



Hawkesbury Local Planning Panel

Date of meeting: 15 February 2024
Location: By audio-visual link
Time: 10:00 AM

BUSINESS PAPER

HAWKESBURY LOCAL PLANNING PANEL

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1. PROCEDURAL MATTERS

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1. PROCEDURAL MATTERS

Welcome

The Chairperson will acknowledge the Indigenous Heritage and address the Hawkesbury Local Planning Panel meeting, mentioning:

- Recording of the Hawkesbury Local Planning Panel Meeting
- Statement regarding people addressing the Meeting

Attendance

Attending Panel members and Council staff members will be noted for the purposes of the Minutes.

Declaration of Interest

The Chairperson will ask for any Declaration of Interests from the attending Panel Members. These will then be addressed at the relevant item.

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2. REPORTS FOR DETERMINATION

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2. REPORTS FOR DETERMINATION

2.1.1. CP - DA0204/23 - Alterations and Additions to an Existing Dwelling House and Construction of an Outbuilding - Lot 14 DP 238403, No.270 Terrace Road, NORTH RICHMOND - (95498, 96329)

Directorate: City Planning

DEVELOPMENT INFORMATION

Application Number:	DA0204/23
Date Received	21 November 2022
Proposal Details	Alterations and Additions to an Existing Dwelling House and Construction of an Outbuilding
Estimated Cost	\$200,000.00
Legal Description	Lot 14 DP 238403
Property Address	270 Terrace Road, NORTH RICHMOND NSW 2754
Site Area	4,382sqm
Zoning	RU2 - Rural Landscape under the Hawkesbury Local Environmental Plan 2012
Applicant	Christopher Edwards
Owner	Mrs AF Edwards
Exhibition Dates	12 June 2023 to 25 June 2023
Submissions	One
Key Issues	<ul style="list-style-type: none">• Contravention of Height of Buildings Development Standard;• Privacy/Amenity impacts to adjoining property;• Unauthorised Building Work;• Bush Fire Prone Land - Not supported by RFS; and• Non-Compliance with the applicable DCP
Recommendation	Refusal

EXECUTIVE SUMMARY

Reason for Consideration by Local Planning Panel

Departure from development standards of greater than 10% - Proposed Height of Building (HoB) exceeds the development standard by 7.4m or 74%.

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Proposal

The subject development application seeks consent for the alterations and additions to an existing dwelling house and the construction of an outbuilding at Lot 14, DP 238403, 270 Terrace Road, North Richmond.

Permissibility

The subject development site is zoned RU2 Rural Landscape under Hawkesbury Local Environmental Plan 2012 (HLEP). The proposed development is defined as alterations and additions to a 'dwelling house' and 'outbuilding' ancillary to a dwelling house. Dwelling houses and outbuildings are permitted with consent in the RU2 zone.

Consultation

In accordance with the Hawkesbury Community Participation Plan, the subject application was publicly notified from 12 June 2023 to 25 June 2023. One submission objecting to the proposal was received. The issues raised in the submission are discussed within the content of this report.

Key Issues

The key issues of this development application include:

- Building height;
- Unauthorised works; and
- Privacy/amenity impacts to adjoining property.

RECOMMENDATION

That DA0204/23 be refused for the reasons contained in this report.

Local Planning Panel Recommended Reasons for Refusal

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979 it is recommended:

1. That the variation pursuant to Clause 4.6 to the maximum height of building under Clause 4.3 of the Hawkesbury Local Environmental Plan 2012 not be supported; and
2. That the Hawkesbury Local Planning Panel, exercising the function of the consent authority, refuse development consent DA0204/23 for alterations and additions to an existing dwelling house and the construction of an outbuilding on land at 270 Terrace Road, North Richmond for the following reasons:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- a) The proposed development is inconsistent with Clause 6.12 Riverine Scenic Areas of State Environmental Planning Policy (Biodiversity and Conservation) 2021 in that the impact of the development on the scenic quality of the Riverine Scenic Area is not minimised.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979)

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Hawkesbury Local Environmental Plan 2012

- b) The proposed development is excessive in the height development standard of 10 metres prescribed under Clause 4.3 of Hawkesbury Local Environmental Plan 2012. The application fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstance and the written request to vary this standard has failed to provide well-founded planning grounds to justify the contravention of the development standard.
- c) The proposed development is considered to be unacceptable having regard to the objectives of Hawkesbury Local Environmental Plan 2012. Particularly;
- To ensure that development retains or enhances existing landscape values including a distinctive agricultural component, and
 - To preserve the river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other features of scenic quality.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979)

Hawkesbury Development Control Plan 2002

- d) The proposed development does not comply with the requirements of the Hawkesbury Development Control Plan 2002, in particular, Chapter 1 Residential Development and Chapter 8 Farm Buildings and Outbuildings.

(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979)

Likely Impact

- e) The proposed development will have an unacceptable impact on the visual quality of the area.
- f) The proposed development is likely to have an adverse impact on the amenity of residents in the immediate locality.
- g) The development application contains insufficient information to carry out an assessment of the likely impacts of the proposed development with regard to Section 4.15 of the Environmental Planning and Assessment Act 1979. In particular, there is insufficient information in respect of landscaping, a complete survey plan, shadow diagrams and FFLs to AHD.

(Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979)

Submissions

- h) The issues raised in the submission have been considered and further warrant the refusal of the application.

(Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979)

Public Interest

- i) For the reasons listed above, approval of the application is not within the public interest.

(Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979)

3. That those who made a submission be advised of the Panel's decision.

BACKGROUND

Detailed Description of Proposal:

The subject development application seeks consent for the alterations and additions to an existing dwelling house and the construction of an outbuilding at Lot 14, DP 238403, 270 Terrace Road, North Richmond. Specifically, the following works are proposed:

- Extension to existing dwelling to construct a viewing tower above the first-floor enclosed balcony on the eastern boundary of the site;
- Construction of an outbuilding on an existing, unauthorised concrete slab within the northern front property boundary;
- Retrospective approval of the existing slab for the purposes of applying for a Building Information Certificate (BIC), and
- Paving and gardens.

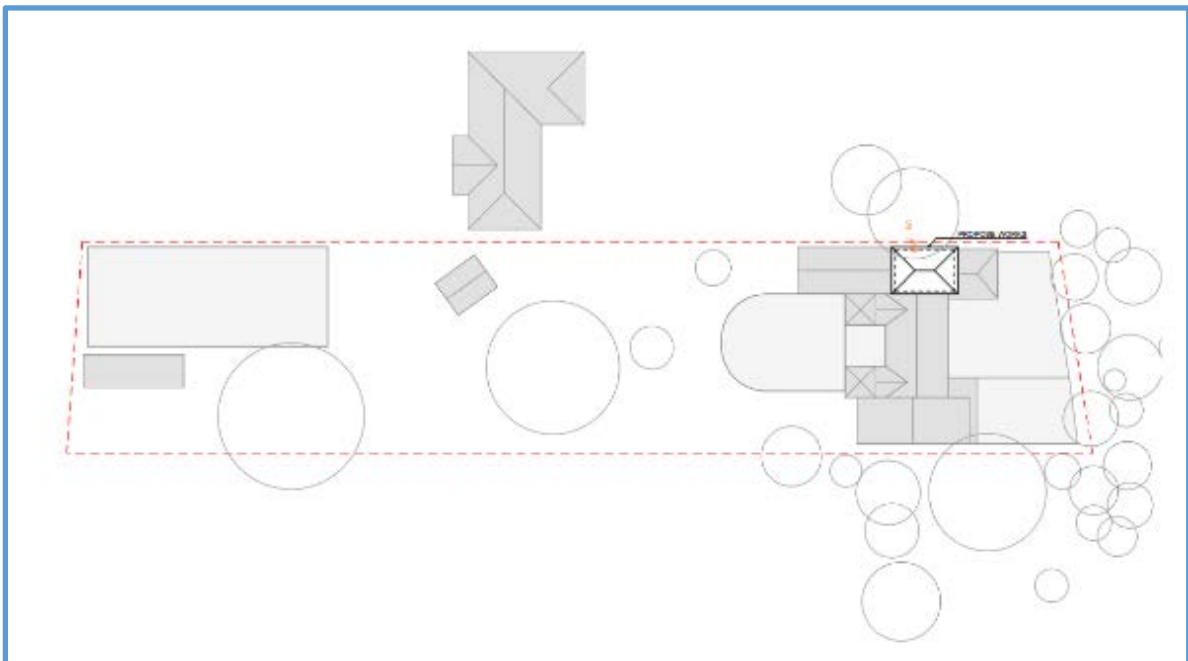


Figure 1: Site Plan indicating location of proposed extension to existing dwelling.

