



Hawkesbury City Council

hawkesbury
local
planning
panel
meeting
business
paper

date of meeting: 15 November 2018

location: council chambers

time: 2:00 p.m.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Table of Contents

Meeting Date: 15 November 2018

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE
	Reports for Determination	5
Item: 012	CP - S82A007/18 Lot 1 DP 605179 1029 St Albans Road, Lower MacDonal - Function Centre - Construction of a car park and use of the former St Joseph Church as function centre - (95498, 91795, 115319)	5
	Reports for Advice	41
Item: 013	CP - S960069/18 (DA0332/16) Lot 2 DP 607906 396 Bells Line of Road, Kurmond - Section 4.55 Amendment - Subdivision - Modification to the consent for a community title scheme (95498, 137333, 76639)	41

HAWKESBURY LOCAL PLANNING PANEL MEETING

Table of Contents

Meeting Date: 15 November 2018

hawkesbury
independent
hearing and
assessment
panel

reports
for determination

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

SECTION 3 – Reports for Determination

Item: 012 CP - S82A007/18 Lot 1 DP 605179 1029 St Albans Road, Lower MacDonald - Function Centre - Construction of a car park and use of the former St Joseph Church as function centre - (95498, 91795, 115319)

Previous Item: 006 (21 June 2018)

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: S82A0007/18
Property Address: Lot 1 DP 605179
1029 St Albans Road LOWER MACDONALD NSW 2775
Applicant: Stephen Kavanagh
Owner: BP & S Pty Limited
Proposal Details: Review of Determination of DA0703/17 - Function Centre - Construction of a car park and the use of the former St Joseph's Church as a function centre
Estimated Cost: \$41,000
Zone: E4 Environmental Living under Hawkesbury Local Environmental Plan 2012
Area: 1.773Ha
Date Received: 06/09/2018
Exhibition Date: 10/10/2018 to 24/10/2018

Submissions: 104 to the original Development Application, 35 to the Application for review

Key Issues:

- ◆ Heritage conservation
- ◆ Potential amenity impacts including noise and parking
- ◆ Context of surrounding land and future development

Recommendation: Approval

REPORT:

This assessment report is in relation to Development Application DA0703/17. Specifically, it addresses an application, made pursuant to Section 8.3 of the *Environmental Planning and Assessment Act 1979*, for a review of the decision made by the Hawkesbury Independent Hearing and Assessment Panel (now the Hawkesbury Local Planning Panel) to refuse this Development Application. The application for review is facilitated by Section 8.2 (1)(a) of the Act.

The development proposal involves the use of the site being a heritage listed premises, the former St Joseph's church, for the purpose of conducting wedding ceremonies and associated receptions. A previous Development Application, DA0642/15 was approved by Council to allow tourist and visitor accommodation use of the premises for up to 10 guests. However at that time, Council decided not to approve of the use of the site for functions and sought to restrict that use through the issue of an Order under Section 121B of the *Environmental Planning and Assessment Act 1979*.

As a result, a subsequent Development Application was lodged with Council, being DA0703/17, seeking approval for the use of the site for wedding functions for up to 100 persons.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

DA0703/17 was considered by the Panel at its meeting of 21 June 2018, where the proposal was refused for a number of reasons that included a failure to satisfy the relevant heritage conservation provisions, a concern about the intensity of the proposed development, a lack of parking, traffic safety when entering and leaving the site and a general lack of information sufficient to enable a properly informed decision to be made.

The applicant lodged an application pursuant to Section 8.3(1) of the *Environmental Planning and Assessment Act 1979*, seeking a review of that decision.

In accordance with Section 8.3(3) of the Act, the applicant amended the original application to reduce the maximum number of guests to 60 persons and reduced the potential number and frequency of functions to a maximum of one per week to occur only from Friday to Sunday. The application was also supported by a number of new and/or revised plans and reports that were designed to address directly the issues underlying the reasons for the refusal as set out in the Panel decision of 21 June 2018.

Also in accordance with Section 8.3(3), it is considered that the Panel can reasonably accept that the proposed development as modified is substantially the same development as originally considered at the meeting of 21 June 2018. Therefore the Panel can review the decision of that meeting to refuse the Development Application.

As a result of the changes proposed to the original development application and following an assessment process as described in this report, it is recommended that the Panel determination of 21 June 2018 not be reconfirmed, but in accordance with Section 8.4 of the Act, the Panel change its decision so that Development Application DA0703/17 be approved subject to the conditions of consent contained within this report.

Development Description as Amended

Pursuant to Section 8.3(3) of the *Environmental Planning and Assessment Act 1979*, the applicant has made amendments to the proposal as originally submitted and assessed. The amendments are designed to directly address the issues of concern raised by the Panel at its meeting of 21 June 2018 which were the foundation for the Panel refusal.

The Development Application continues to seek approval to use the premises as a function centre for wedding receptions. In terms of the proposed land use, the application remains unchanged.

However, the development is amended through a reduction in the number of guests that would attend any one reception, from 100 guests down to 60 guests, inclusive of the 10 guests that can be accommodated as part of the tourist and visitor accommodation provided within the renovated building as approved under DA0642/15.

There would be a reduced number of receptions that would be held with a maximum of only one function per week and by restricting receptions to between Fridays to Sundays rather than the originally proposed potential of seven days a week.

As a consequence of the smaller number of visitors, the development now requires a lesser number of on site car parking spaces, which can be accommodated with a smaller extension to an existing car park area on the site to the south of the church building. This is now to be designed to accommodate 20 vehicles. There would be no other designated car parking areas on the site. It is also proposed to undertake site works along the St Albans Road frontage that will improve the safety of ingress and egress movements.

The Plan of Management now submitted in support of the development indicates that the function centre will cater for up to 60 guests, not the original 100 guests and, should it be approved, may operate between 11:00am and 7:00pm. The documentation indicates that the function centre will

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

operate, dependent on booking demand, predominately on weekends only, rather than over the originally proposed seven days per week. Such functions will typically be held on Saturdays.

The documentation indicates that caterers will generally be used to prepare and cook meals offsite and bring meals to the site for service. Such mobile catering is now common for many functions rather than having to provide commercial standard kitchens on sites that may not be suited for such infrastructure.

In addition to on-site parking, a minibus will be used to transport some function centre guests between the site and local tourist accommodation facilities. Portable toilets will also be used for function guests in addition to the existing facilities that are available.

Site and Locality Description

The subject property has frontage to St Albans Road and is located approximately 4.4km north of the Webbs Creek ferry crossing at Wisemans Ferry. The land has an area of approximately 1.77ha, has an address of 1029 St Albans Road and is legally known as Lot 1 in DP 605179. It is located on a moderately steep ridge above St Albans Road and overlooks the Macdonald River.

The subject property contains a sandstone former church building dating from approximately 1850 that is identified as a local heritage item being listed within Schedule 5 of the Hawkesbury Local Environmental Plan 2012. A cemetery associated with the former church is located on both the subject property and the neighbouring property at 937 St Albans Road to the south and this is separately listed within Schedule 5 of the HLEP.

Surrounding development generally consists of rural residential and agricultural properties. The small hamlet of St Albans is approximately 5 kilometres north further along St Albans Road.

The former church building was approved as a single dwelling house under Development Consent No. DA0459/09. Significant works were completed under this consent to restore the building from its previous ruinous state. The Schedule 5 heritage listing from the 1989 Hawkesbury LEP in fact notated the site as 'ruins' as does the HLEP2012.

More recently, Development Consent No. DA0642/15 was issued to allow the building to be used as tourist and visitor accommodation catering for a maximum of 10 guests.

Previous Panel Consideration and Determination

At the meeting of the Hawkesbury Independent Hearing and Assessment Panel meeting held on 21 June 2018 in relation to DA0703/17, the Panel resolved as follows:

1. *The proposed development fails to satisfy the provisions of Clause 5.10(10) of the Hawkesbury Local Environmental Plan 2012.*
2. *The site is not suitable for the scale or intensity of the development proposed*
3. *The proposed development fails to demonstrate sufficient parking to meet the requirements of the Hawkesbury Development Control Plan 2002 or Australian Standards*
4. *The location of the car park area to the east of the church adversely impacts upon the curtilage and heritage value of the site*
5. *The application fails to demonstrate a safe means of entry to and egress from the site to St Albans Road*
6. *The intensity of development results in unacceptable amenity impacts*
7. *Insufficient information has been provided in respect to road works and earthworks required; car parking layout and construction; swept paths for vehicles entering and exiting the site, including delivery and service vehicles; plans of management, including traffic plan of management, bushfire management and flood management; and means of effluent disposal. This means the impacts of the development cannot be properly assessed.*

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

8. *The plans provided with the application do not provide sufficient information in relation to the extent of conservation works proposed; the operation of the function centre; and the integration of the previous consent DA0642/15*

These issues form the basis of the Panel's recommendation that the Development Application be refused.

Applicants Response to Panel Determination

In response to the Panel's decision to refuse the Development Application, the applicant has chosen to lodge an application for review of that decision pursuant to Section 8.3(1) of the Act.

In doing so, the applicant has chosen, as is their prerogative pursuant to Section 8.3(3) of the Act, to amend certain aspects of the development proposal and to put forward additional information that is designed to directly address the reasons of refusal enunciated in the Panel's decision of 21 June 2018.

These reasons for refusal are comprehensive and they therefore provide an obvious framework within which the applicant can work to ensure all relevant issues are addressed. The amendments made however do not seek to change the fundamental purpose of the proposed development and as a result, the Panel can accept, pursuant to Section 8.3(3) that the proposed development as amended remains substantially the same development.

Given that the purpose of this report is to provide an assessment of whether or not the Panels refusal should be either sustained or overturned, it is appropriate to directly refer to the reasons of refusal and have consideration of how the applicant has addressed those reasons.

The application has been amended as follows:

- A reduction in the maximum number of guests that would attend a function from the original 100 to 60 guests
- A restriction upon the number of functions to be held to one per week, between Friday to Sunday
- A restriction to day time functions only, to finish by 7pm
- A reduction in the number of formalised on site car parking spaces to 20, removing the parking spaces from the area in front (east) of the Church
- Proposed site entrance works to create safer and more efficient traffic movements

In support of the application for review, a summary document was prepared by the applicant making direct comment in relation to each of the eight reasons for refusal.

