



Hawkesbury Local Planning Panel Meeting

Date of meeting: 20 October 2022
Location: By audio-visual link
Time: 10:00 a.m.

BUSINESS PAPER

HAWKESBURY LOCAL PLANNING PANEL MEETING

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Section 1

Reports for determination

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Item: 011 CP - DA0342/21 - Lot 12 DP 608508, 95 Old Pitt Town Road, PITT TOWN NSW 2756 - (151825, 145252, 95498)

Directorate: City Planning

Application Number: DA0342/21
Date Received: 24/11/2021
Proposal Details: Place of Public Worship
Estimated Cost: \$1,488,787.00

Legal Description: Lot 12 DP 608508
Property Address: 95 Old Pitt Town Road PITT TOWN NSW 2756
Area: 2 Hectares
Zoning: RU4 Primary Production Small Lots under *Hawkesbury Local Environmental Plan 2012*

Applicant: Stimson Urban & Regional Planning
Owner: Sri Mandir
Exhibition Dates: 6/12/2021 - 17/01/2022
Submissions: 90 in objection 1 in support

Key Issues:

- ◆ Scale of the development
- ◆ Noise impacts
- ◆ Traffic and parking

Recommendation: Approval, subject to conditions.

EXECUTIVE SUMMARY:

Reason for Consideration by Local Planning Panel

Contentious Development – The application has received more than 10 unique submissions by way of objection.

Proposal

Place of public worship involving alterations & additions to an existing outbuilding, new amenities building, change of use of an existing dwelling house to caretakers residence, associated car park, and landscaping.

Permissibility

The proposed development is permitted with consent on the land pursuant to Hawkesbury Local Environmental Plan 2012.

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Consultation

The application was notified to adjoining and adjacent properties between 6/12/2021 - 17/01/2022 in accordance with the requirements of Hawkesbury Development Control Plan 2002 and the Hawkesbury Community Participation Plan.

Key Issues

The key issues of this development application include:

- Scale of the development
- Noise impacts
- Traffic and parking

Recommendation

That DA0342/21 be approved subject to the recommended conditions contained in this report.

REPORT:

Development Application No. DA0342/21 seeks consent for the use of the above site for the purposes of a place of public worship.

The proposed place of public worship comprises of a temple and caretakers residence for the SriMandir group who practice Hinduism. The application proposes the following:

- Alterations & additions to an existing outbuilding,
- Construction of a new amenities building consisting of two accessible toilets, two female toilets, one male toilet, 2 showers and one urinal,
- Change of use of an existing dwelling house to caretakers residence,
- Construction of new driveway and 20 space car parking area,
- Construction of a 2.1m high acoustic timber fence around the existing building and proposed car parking area/driveway,
- Installation of new water tanks and new effluent disposal system, and
- Landscaping works.

A plan of management has been submitted in support of the application and explains the operation of the facility, including:

- Hours of operation,
- Maximum number of activities and attendees on the site at one time,
- Staff numbers,
- Site management,
- Traffic and parking management, and
- Complaints handling procedures.

It is proposed that the facility will have a maximum of 76 people on the site at any time, and operate in accordance with the following proposed hours:

- Monday – Friday 7am-10am and 5pm-8pm with a maximum of 15 people
- Saturday – Sunday 7am-12pm with a maximum of 60 people and 5pm-9pm with a maximum of 76 people.

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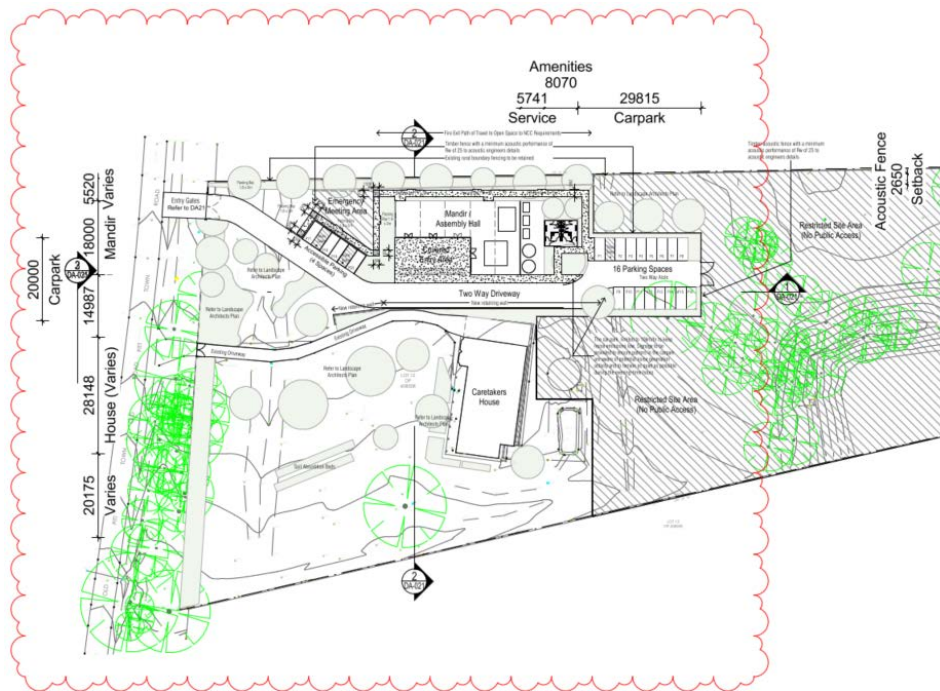
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The plan of management submitted with the application identifies that there will be 12 annual special events where the maximum number of people (76) may be present on site between the hours of 9:00am and 11:00am. These dates will be dependent on the lunar calendar.

Three permanent staff are expected on the site full time, and consist of caretakers and a monk.

The proposal has been designed to utilise an existing building and dwelling on the land in order to minimise visual impacts on the existing built environment. Acoustic fencing and landscaping has been proposed to soften the appearance of the development and mitigate impacts in terms of noise.

The following figures show the proposed development and proposed plans are attached as Attachment 1 to the report.



1 Proposed Site Plan
1 : 500

Figure 1: Site Plan

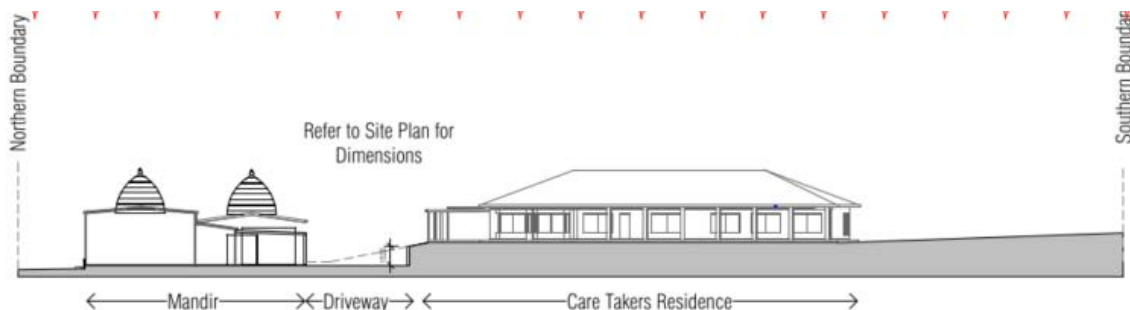


Figure 2: Elevation

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The subject site is irregular in shape, contains an existing dwelling and outbuilding, totals 2 hectares in area and has a 103.68m long frontage to Old Pitt Town Road. The site is surrounded by a rural and residential development consisting of single and double storey buildings. A locality plan and aerial photo of the site is included below.



