L758309.
- DP 582878 was registered on 19 March 1976 with a notation that ‘Lots 2 and 3 are intended to be used for future road purposes and there is no objection to their being shown as a road after acquisition by Dept. Main Roads’.
- 23 March 1983, the properties (Lots 2 and 3 in DP 582878) were transferred to Hawkesbury City Council through dealing T387144.
- In 2008, A development application (DA0660/08) was lodged for 1917 Bells Line of Road seeking to regularise the use of the Cafe. This was unable to proceed due to unresolved access rights of the subject site due to being Council owned and classified as ‘Community Land’
- In 2010, verbal advice was received from the then named Roads and Traffic Authority that they had no immediate intention to acquire the land for road widening purposes. The owner of the land adjoining Lots 2 and 3 has expressed an interest in purchasing these lots. As Council has no future intention to utilise the land for community purposes, reclassifying the land and selling it would be a viable option as it will also relieve Council of any ongoing maintenance and liability issues of these properties.
- In the summer of 2019 – 2020, the structure of Tutti Fruitti Café was severely destroyed in a bushfire.
- 22 October 2020, the Hawkesbury Local Environment Plan 2012 was amended to include Clause 6.14 Temporary use of structures for “Tutti Fruitti Café” on certain land at Kurrajong Heights.
- 2 December 2020, temporary structures were installed on 1917 Bells Line of Road to be used for the Tutti Fruitti Café
- 28 July 2021, DA0660/08 withdrawn.

#### Objectives and Provisions of the Planning Proposal

The objective of the planning proposal is to amend the Hawkesbury Local Environmental Plan 2012, Schedule 4 Classifications and Reclassifications of Public Lands to include the subject site, 1913 and 1905 Bells Line of Road, Kurrajong Heights. This planning proposal also aims to repeal additional



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local provisions, Clause 6.14 Temporary use of structures for “Tutti Fruitti Café” on certain land at Kurrajong Heights.

The intended outcomes of this proposal are as follows:

- Resolve issues regarding access rights and use of land with Tutti Fruitti Café
- To facilitate the process of regularising the existing use of the site
- Support the prosperity and resilience of local business after events of natural disaster.

#### 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*. 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’.

The decision to sell or lease the land will be subject to further negotiations and future resolutions of council. In both situation the funds from this dealing will go to either the Councils property reserve or towards the asset type the land was held for.

#### Existing Planning Controls

**Table 3 Hawkesbury Local Environmental Plan 2012 – Relevant Clauses**

Zone	SP2 Infrastructure  RU2 Rural Landscape
Minimum Lot Size	40 ha
Height of Buildings	10m
Acid Sulfate Soils	Class 5 – Acid Sulfate Soil
Flood	The subject site is above the 1 in 100 ARI flood level and above the Probable Maximum Flood level.
Biodiversity	The site contains vegetation classified as ‘connectivity between remnant vegetation
Bushfire Prone Land	The subject site is entirely bushfire prone, containing vegetation buffer of Vegetation Category 1 and 3 Bushfire Prone Land
Sewer Scheme	The subject site is not connected to any sewer scheme
Sydney Water	The subject site is not within the Sydney Water – Water Supply Area.

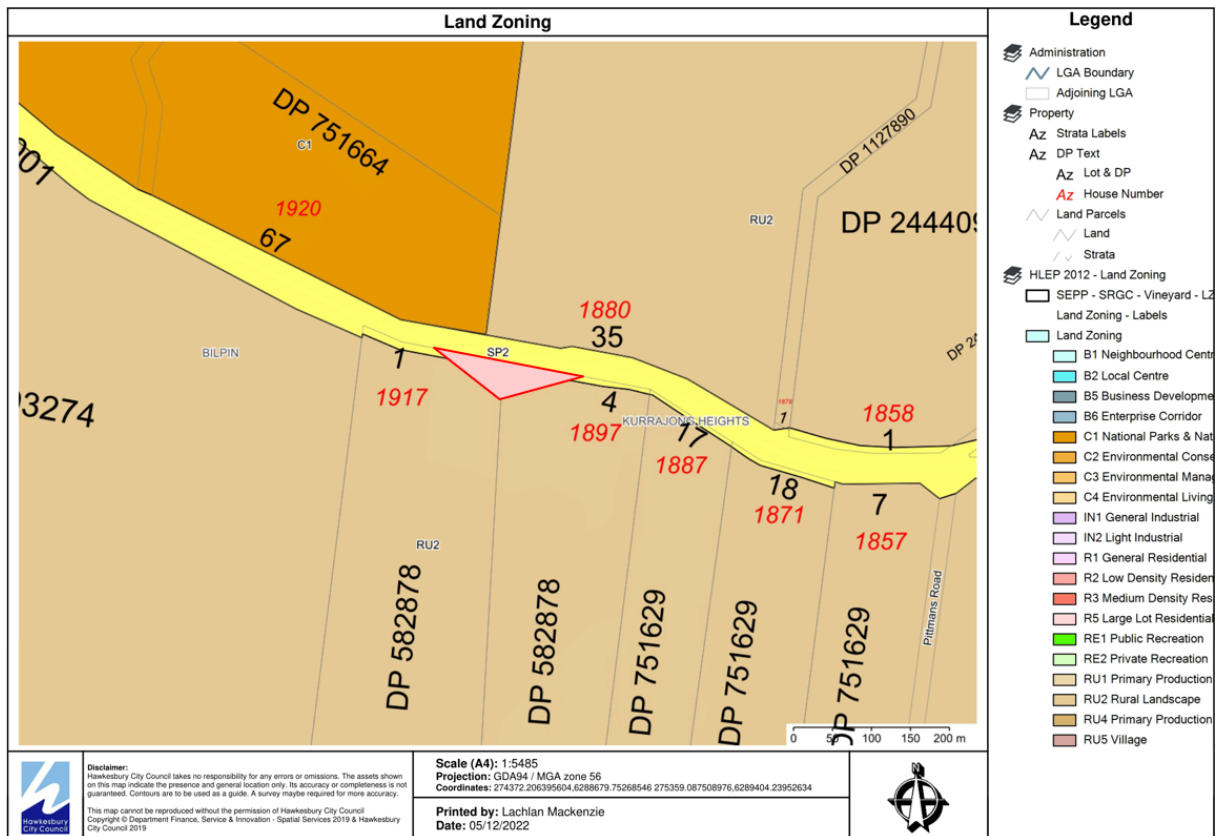
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Heritage	The subject site does not contain or is adjacent to any items of local or state heritage listing.
Temporary use of structures for 'Tutti Fruitti Café' on certain land at Kurrajong Heights	While applicable to the adjacent site 1917 Bells Line of Road, the temporary structures that the clause permits have been constructed on the boundary of the subject site and is relevant to the consideration of the planning proposal.  The structures were erected on the 2 December 2020.