This summary document makes reference to the following submitted supporting documentation:

- Addendum to Statement of Environmental Effects, dated 7 September 2018, prepared by REConcepts
- Revised Heritage Impact Statement, dated September 2018, and covering letter dated 21 September 2018, prepared by Edwards Heritage Consultants
- Revised Noise Impact Assessment, Revision 3 dated 30 August 2018, prepared by Rodney Stevens Acoustics
- Assessment of Vehicular Access to a Proposed Function Centre, dated 5 September 2018, prepared by TSA
- Plan of Management St Joseph's Function Centre, December 2017
- Response to BCA and building classification
- Cost Summary and Maintenance and Repair Schedule, dated 8 September 2018, prepared by KUE-S-Services

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

- Amendment to report for on-site effluent management, dated 29 August 2018, prepared by Blue Mountains Geological and Environmental Services
- Detail Survey Plan, showing driveway cross sections and car parking area dated 18 July 2018, prepared by R.W. Martin & Associates
- Vehicle swept paths, signposting and traffic management plan, dated 4 September 2018, prepared by TSA
- Statement of condition of sandstone structures prepared by Pratt Engineers Pty Ltd dated 26 February 2018

Assessment of Application

In accordance with the provisions of Section 8.5(2) of the *Environmental Planning and Assessment Act 1979*, the functions of the consent authority in relation to a review application are the same as the functions in connection with the original development application.

Therefore the consent authority needs to consider the requirements of Section 4.15 of the Act in its review.

As noted, the original assessment report presented to the Panel meeting on 21 June 2018 is at **Attachment 3** to this report.

This assessment report properly considers the provisions of Section 4.15 of the Act, including the necessary statutory planning controls applying to the land and to the Development Application. It remains a relevant reference to the assessment of the review application.

This report on the application for review has concentrated on the reasons for refusal, the applicant's response to those reasons and why the Panel could reasonably overturn their original decision.

In determining the application for review, pursuant to Section 8.5(2) of the Act, the Panel should take into consideration both reports.

Further Public Submissions

In accordance with the provisions of Section 8.5 of the Act, the application for review was neighbour notified to provide an opportunity for public submissions to be made, taking into account the amended application details and the applicants responses to the original reasons for refusal.

As a consequence, a total of 24 submissions were received by Council objecting to the proposed development. This is a reduction from the original 104 submissions received.

It is reasonable to classify these objections as re-stating the original concerns. In summary these are:

- Traffic safety and inadequate parking
- Noise emanating from the site as a result of functions
- Inadequate sensitivity to heritage conservation
- Potential water quality issues associated with on-site effluent disposal

In relation to traffic safety and parking the amended proposal has sought to address these issues in two ways. Firstly through a significant reduction in the maximum number of guests that would attend the site for any one function, thus reducing traffic movements and car parking demand. Secondly through proposed site works that will improve sight line distances and improve safe manoeuvring into and out of the site from St Albans Road. These works are supported by Council's development engineers.

In relation to potential noise impacts, the application is supported by a revised acoustic assessment report. The number of guests has been reduced and the finish time for functions is 7:00pm to avoid any potential night time disturbance.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

In relation to heritage management, the applicant has provided a comprehensive revised heritage impact assessment report as well as a works schedule with estimated costing of the necessary conservation work. It should be noted that Council has considered and endorsed a Conservation Management Plan for the site previously, although this did require further clarification and commitment around works schedule, costings and timing. This is discussed in more detail later in this report.

In relation to on site effluent management, Council's environmental health officer has assessed the proposal and is satisfied.

It is considered that there are no outstanding issues raised in submissions that have not been adequately addressed by the applicant, assessed by the relevant Council officers or that cannot be covered by appropriate conditions of development consent.

Responses from Council officers

The application for review inclusive of the additional information provided by the applicant, was considered internally by relevant Council officers. The following paragraphs provide a summary of these assessment inputs.

Building Surveyor

No objections are raised by Council's Building Surveyor. A number of conditions of consent have been included, the majority being required to be satisfied prior to an Occupation Certificate being issued, the critical ones being:

- Repairs to sandstone walls as identified in the engineers report by Pratt Engineers
- Fire safety upgrade in accordance with Fire Safety Schedule
- Structural certification of the internal mezzanine area and the external elevated deck as being capable of supporting the loads from a large number of guests

There are also some operational conditions of consent, relating to the maximum number of guests (60), the requirement for an annual Fire Safety Statement and the provision of on site portable toilets for the use of function guests rather than reliance upon the permanent toilet facilities provided within the building as part of the tourist and visitor accommodation.

Development Engineer

No objections are raised by Council's Development Engineer. A number of conditions of consent have been included, the critical ones being:

- The proposed works within the road reserve that have the objective of improving sight distances and overall traffic safety, must achieve a minimum sight distance of 56 metres along St Albans Road in accordance with AUSTROAD
- The formalised car parking area (minimum 20 spaces) to comply with AS2890 with pavement to be designed and certified to be satisfactory for expected traffic loadings
- Installation of a convex mirror in accordance with the Traffic Assessment Report prepared by TSA
- Signage at site entrance to identify location of visitor parking area

A condition of consent is also proposed that relates directly to flood awareness and an evacuation management plan. Such a plan would advise visitors of the appropriate procedures to follow, specifically the necessary vehicular routes along public roads to the nearest place of refuge should a flood occur when a function is in progress. If the Macdonald River is already in flood prior to a function, that function will be postponed. It is noted that the entire property is above the 1% AEP Flood Level, including the on-site car parking area.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

Heritage Adviser

The Council's Heritage Adviser has advised that there is insufficient information to allow Council to adequately address the heritage impact of the proposal. The information requested is:

1. Detailed scaled plans
2. Plans showing the details of the stonework requiring rectification (ie numbering of stone work with accompanied Schedule of Works. This needs the input of a skilled banker mason
3. Structural Engineers report needs to be sufficiently detailed and prepared by appropriate heritage skilled Engineer
4. The application needs to be supported by a detailed Maintenance Plan prepared by a skilled Conservation Consultant team and be costed by a QS. The maintenance plan needs to be for current catch up works and maintenance works forward at least 20 years
5. Details of any temporary uses and their analysis be included within a SHI report – marquees, etc and effects on landscaping
6. CMP needs updating as per submitted SHIs recommendation on page 59 – ie re detailed assessment of building

These matters were discussed with the Heritage Adviser. Objection is not raised to the proposed use of the site and the building to host receptions. The basis of the Heritage Adviser's concerns rest with ensuring that sufficient information is available so that appropriate conservation outcomes are achieved, in particular the required work on structural stonework.

The applicant has provided a Revised Heritage Impact Statement, dated September 2018, and covering letter dated 21 September 2018, prepared by Edwards Heritage Consultants and a Cost Summary and Maintenance and Repair Schedule, dated 8 September 2018, prepared by KUE-S-Services. Both of these documents address the issues raised by Council's heritage adviser. Further, it is noted that Council has previously considered and approved a Conservation Management Plan for the site (Refer to CMP prepared by Edwards Heritage Consultants in July 2017).

In relation to point 1, the proposed development is for the use of premises only. The only 'work' involved relates to on-site car parking and driveway entrance works. These are now documented in the Detail Survey Plan, showing driveway cross sections and car parking area dated 18 July 2018, prepared by R.W. Martin & Associates. The amount of work is minimised to the area to the south of the building and there will be no parking in front of the building to the east which would have been detrimental to the setting.

In relation to point 3, the application is supported by a Statement of the condition of sandstone structures prepared by Pratt Engineers Pty Ltd dated 26 February 2018; however, this is not a detailed statement.

In relation to point 5, it is clear in the application that temporary marquees, when used, will be erected on the western lawn behind the building. There is no impact on the heritage fabric of the site arising from temporary marquees on the western lawn.

Information has been provided in relation to the conservation works that are referenced in points 2, 3, 4 and 6 and appropriate conditions of consent can be imposed as they were in the original report to the Panel at the meeting of 21 June 2018.

It could be considered more appropriate that such a condition operate within the context of a deferred commencement consent, with the deferred matter to be satisfied being an agreement on conservation works, costings and timing, to be reached between the Council and the applicant before the consent can operate.

In this case, for the development to gain an approval, it is contingent upon the heritage incentives clauses for permissibility. It is not unreasonable therefore for the Council to have a level of certainty as to both the quantum and quality of conservation works that would flow from such an approval.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

The deferred consent approach recognises that in terms of the use of the site for receptions as now proposed, it is harmonious with the heritage sensitivities of the site.

Environment and Waste (Regulatory Services)

No objections are raised by Council's Environmental Health Officer. Reference has been made to the revised Noise Impact Assessment report from Rodney Stevens Acoustics dated 30 August 2018, that specifically assessed the function use with 60 guests. As a result, the following specific conditions of consent are intended to be imposed, all of which are intended to ensure that the amenity of neighbouring properties is not adversely impacted.

- Preparation of a noise management plan
- No personal stereos or PA systems
- Outdoor music to cease by 7pm
- No amplified music
- Activities restricted to the western side of the building only not the eastern side that is exposed to the nearest residential neighbour
- Retention of existing noise limiter with the maximum output noise level not to exceed 85dB(A)

The success of limiting noise impacts can be very much linked to good site management. In this respect, the Noise Management Plan plays a crucial role, including an appropriate complaints and review process.

Relevant conditions of consent are proposed in relation to food safety.

Further Assessment

With direct reference to the reasons for refusal in the Local Planning Panel's decision of 21 June 2018, the following comments are relevant:

1. *The proposed development fails to satisfy the provisions of Clause 5.10(10) of the Hawkesbury Local Environmental Plan 2012.*

Clause 5.10(10) provides the statutory framework for dealing with potential heritage conservation incentives. In a broad sense, the incentive within this Clause is the opportunity to gain approval for development that may otherwise be prohibited.

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) *the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) *the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

In this case, the subject site is within the E4 Environmental Living zone of the Hawkesbury Local Environmental Plan 2012. The proposed development, being categorised as a function centre, is prohibited within that zone and is therefore reliant upon Clause 5.10(10) to be considered and potentially approved. This is different to the situation with approved Development Consent No. DA0642/15, that was for tourist and visitor accommodation because that use was permissible within the zone and was not solely reliant upon Clause 5.10(10) for its permissibility.

The Panel, in its initial deliberation, did not consider that the application had satisfied the requirements of Clause 5.10(10), although the Minutes of the meeting do not elaborate as to why that view was taken.

Subclauses (a) to (e) set out the tests of satisfaction, so having regard to the development proposal as now amended and with the information submitted to Council as part of the review application, the following comments are made:

- (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent,*

The word 'facilitate' simply means to make easy or easier and therefore it would be reasonable to conclude that the ability to conduct functions on the site, thus generating a valuable source of income that can be directed towards the cost of maintaining and conserving the heritage item, will 'facilitate' the conservation of the building. This is especially the case when there are expensive and ongoing repair and maintenance obligations.