24 November 2021	Application lodged via the NSW Planning Portal.
6 December 2021	Application notified 6/12/2021 - 17/01/2022. A total of 90 submissions raising objection and one submission in support were received by Council.
11 April 2022	<p>Following a detailed assessment of the proposal the applicant was advised that a number of matters are required to be addressed should the development of the site be considered, particularly in relation to:</p> <ul style="list-style-type: none"> • Scale and Context • Acoustic Fencing • Colours and Materials • Entrance Gate and Signage

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- Plan of Management
- Tree removal
- Driveway access
- Roadworks
- Manoeuvring
- Water Servicing
- Waste
- Sewerage
- Issues raised in submissions received.

7 June 2022

Applicant provided amended plans and response to issues raised as part of the assessment of the application.

The amended designs have been assessed as part of the preparation of this report.

Submissions

A total of 91 submissions have been received in response to the application, are attached to this report, and available to view on Councils development application tracking system online. The issues identified in the submissions have been listed and considered in this assessment report.

Council Policies, Procedures and Codes to which the matter relates

- State Environmental Planning Policy (Resilience and Hazards) 2021
 - Chapter 2 Coastal management
 - Chapter 4 Remediation of land
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - Chapter 4 Koala habitat protection 2021
 - Chapter 9 Hawkesbury-Nepean River
- State Environmental Planning Policy (Industry and Employment) 2021
 - Chapter 3 Advertising and signage
- Hawkesbury Local Environmental Plan 2012 (LEP 2012)
- Hawkesbury Development Control Plan (DCP) 2002

Matters for Consideration Under Part 6 of the Biodiversity Conservation Act 2016 No 63

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offset Scheme (BOS) will be triggered. The threshold has two elements:

- Whether the amount of native vegetation being cleared exceeds an area threshold,
- Whether the impacts occur on an area mapped on the Biodiversity Values Map published by the Environment Agency Head.

The proposal does not trigger the BOS requirement. In this regard the application does not exceed the area threshold, and the land proposed to be developed does not propose impacts on an area mapped on the Biodiversity Values map.

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

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

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State Environmental Planning Policy (Resilience and Hazards) 2021

On 1 March 2022, State Environmental Planning Policy (Coastal Management) 2018 and State Environmental Planning Policy No 55 – Remediation of Land were repealed and its provisions were transferred to Chapter 2 and 4 of SEPP Resilience and Hazards (together with the accompanying schedules) and renumbered accordingly.

The proposal has been assessed having regard to the following relevant chapters of this SEPP.

Chapter 2 Coastal management

The proposed development area is located outside of the *Coastal environmental area* and *Coastal use area* mapped in the SEPP and Council is not prevented from granting consent to the proposal under this plan.

Chapter 4 Remediation of land

The objectives of this chapter are to “*promote the remediation of contaminated land for the purpose of reducing the risk of human health or any other aspect of the environment*”. Section 4.6 outlines the consent authority “*must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The application is accompanied by a preliminary site investigation report which considers the potential risk of contamination existing on the land. The report identifies that the risk of finding any contamination on the land that would prevent the development is low due to the history of the site and that there is no need for a further detailed site investigation.

The proposal is satisfactory having regard to the matters required to be satisfied under this chapter.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

On 1 March 2022, State Environmental Planning Policy (Koala Habitat Protection) 2021 and Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2—1997) were repealed and its provisions were transferred to Chapter 4 and 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

The proposal has been assessed having regard to the following relevant chapters of this SEPP.

Chapter 4 Koala habitat protection 2021

The development will not involve the removal of significant vegetation, and the proposal would not have any adverse impacts on potential koala or core koala habitat. Council is not prevented from granting consent to the proposal under this plan

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Chapter 9 Hawkesbury-Nepean River

This chapter aims "to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context".

The proposal is acceptable having regard to the aims and objectives of this chapter. The development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context, and the development is consistent with the general and specific aims, planning considerations, planning policies and recommended strategies which are to protect the quality of the waterway.

There will be no detrimental impacts upon the Hawkesbury-Nepean River System as a result of the proposed development, as the development will be subject to the implementation of suitable sediment and erosion controls and onsite sewerage management measures which will be designed to avoid adverse impacts on natural watercourses and the Hawkesbury-Nepean River system.

State Environmental Planning Policy (Industry and Employment) 2021

On 1 March 2022, State Environmental Planning Policy No. 64 Signage was repealed and its provisions were transferred to Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021.

Chapter 3 Advertising and signage applies to the proposal and the requirements of this policy have been assessed.

This chapter aims to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations, and is of high quality design and finish.

Clause 3.6 identifies that the consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied that the signage is consistent with the objectives of this Chapter, and that the application satisfies the assessment criteria specified under Schedule 5.

The proposed signage has been modified as part of the assessment of the proposal in order to respond to the Schedule 5 provisions. Signage will be non-illuminated and occupy a 1.2m x 2m wide signage panel attached to the main entrance. This is considered to be building identification signage and is acceptable having regard to this plan.

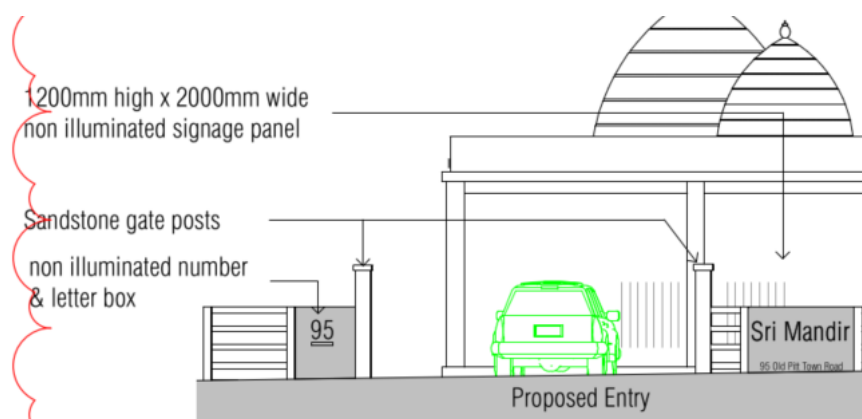


Figure 5: Signage

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Hawkesbury Local Environmental Plan (LEP) 2012

The proposal has been assessed having regard to the requirements of LEP 2012. As assessment of the proposed development against the relevant provisions of the Plan follows:

Clause 2.2 Zoning of land to which Plan applies

The subject site is located within the zone RU4 Primary Production Small Lots zone.

Clause 2.3 Zone objectives and Land Use Table

The development is permitted with consent being best defined as place of public worship. Place of public worship means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

The objectives of the RU4 Primary Production Small Lots zone are as follows:

- To enable sustainable primary industry and other compatible land uses.
- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.

The proposal is considered acceptable having regard to the objectives of the zone as it has been designed to minimise impacts on surrounding development and ensure it does not have any significant adverse effect on water catchments.