The following maps highlight the subject site



**Figure 11: Land Zoning**

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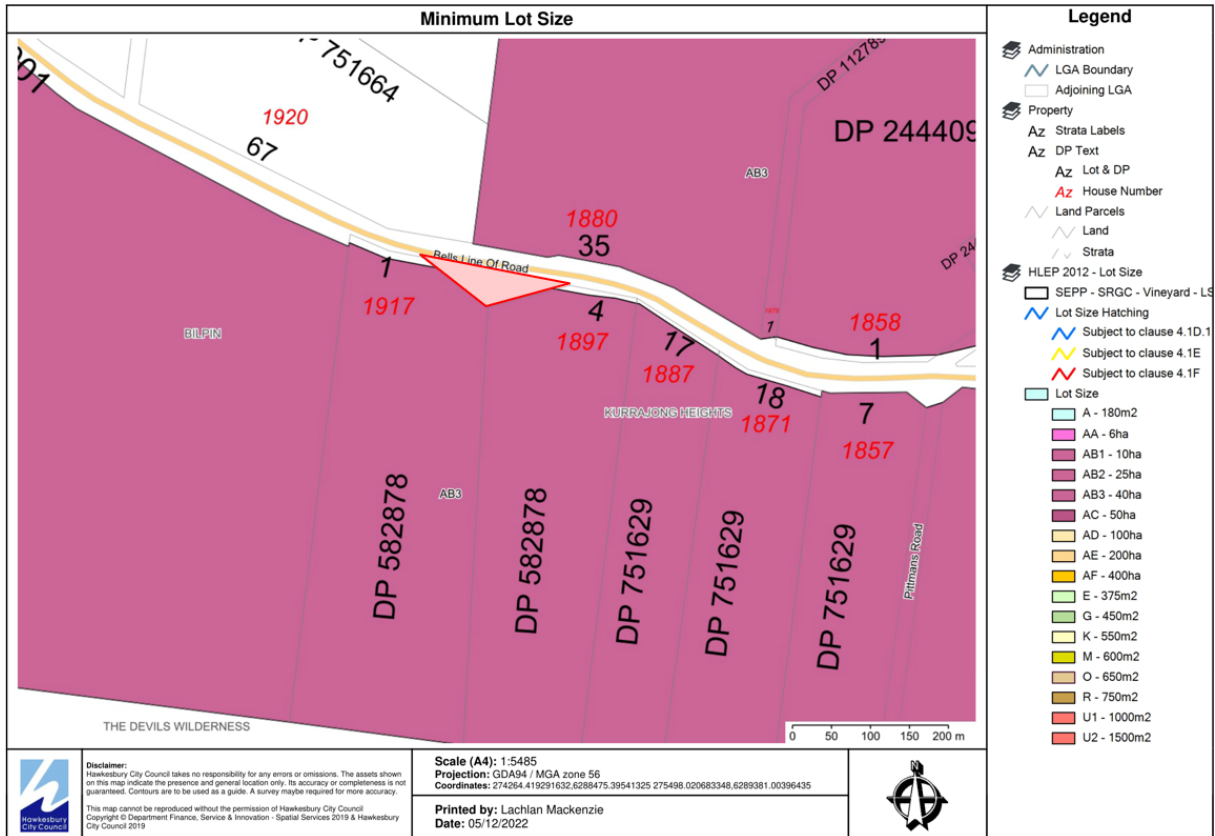