This requires a mechanism to ensure that income derived from the use of the site is utilized in conservation works. The imposition of appropriate conditions of consent provides the necessary mechanism. As a deferred commencement consent, it ensures the appropriate agreements can be reached before operating under the consent. As pointed out by the Heritage Impact Statement, without a significant ongoing income stream from functions, the essential conservation works would still be present and their urgency would still be high. Alternative funding sources are scarce and in reality likely to be inadequate. The do nothing option would simply lead to the deterioration of the item.

The Panel can be satisfied that the proposed development will facilitate the conservation of the item.

- (b) *the proposed development is in accordance with a heritage management document that has been approved by the consent authority,*

A Conservation Management Plan for the building was originally prepared in 2003. More recently, a CMP prepared by Edwards Heritage Consultants in July 2017 was endorsed by Council, although further information was required.

The conservation plan is reconfirmed in the revised heritage report from Edwards dated September 2018.

The application for review has been supported by a maintenance and repair schedule of works setting out a comprehensive list of works deemed necessary for the long term support of the building. It is accompanied by costings for these works, albeit estimates, prepared by KUE-S-Services Pty Ltd, Quantity Surveying & Building Estimating Services. The cost of the listed works is significant in both initial and recurrent outlays. Much of the work relates directly to repairs to sandstone walls and buttresses, which is to be expected given that the item is listed within Schedule 5 of the HLEP2012 as 'ruins'.

Having regard to the comments of Council's Heritage Adviser, it does appear that more surety around these issues is necessary. However, the Panel can be satisfied that the proposed development is in accordance with a Conservation Management Plan and that appropriate works can be enforced through conditions of development consent, preferably a deferred commencement condition.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

- (c) *the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out,*

It is recommended that any consent issued should be a deferred commencement consent with the deferred matter to be satisfied being an agreement on conservation works, costings and timing, to be reached between the Council and the applicant before the consent can operate. Such an agreement has a solid base on which to be based having reference to the information already provided.

The Panel therefore can be satisfied that a consent for the proposed development, with an appropriate deferred commencement condition, can ensure necessary conservation work is carried out.

- (d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance,*

The proposed development is for the use of the site and the building to conduct occasional functions. The development does not necessitate any change to the current form of the building. Marquees will be erected on the western lawn area and amenities to cater for the anticipated number of function guests are to include portable toilets. Therefore the conduct of functions would not have any permanent impact upon the site or the building, in particular its heritage fabric.

Although it is no longer a place of worship, the history of the building as a church provides a certain synergy with the proposed use of the renovated building/site as a wedding venue. There is an obvious connection, both historical and ongoing, between churches and weddings and from this perspective the proposal can be viewed as a suitable use that does not undermine the heritage value of the site.

The reduced number of guests results in a corresponding reduction in the number of on site car parking spaces which lessens the work required to provide those spaces and limits any potential impact upon the natural setting of the building. As noted by Edwards Heritage Consultants, the proposed car parking *'has been reconfigured to reduce the need for engineering retaining walls and the like. This will necessitate partial excavation of the existing landform, however the section plan showing the gradients of the site and proposed parking area, demonstrates that the depth and area of excavation is minimal, in turn having a negligible impact on the rural landscaped setting of the former church.'*

The Panel can be satisfied that the proposed development will not adversely affect the heritage significance of the heritage item.

- (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

The reduced scale and intensity of the proposed use will significantly lessen the likelihood of any adverse impacts upon the amenity of the surrounding area. The most obvious concern raised was in relation to potential noise impacts and in this regard the application for review is supported by a Revised Noise Impact Assessment, Revision 3 dated 30 August 2018, prepared by Rodney Stevens Acoustics.

It is important to note that the report categorises the site as being within a rural noise environment. Therefore the most stringent intrusive and amenity criteria have been used in establishing noise emission criterion in accordance with the Noise Policy for Industry (2017) for the assessment of potential impact.

The Stevens report has calculated predictive resultant noise levels based on the proposed number of guests and the timing of functions, but also through making assumptions surrounding how functions are managed. Such assumptions include music would only be played through the in house sound system which is fitted with a noise limiter; there would be no background music played outside of the building with no amplified music; all activities are occurring on the western side of the building.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

The conclusions of the report are that the use can operate reasonably within the identified noise level parameters. The recommendations of the Stevens report can be incorporated into conditions of development consent. As noted in the comments provided by Council's Environmental Health Officer, through an operational noise management plan, the parameters for the use of the site can be relayed to prospective guests as part of the booking process and can then be enforced.

The second area of potential amenity impact to neighbours would be in relation to increased traffic movements. However, the reduction in the maximum number of guests and the reduction in the frequency of functions to a maximum of 1 per week will significantly reduce the likelihood of any disruption to neighbouring properties arising from traffic generation that could otherwise be considered excessive or out of character for the locality. In conjunction with the proposed site works to improve sight distances and manoeuvring when entering and leaving the site, it is not considered that traffic remains a significant concern.

The Panel can be satisfied that the proposed development will not have any adverse impacts on the amenity of the surrounding area.

2. The site is not suitable for the scale or intensity of the development proposed

Both the scale and the intensity of the proposed development have been reduced.

Rather than the original 100 guests at any one function, the maximum number of guests will now be capped at 60. This is inclusive of the 10 guests that can be accommodated by the approved tourist and visitor accommodation within the renovated church building.

Potential acoustic impacts are reduced with both a lesser frequency of events and a reduced number of guests.

Rather than the potential of an unlimited number of functions that could occur on any day, functions will be limited to one per week over the period Friday to Sunday. Such functions will now only occur during day light hours and will finish by 7pm.

Confirmation has been provided that the on-site effluent disposal system is capable of accommodating the proposed 60 guests, however it is suggested that formal approval to operate the required on site system be secured before functions commence.

Some concern was expressed in relation to bushfire safety. The previous Development Application DA0642/15 was integrated development requiring a Bushfire Safety Authority to be issued because it was for a special fire protection purpose (tourist accommodation). The RFS, by letter dated 24 May 2016, issued General Terms of Approval, being a deemed bushfire safety authority in satisfaction of Section 100B of the *Rural Fires Act 1997*. It should be confirmed, prior to any functions, that these requirements have been satisfied.

3. The proposed development fails to demonstrate sufficient parking to meet the requirements of the Hawkesbury Development Control Plan 2002 or Australian Standards

As a direct result of the reduction in the number of guests attending any one function, the necessary on site car parking has been reduced. Section 2.5.2 of Part C Chapter 2 of the Hawkesbury DCP 2002 requires a minimum of 1 space per 20 square metres for a reception centre outside of the commercial zones, or 1 space per 3 seats (guests), whichever is greater.

In this circumstance, it is not considered appropriate to use the GFA method. Unlike more conventional reception centres, there is no defined floor area for the receptions. There is a combination of indoor/outdoor space that will be available and this cannot be readily measured. Using the site area would lead to an unrealistic and unachievable number of car spaces in order to comply with the DCP.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

It is more logical having regard to the context of this application, to acknowledge that there is an established capacity of 60 guests and therefore the alternative measure of 1 space per 3 guests should be considered. This would be the most appropriate way to impose a minimum car parking requirement, hence the proposed 20 on site spaces, which is both reasonable and achievable.

The car parking options on site are limited due to the topography and heritage values of the site and parking areas should not detract from the aesthetic and heritage qualities of the site. The applicant has indicated that a minibus will be used to transport guests between the venue and local places of accommodation as part of a function booking package. This is considered a plausible proposition in the context of this location. With such buses accommodating up to 12 people and with appropriate management, this will help to reduce traffic and parking demand.

It is also very common that guests 'car pool' to events such as weddings and in this location this practice would be even more prevalent as people coordinate their attendance to the ceremony and then travel to the venue for the actual reception.

4. *The location of the car park area to the east of the church adversely impacts upon the curtilage and heritage value of the site*

See comments above, particularly those from the Edwards heritage report. With the reduced numbers of guests reducing the need for on-site car parking spaces, there is no longer any parking proposed to the east of the Church.

5. *The application fails to demonstrate a safe means of entry to and egress from the site to St Albans Road*

In relation to this issue, the application for review has been supported by an Assessment of Vehicular Access to a Proposed Function Centre, dated 5 September 2018, prepared by TSA; a detail survey plan, showing driveway cross sections and car parking area dated 18 July 2018, prepared by R.W. Martin & Associates; and vehicle swept paths, signposting and traffic management plan, dated 4 September 2018, prepared by TSA.

Council's Development Engineer has reviewed the application and has raised no objections.

The proposed site works that are described in the submitted information will provide a significant improvement to site ingress/egress. The works also need to be considered in the context of far fewer movements associated with the proposed development due to the reduced number of visitors and reduced frequency of events.

It is considered that the information supplied can be translated into appropriate conditions of consent which will then ensure safe means of entry to and egress from the site.

6. *The intensity of development results in unacceptable amenity impacts*

See comments above. The intensity of the proposed development has been significantly reduced through the following:

- lower number of guests (from 100 down to 60)
- the resultant reduction in the number of car movements onto and off the site
- the resultant reduction in on site car parking spaces required to be provided (20 only)
- fewer functions (maximum of 1 per week)
- earlier finish times to functions (7pm finish)

It is considered that cumulatively, all of the above will combine to result in a significantly less intense development proposal and therefore an improved development outcome to that originally proposed in terms of its potential impacts on the amenity of others.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

7. *Insufficient information has been provided in respect to road works and earthworks required; car parking layout and construction; swept paths for vehicles entering and exiting the site, including delivery and service vehicles; plans of management, including traffic plan of management, bushfire management and flood management; and means of effluent disposal. This means the impacts of the development cannot be properly assessed.*

As noted throughout this report, additional information has been provided by the applicant to address all of the above issues.

- Road works and earthworks,
- Car parking layout and construction,
- Swept paths for vehicles entering and exiting the site, including delivery and service vehicles.

For all of the above, refer to Assessment of Vehicular Access to a Proposed Function Centre, dated 5 September 2018, prepared by TSA; a detail survey plan, showing driveway cross sections and car parking area dated 18 July 2018, prepared by R.W. Martin & Associates; and vehicle swept paths, signposting and traffic management plan, dated 4 September 2018, prepared by TSA.