Clause 4.3 Height of Buildings

The building height map specifies a 10m maximum building height and the proposal complies with this requirement. It is noted that the proposal has been designed to utilise an existing rural outbuilding in order to maintain the height of existing structures which would typically be found in the locality.

Clause 5.10 Heritage Conservation

The subject site is within close proximity to local and state listed heritage items which can be seen in Figure 6 below:

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- 1301: Cemetery (Pitt Town Cemetery) – 524 Old Stock Route Road, Pitt Town
- 1302: Cemetery (St James Anglican Cemetery) – 60 Old Pitt Town Road, Pitt Town
- State heritage listed Scheyville National Park (blue shaded site).

During the assessment of the proposal concerns were raised in relation to the impact of proposed front fencing on the nearby St James Anglican Cemetery and the historic setting/aesthetic significance of the nearby State listed Scheyville National Park.

Clause 6.1 Acid Sulfate Soils

The land affected by the development falls within Class 5 as identified on the Acid Sulfate Soils Planning Map. As the works proposed are unlikely to lower the water table no further investigations in respect to acid sulfate soils are required under subclause (6). The proposal is consistent with the requirements of this clause.

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Clause 5.21 Flood Planning

The land is located above the 1 in 100 ARI (average recurrent interval) flood event of 17.3m above the Australian Height Datum (AHD) and therefore no concerns regarding flooding under this clause.

Clause 6.4 Terrestrial Biodiversity

The subject site is mapped as consisting of endangered ecological communities, conservation significance and connectivity between remnant vegetation. The proposed development is located on a portion of the site that has been cleared as part of the rural residential development of the land.

The application does not propose the removal of vegetation in the endangered ecological areas mapped on the land and the development has been designed to maintain existing native vegetated areas on site. It is considered that the proposal is acceptable having regard to the requirements of this clause.

Clause 6.7 Essential Services

The application demonstrates that the development will be provided with suitable area for water, onsite effluent disposal and road access. The proposal will not require any significant extension or modifications to existing services. The required utility clearances will need to be obtained prior to works commencing on the site.

ii. Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:

No Draft Environmental Planning Instruments apply to the proposed development.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan 2002

The proposal is considered to be acceptable having regard to the relevant requirements of the DCP 2002. An assessment of the proposal against the relevant provisions of this plan follows:

Part A Chapter 3 – Notification

The application was notified between 6/12/2021 - 17/01/2022 in accordance with Chapter Three of the DCP and the Hawkesbury Community Participation Plan. Council received 90 submissions raising objection, and 1 in support for the proposal. The issues raised in the submissions have been reviewed and considered under the public consultation section of this report below.

Part C Chapter 1 – Landscaping

A landscaping plan has been submitted for the entire site proposing to soften the appearance of the existing building when viewed from adjacent properties. As part of the assessment of the proposal, the applicant was required to address concerns in relation to acoustic fencing proposed on site boundaries and its interference with the landscape design.

The applicant relocated acoustic fences so that they would be setback a minimum of 2.65m from the closest site boundary to the west so that suitable room can be provided for planting of trees and vegetation. Landscaping is considered acceptable and an

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updated landscape plan is recommended to be provided prior to the issue of a construction certificate. Suitable conditions have been recommended in this regard.

Part C Chapter 2 – Car parking and Access

The DCP specifies 1 space per 5 seats for places of public worship. The application proposes a maximum of 76 people on the site on weekends and during special events.

Originally the carpark was designed to support 36 parking spaces which is more than double the 15.2 minimum spaces required under the DCP. The applicant has amended the proposed carpark to provide parking for up to 20 vehicles. This has reduced the footprint of parking areas on the site, reduced hardstand areas and increased setbacks with adjacent site boundaries.

Part C Chapter 3 – Signs

The originally proposed entrance gate and signage is considered to be out of character with the bushland setting of the surrounding locality and has been deleted from the proposal.

The application proposes a small scaled non-illuminated identification sign to be incorporated to the proposed entrance gate. Whilst it is larger than 0.72m² specified for rural areas it is considered acceptable as signage is not for advertisements, is not freestanding and will be incorporated into the proposed entrance gate.

Part C Chapter 7– Effluent disposal

The applicant has demonstrated that the site has sufficient capacity to cater for both the existing dwelling and proposed facility based on the expected wastewater generation.

Part D Chapter 1 – Residential Chapter

The proposed caretakers residence will have sufficient area to comply with the requirements of this chapter having regard to private open space, landscaping and parking.

- iv. **Planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:**

Not applicable.

- vi. **Matters prescribed by the Regulations:**

The Regulations require Council to publicly notify the application in accordance with the requirements of Council's DCP. This has been undertaken, and all public submissions have been carefully considered in the assessment of the application.

The Regulations also require that the development is to Comply with the National Construction Code. Suitable conditions have been recommended in this regard.

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

The following impacts have been identified and considered as part of the assessment of the proposal.

Traffic generation

The traffic modelling is considered to be acceptable given the number of vehicles expected to be on site during peak hours. The proposal will unlikely have any adverse impacts on traffic flows or the safety of existing intersections based on the total number of people expected to be onsite during peak periods.

Noise and vibration impacts

The proposed hours of operation do not extend into evening hours being 10pm to 7am and the acoustic assessment report submitted with the application specifies acoustic measures to mitigate acoustic impacts including:

- The construction of acoustic fencing surrounding the building and car park,
- All external windows and entry doors facing the north must have a minimum acoustic performance of Rw 26.
- The windows and entry doors elements facing the northern receivers remain closed during operation between the hours of 7pm and 9pm,
- Appropriate selection of any future outdoor mechanical and plant equipment
- The car park be limited to 10km/hr to keep noise emissions low, and
- That signage must be displayed clearly to ensure patrons in the carpark are aware of potential noise generation activity and to remain as quiet as possible during the evening-time hour.

It is recommended that the development be conditioned to comply with the recommendations of the acoustic report and standard noise conditions in order to ensure that the proposal does not have any adverse impacts in terms of noise.

Context and Setting

The proposal is considered to be acceptable in terms of its visual bulk and design, and with proposed colours, finishes and landscaping. The proposal will not have any adverse impacts on the appearance of the locality.

The design of the development will provide suitable area for parking and amenities without having a significant impact on the overall context of the locality.

It is noted that places of public worship traditionally have distinctive architectural elements, even within an historic rural/bushland setting. The proposed dome structures are not considered to be excessive in height having regard to the setback and scale of surrounding rural dwellings and shed structures.

To minimise the visual impact of the proposal the applicant has chosen colours and materials that would blend in with the locality using a combination of muted greys and light browns.

Public Domain

The proposal is not expected to adversely impact the public domain. It is recommended that the existing driveway be made redundant and access be incorporated into the newly proposed driveway in order to reduce the number of driveways on the site.

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Furthermore the road seal will need to be widened either side of the new access in order to ensure the road surface is protected and provides suitable width to allow vehicles to safely enter and exit the site.

Waste

Commercial waste removal services will be required to be arranged to support the proposal.

Natural Hazards

The application is accompanied by a bushfire assessment report which considers the aims and objectives of bushfire controls contained in the NSW Rural Fire Service document *Planning for Bushfire Protection 2019*. Evacuation, landscaping, services, water storage, vehicular access and construction requirements have been specified in the report and appropriate conditions have been included in this report.