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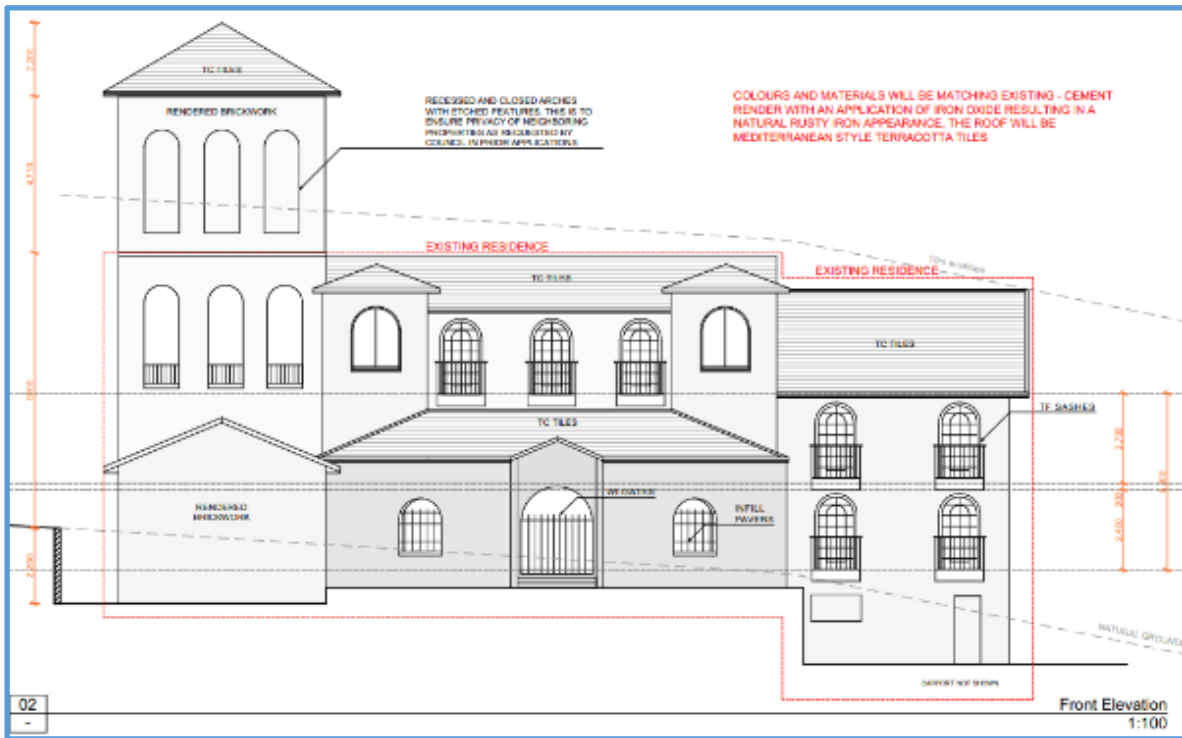


Figure 2: Front elevation of proposed extension to existing dwelling illustrating encroachment of 10m height plane envelope.

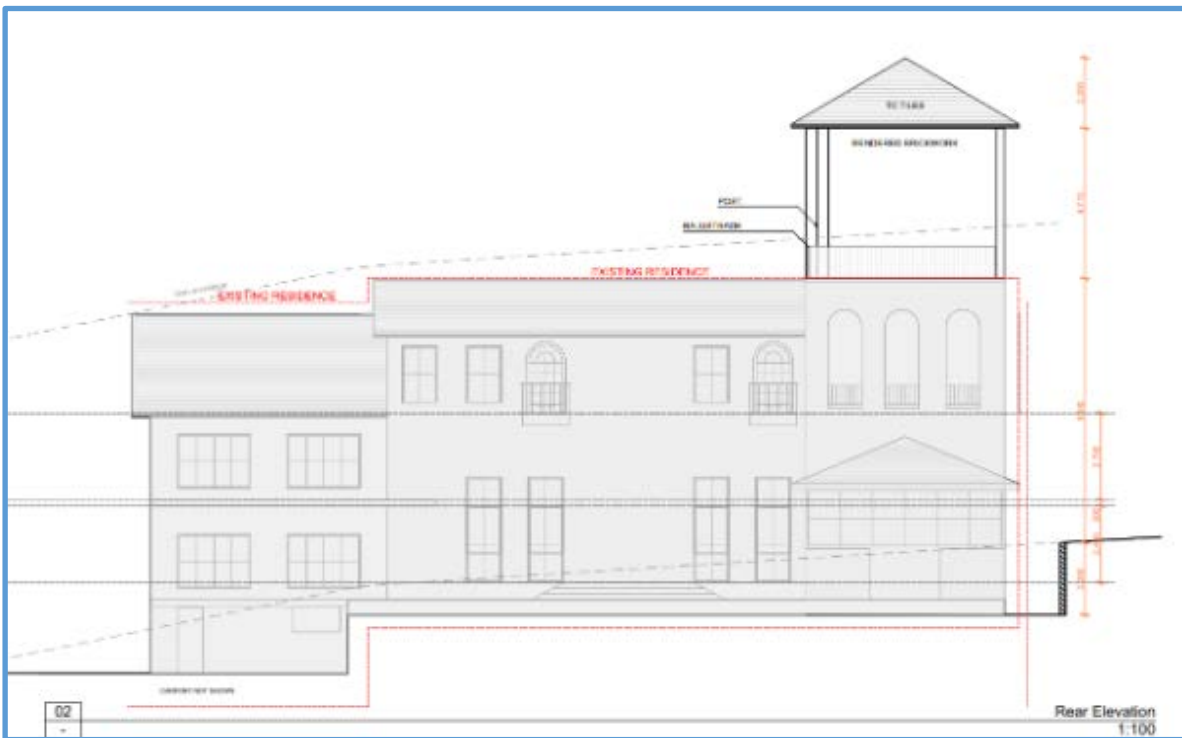


Figure 3: Rear Elevation of proposed extension to dwelling.

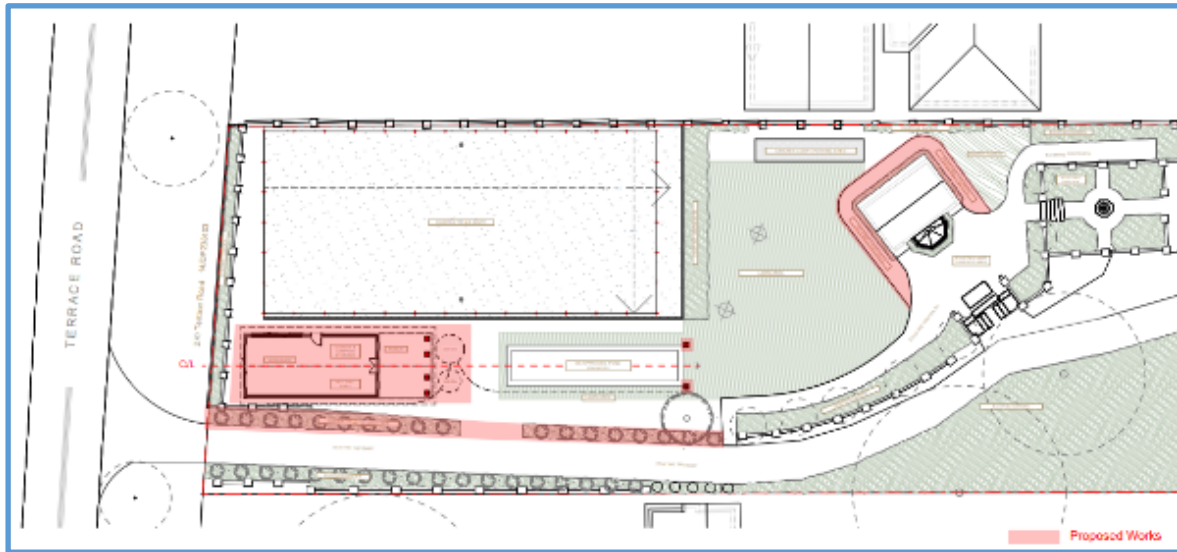


Figure 4: Site plan indicating location of existing concrete slab/proposed outbuilding and paving.

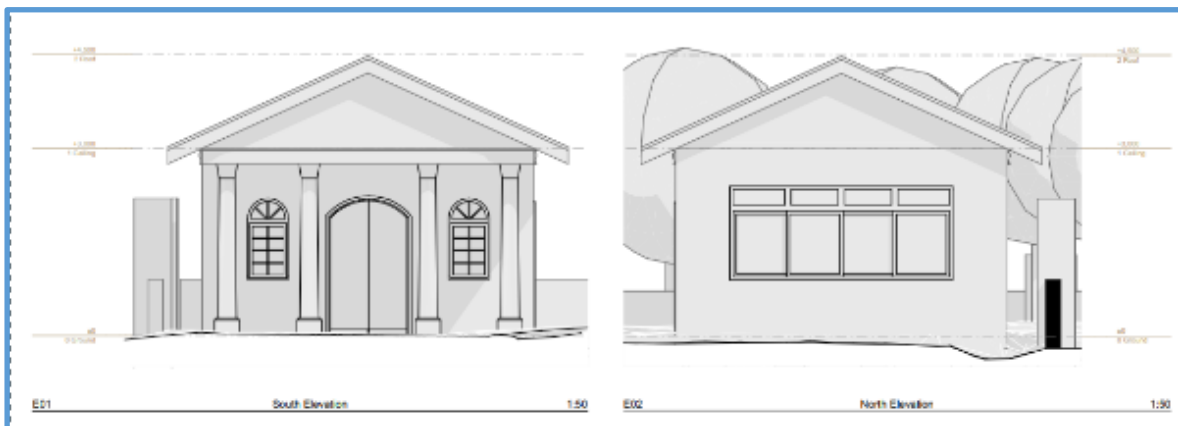


Figure 5: South and north elevations of proposed outbuilding.

Permissibility

The subject development site is zoned RU2 Rural Landscape under Hawkesbury Local Environmental Plan 2012 (HLEP). The proposed development is defined as alterations and additions to a 'dwelling house' and 'outbuilding' ancillary to a dwelling house. Dwelling houses and outbuildings are permitted with consent in the RU2 zone.