Traffic Plan of Management

See above

Bushfire Management

The previous Development Application DA0642/15 for tourist and visitor accommodation received General Terms of Approval which was to be deemed a bushfire safety authority as required under Section 100B of the *Rural Fires Act 1997* for a tourist accommodation development. This required the establishment of asset protection zones, water and utility services, evacuation and emergency management arrangements to comply with Section 4.2.7 of Planning for Bushfire Protection.

This Development Application is not for a special fire protection purpose and therefore was not formally referred to the Rural Fire Service. However, the conditions of DA0642/15 remain valid and relevant. Therefore satisfaction of these requirements should be confirmed before any consent for functions is operable. A deferred commencement condition of consent is proposed that demonstration of compliance with all General Terms of Approval as set out in the letter from Rural Fire Service dated 24 May 2016 be provided.

It is also suggested that a condition be imposed that no functions be held on extreme bushfire hazard days so as to avoid bringing guests to a potentially dangerous location.

Flood Management

A condition of consent is proposed that relates directly to flood awareness and evacuation management plan. Such a plan would advise visitors of the appropriate procedures to follow, specifically the necessary vehicular routes along public roads to the nearest place of refuge should a flood occur when a function is in progress. If the Macdonald River is already in flood prior to a function, that function will be postponed, similar to the restriction on extreme bushfire hazard days. It is noted that the entire property is above the 1% AEP Flood Level, including the on-site car parking area.

Effluent Disposal

The application for review was supported by an addendum report from Blue Mountains Geological and Environmental Services that confirms that the on-site system, which was assessed as being suitable for up to 100 guests to attend a function once a week, will therefore be suitable for up to 60 guests to attend a function once a week.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

The original Development Application was assessed by Council's Sewer Management Facility (SMF) Officer who sought to impose conditions requiring the submission of 'Sewer Management Facility System' Application for the upgrading of the existing system. This decision took into account the use of portable toilets for functions, but considered that the proposed use of an Aerated Wastewater Treatment System (AWTS), balancing/metering tank and low-pressure effluent irrigation system should be required based on the demand generated by the function centre use and to allow for the proportional application of treated effluent.

The necessary approval to operate the required on site system should be obtained before any functions are held.

8. *The plans provided with the application do not provide sufficient information in relation to the extent of conservation works proposed; the operation of the function centre; and the integration of the previous consent DA0642/15*

The proposed use of the site for the conduct of functions does not of itself necessitate any particular building works. In relation to the extent of conservation works, these are best understood with reference to the submitted maintenance and repair schedule, including estimated costs, that has been provided by KUE-S-Services Pty Ltd, Quantity Surveying & Building Estimating Services and reviewed by the applicant's heritage consultant. It is recommended that these works be incorporated into a revised Conservation Management Plan and that appropriate conditions of consent be imposed to ensure such works are undertaken.

In relation to the operation of the function centre, a Plan of Management has been submitted. It outlines the general management structure and states that a copy of the Management Plan is provided to any person who books accommodation or a function at the site. It includes the requirement to sign a 'House Rules Agreement' when booking a function. It also incorporates a complaints and incident register.

Other matters covered include the use of outdoor areas, waste management, expected guest behaviour, noise and the use of recorded and/or amplified music, fire safety, general health and safety including reporting of incidents and listing of emergency contacts.

The relationship between the previously approved tourist and visitor accommodation use and the proposed functions has been clarified. When a function is booked, that customer has by rights full access to the accommodation, which under the previous approval can accommodate 10 guests. These 10 guests are part of the maximum number of 60 guests allowed at any one function. When the function finishes at 7pm, only a maximum of 10 guests can remain to stay overnight.

Conversely, if the guest accommodation is booked, then there are no functions booked on those days. There is no cross over between two different groups – no double booking. This can be enforced through appropriate conditions of consent.

Imposition of Conditions

The original assessment report to the Panel meeting of 21 June 2018 presented a comprehensive set of conditions, the majority of which remain valid.

Throughout this report, it has been highlighted where conditions of consent would be appropriate in ensuring outcomes from the development are properly managed. This includes the restrictions upon the intensity of the use, ongoing operational management issues, heritage management and conservation and works on site, in particular those associated with improved traffic safety and parking.

Three matters in particular however dictate that any consent should be a deferred commencement approval pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. The deferred matters to be satisfied relate to bushfire, effluent disposal and heritage conservation and only upon satisfaction of these matters should the consent become operational.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

Bushfire safety requirements are well described in the General Terms of Approval (Bushfire Safety Authority) previously issued by the Rural Fire Service and demonstration of their satisfaction should be put forward in the form of a comprehensive report prepared by a qualified practitioner.

Similarly, appropriate effluent disposal is matter of both public health and environmental protection that should be resolved. Council's officers have requested the submission of 'Sewer Management Facility System' Application for the upgrading of the existing system on site and this should be lodged and approved prior to the consent becoming operational and any functions being held.

Heritage conservation information has been provided but there needs to be a final agreement reached as to the full scope of works, the quality of works, the costing of works and the timing of works to be carried out.

Certainty in these issues is necessary, not least because approval of the development relies upon the heritage conservation incentives clause of the HLEP.

Conclusion

The applicant has responded to the reasons for the original Panel decision to refuse the Development Application with a range of additional and clarifying information. The application has been amended so that the scale and intensity of the development is significantly less than originally proposed.

The proposal will help facilitate the ongoing heritage conservation and management of the site, which requires significant recurrent and capital expenditure to maintain. To ensure appropriate heritage conservation outcomes, a deferred commencement condition of consent is recommended, building on the information already available in terms of works schedules, work costings and timing.

The proposed development is considered to be of a type that gives rise to issues of public interest. Its purpose is to provide the opportunity for wedding ceremonies and receptions to be held within a heritage listed property. As an original church building, the site would originally have been a place frequented by the public and there is a strong connection between a church and weddings. Encouraging visitation to heritage listed properties should be seen as being in the public interest, because heritage listing of private properties is predicated on the view that there is public benefit in maintaining them.

As a consequence of the reduced scale and intensity of use, the likelihood of potential impacts such as traffic and noise are considerably less, to the extent that it is considered that the proposed development can coexist harmoniously with neighbouring properties.

Approval of Development Application No.DA0703/17 for a function centre on Lot 1 in DP 605179, known as 1029 St Albans Road, Lower Macdonald, is therefore recommended for approval.

RECOMMENDATION:

That:

- (A) That the Hawkesbury Local Planning Panel as the consent authority pursuant to Clause 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended), approve the Application for Review of the decision to refuse Development Application No. DA0703/17 for a function centre on Lot 1 in DP 605179, known as 1029 St Albans Road, Lower Macdonald, and
- (B) As a consequence of Part (A), a deferred commencement consent be issued for Reviewed Development Application No. S82A0007/18 for a function centre on Lot 1 in DP 605179, known as 1029 St Albans Road, Lower Macdonald, subject to the following conditions:

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

CONDITIONS

Development Description: Function Centre – Construction of a car park and the use of the former St Josephs Church as a function centre

Deferred Commencement

1. Deferred Commencement Consent

This is a Deferred Commencement Consent and does not operate until the matters listed in 'Schedule 1' of this consent have been addressed.

All matters listed in 'Schedule 1' are required to be satisfactorily addressed within 12 months from the Determination Date that is shown on this consent. Failure to satisfy these matters by the specified date will result in the lapsing of this consent.

Upon receipt of satisfactory evidence in relation to the matters listed in 'Schedule 1', Council will give written notice to the person having benefit of the consent advising of the date from which this consent is to operate. The requirements of the consent will then be subject to the conditions listed in 'Schedule 2' and any additional conditions imposed by Council associated with the satisfaction of 'Schedule 1'.

Schedule 1 Matters

a) Bushfire Safety

Evidence to be presented to Council, by way of a comprehensive report prepared by a qualified bushfire consultant, to the effect that the requirements of the General Terms of Approval dated 24 May 2016, issued by the Rural Fire Service in relation to Development Application DA0642/15, have been satisfied.

b) Effluent Disposal

In accordance with Section 68 and 68A of the *Local Government Act 1993*, the applicant must lodge with Hawkesbury City Council the required Sewer Management Facility System Application for the proposed use of an Aerated Waste Water Treatment System (AWTS) suitable for the site, with this system being capable of accommodating the effluent loads associated with the proposed development having regard to the potential use of on site portable toilets for the peak demands associated with functions. Approval of this application is necessary prior to any functions being held on the site.

c) Conservation Works

The applicant is to enter into an agreement with Hawkesbury City Council in relation to the scope of works, quality of works, cost of works and timing of works to be undertaken in accordance with the recommendations of Section 11.2 of the 'Revised Heritage Impact Statement – St Josephs Catholic Church (Former) – 1029 St Albans Road' prepared by Edwards Planning and dated September 2018 including the Cost Summary and Maintenance and Repair Schedule, dated 8 September 2018, prepared by KUE-S-Services and other works as may be necessary to ensure the structural safety of the building.

Evidence of compliance with the above conditions, sufficient to satisfy the Council as to those matters, must be provided within 6 months of this notice.

HAWKESBURY LOCAL PLANNING PANEL MEETING**Reports for Determination****Meeting Date:** 15 November 2018**Schedule 2 Matters****General Conditions**

1. Approved Plans and Supporting Documentation

The development shall take place generally in accordance with the following stamped approved plans and documentation:

- Addendum to Statement of Environmental Effects, dated 7 September 2018, prepared by REConcepts
- Assessment of Vehicular Access to a Proposed Function Centre, dated 5 September 2018, prepared by TSA
- Cost Summary and Maintenance and Repair Schedule, dated 8 September 2018, prepared by KUE-S-Services
- Detail Survey Plan, showing driveway cross sections and car parking area dated 18 July 2018, prepared by R.W. Martin & Associates
- Vehicle swept paths, signposting and traffic management plan, dated 4 September 2018, prepared by TSA

Drawing or Document	Prepared By	Dated
Drawing No. DA-01 '1029 St Albans Road'	John Potts Architect	October 2015
Drawing No. 0925 Sheet 1 'Survey Plan'	RW Martin and Associates	12 April 2018
'Plan of Management – St Josephs Catholic Church (Former) – 1029 St Albans Road'	Edwards Planning	June 2018
'Revised Heritage Impact Statement – St Josephs Catholic Church (Former) – 1029 St Albans Road' and covering letter	Edwards Planning	September 2018 and 21 September 2018
Drawing No. DA-01 'Figure 1'	Blue Mountains Geological and Environmental Services Pty Ltd	13 November 2015
'Structural Engineer's Report'	Pratt Engineers Pty Ltd	26 February 2018

Drawing or Document	Prepared By	Dated
'Revised Noise Impact Assessment – Revision 3 Function Room – 1029 St Albans Road, Lower Macdonald' (Reference No. R160399R1 Rev '2')	Rodney Stevens Acoustics	30 August 2018
'Investigation and Assessment for On-site Effluent Management at St Josephs Guesthouse – Lot 1, DP 605179, No. 1029 St Albans Road, Central MacDonalld' Report (Reference No. 151201) and addendum letter	Blue Mountains Geological and Environmental Services Pty Ltd	December 2015 and 29 August 2018

except as modified by the conditions of this consent.