Technological Hazards

There are no technological hazards with potential to impact on the subject development site.

Safety, Security and Crime Prevention

The development will be fully fenced, occupied by caretakers and considered to be secured for the proposed use.

Economic Impact in the Locality

The facility will add to the social infrastructure in the area, providing a place for worship and employment. It will therefore have a positive social and economic impact.

Construction

The application was reviewed by Council's internal building surveyor and development engineer who have raised no issues subject to recommended conditions to ensure BCA compliance and environmental controls.

Cumulative Impacts

There are no cumulative impacts associated with the proposed development.

Compliance with the Disability Discrimination Act

DDA compliance is necessary and conditions recommended. The parking spaces have been designed to be accessible to the building and toilets within the building.

c) Suitability of the site for the development

The location and setting of the proposed development is suitable with regard to the relevant environmental planning policies and potential environmental impacts which have been discussed previously in this report. There are no environmental or physical constraints that would prevent the proposed use from occurring on the land.

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

Public Submissions

A total of 90 submissions were received following the notification of the proposal raising objections to the proposed development and one in support. The issues within the objections are summarised and considered below.

Issues	Comment
Consistency with planning requirements	
Compliance with the objectives of the zone and permissibility of the development.	The proposal has been assessed against the planning controls applicable to the development including Hawkesbury Local Environmental Plan 2012. The proposal is a permitted land use and considered to be acceptable having regard to the objectives of the zone.
Character and scale	
Adverse impact on the rural setting and out of character with surrounding development and nature of the broader locality of Pitt Town.	It is considered that the proposal will not have any adverse impacts on the surrounding locality and that the proposal has been designed to minimise impacts in terms of visual appearance and character.
Impact on heritage character of the locality.	Heritage impacts have been considered as part of the assessment and the applicant has amended entrance treatment and specified colours in order to ensure that the proposal will fit in with the rural/bushland setting.
Visual impacts and inconsistency with setting.	The proposal will utilise an existing building and be screened with additional vegetation planting and timber acoustic fencing. All parking areas and active areas have also been orientated to the centre of the site away from the closest neighbouring dwellings.
Scale of the development based on proposed numbers.	The applicant has reduced the capacity of the car park and amenities building in order to be more reflective with the expected maximum number of worshipers onsite.
Impacts of signage and architectural features on the locality.	Signage has been amended and considered acceptable based on the assessment in the report above.
Traffic	
Suitability of Old Pitt Town Road and surrounding rural roads from increased traffic, particularly in relation to condition of the road, road safety and passing of vehicles.	Existing rural roads are unlikely to be significantly impacted as a result of the expected traffic numbers which has been discussed in the report above. Conditions are recommended in relation to the driveway construction in order to protect the existing road surface.
Traffic impact on the Pitt Town flood evacuation route.	<p>The development is unlikely to adversely impact the evacuation of the locality. Emergency evacuation procedures are proposed for the site and it is expected that local matters such as flooding will have advanced warning for the centre to avoid people being isolated in a flood event or interfering with the evacuation of the locality.</p> <p>Council has received correspondence from the NSW Department of Planning and Environment & Infrastructure confirming that a development is unlikely to exceed the capacity of existing evacuation routes for the surrounding area where the development proposes less than 150 dwellings, or 200 employee vehicles for a commercial development.</p>

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Issues	Comment
Increased traffic noise.	It is not expected that the increased traffic will significantly impact the noise generated along the existing road with is one of the main thoroughfares accessing Pitt Town.
Impact additional traffic would have on native animals living within the Scheyville National Park.	This is not an impact that could be quantified or mitigated as part of the assessment of the proposal. The application proposes to utilise existing public roads which are in close proximity to bushland areas.
Localised flooding of Pitt Town Road and evacuation impacts of the site.	Flood evacuation warnings and routes are in place and evacuation will be coordinated by the SES or Council as part of localised flooding in the area.
Suitability of the time when traffic studies were carried out.	Modelling provided has been reviewed and considered acceptable given the number of people and vehicles proposed to access the site.
Essential services	
Insufficient street lighting.	The proposal does not necessitate the need to upgrade lighting in a rural area. It is noted that the hours of operation are primarily during daylight hours.
Lack of public transport and pathways.	The proposed development has been designed to provide sufficient room for parking. It is not expected that worshipers will rely on the need for public transport and footpaths to access the site.
Suitability of services in relation to, Wastewater runoff, Potable water and Stormwater runoff.	<p>The application proposes onsite stormwater detention to be designed for the proposed car park.</p> <p>The applicant has also provided hydrological calculations which demonstrate that suitable water storage capacity will be provided based on the number of toilets and number of worshipers.</p>
Level of detail submitted	
Waste Management and frequency of waste service and impacts in terms of traffic, noise and impact on road condition.	Waste generation is not considered to be significant for the development. Conditions in relation to collection and , noise and traffic are recommended.
Lack of clarity in relation to festivals, events, functions and hours of operation.	The plan of management submitted with the application clearly identifies hours, number of people expected onsite and special events. It is recommended that the development be conditioned to comply with the proposed operational management plan.
Potential impacts associated with weddings and functions not considered or proposed in the application.	All activities are proposed to be carried out within the buildings and in accordance with the acoustic measures specified in the application and on the plans.
Preparation and servicing of food on the site.	No food preparation areas are proposed or shown on the floor plans.
Potential increase in development into the future and further impact on the locality.	Council can only assess what is proposed. Any increase in the size of the facility other than what is proposed will be required to obtain separate approval and notified accordingly.
Intent for the future use of the site will further impact the locality.	Intent for future expansion is not a matter of consideration as part of the assessment of the current proposal. The current application proposes a permissible land use having regard to the matters for consideration under the Environmental Planning and Assessment Act 1979.

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Significant reduction in patron numbers from previous applications lodged for the site.	The previous application and designs for a new temple on the site as part of DA0513/19 lodged for the site were not approved. It is noted that the previous development proposed for the site was not supported as it was substantially larger and would have resulted in significantly greater impacts on the locality in terms of servicing, noise, built form, traffic, parking, etc.
Amenity impacts	
Consistent impact on surrounding properties with hours of operation proposed at 365 days a year.	Standard development construction conditions are recommended to control matters such as noise, impact of adjacent development. It is noted that the peak times and off peak times will not be at capacity. With the main days of worship being on weekends consistent with what would be expected with places of public worship.
Hours of operation and constant traffic and noise impact on the locality.	Acoustic impacts are considered in the acoustic report submitted with the application. Management measures to control noise have been included in the plan of management accompanying the application and seek to minimise noise impacts in accordance with the recommendations of the acoustic assessment report. Suitable acoustic measures have been shown on the plans including acoustic fencing. Standard acoustic conditions are recommended to ensure the proposal does not result in offensive noise impacts on adjacent development.
Acoustic impacts from music and loudspeakers.	No loudspeakers or music is proposed outside of the proposed buildings.
No reference to amplified music, insulation and soundproofing of the existing structures.	Acoustic measures in terms of upgrades to walls and fencing are specified as part of the application based on the acoustic report submitted with the application.
Other	
Servicing other people from outside of the LGA.	This is not a matter for consideration as part of the assessment of the impacts of a development.
Location where worshipers will come from.	This is not a matter for consideration as part of the assessment of the impacts of a development.
Misleading information about future intention for the site.	Council can only assess documents submitted with the application and expect the operator to adhere to any conditions imposed on the development.
Proposed use operating consistent with how the existing SriMandir temple at Auburn is being used.	This is a separate site subject to separate approvals and operating conditions and cannot be used as justification to refuse the proposal.
Impact on surrounding property values.	Property values are not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.
Compliance and control of number of people on the site at one time.	Conditions proposed to be imposed in relation to the operation of the facility are enforceable.
Potential impacts on crime with new visitors to the locality.	The site is considered acceptable from a safety and security perspective. New visitors to the locality for the purposes of worship are not expected to impact crime.
Inconsistencies in reports and plans in relation to tree removal, numbers, hours and proposed acoustic measures and landscaping.	The applicant has confirmed that errors are typographical and do not change the conclusions provided in the supporting documentation.