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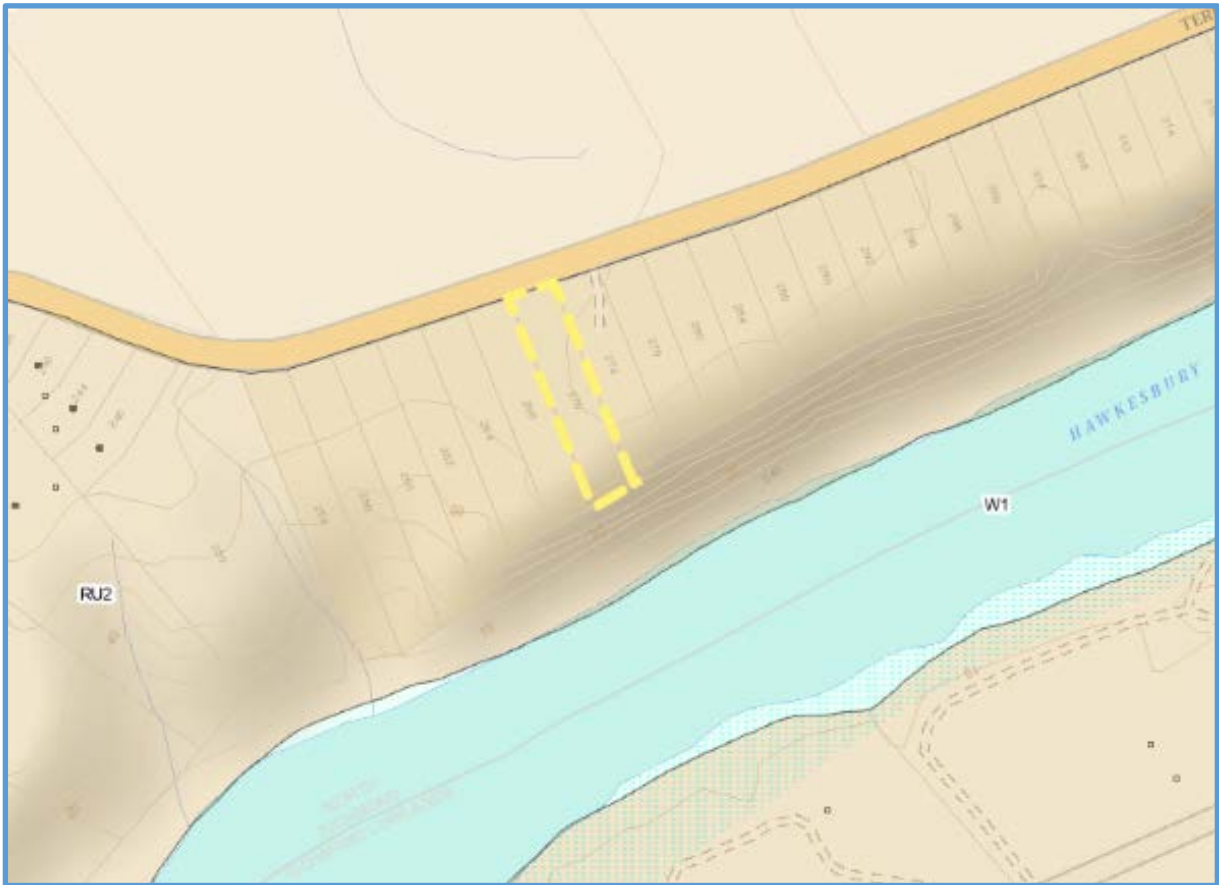


Figure 6: Zoning Map with subject site outlined in yellow. Source: NSW Planning Portal.

Site and Locality Description

The proposed development site is located at 270 Terrace Road, North Richmond and legally described as Lot 14 DP 238403.



Figure 7: Aerial image of subject site. Source: MetroMap.

The site has a primary frontage to Terrace Road and is generally rectangular in shape with a site area of 4382sqm. The property is relatively level with a slight fall from the front to the rear before it drops down a steep escarpment to the Hawkesbury River on the South.

The site contains an existing dwelling house to the rear of the lot, overlooking the Hawkesbury River and the Richmond lowlands; in addition to multiple awnings, a swimming pool which is under construction, a hardstand area constructed for the purposes of a tennis court (currently utilised as a car parking area for trades vehicles), an unauthorised concrete slab, gardens, and established trees.

A significant area of the subject site contains hardstand area and is generally inconsistent with the surrounding area in terms of permeability and site coverage.

A site inspection was completed on Thursday 14th December 2023, revealing that the existing dwelling, when viewed from the primary street, does not currently dominate the streetscape due to its siting and the existing fencing which screens the buildings and structures at the relative distance.



Figure 8: 270 Terrace Road, North Richmond looking south from Terrace Road.



Figure 9: Overlooking to adjoining property, 274 Terrace Road, from existing unenclosed balcony.

The inspection also revealed pipe penetrations within the existing, unauthorised concrete slab.



Figure 10: Existing, unauthorised slab illustrating pipe penetrations.

A further site inspection was completed on Thursday 21st December 2023 to assess views of the existing dwelling from the Richmond Lowlands. The inspection revealed that the existing dwelling dominates the views and vistas from various points upon the Richmond Lowlands and the construction of a turret which exceeds development height standards will result in *visually intrusive development on waterfront land or on slopes and ridgetops which are visible from the river or the surrounding visual catchment*, this is inconsistent with Clause 6.12 Riverine Scenic Areas of State Environmental Planning Policy (Biodiversity and Conservation) 2021 in that the impact of the development on the scenic quality of the Riverine Scenic Area is not minimised (further discussed below under 'Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979'). This Clause replaces Clauses 6 and 11 of Sydney Regional Environmental Plan No 20 (SREP 20) - Hawkesbury-Nepean River (No 2-1997) which was largely informed by the Hawkesbury-Nepean Scenic Quality Study published by the Department of Urban Affairs and Planning in 1996.



Figure 11: Views of existing dwelling at 270 Terrace Road, North Richmond. Looking north from Edwards Road, Richmond Lowlands.

Background and History

The following relevant history has been noted to have occurred at the subject development site:

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pApplication /Reference Number	Description of Development	Date of Determination/Issue
DA0442/03	Development Application - Dwelling addition. inground swimming pool, carport, tennis court, summer house, ponds and decking.	31/07/2003
CC0442/03	Construction Certificate - Dwelling addition. inground swimming pool, carport, tennis court, summer house, ponds and decking.	05/08/2003
DA0442/03A	Modification of Development Notice DA0442/03 - Alterations to dwelling design and layout in accordance with Stop Work Order. Design amendments included access to the viewing tower via internal staircase and a balustrade. The design amendments were supported with the exception of the balustrade and internal staircase that was omitted from the consent.	20/06/2013
DA0442/03	Notice of Intention - Unauthorised concrete slab with drainage installations located at the front of the premises adjacent to the tennis court slab with order to demolish the concrete slab.	02/04/2019
DA0442/03	Order to Demolish - Demolish Works Order issued in relation to Notice of Intention to Serve an Order.	22/05/2019
PD0022/19	Pre-Development Application - Construction of a cabana and swimming pool.	02/09/2019
DA0204/23	Development Application - Alterations and additions to existing dwelling to construct a turret (viewing tower) and the construction of an outbuilding upon the existing, unauthorised slab.	Under Assessment

Consultation

The following internal and external consultation regarding the assessment of the proposal is noted:

Internal Consultation:

Department	Comments
Building Surveyor	Should the application be approved, condition would be imposed to remove the pipe penetrations within the concrete slab (see Figure 10).

External Consultation:

Agency	Comments
NSW Rural Fire Service	The New South Wales Rural Fire Service (NSW RFS) cannot support the proposed development. Previously requested information was not received within the legislative time frame to allow for assessment of the application against the Aims and Objectives of Planning for Bush Fire Protection (2019).

Legislation, Council Policies, Procedures and Codes to which the Matter Relates

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- Hawkesbury Local Environmental Plan 2012 (HLEP 2012); and,
- Hawkesbury Development Control Plan 2002 (HDCP 2002).

Matters for Consideration under the Biodiversity Conservation Act 2016

All development applications are required to be assessed against the *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulation 2017*. The subject property contains areas mapped on the Biodiversity Values Map:



Figure 12: Biodiversity Map. Source: NSW Planning Portal Spatial Viewer.

Where there is a clearing or modification of native vegetation, the requirement of the Biodiversity Offsets Scheme (BOS) is triggered. The proposed development does not include the clearing or modification of native vegetation and therefore the BOS is not triggered.

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

Section 4.15 Evaluation of the Environmental Planning and Assessment Act S4.15(1) requires the following matters to be considered:

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- **Matters for consideration—general** *In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application*
- *the provisions of—*
- *any environmental planning instrument, and*
- *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- *any development control plan, and*

(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v) (Repealed)

that apply to the land to which the development application relates,

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

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

Accordingly, the following is an assessment of the application with regard to the heads of consideration under the provisions of Section 4.15(1) of the EP&A Act 1979:

(1) (a) The provisions (where applicable) of-

(i) any environmental planning instrument:

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land is applicable to the subject site and the objective of this chapter is to provide a state-wide planning approach to the remediation of contaminated land and 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.

Under Clause 4.6(1) of SEPP RH, a consent authority must not grant consent for the carrying out of any development unless:

(a) it has considered whether the land is contaminated, and

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(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The subject site has a history of residential purposes with a current approved residential use. The land does not exhibit any known history of activities that would be reasonably associable with a high probability of contamination. In this regard, it is considered that the provision of further reporting or remediation strategies are not required, and the consent authority is satisfied that the land is suitable for the proposed purpose should the application have been recommended for approval.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 6 - Water Catchments of this policy applies to the subject site and the objective of this chapter is to protect the environment of Water Catchments by ensuring that impacts of future land uses are considered at the development application stage. The chapter includes strategies for the assessment of development in relation to environmentally sensitive areas, water quality and quantity, riverine scenic quality, agriculture, rural residential development, aquaculture, recreation and tourism.