2. Conservation Management Plan – Conservation Works

The conservation works must be undertaken in accordance with the recommendations of Section 11.2 of the 'Revised Heritage Impact Statement – St Josephs Catholic Church (Former) – 1029 St Albans Road' prepared by Edwards Planning and dated September 2018 and of the Cost Summary and Maintenance and Repair Schedule, dated 8 September 2018, prepared by KUE-S-Services.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

Any works undertaken in accordance with this development must be specified, supervised and carried out by people with knowledge, skills and experience appropriate to the work.

The conservation works shall be undertaken under the supervision of a suitably qualified heritage specialist to provide on-site conservation/technical/management advice as necessary.

The general methodology for undertaking the conservation works to the stone blocks shall be as follows:

- a) Repointing of the building internally and externally shall be undertaken with high quality shell lime mortar similar in its compressive strength to the original mortar compound. As a general conservation approach, the 5mm mortar joints should be raked out to at least 1cm and repointed. Loose mortar should be raked out and missing mortar should be packed and filled.
- b) Pinning of failed stone blocks from lateral or vertical cracking as the preferred conservation approach to removal and replacement with like-for-like stone.
- c) New stone cut and dressed to be a like-for-like replacement for stone blocks which are beyond a salvageable/repairable condition.

3. Works Shall Not Commence Until A Construction Certificate Is Issued

No work shall commence until:

- a) a Construction Certificate is obtained from either Council or an Accredited Certifier;
- b) a Principal Certifying Authority is appointed; and
- c) a Notice of Commencement is lodged with Council.

Note: If the Construction Certificate is issued by an Accredited Certifier that is not Council it will be necessary to lodge the Construction Certificate and other approved documents with Council within two days of such approval (a registration fee is payable upon lodgement).

4. Obtainment of a Construction Certificate

A Construction Certificate must be submitted to the Certifying Authority within three months from the determination date of this consent.

5. Occupation Certificate Required Prior to The Use Of The Building

The building shall not be occupied or used as a function centre prior to the issuing of an Interim or Final Occupation Certificate by the Principal Certifying Authority. Where an Interim Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

A copy of the Occupation Certificate shall be submitted to Council within two days of its issue.

6. Section 6.16(1) Certificates Required

The accredited certifier shall provide copies of all Section 6.16(1) Certificates issued under the Environmental Planning and Assessment Act 1979 relevant to this development to Council within seven days of issuing the certificate.

Note: A registration fee applies.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

7. Prescribed Conditions – Compliance with National Construction Code

All building works must be carried out in accordance with the requirements of the National Construction Code (Building Code of Australia).

8. Civil Works Specification Compliance

All civil construction works required by this consent shall be undertaken in accordance with Hawkesbury Development Control Plan 2002 – Appendix E 'Civil Works Specification'. Inspections shall be carried out and compliance certificates issued by Council or an Accredited Certifier.

9. Roads Act 1993 – Approval Required

A separate approval is required from Council (for local roads) under Section 138 of the Roads Act 1993 to undertake any of the following:

- a) carry out a work within a public road; or
- b) dig up or disturb the surface of a public road; or
- c) remove or interfere with a structure, work or tree on a public road; or
- d) pump water into a public road from any land adjoining the road; or
- e) connect a road (whether public or private) to a public road.

10. Works on Public Land – Not Permitted Without Approval

No work can be undertaken within adjoining public lands (i.e. roads, parks or reserves etc.) without the prior written consent of Council or other relevant authority. In this regard the person having benefit of the consent is to contact Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

The developer must bear the cost of all works associated with the development that occurs on public land, including the restoration of damaged areas.

Prior to the issue of a Construction Certificate

The following conditions in this section of the consent must be complied with or addressed prior to the issue of any Construction Certificate (Civil) relating to the approved development, whether by Council or an appropriately accredited certifier. In many cases the conditions require certain details to be included with or incorporated in the detailed plans and specifications which accompany the Construction Certificate. The Construction Certificate shall be obtained for the construction of a car park and the sight distance improvement works within the road reserve:

11. Construction Certificate Required

A Construction Certificate shall be obtained for this development covering:

- a) Construction of the car park;
- b) Civil works for sight distance improvement within the road reserve;
- c) Construction of any retaining walls; and
- d) Civil drainage.

Prior to the issue of a Construction Certificate, plans showing finished levels, any associated drainage, any structural details, batter grades and finished surfaces must be submitted to the Certifying Authority.

The applicant shall pay a Design Compliance Certificate Fee in accordance with Council's adopted fees and charges when submitting Civil Engineering Plans for approval.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

12. Long Service Levy

The payment of a long service levy is required under Part 5 of the Building and Construction Industry Long Service Payments Act 1986 in respect to this building work. Proof that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of the Design Compliance Certificate. All building works in excess of \$25,000 are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Corporation offices or at most Councils.

13. Car Parking and Allocation of Spaces

An all-weather car park providing a minimum of 20 spaces (including one accessible space) shall be constructed to service the development consistent with the Detail Survey Plan, showing driveway cross sections and car parking area dated 18 July 2018, prepared by R.W. Martin & Associates. The car parking spaces shall be provided in accordance with AS2890.1 'Parking facilities: Off-street parking' and AS2890.6 'Parking facilities: Off-street parking for people with disabilities. The car parking spaces are to be identified onsite by line-marking.

Details of compliance with these requirements are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

14. Sight Distance Works

Earthworks, vegetation removal and traffic measures are to be undertaken within the road reserve of St Albans Road to ensure that sight distances for vehicles leaving the site are a minimum of 56m (in accordance with AUSTROAD Absolute Minimum for 60km/hr) in both directions. Work is to be consistent with the details provided by TSA approved in Condition 1.

15. Earthworks – Cut, Fill and Grading

All earthworks on the site must comply with the following:

- a) Topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping
- b) All disturbed areas are to be stabilised/revegetated, using a minimum 300mm surface layer of topsoil, as soon as practicable after the completion of the filling works
- c) Once the topsoil has been removed the natural batter shall be suitably stepped, scarified or roughened to prevent slipping and the fill is to be keyed in to hold the top of the fill batter in place
- d) Where batters exceed a ratio of three horizontal to one vertical, retaining walls, stone flagging or terracing shall be constructed
- e) All fill within the site shall be placed in layers not exceeding 300mm thickness and compacted to achieve a minimum dry density ratio of 95% when tested in accordance with Australian Standard AS1289 'Methods of testing soils for engineering purposes' unless otherwise specified
- f) Filling shall comprise only uncontaminated Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM). Contamination certificates for all source material shall be provided to the Principal Certifying Authority prior to placing any fill on site.

Details satisfying the above requirements are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

16. Retaining Wall Requirements

Any retaining walls having a height exceeding 600mm are required to be designed by a practicing structural engineer. The design must be submitted to the Certifying Authority prior to issue of the Construction Certificate.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

17. Overland Flow

The development shall not create adverse impacts to neighbouring properties in relation to overland flow of stormwater and must meet the following requirements:

- a) water flowing from the property must not be redirected or concentrated to adjoining properties
- b) water flowing into the property from adjoining lots shall not be impeded or diverted
- c) water flow shall follow the natural flow directions without increasing velocity.

Details are to be provided on the plans submitted to the Certifying Authority prior to issue of a Construction Certificate.

Prior to the Commencement of Works

18. Principal Certifying Authority – Details

The applicant shall advise Council of the name, address and contact number of the Principal certifier, in accordance with Section 66(2)(a) of the Environmental Planning and Assessment Act 1979.

19. Notice of Commencement

No work shall commence until a notice of commencement has been provided to Council. This notice is to be provided not less than two days from the date on which it is proposed to commence work associated with this Development Consent. The notice must also contain:

- a) details of the appointment of a Principal Certifying Authority (PCA) providing name, address and telephone number; and
- b) details of the name, address and licence details of the contractor.

20. Principal Certifying Authority (PCA) Site Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifying Authority for the work;
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

21. Toilet Facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

22. Erosion and Sediment Controls

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Landcom's publication 'Managing Urban Stormwater – Soils and Construction (2004)'.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

23. Traffic Management Plan

A Traffic Management Plan prepared in accordance with the Roads and Maritime Services' (formerly the Roads and Traffic Authority) publication 'Traffic Control at Worksites' is to be prepared by an appropriately qualified person and submitted to Council for approval prior to commencement of any works.

24. Survey Certificates

The works shall be set out by a Registered Surveyor to ensure that no work is undertaken on adjoining properties as part of this consent. A Survey Certificate for the site showing the location of the car park, fencing and other structures under construction and in compliance with the approved plans shall be lodged with the Principal Certifying Authority during an early stage of construction. Any easements must be shown on the Survey Certificate.

During Construction

25. Construction Hours

Clearing of land, running of machinery, excavation, and/or earthworks, civil works and the delivery of building materials shall be carried out between the following hours:

- a) between 7am and 6pm, Mondays to Fridays inclusive;
- b) between 8am and 4pm, Saturdays;
- c) no work on Sundays and public holidays; and
- d) works may be undertaken outside these hours where:
 - (i) the delivery of vehicles, plant or materials is required outside these hours by the Police or other authorities;
 - (ii) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and
 - (iii) a variation is approved in advance in writing by Council.

26. Site Management During Construction

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Copies of receipts stating the following must be given to the Principal Certifying Authority:
 - (i) the place to which waste materials were transported;
 - (ii) the name of the contractor transporting the materials; and
 - (iii) the quantity of materials transported off-site and recycled or disposed of.
- d) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.
- e) During construction:
 - (i) all vehicles entering or leaving the site must have their loads covered;
 - (ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads; and
 - (iii) any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to the public.
- f) At the completion of the works, the work site must be left clear of waste and debris.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

27. Implementation of Traffic Management Plan

A Traffic Management Plan must be implemented and all devices maintained for the duration of the proposed works in compliance with the approved Traffic Management Plan.

The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:

- a) stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site
- b) building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site
- c) builders waste must not be burnt or buried on site
- d) all waste (including felled trees) must be contained and removed to a Waste Disposal Depot.