Figure 12: Minimum Lot Size

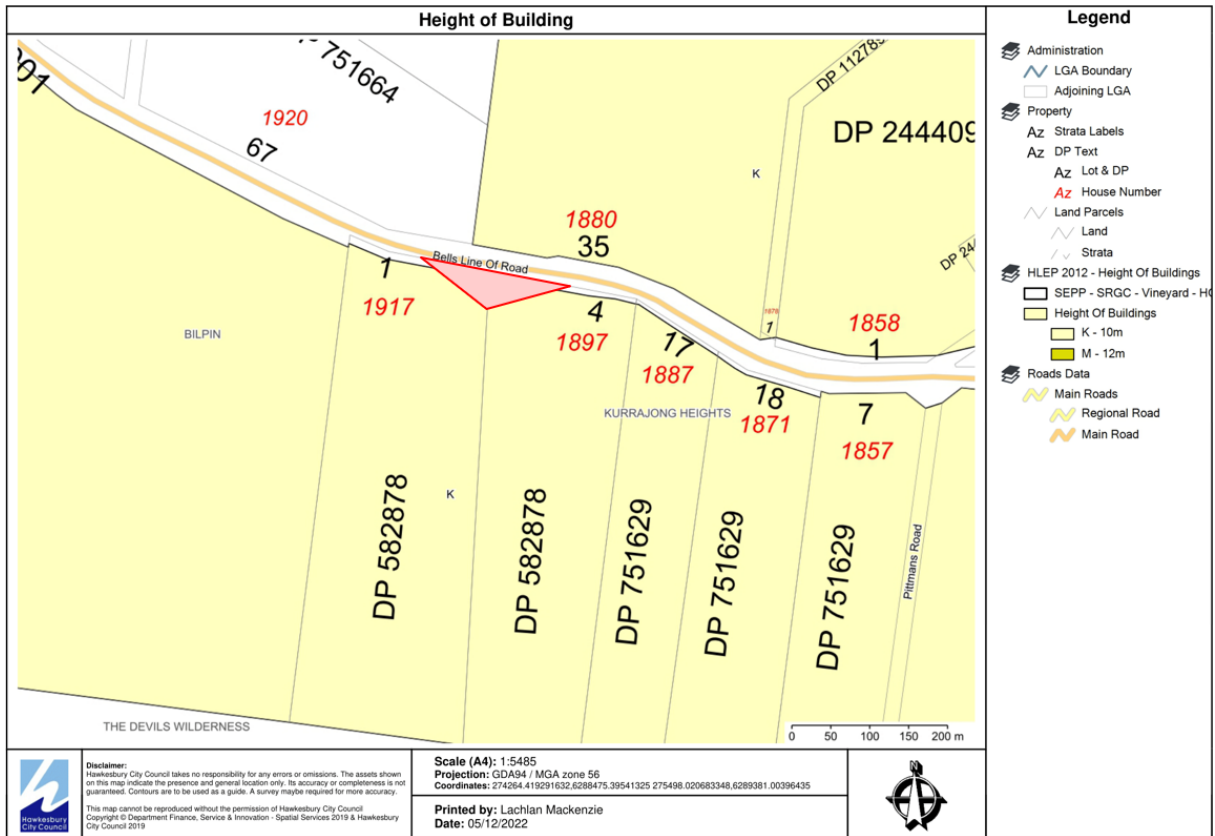


Figure 13: Height of Building

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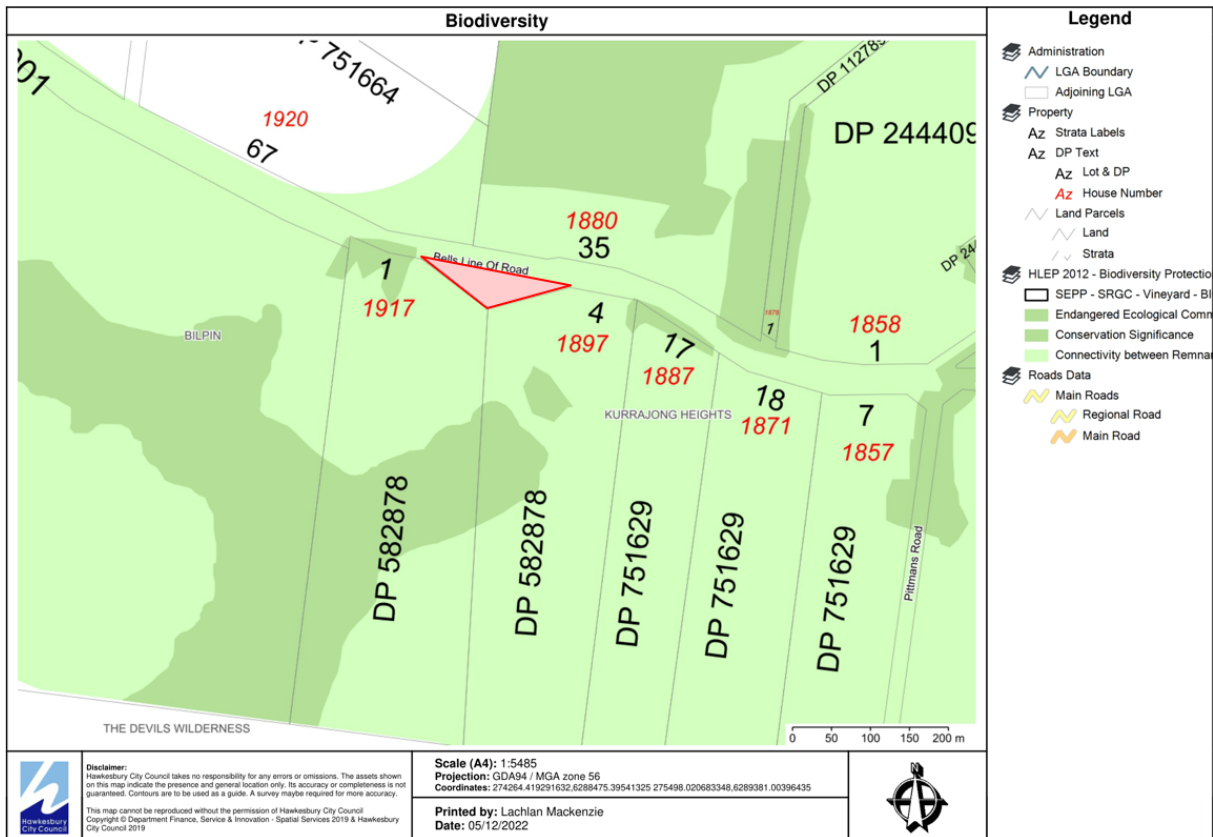