An assessment of the relevant clauses under Chapter 6 is provided in the tables below:

Clause 6.12 Riverine Scenic Areas	Assessment	Compliance
(1) Development in a Riverine Scenic Area may be carried out only with development consent.	Development consent is sought for the proposed development.	Yes
(2) In deciding whether to grant development consent to development in a Riverine Scenic Area, the consent authority must consider the following— (a) whether the development is likely to damage river banks, (b) whether the development will be adequately set back from natural waterbodies in the Hawkesbury-Nepean Catchment, (c) the visibility of the development from the surrounding natural waterbodies and visual catchment, (d) whether the development will be consistent with the scenic character of the Riverine Scenic Area, as described in the document entitled Hawkesbury-Nepean River Scenic Quality Study, published by the Department of Urban Affairs and Planning in 1996,	(a) the development is unlikely to damage river banks. (b) the development is adequately set back from natural waterbodies in the Hawkesbury-Nepean Catchment. (c) the visibility of the development from the surrounding natural waterbodies and visual catchment is deemed to be dominating and out of character. (d) the development is inconsistent with the scenic character of the Riverine Scenic Area, as described in the document entitled Hawkesbury-Nepean River Scenic Quality Study, published by the Department of Urban Affairs and Planning in 1996. (e) the development will not increase public recreational and visual access to natural waterbodies. (f)	No

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Clause 6.12 Riverine Scenic Areas	Assessment	Compliance
<p>(e) whether the development will increase public recreational and visual access to natural waterbodies,</p> <p>(f) landscaping, including the following—</p> <p>(i) the form and siting of buildings,</p> <p>(ii) the colours and materials proposed to be used in the buildings,</p> <p>(iii) whether the development includes or retains native vegetation,</p> <p>(g) the appropriateness of imposing a condition requiring the protection of the scenic character of the Riverine Scenic Area.</p>	<p>(i) the form and siting of the proposed development are inconsistent with the prevailing character of the Riverine Scenic Area,</p> <p>(ii) the existing and proposed colours and materials of the development are inconsistent with the prevailing character of the Riverine Scenic Area,</p> <p>(iii) the development proposes to retain native vegetation.</p> <p>(g) Imposing a condition requiring the protection of the scenic character of the Riverine Scenic Area is not required as the proposed development is not supported.</p>	
<p>(3) Development consent must not be granted to development in a Riverine Scenic Area unless the consent authority is satisfied the impact of the development on the scenic quality of the Riverine Scenic Area will be minimised.</p>	<p>Considering the assessment of the abovementioned controls, Council is not satisfied that the impact of the proposed development on the scenic quality of the Riverine Scenic Area will be minimised.</p>	No

Clause 6.13 Hawkesbury-Nepean conservation area sub-catchments	Assessment	Compliance
<p>(1) Development in a Hawkesbury-Nepean conservation area sub-catchment may be carried out only with development consent.</p>	<p>Development consent is sought for the proposed development.</p>	Yes
<p>(2) In deciding whether to grant development consent to development in a Hawkesbury-Nepean conservation area sub-catchment, the consent authority must consider the following—</p> <p>(a) whether the development will minimise human interference with the condition of the sub-catchment,</p> <p>(b) whether the development will maintain and enhance the structure and floristics of native vegetation in the sub-catchment,</p>	<p>(a) the proposed development is likely to minimise human interference with the condition of the sub-catchment.</p> <p>(b) the proposed development is unlikely to adversely impact the structure and floristics of native vegetation in the sub-catchment.</p> <p>(c) the proposed development is unlikely to maintain or enhance the scenic quality of the locality due to the inconsistencies with the prevailing character of the Hawkesbury-Nepean conservation area sub-catchments and the existing and proposed dominance of the dwelling.</p> <p>(d) development has previously been carried out on the development site and it is recommended that the bulk and scale of the</p>	No

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Clause 6.13 Hawkesbury-Nepean conservation area sub-catchments	Assessment	Compliance
(c) whether the development will maintain or enhance the scenic quality of the locality, (d) whether development has previously been carried out on the development site.	existing development is not exacerbated as proposed by the development.	

Accordingly, Council has considered the relevant chapter of the SEPP and is not satisfied that the proposed development is consistent with **Clause 6.12 Riverine Scenic Areas** or **Clause 6.13 Hawkesbury-Nepean Conservation area sub-catchments**. It is therefore recommended that the application not be supported.

Hawkesbury Local Environmental Plan 2012

An assessment of the relevant clauses under the Hawkesbury Local Environmental Plan (HLEP 2012) is provided below:

Clause 2.2 Zoning of Land to which plan applies

The subject site is zoned RU2 Rural Landscape pursuant to HLEP 2012. The proposed development is characterised as 'alterations and additions' to a 'dwelling house' and 'outbuilding' ancillary to a 'dwelling house', both of which are permitted with consent in the RU2 zone.

Clause 2.3 Zone objectives and Land Use Table

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives of the RU2 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses in the zone and land uses in adjoining zones.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To preserve the river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other features of scenic quality.*

- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

The proposal is inconsistent with the objectives of the RU2 Rural Landscape zone in that the proposal will:

- not maintain the rural landscape character of the land due to the bulk, scale and materials of the proposed extension.
- not retain or enhance the existing landscape values due to matters discussed under the Biodiversity and Conservation SEPP.
- not preserve scenic corridors and other features or scenic quality due to matters discussed under the Biodiversity and Conservation SEPP.
- detract from the existing rural character due to the proposed outbuilding constructed on the front property boundary.

Clause 4.3 Height of buildings

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings (HoB) map.



Figure 13: Height of buildings map (Source: NSW Planning Portal).

The maximum height of building (HoB) for the subject lot is 10 metres. The development proposes alterations and additions to an existing two-story dwelling to construct a turret (viewing tower). The

proposed HoB from the highest point of roof ridge is 17.4 metres above finished (existing) ground level, resulting in a HoB variation of 7.4m and contravening the development standard by 74%. In the absence of a complete survey plan and finished floor levels (FFL) and roof ridge height to Australian Height Datum (AHD), this measurement was calculated using Council's internal plan measuring software. It is noted that the applicant has stated a maximum building height of 13.91 metres in their submitted Clause 4.6 variation written statement.

The objectives of this clause are as follows:

(a) to protect privacy and the use of private open space in new development and on adjoining land,

(b) to ensure that the bulk of development is not excessive and relates well to the local context,

(c) to nominate heights that will provide a transition in built form and land use intensity,

(d) to ensure an appropriate height transition between new buildings and heritage items.

The proposal is inconsistent with the objectives of the RU2 Rural Landscape zone in that the proposal will:

- not protect the privacy and use of private open space on adjoining land.
- result in a development of excessive bulk and not relate well to the local context.
- not nominate a height that provides a transition in built form and land use intensity.

The proposal seeks a variation to the HoB control under Clause 4.6 which is discussed in detail under *Clause 4.6 Exceptions to development standards* below.

Clause 4.6 Exceptions to development standards

The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A variation to the maximum building height, prescribed by *Clause 4.3 Height of buildings*, which imposes a maximum building height of 10 metres, is sought. The development proposes a height of 17.4 metres, contravening the development standard by 60.1%.

Clause 4.6(2) states that in certain circumstances, consent ...*may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

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(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Further, pursuant to subclause (4), *development consent must not be granted for development that contravenes a development standard unless—*

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The applicant has sought to demonstrate the above with the following justification:

"In an alternate circumstance where compliance was to be required with the subject standard, the development potential for the site would be under-utilised. A compliant building height, in the circumstance of the proposed, would –

- Result in a lack of increased residential amenities for the occupants of the dwelling.*
- Result in the loss of a design that is of a high architectural standard, which introduces visual interest and architectural appeal to the site and existing development.*
- Not result in any real-world beneficial outcomes in relation to amenity considerations for the broader locality. In this regard presenting as an unnecessary compliance void of environmental planning justifications.*
- Inhibit confidence in relation to the expectations of further investment in the area by establishing precedence for an unreasonable absence of flexibility to such standards."*

The applicant has further noted that *"the component of the proposed associable with the contravention of the height limit is not seen to be perceptible from the public domain, nor neighbouring dwellings"*.

The applicant's written request was considered against the following case:

- Initial Action Pty Ltd v Woollahra Council [2017] NSW LEC 1734*

The case outlined that *the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature and that the environmental planning grounds relied upon must be sufficient to justify contravening the development standard...therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action at [24]).*

With respect to the above, it is evident that the applicant's written request for the subject application is inconsistent with the requirement to identify sufficient 'environmental planning grounds' to justify the departure, rather, the written request seeks to justify the contravention to the development standard simply by promoting the benefits of the development as whole.

The Clause 4.6 request therefore fails to address the matters required to be demonstrated by Clause 4.6(3)(a) and 4.6(3)(b) in that it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary and that there are insufficient planning grounds to justify

contravening the development standard. The subject application is further inconsistent with the objectives of the RU2 zone applicable to the site, in that the proposed height variation is contrary to the established rural character of the surrounding locality.

The Clause 4.6 statement and justification was further considered against the following case:

- *Wehbe v Pittwater Council [2007] NSW LEC 827*

Wehbe requires that the applicant must argue, and the consent authority must be satisfied, that compliance with the development standard is unreasonable or unnecessary with the following test:

Compliance with the development standard is reasonable or unnecessary because:

- the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
- 'the zoning or particular land' was 'unreasonable or inappropriate' so that 'a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land' and that 'compliance with the standard in that case would be unreasonable or necessary'

The objectives of Clause 4.3 are as follows:

(a) to protect privacy and the use of private open space in new development and on adjoining land,

(b) to ensure that the bulk of development is not excessive and relates well to the local context,

(c) to nominate heights that will provide a transition in built form and land use intensity,

(d) to ensure an appropriate height transition between new buildings and heritage items.

The following comments are made in reference to the test set out under *Wehbe v Pittwater Council [2007] NSW LEC 827*

1. Are the objectives of the development standard achieved notwithstanding non-compliance with the standard?

The established locality demonstrates a mix of rural dwellings and farm buildings indicative of the current zoning. The objectives of the development standard seek to protect the privacy and the use of private open space on adjoining land, to ensure that the bulk of development is not excessive and relates well to the local context, and to nominate heights that will provide a transition in built form and land use intensity. The proposed development fails to produce a quality development outcome that adheres to the existing and envisaged building heights within the locality.

2. Is the underlying objective or purpose not relevant to the development with the consequence that compliance is unnecessary?

The underlying objective of Clause 4.3 is to set a numerical standard in achieving an appropriate sense of bulk and scale for the locality and its surrounding zones. Per the height of buildings map in Figure 13, the established height for the zone is considered to be a maximum of 10m. In this respect, Clause 4.3 is set in tandem with the zoning of the land under Clause 2.2, ensuring that all land within the RU2 zone adopt a height limit of 10m.