28. Disposal of Cleared Vegetation

Vegetation waste resulting from the approved clearing of the site shall be salvaged for re-use either in log form or as woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots, stumps or declared weed species shall be disposed of to an appropriate waste facility.

No vegetative material is to be disposed of by burning onsite other than in an approved heating or cooking device.

29. Food Premises – Design and Fitout

All works associated with the storage, preparation and cooking of food shall be undertaken in accordance with the requirements of:

- Food Act 2003 and Regulations thereunder
- Australian Standard AS4674:2004 'Design, construction and fit-out of food premises'
- Australian Standard AS1668.2:2002 'The use of ventilation and air conditioning in buildings –Ventilation design for indoor air contaminant control'
- Hawkesbury Council's 'Food Premises Fit Out Code'.

Any food premises must comply with the following requirements:

- a) finishes, fittings and appliances must be fit for purpose, and should generally be smooth and impervious to moisture
- b) all gaps inside and outside the premises that may allow the entrance of vermin and insects to the kitchen shall be eliminated
- c) hand washing facilities, with hot and cold running water mixed through a common spout, hand wash soap and hand drying facilities must be provided in the kitchen. A constant supply of soap and paper towel delivered through a dispenser must be located next to the hand washing facilities
- d) where fittings are butt joined together they must be sealed to eliminate any cavities or crevices. Alternatively, a clear space of at least 75mm is to be provided between fittings. The following requirements apply to clearances and supports of equipment:

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

- (i) all refrigerators, freestanding cupboards and similar fittings must have metal legs made of non-corrosive metal or moulded plastic at a minimum height of 150mm above the floor. If placed flush on solid plinths the solid plinth is to be a minimum of 75 mm high
- (ii) where the above fittings do not comply with these clearances, the fittings shall be provided with wheels to enable easy cleaning, and eliminate inaccessible cavity.

30. Construction and Compliance Certificates – Sewer Works

Inspections and Compliance Certificates for sewer works can only be conducted and issued by Council. In the case of internal and external drainage, the inspection must be conducted by Council's Environment and Regulatory Services/Environmental Health Department. Please phone (02) 4560 4444 to arrange inspections and make payment of the required fees.

In all cases inspections must be conducted on the exposed pipes prior to any backfilling (including poured concrete or concrete encasement).

31. Civil Construction Requirements

All civil construction works required by this consent shall be undertaken in accordance with Hawkesbury Development Control Plan 2002 – Appendix E – Civil Works Specification. Inspections shall be carried out and Compliance Certificates issued by Council or an accredited certifier.

Prior to the Issue of an Occupation Certificate

32. Compliance Certificate – Connection to Onsite Waste Facility

A written clearance from Council (as the local sewer authority) that the development is suitably connected to the onsite sewerage management system is required to be submitted to the Principal Certifying Authority prior to the issue of an Interim or Final Occupation Certificate.

33. Structural Rectification to Sandstone Elements

The temporary securing recommendations for the sandstone walls as identified in the 'Structural Engineer's Report' prepared by Pratt Engineers Pty Ltd and dated 26 February 2018 are to be carried out and completed prior to the issue of an Occupation Certificate.

34. Structural Certification of Mezzanine Level and External Deck

A structural engineer shall inspect and certify the mezzanine level and the external deck as being capable of withstanding the loads likely to be imposed upon them by a large gathering of people.

In the event the structural engineer wishes to restrict the load imposed upon either structure, a maximum load limit (expressed as a maximum number of people) shall be specified. A sign or plate shall be affixed to the building in a prominent location indicating the maximum number persons the mezzanine or deck can accommodate.

The Structural Engineer's Certificate (and where required the load limit sign) shall be provided prior to the issue of an Occupation Certificate.

35. Fire Safety Upgrading

The function centre shall be provided with fire extinguishers, illuminated exit signage and emergency lighting in accordance with the attached Fire Safety Schedule. Certificates of

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

Compliance and a Final Fire Safety Certificate are required to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

36. Upgrading to Exit Doors

Compliant door hardware (such as lever type door handles) are required to be provided to all exit doors where the installation will not unduly destroy the heritage fabric.

37. Function Centre – Plan of Management

A consolidated Plan of Management shall be prepared for the function centre. This Plan of Management must be provided to Council for approval prior to the release of an Interim or Final Occupation Certificate.

The Plan of Management must be prepared to address but not be limited to the following:

- a) Hours of operation for the function centre are to be limited to 11am to 7pm Friday to Sunday. The operation of the function centre is prohibited Monday to Thursday and on public holidays;
- b) The departure of patrons from the function centre (exclusive of any guests of the tourist and visitor accommodation) must commence at 7pm, with all function centre patrons removed from the site by 7:30pm. The onsite manager and any event staff may remain on the site until 8pm to allow for the cleaning of the site and the removal of equipment;
- c) The function centre may be used for a maximum of one function or event per calendar week, with no functions or events permitted to be held on consecutive days;
- d) A maximum of 60 patrons (including any guests of the tourist and visitor accommodation component of the development) may be accommodated within the function centre and the property at any one time;
- e) An onsite manager must be present to oversee and manage the operation of the function centre during all functions and events;
- f) The recommendations of the 'Revised Noise Impact Assessment – Function Room – 1029 St Albans Road, Lower Macdonald' Report prepared by Rodney Stevens Acoustics and dated 30 August 2018 are to be incorporated into the Plan of Management;
- g) The onsite manager or a warden shall be used direct vehicles to the overflow parking areas;
- h) Flood evacuation procedures (including vehicular routes along public roads to the nearest place of refuge) and emergency telephone numbers are to be incorporated into the Plan of Management;
- i) Details of any 'house rules' and complaints handling procedures are to be incorporated into the Plan of Management; and
- j) No tents, caravans or campervans are to be installed or used onsite in association with the function centre use or the tourist and visitor accommodation use which is capped at a maximum of ten guests in accordance with Development Application 0642/15.

38. Function Centre – Flood Emergency Evacuation and Management Plan

A Flood Emergency Evacuation and Management Plan is to be prepared for the development. The plan shall advise occupants of flood evacuation procedures (including vehicular routes along public roads to the nearest place of refuge) and emergency telephone numbers. The

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

evacuation procedures shall be permanently fixed to the building in a prominent location and maintained at all times.

The plan must outline that any functions, bookings and/or events are to be cancelled upon the issue by any appropriate Authority of a flood warning for the locality.

A copy of this plan shall be provided to Council prior to the release of the Occupation Certificate.

The plan shall also be incorporated in the Plan of Management for the function centre and tourist and visitor accommodation development.

39. Function Centre – Flood Warning Periods

Functions, bookings and events shall not occur during flood warning periods or when access roads are inundated by water after rain events. Staff and patrons shall be given advanced warning to not access the site during these periods.

40. Function Centre – Installation of Flood Warning Signs

Flood warning signs are to be installed to advise patrons and occupants that public roads used to access the site may be subject to inundation during times of flood. The signs shall be constructed of durable material and installed in prominent locations within the building and property.

41. Installation of Fencing

Rural fencing (post and rail or post and wire) shall be installed to define the property's eastern and southern boundaries with 937 St Albans Road. The fencing shall be installed wholly within the subject property and clear of any headstones and monuments.

The installation of the fencing shall be completed prior to the release of an Occupation Certificate.

Note: Building work in close proximity to the boundary may be a sensitive matter for each property owner and can often end in an unsatisfactory relationship between neighbours. You are advised that the consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary.

42. Provision of Potable Water

Potable water shall be provided to the function centre in accordance with the NSW Health Private Water Supply Guidelines. A Water Supply Management Plan is to be developed and implemented in accordance with this Guideline.

A copy of the Water Supply Management Plan shall be submitted to Council prior to the release of the Occupation Certificate.

43. Occupation Certificate – Development Consent No. DA0642/15

Evidence of the obtainment of an Occupation Certificate for the tourist and visitor accommodation approved with Development Consent No. DA0642/15 shall be provided to the Principal Certifying Authority prior to the release of an Occupation Certificate for the subject development.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

Operational Conditions

44. Function Centre – Hours of Operation

Hours of operation for the function centre are to be limited to the following:

Friday to Sunday: 11:00am to 7:00pm

Monday to Thursday: Closed

Public Holidays: Closed

The orderly departure of patrons from the function centre (exclusive of any guests of the tourist and visitor accommodation) must commence at 7:00pm, with all function centre patrons removed from the site by 7:30pm.

The onsite manager and any event staff may remain on the site until 8:00pm to allow for the cleaning of the site and the removal of equipment.

45. Function Centre – Event Frequency

The function centre may be used for a maximum of one function or event per calendar week. Functions and events are not permitted to be held on consecutive days.

46. Function Centre – Maximum Number of Patrons

A maximum of 60 patrons (including any guests of the tourist and visitor accommodation component of the development that has a capacity of 10 guests) may be accommodated within the function centre and the property at any time.

47. Function Centre – Maximum Capacity Signage

The maximum number of persons permitted in the function centre shall be limited to 60. A sign must be displayed in a prominent position within the building stating the maximum number of persons that are permitted in the building.

48. Function Centre – Onsite Manager

An onsite manager must be present to oversee and manage the operation of the function centre at all times during all functions and events.

49. Function Centre – Plan of Management

The operation of the function centre must be undertaken in accordance with the approved Plan of Management, except where modified by the conditions of this consent or the requirements of the Police and/or Department of Liquor and Gaming.

A copy of the Plan of Management must be kept and maintained in a register and made available for inspection by the Police, Department of Liquor and Gaming and/or authorised Council inspectors/officers upon request.

The Plan of Management may be altered with the consultation and consent of Local Licensing Police, Department of Liquor and Gaming and/or Council.

50. Function Centre – Extreme Bushfire Hazard

Functions, bookings and events shall not occur during extreme bushfire hazard periods. Pre booked functions must be postponed. Staff and patrons shall be given advanced warning to not access the site during these periods.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

51. Function Centre – Management of Vehicles

Functions and events shall be managed to ensure that adequate parking is available to accommodate all patron, guest and staff/caterer vehicles within the subject property. No loading, unloading or parking of vehicles is permitted on the public road.

All vehicles being loaded or unloaded shall stand entirely within the property.

52. Function Centre – Register of Functions and Events

The operator shall keep a register detailing the date and times of when the premises is being used for a function and the number of guests attending. This register must be made available to Council officers on request and a copy is to be forwarded to Council at six monthly periods (January and July each year).