Figure 14: Biodiversity Protection

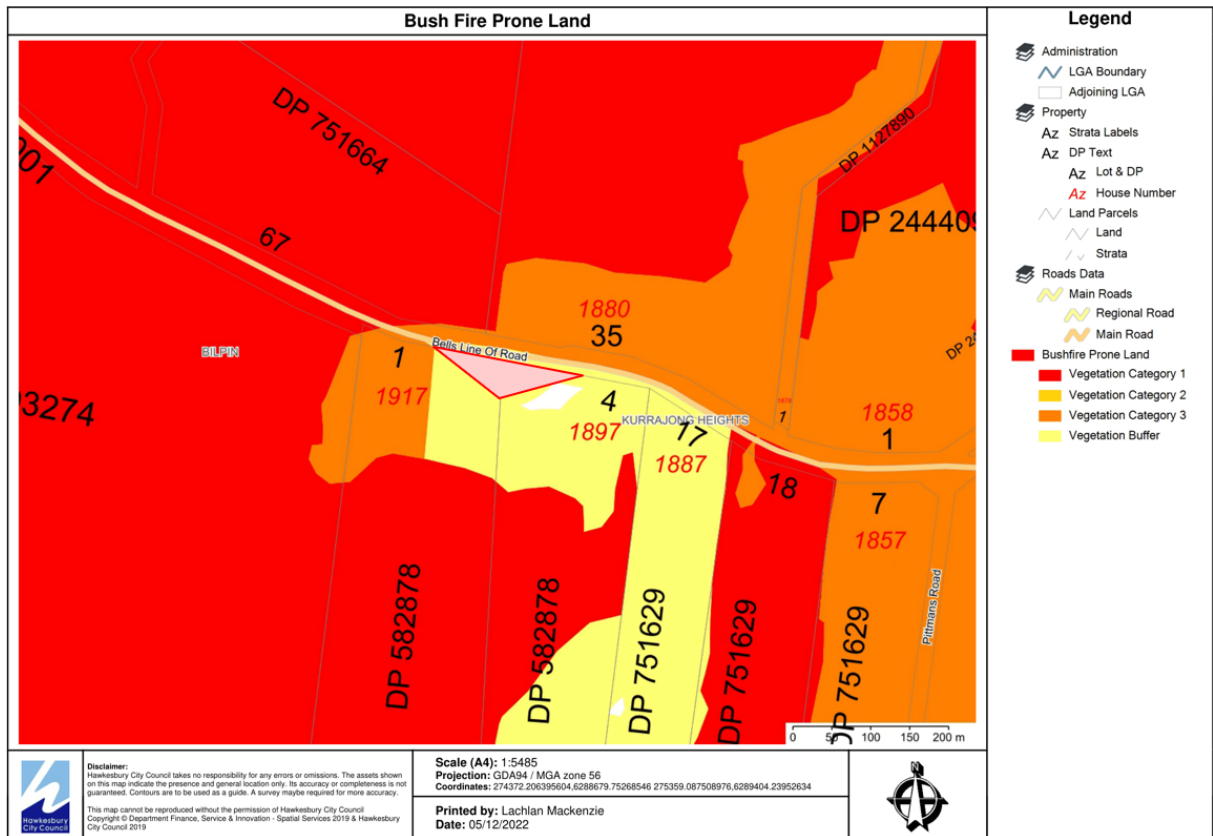


Figure 15: Bushfire Prone Land

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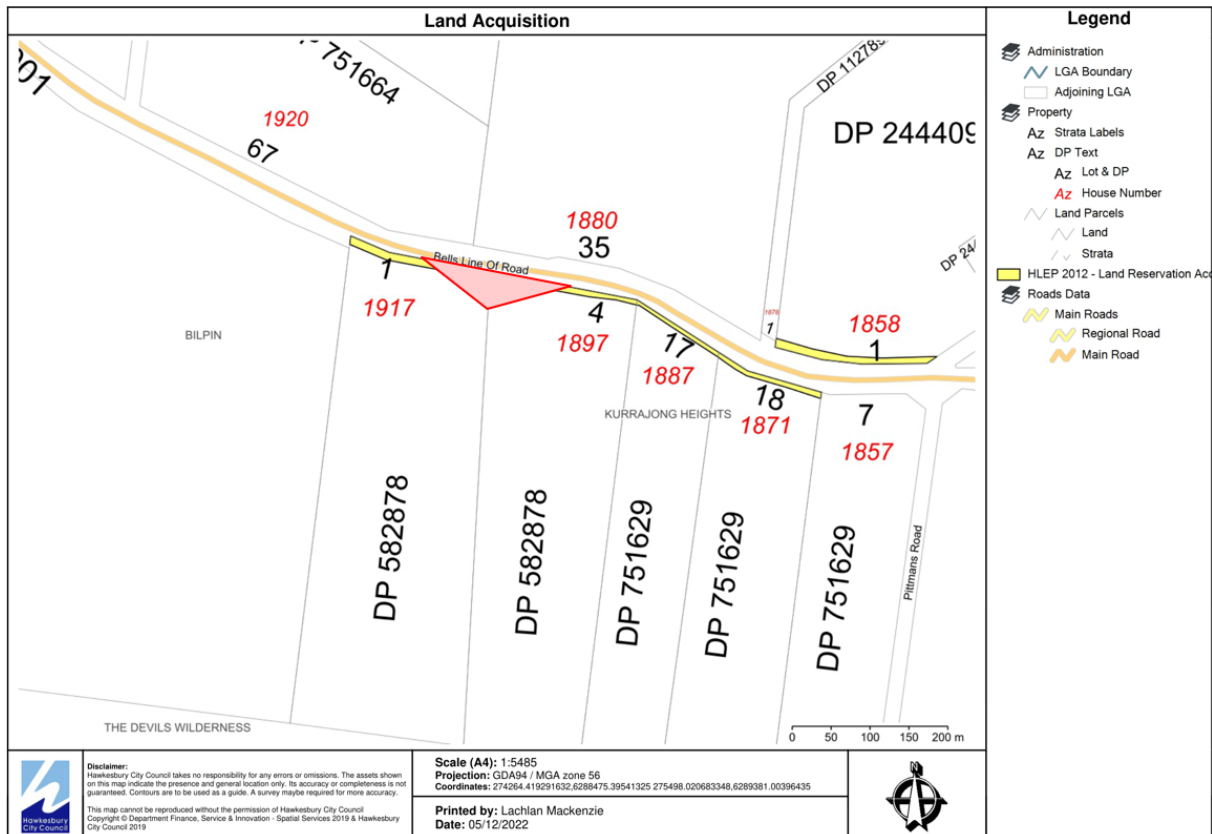


Figure 16: Land Acquisition Reserved for Road Widening

### Site Location and Characteristics

The planning proposal applies to 1913 and 1905 bells line of Road (Lot 2 and 3 DP 582879). The current site is used for vehicular access and parking for the Tutti Fruitti Café, which is situated over the boundary of 1917 Bells line of Road and the subject site, without formal development consent. The current café utilises temporary structures as permitted through Clause 6 of the Hawkesbury Local Environmental Plan 2012 until 2 December 2022.

The subject site is zoned RU2 Rural Landscape, and SP2 Infrastructure due to allocation of the front of the lot for road widening, with no immediate intention to undertake in this road upgrade. The use of RU2 land for the purposes of restaurants and cafes is permissible under the Hawkesbury Local Environmental Plan 2012 Land Use Table.

The surrounding area features extensive rural uses including commercial orchards, small scale farming and complimentary agri-tourism businesses on RU2 zoned land. Immediate uses around the subject site include the Bilpin Blossom farm an agri-tourist facility, Madison's Mountain Retreat, Pie in the Sky Roadhouse, and rural-residential dwellings.