3. Would the underlying objective of purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?

The objectives of Clause 4.3 serve to provide a numerical basis for assessment. It is regarded that the 10m height restriction is seen to serve the purpose of protecting the privacy and amenity of adjoining properties, whilst ensuring the bulk of development is not excessive. In this regard, the non-compliance with the building height only serve to remove the proposal's ability to serve the objectives of Clause 4.3.

4. Has the development standard been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?

The locality exhibits developments which are consistent with the prescribed building heights as stipulated by Clause 4.3. As such, it is pertinent that the development complies with the height limit to prevent erosion of the Clause 4.3's ability to enforce its objectives through a numerical standard.

5. Is "the zoning of the particular land...unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would be unreasonable or necessary"?

The zoning of the site reflects Council's intention to maintain the rural landscape character of the land and ensure development that retains or enhances the existing landscape values. In this regard, the zoning is deemed reasonable and necessary to ensure the preservation of rural landscape values whilst encouraging sustainable primary industry production by maintaining and enhancing the natural resource base. The transition to an alternative zone would not achieve compliance with the objectives set out under Clause 4.3 of the HLEP 2012.

Is the exception well founded?

In considering the applicant's written request to vary the development standard, the following commentary is made in respect to the proposal:

- The applicant's written request does not adequately address the matters required to be demonstrated by subclause (3),
- The proposed development will not be in the public interest as it is inconsistent with the objectives of the particular standard (further discussed below),
- Existing residential amenities for the occupants of the dwelling are deemed sufficient,
- The architectural design is inconsistent with the character, and bulk and scale of surrounding development,
- Non-compliance with the development standard is likely to set an undesirable precedent which is highly visible from for the surrounding area,

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- Amenity and privacy of adjoining dwellings are likely to be compromised,
- It is evident, from both site inspections conducted, that the contravention of the height limit (regardless of the proposed height) is seen to be perceptible from the public domain (when viewed from the primary street and the Richmond Lowlands), and from neighbouring dwellings.

It is considered that the underlying purpose, when considering the objectives of Clause 4.3, is to protect the privacy and the use of the private open space on adjoining land, to ensure that the bulk of development is not excessive and relates well to the local context and to nominate heights that will provide a transition in built form and land use intensity.

The written request does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances as the proposal is unable to meet the objectives of Clause 4.3.

Compliance with the standard is not considered to be unreasonable given that the development can be designed to comply with the maximum building height. The variation request is also not considered to be well-founded, nor does it adequately demonstrate that there are sufficient environmental planning grounds to justify non-compliance. The variation is unlikely to achieve better planning outcomes, nor is it within the public interest,

With regard to the above, it is therefore recommended that the Panel refuse the applicant's request for a clause 4.6 variation.

Clause 6.3 Acid sulfate soils

The objective of this clause is to ensure that development does not disturb, expose, or drain acid sulfate soils and cause environmental damage.

The subject site is mapped as containing Class 5 Acid Sulfate Soils and is located approximately 50m from land affected by Class 1 Acid Sulfate Soils:



Figure 14: Acid Sulfate Soils Map. Source: IntraMaps.

The proposal includes minimal earthworks to accommodate the alterations and additions and construct the proposed outbuilding. The proposal does not include works by which the water table is likely to be lowered below 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. An acid sulfate soils management plan is not required for assessment purposes.

Clause 6.4 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and
- (b) protecting the ecological processes necessary for their continued existence, and
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats

The subject site is mapped under Council's Terrestrial Biodiversity Map as containing both "Significant Vegetation" and "Connectivity Between Significant Vegetation" and is therefore subject to the biodiversity controls listed under Clause 6.4(3) and (4) in accordance with Clause 6.4(2).



Figure 15: Terrestrial Biodiversity Map. Source: Hawkesbury Local Environmental Plan 2012.

Clause 6.4(3) and (4) states:

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—

(a) whether the development—

(i) is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) is likely to have any adverse impact on the habitat elements providing connectivity on the land.

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

The development does not propose the removal of vegetation, is unlikely to result in significant impact on the flora and fauna of the land and does not have potential to disturb biodiversity structure. Measures to avoid, minimise or mitigate the impacts of the development are therefore not required in this regard.

Clause 6.7 Essential services

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

(a) the supply of water,

(b) the supply of electricity,

(c) the disposal and management of sewage,

(d) stormwater drainage or on-site conservation,

(e) suitable road access.

Existing services for the supply of water, electricity, stormwater drainage and storage, and suitable road access are considered suitable for the proposed development. In the absence of a wastewater report, the applicant has disclosed that effluent disposal is managed via Council-approved pumpout service.

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

No Draft Environmental Planning Instruments apply to the proposed development.

(iii) any development control plan:

Hawkesbury Development Control Plan 2002

The proposal is not considered to be acceptable having regard to the relevant requirements of the Hawkesbury DCP 2002. An assessment of the proposal against the relevant provisions of this plan follows:

Part A Chapter 3 – Notification

The application was notified between 12/06/2023 – 25/06/2023 in accordance with Chapter Three of the DCP and the Hawkesbury Community Participation Plan. Council received 1 submission raising objection to the proposal. The issues raised in the objection have been reviewed and considered under the public consultation section of this report below.

Part C Chapter 1 – Aims

The proposed development is inconsistent with the relevant aims of the chapter as the proposed building form is not sympathetic with the existing surrounding neighbourhood, is not compatible with the surrounding environment in terms of height size, bulk scale setbacks and materials, and detracts from the amenity of adjoining residents.

Part C Chapter 1 - Height

In addition to non-compliance with the LEP height provisions, the proposed development encroaches the building height plane prescribed by the applicable DCP. Compliance with this control is not deemed unreasonable in this instance. Encroachment of the building height plane will result in adverse privacy and solar access impacts to the adjoining property.

Part C Chapter 1 – Landscaped Areas

Minimal landscaping has been proposed along the road frontage and property boundaries to soften the appearance of the development. In the absence of a landscape plan, landscaping compliance is not discernible. The design of the building does not provide suitable opportunity for landscaping given the minimal building setback of the proposed outbuilding along Terrace Road. The site appears to contain excessive hardstand areas which is inconsistent with surrounding developments.

Part C Chapter 8 – Outbuildings

The proposed outbuilding is inconsistent with this chapter in that the outbuilding has not been sited to reduce visual dominance, for lots containing an area of 4,000m² to <4ha, a minimum front setback of 15m is required, the development proposes a front setback of 1.270m, resulting in a significant variation which would further set an undesirable precedent for the area. Further, the proposed awning is greater than one third of the area proposed for the outbuilding.

(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:

No planning agreements apply to the proposed development.

(iv) the regulations:

The Regulations require that the development is to Comply with the National Construction Code and be levied against Council's Development Contributions Plan should the proposal be supported.

Development Contributions

Council's Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015) applies to the proposal. A development contribution equal to 1% of the total cost of the development would apply to the proposal should it be supported.

(v) (Repealed)

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

Scenic Quality

As discussed within the content of this report, the development is inconsistent with the scenic character of the Riverine Scenic Area, as described in the document entitled Hawkesbury-Nepean River Scenic Quality Study, published by the Department of Urban Affairs and Planning in 1996. This study largely informed relevant clauses of SEPP Biodiversity and Conservation (formerly SREP 20).

Privacy/Amenity

In the absence of shadow diagrams, the overshadowing impacts of the proposed turret on adjoining properties are not perceptible. Given the orientation, it is highly likely that the turret will result in significant overshadowing of the adjoining property's private open space.

Significant overlooking to the adjacent property, 274 Terrace Road, North Richmond, is evident (see Figure 9) and Council is concerned that the construction of the proposed turret on the eastern property boundary would further exacerbate the existing privacy/overlooking concerns.

Prevailing Character

It is considered that the bulk and scale of the proposed development is inconsistent with the surrounding properties which are primarily developed for rural residential use.

(c) Suitability of the site for the development:

Insufficient information has been provided to consider the suitability of the site for the proposed development, particularly in relation to landscaping, a complete survey plan, and overshadowing. It is further noted that the proposed development is located on bushfire prone land and RFS have not provided integrated approval due to insufficient information.

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

In accordance with the Hawkesbury Community Participation Plan, the subject application was publicly notified from 12 June 2023 to 25 June 2023. One submission objecting to the proposal was received. The issues raised in the submission include the following:

- Excessive height of building

Officer Comment

Proposed Height of Building (HoB) exceeds the development standard by 7.4m or 74%. The proposed variation is not supported by Council staff for several reasons discussed within this report.

- Overshadowing and amenity impacts.

Officer Comment

Whilst overshadowing cannot be accurately determined in the absence of shadow diagrams, the amenity and privacy impacts to the neighbouring property are significant.

- Structural soundness of existing and proposed development in relation to the escarpment.

Officer Comment

Structural adequacy is not a matter for consideration at Development Application stage.

- Unauthorised works.

Officer Comment

An assessment of the history of the site has been completed and all unauthorised works, inclusive of the concrete slab, are noted. Council has issued a demolition order for unauthorised works, in which this development application seeks to rectify.

The issues raised in the submission have been considered and further warrant the refusal of the proposed development.

(e) the public interest:

It is considered that the proposal is inconsistent with the overall objectives of the zone and is likely to result in a precedent which may have negative impacts on the locality. It is therefore considered that the proposal is contrary to the public interest.

Conclusion

The application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act 1979 and the proposal is considered to be unacceptable having regard to the relevant planning controls applicable to the development.

Accordingly, it is recommended that the proposal be refused for the reasons outlined above.