53. Noise Generating Premises – Acoustic Management

The operation of the development shall incorporate the recommendations of the 'Revised Noise Impact Assessment – Function Room – 1029 St Albans Road, Lower Macdonald' Report prepared by Rodney Stevens Acoustics and dated 30 August 2018. All recommendations contained within the Acoustic Report are to be implemented, including but not limited to the following:

- a) All activities on the site shall comply with the submitted Acoustic Management Plan.
- b) Power to all audio or audio-visual equipment shall be controlled by a noise limiting device that is set to 85dB(A) (internal). The noise limiter device must only be accessible by management and must not be used by third parties.
- c) All outdoor activities/congregations/events/functions shall be conducted on the western side of the building only.
- d) No personal stereos and/or public address (PA) systems are to be used onsite.
- e) Musicians are to consist of a maximum two piece band (acoustic string instruments only) or a disc jockey (DJ). No amplified or percussion instruments are allowed to perform. Musicians are only allowed to perform within the ground floor of the building; they must not perform outside the building.
- f) Patrons and guests must be instructed to not cause unnecessary noise and to be mindful of neighbours. Signs are to be placed on the balcony area and within the vicinity of the building to advise patrons to keep noise to a minimum.

54. Noise Generating Premises – Noise Monitoring

Where requested certification and/or evidence must be provided to demonstrate that the development is operating in accordance with 'Revised Noise Impact Assessment – Function Room – 1029 St Albans Road, Lower Macdonald' Report prepared by Rodney Stevens Acoustics and dated 30 August 2018 and the conditions of this consent.

If, during the on-going use of the premises, substantiated complaints of breaches of noise occur, the applicant must arrange for further acoustic testing to be undertaken by a suitably qualified acoustic consultant. Any recommendations made by the consultant to ensure the premises complies with the noise criteria specified in the Noise Impact Assessment Report must be immediately implemented.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

55. Noise Generating Premises – Noise Monitoring

Noise generated as a result of the mechanical plant or equipment during hours of operation shall be managed so that the LAeq noise levels, measured at any point in accordance with the NSW DECs' Industrial Noise Source Policy, does not exceed 5dB(A) (LAeq) above background levels (LA90) with respect to noise amenity of other residential properties and associated outdoor areas. Outside of the hours of operation, the noise from any mechanical plant or equipment should not be significantly audible at any residence.

56. Neighbourhood Amenity – Signs

Signs must be placed in clearly visible positions within the building and in the car park area requesting that patrons leaving the premises are to do so quickly and quietly, having regard to maintaining the amenity of the area.

57. Prohibition of Tents, Caravans and Campervans

No tents, caravans or campervans shall be installed or used onsite unless otherwise allowed under Section 77 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

58. Annual Fire Safety Statement

The owner of the building is responsible for the lodgement with Council of an Annual Fire Safety Statement from a competent person so as to confirm the essential fire safety measures required to be provided in the building exist and are being maintained. The Annual Fire Safety Statement shall be issued within 12 months of the issue of the Final Safety Certificate, and then on an annual basis thereafter.

A copy of the Fire Safety Statement obtained and the Fire Safety Schedule shall also be:

- a) Forwarded to the Commissioner of Fire and Rescue New South Wales by email to afss@fire.nsw.gov.au; and
- b) Prominently displayed in the building.

59. Private Water Supplier – Registration with Council

The development must be registered with Council as a private water supplier prior to the operation of the function centre.

60. Food Premises – Registration of Food Premises

Any part of the building used for food preparation shall be registered with Council as a Food Premises and have inspections conducted by Council officers as necessary/required.

61. Food Premises – Operation and Maintenance Requirements

The food premises shall be maintained in accordance with the requirements of:

- *Food Act 2003* and Regulations there under.
- Australian Standard 4674:2004 'Design, construction and fit-out of food premises'.

Hand washing facilities, with hot and cold running water mixed through a common spout, hand wash soap and hand drying facilities must be provided in the kitchen. A constant supply of soap and paper towel delivered through a dispenser must be located next to the hand washing facilities.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

Any refrigeration used to store potentially hazardous food must have a capacity to keep food colder than 5°C and be provided with a thermometer, accurate to $\pm 1^\circ\text{C}$.

All food is to be transported, stored and displayed in a manner that protects the food from likely contamination in accordance with the provisions of Standard 3.2.2 of the Food Standards Code under the *Food Act 2003*.

62. Waste Management

All waste generated on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the *Protection of the Environment Operations Act 1997*.

All waste materials are to be stored in covered vermin proof waste storage bins and regularly removed from the property. Waste is to be separated where appropriate for re-use and recycling purposes. Waste is to be contained in such a manner to prevent it from being blown, moved or located around the property or surrounding properties.

63. Reporting of Pollution Incidents

In accordance with the requirements of Part 5.7 of the *Protection of the Environment Operations Act 1997*, Council is to be informed of any pollution incident that occurs in the course of carrying out the approved activity where material harm to the environment is caused or threatened.

64. Lighting

Any lighting from the development is to be directed away from surrounding properties, at an angle of 45 degrees towards the ground and shielded if needed, to prevent any light spillage and nuisance onto adjoining properties.

The reasons for the imposition of these conditions are those matters listed under Section 4.17 of the *Environmental Planning and Assessment Act 1979* as are relevant to the development subject to this consent. Unrestricted consent may affect the environmental amenity of the area and would not be in the public interest.

Advisory Notes

- (i) This consent operates from the determination date shown on the top of this notice and will lapse unless the development is commenced within five years from the date endorsed on this consent.
- (ii) Private Accredited Certifiers do not have any authority to issue Engineering Approvals or carry out inspections for works on Public Roads under the *Roads Act 1993*.
- (iii) Any activity carried out in accordance with this approval shall not give rise to offensive noise, air pollution (including odour) or pollution of land and/or water as defined by the *Protection of the Environment Operations Act 1997*.
- (iv) Building work in close proximity to the boundary may be a sensitive matter for each property owner and can often end in an unsatisfactory relationship between neighbours. You are advised that the consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

Your attention is directed to the provisions of the *Dividing Fences Act 1991* that gives certain rights to adjoining owners, including use of the common boundary. In the absence of any structure standing well clear of the common boundary you need to make yourself aware of your legal position, which may involve a survey to identify allotment boundaries.

Note: This consent does not override your obligations under the *Dividing Fences Act 1991*.

- (v) This development falls within the Sewerage Scheme controlled by Hawkesbury City Council and accordingly Council is the approval authority for all sewer works.

The sewage management facility must be operated in accordance with the relevant operating specifications and procedures for the component facilities, and so as to allow disposal of treated sewage in an environmentally safe and sanitary manner (Local Government [General] Regulation 2005).

- (vi) The installed system will be the subject of an approval to operate a system of sewage management in accordance with the provisions of Subdivision 6 and 7 of Division 4 of Part 2 of the Local Government (General) Regulation 2005 and for this purpose will be subject to inspection at annual frequency by Council's Environmental Health Officer or at such other frequency as may be determined according to the future operation or risk of the system.
- (vii) The Applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.
- (viii) Non-compliance with any condition of this development consent may result in a penalty notice being issued by Council.
- (ix) The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this development. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- (x) The applicant is advised to consult with the relevant:
 - a) sewer provider;
 - b) electricity provider; and
 - c) telecommunications carrier

regarding their requirements for the provision of services to the development and the location of existing services that may be affected by the works, either onsite or on the adjacent public roads.

ATTACHMENTS:

- AT - 1** Detail Survey Plan, showing driveway cross sections and car parking area dated 18 July 2018, prepared by R.W. Martin & Associates
- AT - 2** Vehicle swept paths, signposting and traffic management plan, dated 4 September 2018, prepared by TSA
- AT - 3** Assessment report presented to IHAP 21 June 2018 (distributed under separate cover)

Meeting Date: 15 November 2018

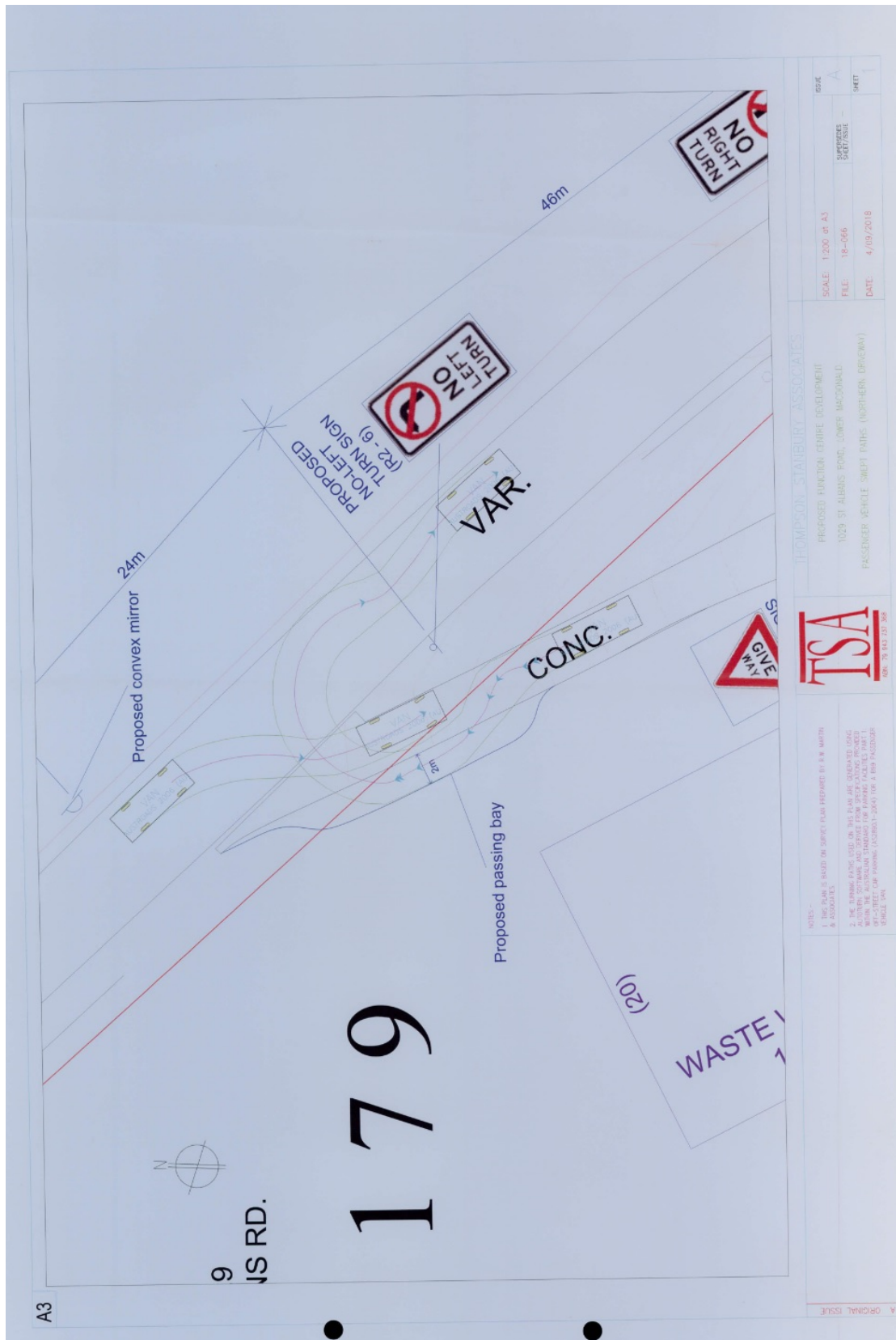
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HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