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Issues	Comment
	It is noted that the acoustic fencing details has now been addressed with the submission of amended plans.
Accuracy of data provided in relation to the demographics.	The determination/assessment of the application does not rely on the need to provide detailed demographic information. The applicant has provided this information in order to identify trends in religious worship in the boarder community.

NSW Rural Fire Service

The application was originally identified as integrated development. The application was referred to NSW Rural Fire service who confirmed that the proposal is not for a special fire protection purpose.

e) The Public Interest:

The proposed facility will provide for a permitted land use which has been designed to minimise the impacts associated with the proposed land use.

The matters raised in public submissions have been assessed in detail but are not considered to be sufficient to justify refusal of the application.

Development Contributions

Councils Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015) applies to the proposal. Places of public worship exempted from contributions under this Plan.

Conclusion

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

Accordingly, it is recommended that the proposal be supported subject to conditions recommended in this report.

Local Planning Panel Recommended Conditions of Approval

General Conditions

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the approved plans and supporting documentation listed below, except where amended in red on the plans and/or amended by other conditions of this consent:

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a) Plans Reference:

Drawing Name	Prepared by	Drawing Number	Date
Sediment and Erosion Control Plan	Jakaan Architects	DA006 Issue D	June 2022
Proposed Site Plan	Jakaan Architects	DA015 Issue D	June 2022
Proposed Acoustic Fence Plan	Jakaan Architects	DA015a Issue D	June 2022
Proposed Caretakers House	Jakaan Architects	DA016 Issue D	June 2022
Proposed Floor Plan	Jakaan Architects	DA017 Issue D	June 2022
Proposed Roof Plan	Jakaan Architects	DA018 Issue D	June 2022
Proposed Caretakers Elevations	Jakaan Architects	DA019 Issue D	June 2022
Proposed Mandir Elevations	Jakaan Architects	DA020 Issue D	June 2022
Site Sections and Gate Elevations	Jakaan Architects	DA021 Issue D	June 2022
Colours and Materials Proposed Mandir	Jakaan Architects	DA034 Issue D	June 2022
Colours and Materials Proposed Existing Dwelling	Jakaan Architects	DA034a Issue D	June 2022
Street Elevation	Jakaan Architects	DA036 Issue D	June 2022

b) Document Reference:

Document Name	Reference	Prepared by	Date
Plan of Management	95 Old Pitt Town Road	Stimson urban and regional planning	Undated
Bushfire Assessment Report	211257	Building Code and Bushfire Hazard Solutions Pty Ltd	31 May 2021
Preliminary Site Investigation	5637-E1	Assetgeo	7 August 2019
Engineering plans Stormwater Management Plan OSD tank Sections Sediment and erosion control plans	C3.001 C7.001 C7.201 C7.401 C8.001 and C8.101	Acor consultants Pty Ltd	10 June 2022
Carpark Certification Of A Proposed Place Of Worship	A201726N Version 1c	ML Traffic Engineers	June 2022
Traffic Impact Assessment	A201726N Version 1a	ML Traffic Engineers	May 2021
Acoustic Report	11614	PKA Acoustic consulting	13 July 2021
Access Report	95 Old Pitt Town Road	Accessible Public Domain	19 July 2021
Soil And Site Assessment For Onsite Wastewater Disposal	4812WW	Harris Environmental Consulting	8/10/2021

No works, other than those approved (including raising or lowering of ground levels on the site, or construction of retaining walls on any property boundary) are permitted by this consent.

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Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and
- (iii) any conditions contained in this consent.

2. Design Amendments Required

The existing driveway and vehicular crossover must be made redundant and demolished. Access to the dwelling is required to be incorporated into the new driveway.

Details are to be submitted to the Accredited Certifier prior to the issue of a Construction Certificate demonstrating compliance with this condition.

3. Works Must Not Commence Until a Construction Certificate is Issued

Construction or preparatory work (including earthworks or tree and/or vegetation removal) must not commence until:

- a) a Construction Certificate is obtained from either Council or an Accredited Certifier;
- b) a Principal Certifier 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. Appointment of a Principal Certifier

No work shall commence until:

- a) A Principal Certifier is appointed for the building/engineering works and the following details relating to the carrying out of the works have been provided:
 - (i) name and licence number of the builder/contractor undertaking the construction works; or
 - (ii) name and permit number of the owner-builder (if relevant);
- b) The Principal Certifier has:
 - (i) provided a copy of the notice of its determination to the consent authority, and to Council (within two days after the date of the determination);
 - (ii) notified the person having benefit of the consent of any critical stage inspections and other inspections that it requires to be carried out in relation to the approved work;
 - (iii) notified Council of its appointment (not less than two days before commencement of building work);

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- c) The person having benefit of the consent (if not carrying out work as an owner-builder) has:
 - (i) appointed a principal contractor who must hold a 'contractor licence' if any residential building work is involved;
 - (ii) notified the Principal Certifier of the appointment of the principal contractor;
 - (iii) notified the principal contractor of any critical stage inspections or any other inspections that are required to be carried out in relation to the approved work; and
- d) At least two days' notice are to be provided to Council of the date on which it is proposed to commence work associated with this development consent.

5. Part 6 Certificates Required

The accredited certifier must provide copies of all Part 6 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.

6. 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).

7. Civil Works Specification Compliance

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

8. Roads Act 1993 Approval

A separate *Roads Act 1993* (Section 138) approval is required from a Roads Authority for the proposed new driveway before any work is carried out within Public Roads.

As part of the development it is required that:

- a) the existing driveway be made redundant,
- b) the driveway crossing must not impact the quality and health of the street trees, not interfere with existing public infrastructure, have a sealed finish and be constructed in accordance with Hawkesbury Council's 'Driveway Specification' and Hawkesbury Development Control Plan 2002 - Appendix E - Civil Works Specification.
- c) the road shoulder adjacent to the proposed access driveway be widened by 1.0m and sealed to a length of approximately 20m on either side of the driveway in order to prevent road pavement edge break and to facilitate entry and exit to the proposed development for increased traffic during peak periods.

The above details must be shown on the plans prior to the issue of the Construction Certificate.

9. Works on Public Land - Not Permitted Without Approval

No work can be undertaken within adjoining public lands (i.e. Parks, Reserves, Roads 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 Control 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.