ATTACHMENTS

There are no supporting attachments for this report.

oooO END OF REPORT Oooo

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2.1.2. CP - DA0014/23 - Signage – Removal of Existing Signage and Construction of a Digital Advertising Structure - Lot 9 DP 1149340, No.9 Industry Road, VINEYARD - (96329)

Directorate: City Planning

DEVELOPMENT INFORMATION

Application Number:	DA0014/23
Date Received	18/01/2023
Proposal Details	Signage – Removal of Existing Signage and Construction of a Digital Advertising Structure.
Estimated Cost	\$173,800.00
Legal Description	Lot 9 DP 1149340
Property Address	9 Industry Road, Vineyard NSW 2765
Site Area	1.227 Ha
Zoning	E3 – Productivity Support
Applicant	EI Media
Owner	Hawkesbury City Council
Exhibition Dates	06/03/2023 to 20/03/2023
Submissions	Nil
Key Issues	State Environmental Planning Policy (Industry and Employment) 2021
Recommendation	Approval subject to conditions

EXECUTIVE SUMMARY

Reason for Consideration by Local Planning Panel

The matter is reported to the Hawkesbury Local Planning Panel as the application is identified as a conflict of interest as the proposed development is on land owned by Council.

Proposal

The proposed development seeks the approval for the following:

- Removal of the unused static sign currently on the site; and
- Construction of a single digital sign measuring at 8.3m x 2.2m at a height of 3m from the natural ground level.

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Permissibility

The subject development site is zoned E3 Productivity Support under the Hawkesbury Local Environmental Plan 2012.

The proposal involved the construction of signage as such, is suitably defined as "advertising structure" which is subordinate to the parent term 'signage' and as such, is permitted with consent in the E3 zone.

Consultation

In accordance with Council's Community Participation Plan 2019, the Development Application was notified from 06 March 2023 to 20 March 2023. No submissions were received in response to the proposal.

RECOMMENDATION

Pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979:

- **That** the Hawkesbury Local Planning Panel, exercising the function of the consent authority, grant development consent to DA0014/2023 for the removal of existing signage and construction of a digital advertising structure on the site of 9 Industry Road, Vineyard for the following reasons:
 - The proposed signage meets the objectives of the zone and relevant controls under the Hawkesbury Local Environmental Plan 2012.
 - The proposed development generally complies with controls under the Hawkesbury Development Control Plan 2012.
 - The proposed development remains in the public interest.

BACKGROUND

1. Site Description & Conditions

The subject site encompasses a total site area of 1.227 hectares and is characterised as a landscape strip between Industry and Windsor Roads. The site currently accommodates an existing advertising sign.

The following maps indicate the subject site in Figures 1-8 below.

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Figure 1. Site location map.



Figure 2. Bushfire and Biodiversity Values Map. Source: NSW Planning Portal



Figure 3. Site Plan.

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- (A) - EASEMENT FOR PIPELINE - 18.185 Wide (Vide D.P.808875)
- (B) - EASEMENT FOR GAS MAIN - 3 Wide (Vide D.P.808875)
- (C) - RIGHT OF CARRIAGEWAY - 6 Wide (Vide D.P.808875)
- (D) - EASEMENT FOR CARPARKING - 6 Wide (Vide D.P.808875)
- (E) - EASEMENT FOR PIPELINE - 24.385 Wide (Vide D.P.49904, DP49904, INSTRUMENTS S-156426, 6293137, 6468036)
- (F) - EASEMENT TO DRAIN WATER 12 WIDE (Vide D.P.1066060)
- (G) - EASEMENT TO DRAIN WATER 5 WIDE (Vide D.P.1066060)
- *** RESERVATIONS - CONVEYANCES BY THE CROWN - ***
- (Y) - RESTRICTION ON USER (S.27E (a) Main Roads Act, 1924) - Vide (Lot 27 D.P.220274) J790263
- (Z) - BENEFITED BY RIGHT OF CARRIAGEWAY 6 WIDE - DP808875

NOTE:

INDUSTRY ROAD DEDICATED SUBJECT TO EASEMENTS & RESTRICTIONS :-
(A), (B), (C), (D), (E), (F) & (X) LISTED ABOVE

SURVEYING REGULATION 200 : CLAUSE 32 (2)					
M.G.A. CO-ORDINATES					
MARK	EASTING	NORTHING	ZONE	CLASS	ORDER
PH.47120	249 824.98	6 276 894.39	56	B	2
SSM.61373	249 296.509	6 277 926.480	56	B	2
SSM.61360	249 106.269	6 277 927.271	56	B	2

COMBINED SCALE FACTOR : 1.000004
SOURCE : S.C.I.M.S. : 29th July 2004

- (H) - COVENANT - (L483375)
- (J) - BENEFITED BY CAR PARKING 6 WIDE - DP808875
- (K) - RESTRICTION ON THE USE OF LAND - DP808875

NOTE: ALL RMs GONE
BETWEEN REFERENCE MARK(S)
AND REFERENCE MARK(S)

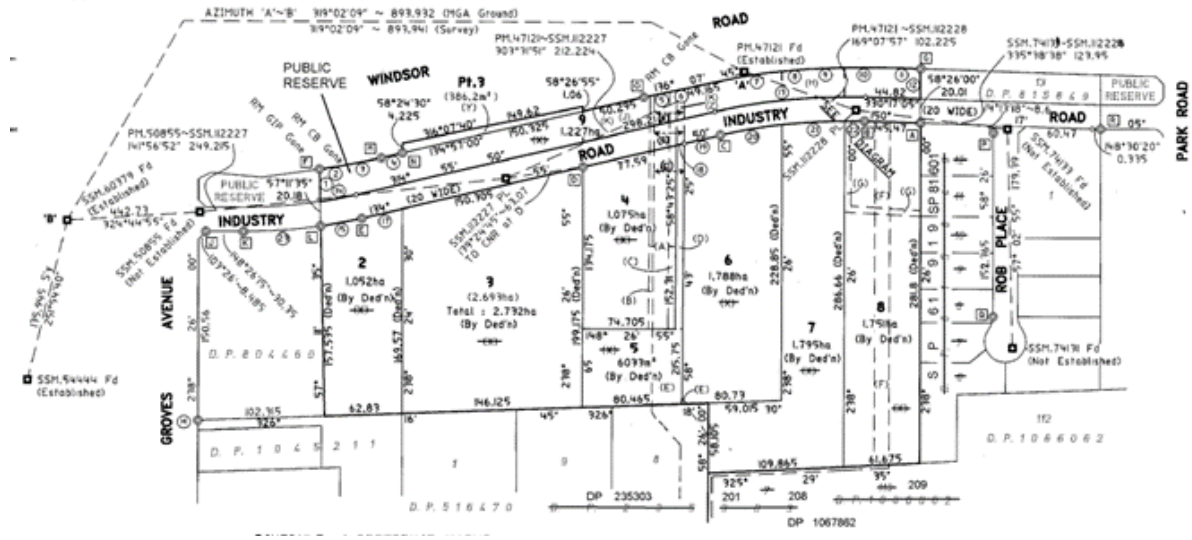
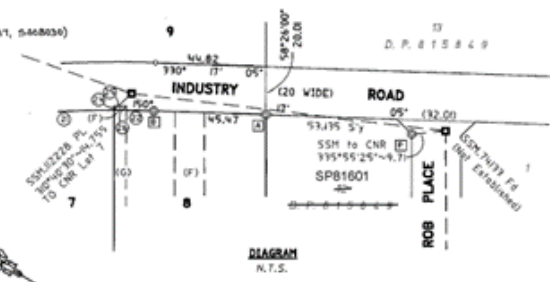


Figure 4. DP 1149340.

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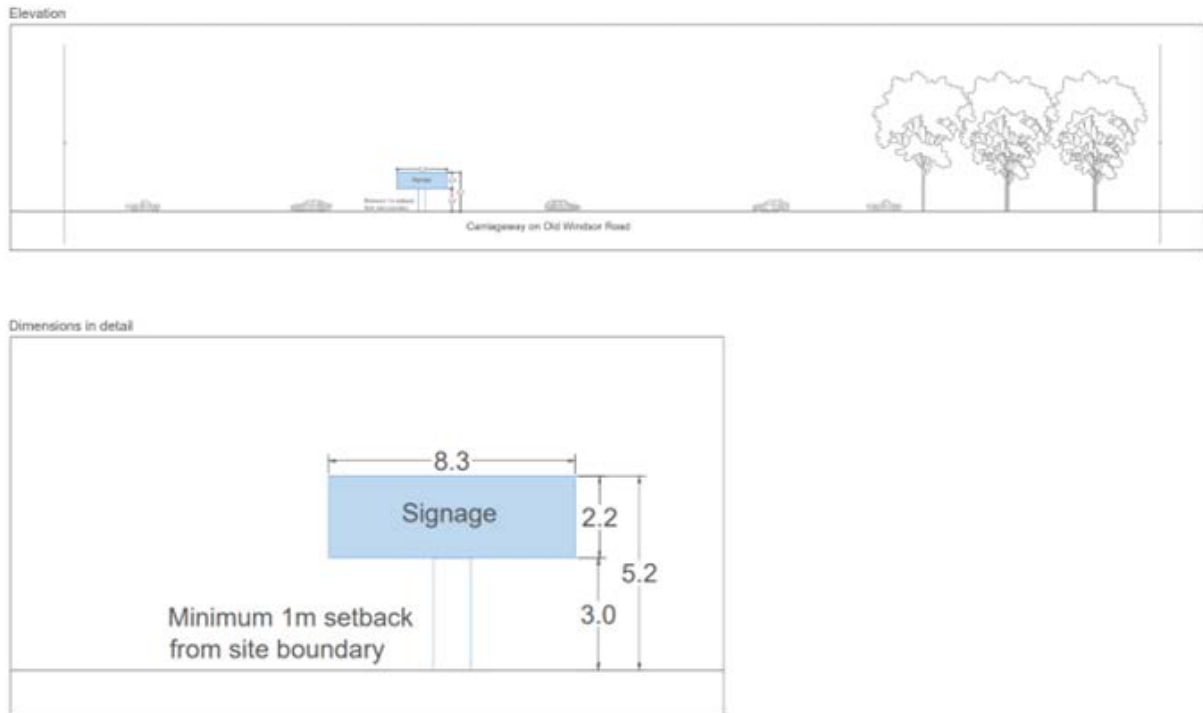