AT - 2 Vehicle swept paths, signposting and traffic management plan, dated 4 September 2018, prepared by TSA



Meeting Date: 15 November 2018



Meeting Date: 15 November 2018



HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Determination

Meeting Date: 15 November 2018

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Advice

Meeting Date: 15 November 2018

Reports for Advice

Item: 013 CP - S960069/18 (DA0332/16) Lot 2 DP 607906 396 Bells Line of Road, Kurmond - Section 4.55 Amendment - Subdivision - Modification to the consent for a community title scheme (95498, 137333, 76639)

Previous Item: 001 (28 March 2018) and 003 (17 May 2018)

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: S960069/18 (DA0332/16)
Property Address: 396 Bells Line of Road and 2 Inverary Drive, KURMOND NSW 2757
Legal Description: Lot 2 DP 607906 (396 Bells Line of Road)
Lot 2 DP 600414 (2 Inverary Drive)
Applicant: Cohesive Planning
Owner: Mrs J Bonfield (2 Inverary Drive)
Proposal Details: Section 4.55 Amendment - Subdivision - Modifications to the consent for a community title subdivision
Estimated Cost: \$2,000,000.00
Zone: RU1 Primary Production and SP2 Infrastructure - Classified Road
Area: 13.07Ha (396 Bells Line of Road)
Date Received: 24 July 2018
Exhibition Dates: 23 August to 6 September 2018
Date Formal: 12 October 2018
Submissions: One

Reason for Referral to Local Planning Panel:

Advice sought based on the original determination issued by the Local Planning Panel

Key Issues:

- ◆ Validity of Conditions
- ◆ Sewer Capacity
- ◆ Access Arrangements

Recommendation: Conditional Approval

REPORT:

EXECUTIVE SUMMARY

The subject application seeks approval for modifications to Development Consent No. DA0332/16 for a community title subdivision at 396 Bells Line of Road and 2 Inverary Drive, Kurmond. The original consent was issued as a 'Deferred Commencement' Consent by the Hawkesbury Local Planning Panel on 17 May 2018 and approved earthworks, the filling of dams, the construction of roads, the installation of a sewer main and a community title subdivision to create 33 residential lots. The consent was made operative on 29 May 2018.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Advice

Meeting Date: 15 November 2018

The Section 4.55 Application seeks to modify or delete a number of conditions imposed on the consent relating to the provision of sewer, access and works on a neighbouring property, public works, dilapidation surveys, residue lots and building envelopes. The subject proposal does not seek to alter or modify the layout or number of lots approved with the original consent.

The modifications primarily relate to the provision of sewer and works to the neighbouring property at 406 Bells Line of Road. The Applicant argues that the conditions requiring this neighbouring property to be connected to reticulated sewer are not valid as they are unreasonable and there is no nexus between the subject development and the neighbouring property.

Council seeks the advice of the Hawkesbury Local Planning Panel with respect to the imposed sewer and works conditions on account of the Panel being the determining authority for the original development.

Background

The land is located within the Kurmond Kurrajong Investigation Area and 396 Bells Line of Road has been subject to a site-specific Planning Proposal to allow minimum lots sizes of 2,000m², 1Ha and 1.5Ha. The Planning Proposal and subsequent Local Environmental Plan Amendment allowed for the consideration of 2,000m² lots on the basis that this area, unlike other subdivisions within the Kurrajong Kurmond Residential Investigation Area, would be provided with reticulated sewer from Sydney Water.

Development Consent No. DA0332/16 for the subdivision of 396 Bells Line of Road and 2 Inverary Drive, Kurmond, was submitted to Council on 23 May 2016. Originally submitted as a Torrens title subdivision, the development was modified to comprise of a community title subdivision on account of Sydney Water's sewer requirements. The development specifically involved:

- The removal of vegetation to accommodate earthworks and road construction;
- Bulk earthworks associated with road construction, drainage and lot levelling;
- The de-watering, de-silting and removal of three dams;
- The construction of a deceleration lane, new road and intersection off Bells Line of Road, as well as an internal road network to service the allotments;
- The installation of a septic holding tank and pump station within 2 Inverary Drive;
- The installation of a sewer main within Bells Line of Road from the development to Sydney Water's North Richmond Sewerage Treatment Plant;
- Weed removal and revegetation works within the riparian corridors; and
- A community title subdivision to create 37 residential lots, two residue lots and one community lot.

The matter was the subject of an assessment report presented to the Hawkesbury Local Planning Panel meeting of 28 March 2018. Having considered a report on the matter recommending the refusal of the application, the Panel did recognise some merit in the proposal and therefore recommended a deferral to allow the Applicant to consider some changes to the subdivision layout. The resolution issued by the Hawkesbury Local Planning Panel was as follows:

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

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

REASONS FOR DECISION:

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

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Advice

Meeting Date: 15 November 2018

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

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

Other factors considered relevant by the Panel included:

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

The Panel was of the view that a modified design that provided a greater differentiation in lot size, with smaller lots (not less than the permissible minimum lot size) between Bells Line of Road and the creek corridor, and larger lots (with an average lot size of not less than 4000m²) to the east of the creek corridor, would provide an outcome more in keeping with the existing and desired future character of the area.

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

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

In response to this resolution the Applicant advised that they did not wish to amend the application and a further report on the matter was considered by the Hawkesbury Local Planning Panel on 17 May 2018. At this time the Panel resolved to determine the application with a deferred commencement consent requiring a reduction in the number of residential lots from 37 to 33 lots. The deferred commencement condition issued as part of the consent required the amalgamation of seven rear lots to create three lots as follows:

1. That the applicant is to submit for approval of Council's Director City Planning an amended plan of subdivision, amalgamating the following lots into single lots with an area of at least 4,000m²:
 - Lots 16 and 17
 - Lots 18 and 19
 - Lots 20, 21 and 22

A revised plan satisfying the requirements of the deferred commencement condition was supplied and the consent was made operational on 29 May 2018.

Description of Proposal

Pursuant to Clause 4.55(2) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's approval to modify Development Consent No. DA0332/16 for the community title subdivision of 396 Bells Line of Road and 2 Inverary Drive, Kurmond. The

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Advice

Meeting Date: 15 November 2018

original consent approved the creation of 33 residential lots and one community lot.

The Section 4.55 Application seeking the modification of this consent was lodged with Council on 24 July and notified between 23 August and 6 September 2018. One submission was received in response to the notification of the modified proposal.

The submitted Section 4.55 Application seeks to modify or delete Conditions 19, 29, 48, 79, 88, 99 and 100 of the consent. The modifications primarily relate to the provision of sewer and works to the neighbouring property at 406 Bells Line of Road. The documentation argues that the conditions requiring this neighbouring property to be connected to reticulated sewer are unreasonable and there is no nexus between the subject development and the neighbouring property.

It should be noted that the documentation supplied in support of the application also requests modifications to the condition relating to access arrangements for 406 Bells Line of Road. However, the modified proposal has been referred to the Roads and Maritime Services (RMS) and they have not provided their concurrence for any alterations to the approved access arrangements.

The original Development Application was reported to the Hawkesbury Local Planning Panel for determination as it was subject to a Planning Agreement with Council. As the Planning Agreement has been executed the Panel will not be the determining authority for the Section 4.55 Application, and Council will instead assume this role.

Matters For Consideration

The primary contention relating to the Section 4.55 Application involves Condition 79 which requires the neighbouring property at 406 Bells Line of Road to be connected to Sydney Water's sewer. This condition states:

79. Sewer Reticulation – Provision of Sewer

Sewerage reticulation, including junctions, shall be constructed to each residential lot in the subdivision and to 406 Bells Line of Road (Lot 1 DP 607906).

This condition outlines that each residential allotment within the subdivision and the neighbouring property at 406 Bells Line of Road must be connected to Sydney Water's reticulated sewer. Whilst the supporting documentation suggests the condition is to be deleted as a whole, it is understood that the Applicant's request only relates to the connection of 406 Bells Line of Road to the sewer. The Applicant does not appear to be disputing the need for the residential lots within the subdivision to be connected to the sewer.

The supplied documentation argues that Condition 79 is invalid as it fails the 'Newbury Test'.

The Newbury Test was established in relation to a matter in the United Kingdom but has been applied in the Land and Environment Court when considering the power to impose conditions on a development consent. The Newbury Test outlines that three principles or tests must be satisfied to demonstrate that the validity of a consent condition:

1. The condition must have a planning purpose;
2. The condition must relate to the permitted development to which it is annexed; and
3. The condition not be so clearly unreasonable that no reasonable planning authority could have imposed it.

With respect to the subject proposal the Applicant suggests that the proposal fails the Newbury Test as there is no nexus between the subject development and the condition requiring the provision of sewer to the neighbouring property. Furthermore the application argues that the condition is unreasonable as the connection of 406 Bells Line of Road would impact upon and limit the servicing of the subdivision and would also have significant financial implications for the developer.

HAWKESBURY LOCAL PLANNING PANEL MEETING

Reports for Advice

Meeting Date: 15 November 2018

Council seeks the advice of the Hawkesbury Local Planning Panel regarding the conditions relating to the sewer and works on account of the Panel being the determining authority for the original development.

RECOMMENDATION:

That in respect to the Section 4.55 Amendment No. S960069/18 (DA0332/16) at Lot 2 DP 607906, 396 Bells Line of Road and Lot 2 DP 600414, 2 Inverary Drive, Kurmond, the Hawkesbury Local Planning Panel provide advice to Council regarding the proposed conditions relating to the consent for a community title subdivision for sewer and works.

ATTACHMENTS:

AT - 1 Approved Plans (distributed under separate cover)

oooO END OF REPORT Oooo



hawkesbury
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planning
panel
meeting

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