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

The building must not be occupied or used prior to the issuing of an Occupation Certificate by the Principal Certifier. Where a partial Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

A copy of any Occupation Certificate must be submitted to Council within two days of its issue.

11. Archaeology - Discovered During Excavation

As required by the *Heritage Act 1977*, in the event that items, relics, historical cultural fabric and/or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the NSW Government's Heritage Council must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the *Heritage Act 1977* to obtain the necessary approvals/permits from the Heritage Council.

Note: The *Heritage Act 1977* imposes substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

12. Excavation - Aboriginal Relics

If any Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) all excavation or disturbance of the area must stop immediately in that area; and
- b) Heritage NSW must be advised of the discovery.

All necessary approvals from the Heritage NSW must be obtained and a copy provided to Council prior to works recommencing.

Note: If an Aboriginal object is discovered, an Aboriginal Heritage Impact Permit may be required under the *National Parks and Wildlife Act 1974*.

13. Vegetation Removal

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

No vegetative material is to be disposed of by burning on-site.

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Separate approval is required for the removal of any vegetation in the road reserve. Native vegetation in the road reserve is required to be protected during construction under the supervision of an appropriately qualified arborist (AQF Level 5).

Prior to the Issue of a Construction Certificate

14. Structural Certification for Existing Building - Alterations and Additions

A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction must be submitted to the Accredited Certifier for approval prior to issue of any Construction Certificate.

The report of structural adequacy must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the report must be complied with at all times.

15. Long Service Levy Payment

The payment of a long service levy as required under Part 5 of the *Building and Construction Industry Long Service Payments Act 1986* is required. Evidence that the levy has been paid, is to be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

Note: All building and construction work costing \$25,000 and above are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Payments Corporation offices or most councils.

16. Engineer Designed Pavement Commercial

The carpark pavement must be designed by a qualified civil/geotechnical engineer and certified to be satisfactory for the expected traffic loadings. AUSTROADS Guide to Pavement Technology can be used as the design guideline for the pavement design.

The above details must be incorporated on appropriate submitted plans prior to the issue of the Construction Certificate to the satisfaction of the Certifier

17. Car Parking and Allocation of Spaces

Car parking spaces shall be provided in accordance with the approved plans, National Construction Code (Building Code of Australia) & AS 2890.6 - 'Parking facilities: Off-street parking for people with disabilities'. The minimum number of spaces provided shall be as follows:

- 18 - Staff/Visitor
- 2 - Accessible Car Spaces

All car parking spaces are to be identified by line-marking and appropriate signposting.

Details demonstrating compliance with the above requirements must be submitted to the Certifier prior to issue of the Construction Certificate.

18. Public Safety - Clear Pedestrian Sight Lines

Clear pedestrian sight lines are to be provided at the driveway entry in accordance with Figure 3.3 of Australian Standard AS 2890.1 - 'Parking facilities - Off-street car parking'. Any walls/fences/landscaping are to be adjusted in order to comply with this requirement.

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

19. Redundant Vehicular Layback

All redundant vehicular layback crossing servicing the existing dwelling must be removed and match adjacent road construction and infrastructure. This work must be carried out at the developer's expense, including all alterations of public infrastructure where necessary.

Details demonstrating compliance with these requirements are to be submitted to the Certifier prior to the issue of the Construction Certificate

20. Access for Persons with a Disability

Details demonstrating compliance with Australian Standard AS 1428.1 - 'Design for Access and Mobility and Disability (Access to Premises - Buildings) Standards 2010' in relation to the development are to be submitted to the Accredited Certifier prior to issue of a Construction Certificate.

21. Compliance with the Building Code of Australia - Fire Services and Equipment

Detailed plans showing the existing and proposed fire services and equipment suitable for the intended class of building and proposed use, is to be supplied.

The design and installation of these services and equipment are to be compliant with the Building Code of Australia and relevant Australian Standards.

Details are to be provided to the Accredited Certifier prior to issue of the Construction Certificate.

22. Structural Engineers Design - Concrete and Structural Steel

A qualified Structural Engineer's design for all reinforced concrete and structural steel must be provided to the Accredited Certifier prior to issue of Construction Certificate.

23. Overland Flow

The development shall not create adverse impacts to neighbouring properties in relation to overland flow 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; and
- c) water flow shall follow the natural flow directions without increasing velocity.

Details demonstrating compliance with the above must be provided to the Certifier prior to the issue of a Construction Certificate.

24. On Site Stormwater Detention Design Compliance

On-Site Detention (OSD) for stormwater is required to be provided for the car park. Details including calculations are to be shown on plans submitted for the Construction Certificate to the Satisfaction of the Certifier. OSD must comply with the following:

- a) OSD shall be provided to maintain all stormwater discharges for storms up to the 1 in 100 Average Recurrence Interval storm event at pre-development levels; and

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- b) the OSD system is to be designed in accordance with the Hawkesbury Development Control Plan - Appendix E, Civil Works Specification (Part 1 - Design Specifications and Part 2 - Construction Specifications).

Details demonstrating compliance with the above requirements must be submitted to the Certifier prior to issue of the Construction Certificate.

25. Council Sewer Authority - Inspection Fees

Council is the sewer authority for this development. As this development involves connection to the existing sewer system or works in connection to an on-site waste management facility payment of the prescribed inspection fee is required.

Evidence of this payment must be provided to the Accredited Certifier prior to the issue of the Construction Certificate.

26. On-site Sewage Management - Approval Required

Prior to the issue of the Construction Certificate, approval must be obtained for the installation of an on-site sewage management system. The application must be submitted to Council together with the design details, site assessment report and payment of the prescribed fee.

Following installation and prior to use of the approved on-site sewage management system an Application to Operate the system must be obtained from Council.

27. Bushfire Construction Requirements

The development approved under this consent must comply with the recommendations of the bushfire assessment report submitted with the application prepared by Building Code and Bushfire Hazard Solutions Pty Ltd dated 31 May 2021. Matters in relation to services, water, access, construction and asset protection zones must be specified on the plans.

Details demonstrating compliance with the above must be provided to the Certifying Authority prior to the issue of a Construction Certificate.

28. Building upgrading required

The existing building to be used as a Place of Worship shall be upgraded to comply with the provisions of Parts C, D and E of Volume 1 of the Building Code of Australia (BCA) in force at the date of lodgement of the Construction Certificate.

All required upgrading work shall be incorporated into the construction certificate documentation for approval and the building upgraded accordingly.

Alternatively, a Performance Solution report may address the relevant performance provisions of Sections C, D and E of the BCA to the satisfaction of the Certifying Authority.

29. Landscape Plan

A detailed landscape plan, prepared by a qualified landscape consultant, must be provided consistent with the plans approved as part of this consent. The landscape plan must demonstrate that acoustic fencing and car park do not interfere with the proposed landscaped areas and landscaping complies with the provisions of Appendix 4 of Planning for Bushfire Protection – 2019.

Details in accordance with the above must be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate.

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30. Noise Generating Premises - Acoustic Certification

The recommendations contained in the Acoustic Impact Assessment report prepared by PKA acoustic consulting submitted with the application must be incorporated into the design and construction of the development. Including:

- a) Acoustic fences identified on the approved site plan must have a minimum acoustic performance of R_w of 25 and consist of a timber fence with double lapped boards of standard 15 mm thickness, allowing a continuous thickness of 30mm.
- b) External windows and entry doors facing the north must have a minimum acoustic performance of R_w 26.
- c) Outdoor mechanical and plant equipment must be checked so that the rated sound power/pressure levels will comply at the boundary of the sensitive residences (existing and proposed) with the criteria listed in Table 5-1 and Table 5-2.