### Site Merit

The subject site is located on a key arterial road and contains a high degree of merit in regard to providing a hospitality food and drink venue in the broader context of the areas land use and industry mix which features significant agri-tourism facilities which the facility is able to support. On the scale of the subject site specifically the merit of reclassification is a point of discussion. Whether it is the best scenario for the premise to use the council owned land for parking when it becomes reclassified as operational land, through leasing or purchasing the land from Council, rather than using Lot 1 DP 582878 for parking and vehicle access, especially considering the future permanent structures for the

café will be required to be located entirely on this lot. This point will be elaborated further in the discussion portion of this report.

### Relationship to Strategic Framework

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

The Greater Sydney Region Plan, established by the Greater Sydney Commission, is the key strategic plan governing the direction and objectives of the future of Sydney. The plan envisions a 'City of Three Cities', a multicentred future for Sydney that facilitates and co-ordinates the growth of Greater Sydney. The strategy outlines 10 directions, and 42 objectives guiding the future of Sydney

Relevant to this planning proposal is *Objective 24 – Economic sectors are targeted for success*. This objective emphasises the need to nurture and promote local industries, especially through supporting small business locally defining industries. The provisions of the planning proposal meet this objective as it enables the regularisation of the existing use of the site within the context of the local agri-tourism industry.

The planning proposal additionally is consistent with the *Objective 22 – Investment in business activity in centres*. This objective identifies the need to maintain the character of rural towns and villages as centres of rural industries, tourism and businesses. Accordingly, business activity that maintains this character is supported. As the planning proposal seeks to reclassify the public land as operational land to support the existing business, it is consistent with this objective.

Through Hawkesbury's classification as Metropolitan Rural Area within the greater Sydney Region Plan, *Objective 29 – Environmental, Social and economic values in rural areas are protected and enhanced* is of relevance to the planning proposal. This objective ensures the preservation of the character and identity of the Metropolitan Rural Areas. The planning proposal is consistent with this objective as it seeks to support existing local business that is congruent with the local character as an agribusiness due to being a restaurant that supports and serves local tourism, and also retails local produce. Additionally, the proposal does not support or enable any development that will detract from the environmental, social and economic values in the area.

#### Western City District Plan

The Western Sydney District Plan provides planning priorities and objectives targeted and in consideration of the unique context of Western Sydney. The planning proposal is consistent with *Planning Priority W8 – Leveraging industry opportunities from the Western Sydney Airport and Badgerys Creek Aerotropolis*, whereby tourism industries in the Western City District are to be supported to maximise the benefits of the Western City Airport.

The planning proposal is consistent with *Planning Priority W17 - Better management of rural areas*. This priority gives effect to Objective 29 of the Greater Sydney Region Plan. This priority emphasises the need for improved management of the character defining and productive rural areas of the Western City District. The planning proposal is consistent with this objective as it seeks to maintain the existing economic activity and character of the area through supporting local business.

#### Hawkesbury Local Strategic Planning Statement 2040

The Hawkesbury Local Strategic Planning Statement 2040 responds to objectives in the Western City District Plan, to localise the strategic vision. Relevant to the planning proposal is *Planning Priority 7 Promote and support all sectors of industry and business to meet current and future demands and trends*. This planning proposal through supporting and enabling the regularisation of a local hospitality business complementary to the surrounding land uses is consistent with this clause.

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#### Hawkesbury Community Strategic Plan 2022-2042

The Hawkesbury Community Strategic Plan 2022-2042 is the central strategic plan for Council, outlining the key aspirations and sets the direction for future Council activities and decision making. The planning proposal is assessed to be consistent with the following objectives of the community strategic plan:

3.2 Increase the range of local industry opportunities and provide effective support to continued growth.

3.3 Promote our community as the place to visit, work and invest.

#### Hawkesbury Rural Lands Strategy

The Hawkesbury Rural Lands strategy identifies the importance of tourist and commercial uses, specifically agri-tourism and agribusiness in the Hawkesbury area. The strategy acknowledges the importance of these uses, which are complimentary to the land use patterns and landscape of the area. Accordingly, this planning proposal is consistent with the strategy as it supports and regularises the use of the site which is a contributor to the Kurrajong – Bilpin tourist and commercial industry.

#### State Environmental Planning Policies

The planning proposal is assessed to be consistent with relevant State Environmental Planning Policies as detailed in Attachment 1. The following State Environmental Planning Policies are of particular importance to the planning proposal.

##### *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

##### Chapter 4: Koala habitat Protection 2021

The subject site is less than 1 ha and not within an area with a koala plan of management, accordingly it is not subject to clause 4.2 development controls for koala habitats.

##### Chapter 6: Water Catchment (6.13 Hawkesbury-Nepean conservation area sub-catchments)

The planning proposal does not have any adverse impacts on the Hawkesbury-Nepean River or its sub catchments.

##### *State Environmental Planning policy (Resource and Energy)*

##### Chapter 3: Extractive Industries in Sydney

The planning proposal is for the reclassification of the land to enable the regularisation of the subject site. The proposal is not impacted by or impedes extractive industries.

The following State Environmental Planning Policies are not relevant to the planning proposal at this stage, however, will be relevant to any ensuing development should the proposal proceed.

- *SEPP (Building Sustainability Index: BASIX) 2004.*
- *SEPP (Exempt and Complying Development Codes) 2008.*
- *SEPP (Sustainable Buildings) 2022 (in force from 01 October 2023).*

#### Local Planning Direction (Ministerial Directions)

The planning proposal is assessed to be consistent with relevant Ministerial Directions as per Attachment 2. The following are of particular relevance to the planning proposal.

4.3 Planning for Bushfire Protection



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This direction aims to protect life, property, and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas and encourage sound management of bush fire prone area.

The planning proposal is consistent with this direction as it is only for the reclassification of land and will be consulted with relevant authorities as required. Any future development is a separate matter to this planning proposal, which will be considered upon receiving a development application.

#### 9.2 Rural Lands

This direction aims to protect the agricultural productivity and character of rural areas in New South Wales. Specifically, objective b of this direction is to *facilitate the orderly and economic use and development of rural lands to promote for rural and related purposes*. The planning proposal is consistent with this direction as it does not impede the productivity of surrounding land uses and supports the local agri-tourism industry.