Figure 5. Elevation Plan

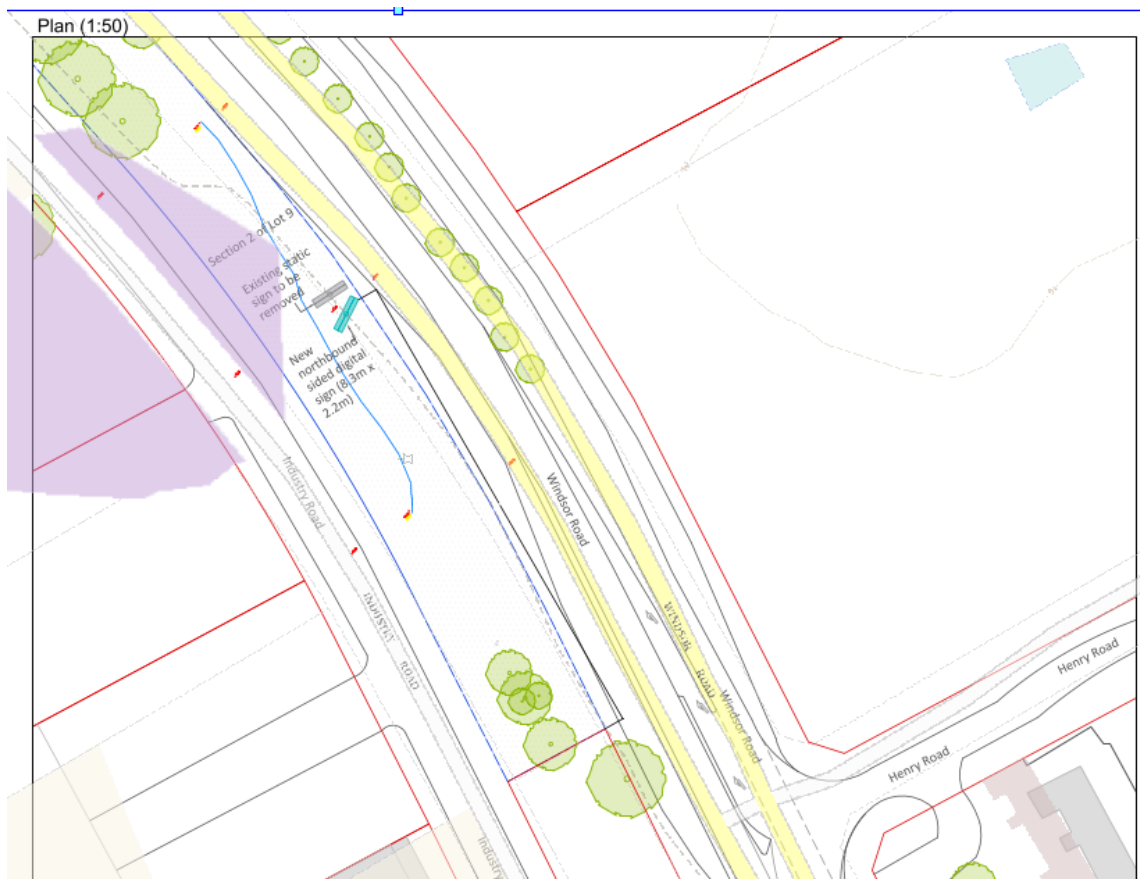


Figure 6. Overlay of Biodiversity map onto proposed site plan.

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Figure 7. Site photo of existing billboard sign.



Figure 8. Rear of existing billboard sign.

2. Proposal

The proposed development seeks the approval for the following:

- Removal of an existing static sign, and;
- Construction of a single digital sign measuring at 8.3m x 2.2m at a height of 3m from the natural ground level enabling viewing for traffic from a travelling north on Industry and Windsor Roads.

Note: a commercial agreement has been made with Council to allow for 10% of the content time to be allotted to the following purposes:

- Community Campaigns approved by an appointed Council Officer; and
- Community Emergency messaging approved by an appointed Council Officer which would be scheduled in high rotation during Emergency Events and managed by Emergency Incident Management Operations on a 24/7 basis during Emergency Events.

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3. Relevant Application History

Date	Comment
18/01/2023	Application lodged on the NSW Planning Portal.
04/04/2023	Additional information requested.

4. Referrals

Stakeholder	Comment
Engineering	·Supported, subject to the imposition of conditions.
Building	·Supported, subject to the imposition of conditions.
Transport for NSW	Supported, subject to the imposition of conditions.

5. Environmental Planning Instruments

5.1 Overview

The instruments applicable to this application are:

- State Environmental Planning Policy – (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- State Environmental Planning Policy (Industry and Employment) 2021;
- Hawkesbury Local Environmental Plan 2012 (LEP 2012);
- Hawkesbury Development Control Plan 2002 (HDPC 2002); and
- Schedule of Flood Related Development Controls 2021

5.2 State Environmental Planning Policy – Biodiversity and Conservation 2021.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the site. The aims of the plan are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of the non-rural areas of the State through the preservation of trees and other vegetation.

A portion of the site is identified on the Biodiversity Values Map. It is noted however that the proposed signage panels are located outside of the mapped space and no trees have been sought for removal. In this respect, the proposed development does not trigger any requirements under the SEPP.

5.3 State Environmental Planning Policy – Resilience and Hazards 2021

The requirements of the State Environmental Planning Policy (Resilience and Hazards) 2021 apply to the subject site. In accordance with Chapter 4 of the Policy, Council must consider if the land is contaminated and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed use.

The site is not indicated in Council's records as being contaminated. A site inspection reveals the site does not have an obvious history of a previous potentially offensive or hazardous development on the site that may have caused contamination and there is no specific evidence that indicates that the site is contaminated.

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Therefore, in accordance with Clause 4.6 of the State Environmental Planning Policy (Resilience & Hazards) 2021, the land is considered to be suitable for the proposed development.

Standard conditions of consent will be imposed.

5.4. State Environmental Planning Policy – Transport and Infrastructure 2021.

The relevant matters to be considered under Chapter 2 of the SEPP for the proposed development outlined below.

Clause	Comment
Clause 2.48 – Electricity Infrastructure	The proposed development was referred to Endeavour energy on 24/01/2024. Standard conditions were received in the event of approval.
Clause 2.98 – Development Adjacent to rail corridors	The proposed development does not adjoin in, around or on top of any rail corridors.
Clause 2.119 – Frontage to a classified road	The application has been referred to TFNSW who have provided conditions in support of the application.

5.5 State Environmental Planning Policy (Industry and Employment) 2021

The relevant matters to be considered under Schedule 5 assessment criteria of the SEPP are considered in the table below:

Criteria	Comment
Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage fronts a local catchment of business & industrial sites. In this respect, Council does not consider the proposed signage to be out of character for locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Several business identification signs are located on local businesses within the locality catchment. In this respect the digital advertisement sign replaces an existing static billboard sign and is not considered to attribute to a discord in themes within the locality.
Special Areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage is considered to be consistent with the immediate uses in the locality.
Views & Vistas	
Does the proposal obscure or compromise important views?	No significant views have been nominated on the site.
Does the proposal dominate the skyline and reduce the quality of vistas?	No.

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Criteria	Comment
Does the proposal respect the viewing rights of other advertisers?	The proposed advertising sign has an overall height of 5.2m and will not obscure building identification signs located on Industry road.
Streetscape, Setting or Landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage is sized appropriately for the development.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	Yes, a digital sign reduces clutter through a reduction of the number of signs required.
Does the proposal screen unsightliness?	Yes.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.
Does the proposal require ongoing vegetation management?	No.
Site and building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes.
Does the proposal respect important features of the site or building, or both?	Yes.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes.
Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed digital sign is controlled via an accessible separate unit contained within the structure hidden from public view.
Illumination	
Would illumination result in unacceptable glare?	The proposed digital sign contains an adjustable ambient sensor.
Would illumination affect safety for pedestrians, vehicles, or aircraft?	An adjustable illumination sensor is equipped onto the sign. Further, TFNSW have reviewed the application and raise no objections on this ground.
Would illumination detract from the amenity of any residence or other form of accommodation?	An adjustable sensor would alleviate glare.
Can the intensity of the illumination be adjusted, if necessary?	Yes
Is the illumination subject to a curfew?	Ambient sensor would ensure unwarranted glare. In this regard, a trial period of 12 months will be

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Criteria	Comment
	imposed to which upon completion, the requirement of a curfew will be reviewed.
Safety	
Would the proposal reduce the safety for any public road?	Conditions from TFNSW are to address this.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

6. Hawkesbury Local Environmental Plan 2012

The relevant matters considered under the HLEP 2012 for the proposed development are outlined below:

6.1. Clause 1.2 Aims of plan.

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

- to provide the mechanism for the management, orderly and economic development and conservation of land in Hawkesbury.*
- to provide appropriate land in area, location and quality for living, working and recreational activities and agricultural production,*
- to protect attractive landscapes and preserve places of natural beauty, including wetlands and waterways,*
- to protect and enhance the natural environment in Hawkesbury and to encourage ecologically sustainable development,*
- to conserve and enhance buildings, structures and sites of recognised significance that are part of the heritage of Hawkesbury for future generations,*
- to provide opportunities for the provision of secure, appropriate and affordable housing in a variety of types and tenures for all income groups in Hawkesbury,*
- to encourage tourism-related development that will not have significant adverse environmental effects or conflict with other land uses in the locality.*

The proposed development is considered to align with the aims of the plan.

6.2. Clause 2.3 Zone objectives and Land use table.

The site is zoned E3 – Productivity Support under the Hawkesbury Local Environmental Plan 2012. The aims and objectives for the E3 zone in clause 2.3 zone objectives are as follows:

- To provide a range of facilities and services, light industries, warehouses, and offices.*

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- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
- To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.
- To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.
- To provide opportunities for new and emerging light industries.
- To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.