A suitably qualified acoustic consultant shall be engaged to assist with the preparation of the final building plans and specifications to ensure compliance with any acoustic conditions. Details demonstrating compliance with this requirement must be submitted to the certifier prior to issue of the Construction Certificate.

Prior to the Commencement of Works

31. Principal Certifying Authority - Details

The applicant must advise Council of the name, address and contact number of the Principal Certifier, in accordance with Section 6.6(2) of the *Environmental Planning and Assessment Act 1979*.

32. 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.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer;
- b) be attached to an approved on-site effluent disposal system;
- c) be a temporary chemical closet that is regularly maintained; and
- d) appropriate facilities for the disposal of sanitary items are to be provided within the toilet.

33. Survey Certificate - Building to be Verified by a Registered Surveyor

In order to ensure compliance with approved plans, a Survey Certificate, prepared by a Registered Surveyor, including locating any easements affecting the subject land, is to be undertaken. A set-out survey must be provided prior to any excavation, placement of footing and pouring of concrete showing its relationship of works to property boundaries.

Progress surveys must be submitted to the Principal Certifier at the time of carrying out relevant progress inspections. Under no circumstances is work allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the works as constructed.

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34. 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 Certifier (PCA) providing name, address and telephone number; and
- b) details of the name, address and licence details of the Builder.

35. Principal Certifier 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 Certifier 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.

36. Safety Fencing

The site is to be secured by a fence, in accordance with Safework NSW requirements, to prevent unauthorised access during the period of all works.

Entry and exit points shall be secured at all times to prevent the unauthorised entry of vehicles, and to ensure that the site manager can control and prevent dumping of waste and potentially contaminated material whilst fill material is being imported or managed on site.

37. Erosion and Sediment Control for Minor Development

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Hawkesbury Council's publication *Guidelines for Erosion and Sediment control on a building site (2017)*.

During Construction

38. Critical Stage Inspections

Prior to the commencement of building work and at nominated stages during the construction of the building, a minimum of 48 hours' notice is required to be provided to allow the Principal Certifier to ensure that the critical stage inspections are undertaken.

Note: Critical stage inspections are required to be carried out in accordance with Clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

39. Inspection and Compliance Certificates - Sewer Works

Inspection and Compliance Certificates for sewer works can only be conducted and issued by Council.

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In the case of:

- a) internal and external (house service connection) drainage, the inspection must be conducted by Council's Waste Management Branch;
- b) sewer work constructed under a Major/Minor Sewer Works application, the inspection must be conducted by Council's Waste Management Branch. A compliance certificate will not be issued until a Works as Executed information has been received, assessed and approved by the Waste Management Branch; and
- c) major sewer works where the contractor is allowed to use third party quality control, the third party must be approved by the branch manager of Council's Waste Management Branch.

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

Note: To arrange inspections and pay required fees please telephone Customer Service on (02) 4560 4444.

40. Stormwater Drainage Management

Roof water (including overflow from water storage vessels) must be drained to the water storage vessel/s with any overflow being dispersed over the site via a level spreader/absorption trench or similar. The trench must be located a minimum of six metres from any structure or boundary and must be of adequate size and be fitted centrally with vertical overflow pipes and be located so as not to interfere with any other property or sewer drainage system.

41. Construction Hours

Clearing of land, running of machinery, excavation, and/or earthworks, building 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;
- 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.

42. 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.

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- c) Copies of receipts stating the following must be given to the Principal Certifier :
 - (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.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council shall be obtained prior to any closing of the road reserve or footpath area. The closure shall take place in accordance with Council's written approval. The area shall be signposted and such signposting be maintained in a way that ensures public safety at all times.

43. Loading and Unloading During Construction

The following requirements apply.

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.

44. Erosion and Sediment Control Plan – Implementation

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved Erosion and Sediment Control Plan.

45. Overland Stormwater Flow Management

The works associated with the development shall ensure that:

- a) all natural water flow from adjoining properties is not impeded or diverted; and
- b) surface and subsurface water flows are not redirected or concentrated onto adjoining properties.

46. Earthworks - General Requirements

All earthworks on site must comply with the following:

- a) no fill material must be imported to the site;
- b) topsoil shall be stripped only from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping;
- c) once the topsoil has been removed the natural batter should be suitably stepped, scarified or roughened to prevent slipping and the fill is to be keyed in to hold the toe of the fill batter in place;
- d) where batters exceed a ratio of three horizontal to one vertical, retaining walls, stoneflagging 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 98% when tested in accordance with Australian Standard AS 1289 - 'Methods of testing soils for engineering purposes unless otherwise specified'; and
- f) all disturbed areas are to be stabilised/revegetated, using a minimum 300mm surface layer of topsoil, as soon as practicable after the completion of filling works.

47. Earthworks - Removal, Management and Transportation of Fill

All excavated fill material that is to be removed from the site shall only be sent to:

- a) a NSW Office of Environment and Heritage licensed waste disposal facility. A copy of the receipts from the waste disposal facility shall be kept and shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, whichever occurs first, or authorised officer of Council upon request; or
- b) a site which has a current development consent for the importation of fill material. A copy of the current development consent for the site to which the material is proposed to be distributed must be provided to the Principal Certifier prior to the issue of an Occupation Certificate, whichever occurs first, or authorised officer upon request.

All removed excavated material shall be transported and disposed of in accordance with the NSW Office of Environment and Heritage guidelines applicable at the time of removal.

48. Dust Management Measures

All reasonable measures to minimise dust generated during construction are to be implemented. This includes but is not limited to:

- a) clearly defined stop work thresholds whereby work on site will be ceased with the exception of water trucks; thresholds must be provided that relate to velocity and direction of wind and relative humidity;
- b) dust screen installation and maintenance around the perimeter of the site for the duration of works;
- c) the use of water trucks to regularly wet down areas;

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- d) stabilisation of stockpiles;
- e) definition of the maximum allowable height of stockpiles; and
- f) dust Management Measures are to be incorporated into the Construction Management Plan.

Prior to Issue of Occupation Certificate

49. Design - Onsite stormwater detention system

The submission of a report by the Design Engineer stating the conformance or otherwise of the onsite stormwater detention (OSD) system of in relation to the approved design shall be provided prior to the issue of the Occupation Certificate.

50. Plan of Management

A Plan of Management for the on-site stormwater detention facilities shall be submitted to and approved by Council. The Plan of Management shall set out all design and operational parameters for the detention facilities including design levels, hydrology and hydraulics, inspection and maintenance requirements and time intervals for such inspection and maintenance.