#### Strategic Merit

The planning proposal contains a sound level of strategic merit as it seeks to facilitate the regularisation of an existing use which contributes to the local agribusiness and agri-tourist economy, and does not permit development that will hinder the local character and productivity. With this consideration, the planning proposal is consistent with the Metropolitan Rural Area objectives of the Greater Sydney Region Plan and Western City District Plan and supports local planning objectives and strategies that seek to promote and support local rural areas.

#### Environmental, Social and Economic Impact

No adverse environmental, social, or economic impacts are anticipated as a result of the planning proposal.

#### Discussion

In achieving the objectives of the planning proposal and in consideration of historical and present context of the subject site and its use, two options are available. Both of these options require the owners of the Tutti Fruitti Café to construct a permanent structure for the use as a café entirely within Lot 1 DP 582879 on the RU2 zoned land, as specified in the pre-lodgement advice provided on the 9 July 2021.

The first option as presented in the planning proposal and assessed in this report, is to reclassify the subject site to 'operational land' and enter into a lease agreement with the owners or sell the land to the owners through a public process to enable the use of the land for parking and vehicle access. Achieving this option is not guaranteed as it is dependent on the planning proposal being supported by Council and approved by the Department of Planning & Environment. In this scenario the preferred option between leasing and selling the land for both Council and the owners of Tutti Fruitti Café is a point for negotiation and subject to Council consideration.

The second option, which in any case may be necessitated through an unsuccessful planning proposal, is to not reclassify the land. As a result, for the owners of Tutti Fruitti Café to receive development consent for construction and lawful operation of permanent structures for use as the café under this scenario, the structure, parking and vehicular access will need to be located entirely within Lot 1 DP 582878. This scenario can possibly be supported by an extension of clause 6.14 of the Hawkesbury Local Environment Plan for another 2 years to enable the owners to continue trading at the current temporary site while a development application for a permanent structure is lodged and assessed, and then constructed.



**Conclusion**

The reclassification of the subject site from community to operational land provides an avenue to regularise the Tutti Fruitti Café, enabling lawful operation through resolving issues of parking and access rights on Council owned land. This reclassification will allow for flexibility in dealing with the land and consideration of future development applications. While the planning proposal contains site and strategic merit, a point of discussion raised is the method of regularising the use of Tutti Fruitti Café, whether through the reclassification of the land or requiring the premise to be contained entirely within Lot 1 DP 582878 including parking and access.

**ATTACHMENTS:**

**AT - 1** Assessment against State Environmental Planning Policy.

**AT - 2** Assessment against Local Planning (Ministerial) Directions.

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**AT - 1 Assessment against State Environmental Planning Policy**

State Environmental Planning Policy (Biodiversity and Conservation) 2021		
Vegetation in Non-Rural Areas	The aims of this Chapter are— a. to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and b. to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	Consistent  The planning proposal does not apply to applicable zones of this chapter
Koala habitat Protection 2020	This Chapter aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline— a. by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and b. by encouraging the identification of areas of core koala habitat, and c. by encouraging the inclusion of areas of core koala habitat in environment protection zones.	Does not Apply to Hawkesbury LGA
Koala habitat Protection 2021	This Chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.	Consistent  The subject site is less than 1 ha and not within an area with a koala plan of management, accordingly it is not subject to clause 4.2 development controls for koala habitats
River Murray Lands	The aims of this Chapter are to conserve and enhance the riverine environment of the River Murray for the benefit of all users.	Does not Apply to Hawkesbury LGA
Water Catchments	This Chapter applies to land in the following catchments—  the Sydney Drinking Water Catchment, the Sydney Harbour Catchment, the Georges River Catchment, the Hawkesbury-Nepean Catchment.	Consistent  The planning proposal does not have any adverse impacts on the Hawkesbury-Nepean River or its sub catchments
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004		
Chapter	Aims	Comment
Building Sustainability Index: BASIX	Regulations under the Act have established a scheme to encourage sustainable residential development ( <i>the BASIX scheme</i> ) under which:  a. application for a development consent, complying development certificate or construction certificate in	Consistent

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	<p>relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and</p> <p>b. the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.</p>	
State Environmental Planning Policy (Exempt and Complying Development) 2008		
Exempt and Complying development Codes	This Policy aims to provide streamlined assessment processes for development that complies with specified development standards	Consistent
State Environmental Planning Policy (Housing) 2021		
Affordable Housing	<p>a. enabling the development of diverse housing types, including purpose-built rental housing,</p> <p>b. encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,</p> <p>c. ensuring new housing development provides residents with a reasonable level of amenity,</p> <p>d. promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</p> <p>e. minimising adverse climate and environmental impacts of new housing development,</p> <p>f. reinforcing the importance of designing housing in a way that reflects and enhances its locality,</p> <p>g. supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,</p> <p>h mitigating the loss of existing affordable rental housing.</p>	Consistent
Diverse Housing	<p>a. enabling the development of diverse housing types, including purpose-built rental housing,</p> <p>b. encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,</p> <p>c. ensuring new housing development provides residents with a reasonable level of amenity,</p> <p>d. promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</p> <p>e. minimising adverse climate and environmental impacts of new housing development,</p> <p>f. reinforcing the importance of designing housing in a way that reflects and enhances its locality,</p> <p>g. supporting short-term rental accommodation as a</p>	Consistent

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	home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use, h mitigating the loss of existing affordable rental housing.	
State Environmental Planning Policy (Industry and Employment) 2021		
Western Sydney Employment Area	This Chapter aims to protect and enhance the land to which this Chapter applies (the <b>Western Sydney Employment Area</b> ) for employment purposes.	Does not Apply to Hawkesbury LGA
Advertising and Signage	This Chapter aims— a. to ensure that signage (including advertising)— (i) is compatible with the desired amenity and visual character of an area, and (ii) provides effective communication in suitable locations, and (iii) is of high quality design and finish, and b. to regulate signage (but not content) under Part 4 of the Act, and c. to provide time-limited consents for the display of certain advertisements, and d. to regulate the display of advertisements in transport corridors, and e. to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.	Consistent
State Environmental Planning Policy No 65 (Design Quality of Residential Department Development) 2002		
Design Quality of Residential Department Development	This Policy aims to improve the design quality of residential apartment development in New South Wales.	Consistent
State Environmental Planning Policy (Planning Systems) 2021		
State and Regional Development	The aims of this Chapter are as follows— a. to identify development that is State significant development, b. to identify development that is State significant infrastructure and critical State significant infrastructure, c. to identify development that is regionally significant development	NA
Aboriginal Land	The aims of this Chapter are— to provide for development delivery plans for areas of land owned by Local Aboriginal Land Councils to be considered when development applications are considered, and to declare specified development carried out on land owned by Local Aboriginal Land Councils to be regionally significant development.	NA