The use of the site is most accurately defined as “advertising structure”. An excerpt of the definition under the Environmental Planning and Assessment Act 1979 is provided as below:

“Advertisement means a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water”.

Noting that the term ‘advertisement’ falls under the parent term of ‘signage’ the definition under the Hawkesbury Local Environmental Plan 2012 is provided as below:

“Signage means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—

- a) an advertising structure,
- (b) a building identification sign,
- (c) a business identification sign,

but does not include a traffic sign or traffic control facilities”.

In this respect, 'Signage' and 'Advertisement' are permissible with consent under the E3 Productivity Support zone under the Hawkesbury.

The proposed digital signage panel is sought for the purposes of third party advertisements as well as Council related messaging services, therefore falling under the definition of 'Advertisement' which is a permissible use on the site.

Clause	Comment
Part 4 – Principal development standards	
Clause 4.1 Minimum subdivision lot size	The proposed development does not seek any new subdivision onto the site.
Clause 4.2 Rural subdivision	The proposed development does not seek any new subdivision onto the site.
Clause 4.3 Height of buildings	Supportable Given that no height control exists on the subject site, a merit approach has been undertaken. The development site is located within a primarily business/industrial section of Industry Road/Windsor Road. Several buildings within the locality exhibit a height of 12-24m. The proposed

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Clause	Comment
	sign measures at 5.2m from the natural ground level and is not expected to obscure any views onto business located along Industry Road. As such, the proposed height is considered to be appropriate for the locality.
Clause 4.6 Exceptions to development standards	The proposed development does not seek any variation to development standards.
Part 5 – Miscellaneous provisions	
5.1A Development on land intended to be acquired for public purposes	The deposited plans do not demonstrate that the site is or will be subject to future land acquisition.
5.10 Heritage conservation	The site is not considered to be a heritage item nor is it considered to be a heritage item.
5.21 Flood planning	The site is not considered to be subject to flood development controls.
Part 6 – Additional local provisions	
6.1 Acid sulphate soils	The site is considered to fall under class 5 acid sulphates. Suitable conditions of consent will be provided.
6.2 Earthworks	Council's development engineers have reviewed the proposed earthworks involved and support the application subject to the imposition of conditions.
6.6 Development in areas subject to aircraft noise	The site is not considered to fall within the vicinity of the RAAF base Richmond.

7. Hawkesbury Development Control Plan 2002

A consideration of Part C Chapter 3 of the Hawkesbury Development Control Plan 2002 is provided below.

Clause	Compliance
Chapter 3 Signage	
<p>Clause 3.2 Signs in Commercial and Industrial zones</p> <p>Signs that are generally acceptable area:</p> <ul style="list-style-type: none"> • under the awning signs; • painted window signs; • pole or pylon signs up to 6m in height; • fascia signs - signs attached to the fascia or return of an awning; • flush wall signs - attached to the wall of building and projecting not more than 300mm; • top hamper signs - attached to the transom of a doorway or display window of a building. 	<p>Yes, the proposed signage panel is sought to display third party advertisements alongside Council related messaging. Further, the signage panels are not located alongside a building and is instead a freestanding billboard style panel located within a Council owned nature strip between Industry Road and Windsor Road. In this respect, the signs has an overall height of 5.2m and is generally compliant with the</p>

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Clause	Compliance
Signs that are unacceptable area: <ul style="list-style-type: none">• pole or pylon signs above 6m in height;• roof sign - signs erected on or above the roof or parapet of a building;• above awning signs - signs attached to the upper side of an awning;• horizontal projecting signs - attached to the wall of a building and projecting more than 300mm vertically;• moving, blinking or flashing signs; and• fin signs - signs erected on or above the canopy of a building.	objectives and controls of Part3.2 of the HDCP 2002.

8. Development Contributions

Pursuant to Council's adopted 7.12 Contributions Plan, a development contribution of \$869.00 is required to be paid prior to the issue of a Construction Certificate. Appropriate conditions of consent will be imposed.

9. Environmental Planning and Assessment Regulation 2021

Applicable regulation considerations for compliance with the Building Code of Australia, PCA appointment and notice of commencement of works, sign on work sites, critical stage inspections and records of inspection will be covered under the recommended conditions of consent.

10. The Likely Impacts of the Development

The proposed development seeks the re-introduction of advertising signage along industry road through the removal of the existing static sign and replacement with a single digital sign. The proposed development has been assessed against the relevant controls and is considered to have minimal impacts upon the locality. In consultation with the RMS, appropriate conditions of consent have been imposed onto the consent to ensure drivers along both Windsor and Industry Roads are protected.

11. Suitability of the Site

The subject site has supported an advertisement billboard in the past which is set to be replaced by the subject application. In this respect, Council does not raise concern with the subject site historically supporting advertisement structures.

12. Public Consultation

In accordance with Council's Community Participation Plan 2019, the Development Application was notified from 6 March 2023 to 20 March 2023. No submissions were received in response to the proposal.

13. Public Interest

The proposed development is considered to have met the aims of a C3 Productivity Support zone and the relevant sections of Council's development control plan. In this respect, Council does not raise concern with the proposed development being against the public interest.

14. Conclusion

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the development has been appropriately designed and will provide a suitable service to the public. It is considered that the proposal sufficiently minimises adverse impacts on the amenity of neighbouring properties. Hence the development, is consistent with the intentions of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval subject to conditions.

ATTACHMENTS

AT - 1 Recommended Conditions of Consent - *(Distributed under separate cover)*.

oooO END OF REPORT Oooo

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 15 February 2024

2.1.3. CP - Delegations of Specific Functions from Hawkesbury Local Planning Panel to the General Manager, Director City Planning and General Counsel - (95498, 144940)

Directorate: City Planning

EXECUTIVE SUMMARY

Reason for Consideration by Local Planning Panel

Delegation of specific functions of the Hawkesbury Local Planning Panel to the General Manager, Director City Planning and General Counsel.

Proposal

The Hawkesbury Local Planning Panel was established in accordance with the Environmental Planning and Assessment Act 1979 (EP&A Act).

Section 8.15 (4) of the EP&A Act deals with appeals against development application decisions made by, amongst other authorities, a local planning panel. This section requires the local planning panel to have direction and control of proceedings before the Court where the Panel has determined the relevant development application.

This report discusses the ramifications of this requirement under the Act and recommends that this function of the Panel be delegated to the General Manager, Director City Planning and General Counsel.

RECOMMENDATION

The functions of the Hawkesbury Local Planning Panel under S.8.5(4) of the Environment Planning and Assessment Act 1979 in relation to planning appeals be delegated by the Panel to the General Manager and Director City Planning and General Counsel in accordance with the attached instrument of delegation.

BACKGROUND

Detailed Description of Proposal

Delegation of specific functions from Hawkesbury Local Planning Panel to the General Manager, Director City Planning and General Counsel.

Background and History

The functions of the Hawkesbury Local Planning Panel under s.8.15(4) of the Environmental Planning and Assessment Act 1979 in relation to planning appeals.

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Legislation, Council Policies, Procedures and Codes to which the Matter Relates

The Hawkesbury Local Planning Panel was established in March 2018 in accordance with the relevant provisions in the Environmental Planning and Assessment Act 1979 (EP&A Act).

Section 8.15(4) of the EP&A Act deals with appeals against development application decisions made by, amongst other panels, a local planning panel states;

If the determination or decision appealed against under this Division was made by a Sydney district regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the Panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.

This section, in effect, requires the local planning panel to have direction and control of proceedings, brought before the Court, where the Panel has determined the relevant development application

The Land and Environment Court determines appeals on the basis of the expert evidence before it in each matter and in accordance with the timetable of the Court. This means that Council staff and Council's lawyers need to have control and flexibility in how an appeal is run and managed. It is Council's view that once the Panel makes its decision, then any appeal against that decision should be run and managed by Council and its lawyers without any further involvement of the Panel.

Section 2.20(8) of the EP&A Act enables any function of a Local Planning Panel to be delegated and is not limited to the local planning panel functions, to control and direct appeals to the Land and Environment Court against the Panel's determinations.

A draft instrument of delegation has been prepared and is attached.

Policy Impact

The recommendation will address a delegation matter in relation to appeals against development application decisions made by the Hawkesbury Local Planning Panel.

FINANCIAL IMPACT

There is no financial impact from the recommendation.

COMMUNITY IMPACT

There is no community impact from the recommendation.

ATTACHMENTS

AT - 1 Draft Instrument of Delegation.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

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AT 1 – Draft Instrument of Delegation

Environmental Planning and Assessment Act 1979

Delegation of Specific Functions from Hawkesbury Local Planning Panel to the General Manager, Director City Planning and General Counsel

By resolution of the Panel dated ----- 2024 the Panel pursuant to s2.20(8) of the Act delegates to the General Manager, Director City Planning and General Counsel the Functions specified or described in Schedule 1 of this Instrument of Delegation.

1. Definitions

1.1 In this instrument

Act means the Environmental Planning and Assessment Act 1979.

Council means Hawkesbury City Council.

Director City Planning means the person appointed by the General Manager to the position of Director City Planning.

Function means a function of the Local Planning Panel within the meaning of the Act.

General Manager means the person appointed by the Council to the position of General Manager.

General Counsel means the person appointed by the General Manager to the position of General Counsel or Manager Legal Services.

Panel means Hawkesbury Local Planning Panel.

Planning Appeal means an appeal commenced pursuant to ss 8.6, 8.7, 8.8 and 8.9 of the Act and any subsequent appeal proceedings arising from any decision in those proceedings.

2. Commencement

2.1 The delegation commenced on -----2024 (Drafting note to be the same date as the resolution).

Schedule 1

Functions

The functions of the Panel under s8.15(4) of the Act in relation to a Planning Appeal.

Chairman of Panel

Date: 2024

oooO END OF REPORT Oooo



Hawkesbury Local Planning Panel Meeting

End of Business Paper

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