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Concurrences and Consents	Provide overview of when the Planning Secretary may act as concurrence authority	Consistent
State Environmental Planning Policy (Precincts – Central River City) 2021		
Central River City	Provide planning policies for the Central River City	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021		
Eastern Harbour City	Provides planning policies for the Eastern Harbour City	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Precincts – Regional) 2021		
Regional	Provides planning policies for the Regional NSW	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Precincts – Western Parkland City) 2021		
State Significant Precincts	The aims of this Chapter are as follows— a. to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State, b. to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.	Does not apply to Hawkesbury LGA
Sydney Region Growth Centres	The aims of this Chapter are (in conjunction with amendments to the regulations under the Act relating to precinct planning) as follows— a. to co-ordinate the release of land for residential, employment and other urban development in the North West Growth Centre, the South West Growth Centre, the Wilton Growth Area and the Greater Macarthur Growth Area, b. to enable the Minister from time to time to designate land in growth centres as ready for release for development, c. to provide for comprehensive planning for growth centres, d. to enable the establishment of vibrant, sustainable and liveable neighbourhoods that provide for community well-being and high quality local amenity, e. to provide controls for the sustainability of land in growth centres that has conservation value, f. to provide for the orderly and economic provision of infrastructure in and to growth centres, g. to provide development controls in order to	Consistent  The planning proposal is not within and Sydney Region Growth Centres

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	<p>protect the health of the waterways in growth centres, to protect and enhance land with natural and cultural heritage value, h. to provide land use and development controls that will contribute to the conservation of biodiversity.</p>	
Western Sydney Aerotropolis	<p>The aims of this Chapter are as follows— a. to facilitate development in the Western Sydney Aerotropolis in accordance with the objectives and principles of the Western Sydney Aerotropolis Plan</p>	Does not apply to Hawkesbury LGA
Penrith Lakes Scheme	<p>The aims of this Chapter are as follows— a. to provide a development control process that ensures that environmental and technical matters are considered in the implementation of the Penrith Lakes Scheme, b. to identify and protect items of the environmental heritage, c. to identify certain land that may be rezoned for employment, environmental, parkland, residential, tourism and waterway purposes and land that will be rezoned as unzoned land, d. to permit interim development that will not detrimentally impact on the implementation of the Penrith Lakes Scheme, e. to ensure that the implementation of the Penrith Lakes Scheme does not detrimentally impact on the ongoing operation and use of olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.</p>	Does not apply to Hawkesbury LGA
St Marys	<p>The aims of this Chapter are to— a. support the <i>St Marys Environmental Planning Strategy, 2000</i> of the Department of Urban Affairs and Planning by providing a framework for the sustainable development and management of the land to which this Chapter applies</p>	Does not apply to Hawkesbury LGA
Western Sydney Parklands	<p>The aim of this Chapter is to put in place planning controls that will enable the Western Sydney Parklands Trust to develop the Western Parklands into a multi-use urban parkland for the region of western Sydney</p>	Does not apply to Hawkesbury LGA
<b>State Environmental Planning Policy (Primary Production) 2021</b>		
Primary production and Rural Development	<p>The aims of this Chapter are as follows— a. to facilitate the orderly economic use and development of lands for primary production, b. to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources, c. to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</p>	<p>Consistent</p> <p>The planning proposal does not impact the productivity and character of surrounding rural lands</p>

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	<p>d. to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</p> <p>e. to encourage sustainable agriculture, including sustainable aquaculture,</p> <p>f. to require consideration of the effects of all proposed development in the State on oyster aquaculture,</p> <p>g. to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</p>	
Central Coast Plateau Areas	<p>The general aims of this Chapter are—</p> <p>a. to provide for the environmental protection of the Central Coast plateau areas and to provide a basis for evaluating competing land uses</p>	Does not apply to Hawkesbury LGA
State Environmental Planning Policy (Resilience and Hazard) 2021		
Coastal Management	<p>The aim of this Chapter is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the <i>Coastal Management Act 2016</i>, including the management objectives for each coastal management area</p>	Consistent
Hazardous and offensive Development	<p>This Chapter aims—</p> <p>a. to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and</p> <p>b. to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Chapter</p>	Consistent
Remediation of Land	<p>This Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—</p> <p>a. by specifying when consent is required, and when it is not required, for a remediation work, and</p> <p>b. by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and</p> <p>c. by requiring that a remediation work meet certain standards and notification requirements.</p>	Consistent

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State Environmental Planning Policy (Resource and Energy) 2021		
Mining, petroleum, and Extractive Industries	The aims of this Chapter are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries— a. to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and b. to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and c. to promote the development of significant mineral resources, and d. to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and e. to establish a gateway assessment process for certain mining and petroleum (oil and gas) development— (i) to recognise the importance of agricultural resources, and (ii) to ensure protection of strategic agricultural land and water resources, and (iii) to ensure a balanced use of land by potentially competing industries, and (iv) to provide for the sustainable growth of mining, petroleum and agricultural industries	Consistent  The planning proposal does not impeded existing or the establishment of future extractive industries
Extractive industries in Greater Sydney	This Chapter aims— a. 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	Consistent  The planning proposal does not impede existing or the establishment of future extractive industries.
State Environmental Planning Policy (Transport and Infrastructure) 2021		
Infrastructure	The aim of this Chapter is to facilitate the effective delivery of infrastructure across the State	Consistent
Educational establishments and child care facilities	The aim of this Chapter is to facilitate the effective delivery of educational establishments and early education and care facilities across the State	Consistent
Major Infrastructure Corridors	The aims of this Chapter are as follows— a. to identify land that is intended to be used in the future as an infrastructure corridor, b. to establish appropriate planning controls for the land for the following purposes— (i) to allow the ongoing use and development of the land until it is needed for the future infrastructure corridor,	Consistent



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	(ii) to protect the land from development that would adversely impact on or prevent the land from being used as an infrastructure corridor in the future.	
Three ports – Port Botany, Port Kembla and port of Newcastle	The aims of this Chapter are as follows— a. to provide a consistent planning regime for the development and delivery of infrastructure on land in Port Botany, Port Kembla and the Port of Newcastle, b. to allow the efficient development, re-development and protection of land at Port Botany, Port Kembla and the Port of Newcastle for port purposes	Does not apply to Hawkesbury LGA

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**AT - 2 Assessment against Local Planning (Ministerial) Directions**

Planning Systems		
Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.	Consistent  Planning proposal is assessed to be consistent with relevant regional plans
Development of Aboriginal land council	The objective of this direction is to provide for the consideration of development delivery plans prepared under chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 when planning proposals are prepared by a planning proposal authority.	NA
Approval and referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Consistent:  The planning proposal does not require concurrence with the Minister of Planning or another public authority
Site Specific provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	Consistent  The planning proposal does not propose any site specific provisions
Planning Systems Place Based		
1.5-1.20	Site specific direction not relevant to the Hawkesbury LGA	Not Applicable to the Hawkesbury LGA
Biodiversity and Conservation		
Conservation Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	Consistent  The planning proposal does not impact environmentally sensitive areas
Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Consistent
Sydney Drinking	The objective of this direction is to protect water	Not Applicable to the

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Water Catchments	quality in the Sydney drinking water catchment.	Hawkesbury LGA
Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	The objective of this direction is to ensure that a balanced and consistent approach is taken when applying conservation zones and overlays to land on the NSW Far North Coast.	Not Applicable to the Hawkesbury LGA
Recreation Vehicle Areas	The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles	Consistent
Strategic Conservation Planning	The objective of this direction is to protect, conserve or enhance areas with high biodiversity value.	Consistent
<b>Resilience and Hazards</b>		
Flooding	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 that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.	Consistent  The planning proposal is above the flood planning level
Coastal Management	The objective of this direction is to protect and manage coastal areas of NSW.	Consistent
Planning for Bushfire Protection	The objectives of this direction are to: (a) protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) encourage sound management of bush fire prone areas	Consistent  The planning proposal is consistent with this direction as it is only for the reclassification of land and will be consulted with relevant authorities as required. Any future development is a separate matter to this planning proposal, which will be considered upon receiving a development application
Remediation of Contaminated	The objective of this direction is to reduce the risk of harm to human health and the environment by	Consistent

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Land	ensuring that contamination and remediation are considered by planning proposal authorities.	
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	Consistent
Mine Substance and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	Consistent
<b>Transport and Infrastructure</b>		
Integrating land Use and Transport	<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	Consistent
Reserving Land for Public Purposes	<p>The objectives of this direction are to:</p> <p>(a) facilitate the provision of public services and facilities by reserving land for public purposes, and</p> <p>(b) facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p>	Consistent
Development Near Regulated Airports and defence Airfields	<p>The objectives of this direction are to:</p> <p>(a) ensure the effective and safe operation of regulated airports and defence airfields;</p> <p>(b) ensure that their operation is not compromised</p>	Consistent

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	<p>by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and</p> <p>(c) ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</p>	
Shooting Ranges	<p>The objectives are to:</p> <p>(a) maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range,</p> <p>(b) reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land,</p> <p>(c) identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.</p>	Consistent
<b>Housing</b>		
Residential Zones	<p>The objectives of this direction are to:</p> <p>(a) encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) minimise the impact of residential development on the environment and resource lands.</p>	Consistent
Caravan Parks and Manufactured Home Estates	<p>The objectives of this direction are to:</p> <p>(a) provide for a variety of housing types, and</p> <p>(b) provide opportunities for caravan parks and manufactured home estates.</p>	Consistent
Business and Industrial Zones	<p>The objectives of this direction are to:</p> <p>(a) encourage employment growth in suitable locations,</p> <p>(b) protect employment land in business and industrial zones, and</p>	Consistent

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	(c) support the viability of identified centres	
Reduction in non-hosted short-term rental accommodation period	<p>The objectives of this direction are to:</p> <p>(a) mitigate significant impacts of short-term rental accommodation where non-hosted short-term rental accommodation period are to be reduced, and</p> <p>(b) ensure the impacts of short-term rental accommodation and views of the community are considered.</p>	Consistent
Commercial and Retail Development along Pacific Highway, North coast	<p>The objectives for managing commercial and retail development along the Pacific Highway are to:</p> <p>(a) protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route,</p> <p>(b) prevent inappropriate development fronting the highway,</p> <p>(c) protect public expenditure invested in the Pacific Highway,</p> <p>(d) protect and improve highway safety and highway efficiency,</p> <p>(e) provide for the food, vehicle service and rest needs of travellers on the highway, and</p> <p>(f) reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.</p>	Not Applicable to the Hawkesbury LGA
<b>Resources and Energy</b>		
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.	<p>Consistent</p> <p>The planning proposal will not result in conflict with existing or future extractive industries</p>
<b>Primary Production</b>		
Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	Consistent

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<p>Rural Lands</p>	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>(a) protect the agricultural production value of rural land,</li> <li>(b) facilitate the orderly and economic use and development of rural lands for rural and related purposes,</li> <li>(c) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State,</li> <li>(d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,</li> <li>(e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land,</li> <li>(f) support the delivery of the actions outlined in the NSW Right to Farm Policy.</li> </ul>	<p>The planning proposal is consistent with this direction as it does not impede the productivity of surrounding land uses and supports the local agri-tourism industry.</p>
<p>Oyster Aquaculture</p>	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>(a) ensure that ‘Priority Oyster Aquaculture Areas’ and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal, and</li> <li>(b) protect ‘Priority Oyster Aquaculture Areas’ and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.</li> </ul>	<p>Consistent</p>
<p>Farmland of State and regional Significance on the NSW Far North Coast</p>	<p>The objectives of this direction are to: (a) ensure that the best agricultural land will be available for current and future generations to grow food and fibre, (b) provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning, and (c) reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas</p>	<p>Not Applicable to the Hawkesbury LGA</p>

**oooO END OF REPORT Ooo**



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## End of Business Paper

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