51. Works as Executed Drawings Required

Works-As-Executed drawings are to be submitted to Council detailing the following information:

- a) invert levels of tanks, pits and pipes;
- b) surface levels of pits and surrounding ground levels;
- c) levels of surrounding kerb;
- d) levels of buildings & car parking areas;
- e) top of kerb levels at the front of the lot;
- f) Onsite stormwater drainage compliance with approved plans

52. Plan of Management

The plan of management for the place of public worship listed in Condition 1 must be updated to include the following:

- (a) the Bushfire Emergency Management Plan prepared be included as part of the plan of management,
- (b) that contact phone numbers and details be provided for any complaints in relation to the operation of the facility,
- (c) that no amplified noise, music, equipment or instruments are to be used externally of the buildings,
- (d) that the car park be limited to 10km/hr to keep noise emissions low,
- (e) that signage be displayed clearly to ensure patrons in the carpark are aware of potential noise generation activity and to remain as quiet as possible during the evening-time hours, and
- (f) between the hours of 7pm and 9pm, the windows and entry doors elements facing the northern receivers remain closed during operation. To allow for patron entry and exit, an automatic close system may be implemented without compromising the acoustic performance.

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The approved plan of management updated in accordance with this condition is to be submitted to the Principal Certifier and Council prior to the issue of an Occupation Certificate. The development is to be carried out in accordance with the Plan of Management updated pursuant to this condition.

53. Survey Certificate at Completion

A Survey Certificate, prepared by a Registered Surveyor is to certify the location of the buildings in relation to the boundaries of the allotment.

The certificate is to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

54. Suitability of Glazing - Windows and Doors

Glazing materials installed in the building shall be in accordance with Australian Standards AS 1288 - 'Glass in Buildings - Selection and Installation' and AS 2047 - 'Windows and external glazed doors in buildings', e.g. windows, doors, footlights, balustrades and shower screens.

A Certificate of Compliance is required to be provided to the Principal Certifier prior to the issue of an Occupation Certificate.

Note: The certificate is required to be signed by the manufacturer and the installer.

55. On-site Sewage Management - Approval to Operate

An Approval to Operate the on-site sewage management system must be obtained prior to the issue of any Occupation Certificate.

56. Connection to On-Site Waste Management Facility

A written clearance from Council (as the local sewer authority) that the development is suitably connected to the on-site waste management facility is required to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

57. Final Fire Safety Certificate

A Final Fire Safety Certificate for all new (or altered) fire safety measures is required to be provided to Council prior to the issue of an Occupation Certificate.

58. Bushfire Protection Requirements - NSW Rural Fire Service

Prior to the issue of an Occupation Certificate for the development approved under this consent, evidence of compliance with the recommendations of the Bushfire Assessment report listed under condition 1 of this consent must be provided to the Principal Certifier.

59. Infrastructure Repair and Completion of Works

Prior to the issue of any Occupation Certificate:

- a) all works in the road reserve must be fully completed,
- b) any public infrastructure damaged as a result of the development must be repaired to the satisfaction of Council.

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60. Telecommunications Provider Certificate

Documentary evidence from a telecommunications carrier confirming that services are available for the development shall be provided to the Principal Certifier prior to issue of the Occupation Certificate.

61. Energy Provider Certificate

Documentary evidence from an Energy Provider confirming that satisfactory arrangements have been made to serve the proposed development shall be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

62. Completion of Landscaping

Suitable documentation must be provided to the Principal Certifier prior to the issue of an Occupation Certificate demonstrating that landscaping has been completed in accordance of the approved landscape plan.

63. Acoustic Certification

Prior to the issue of the Occupation Certificate, an acoustic consultant shall certify that the works have been completed in accordance with the recommendations contained in the approved acoustic report and that the development is capable of operating in accordance with the design criteria.

Operational Conditions

64. Hours of Operation - Place of Public Worship -

The place of public worship is limited to a maximum number of 76 people being onsite at any one time.

Hours of operation are to be limited to the following hours:

Days	Hours
Monday – Friday	7am to 10am and 5pm to 8pm
Saturday – Sunday	7am to 12pm and 5pm to 9pm
Special events specified in the plan of Management	9am to 11am (Limited to a maximum of 12 events per year)

Operations such as staff accessing the site, cleaning, preparing for operation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs. These hours do not apply to residents who live in the caretakers residence.

65. Plan of Management

The development must operate in accordance with the conditions specified in the approved plan of management updated in accordance with Condition 52 of this consent.

66. Waste Management - *Protection of the Environment Operations Act 1997*

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. The development shall maintain facilities sufficient for containment of all wastes arising from the use of the site.

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Waste collection for the place of public worship must be stored in a separate area to the residential waste and recycling material/storage bins. Waste collection is to be provided by a private contractor and occur between the hours of operation specified above.

67. Maintenance of Landscaping

All trees, including street trees, and plants forming part of the approved landscape design must be maintained on an ongoing basis. Maintenance includes watering, weeding, fertilizing, pest and disease control and any other activity required to maintain healthy trees, plants and turfed areas.

68. Signage

No advertising signs or structures shall be erected, displayed or affixed on the approved premises, site, footpaths, pedestrian paths, roadways or on any other land without prior approval.

69. Loading Within Site

All loading and unloading operations must be carried out wholly within the confines of the site at all times and must not obstruct other properties or adjacent roadways.

70. Noise Generating Activities - Daytime and evening hours

During the hours of 7am to 10pm, the development shall be managed so that the LAeq noise levels, measured at any point in accordance with the NSW Industrial Noise Policy, do not exceed 5dB(A) (LAeq) above background levels (LA90) with respect to noise amenity of residential properties and associated outdoor areas.

71. Noise Generating Activities - Night hours

Between the hours of 10pm to 7am, the development shall be managed so that the noise level does not create audible noise in any habitable rooms of a neighbouring residences.

72. Outdoor Lighting

All lights are to be directed away from surrounding properties to prevent any light spillage onto neighbouring properties. The building and carpark must not be illuminated outside of the approved hours of operation.

73. Trading Outside the Building

At no time may any signs, sound amplification equipment, goods for sale, display or storage of goods (including vehicles for repair) be placed on the public road, public footpath, parking area/driveways, or outside the area shown on the approved plans.

74. Use of Approved Areas

All work and the storage of goods or materials must be confined within the building or approved areas at all times.

75. Private Water Supplier

The place of public worship is to be registered with Council as a private water supplier.

76. 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 must be issued within 12 months of the issue of the Final Fire Safety Certificate, and then on an annual basis thereafter.

A copy of the Fire Safety Statement obtained and Fire Safety Schedule must 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.

Advisory Notes

(i) Approval within the Road Reserve

Registered Certifiers do not have any authority to issue Engineering Approvals or carry out inspections for works on Public Roads under the Roads Act 1993.

(ii) Approval Authority

This development falls within the Sewerage Scheme controlled by Council, therefore Council is the approval authority for all sewer works.

The applicant must consult with the Waste Management Branch regarding any possible new work or upgrades to existing Council sewer mains related to this application.

(iii) Equitable Access

The applicant must make themselves aware of the *Discrimination Against People with Disabilities Act (DDA)* and assess their responsibilities and liabilities with regards to the provision of access for all people.

(iv) Acid Sulfate Soils - Monitoring of Excavation During Works

All excavations are to be monitored to ensure that acid sulphate soils are not encountered during works. Signs that may indicate the presence of acid sulphate soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

(v) Site Contamination Discovered During Demolition or Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, Council must be immediately notified and works must cease. Works must not recommence on site until an agreed management strategy is developed in consultation with Council.

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(vi) **Dial Before You Dig**

Prior to commencement of work, you are required to contact the free national community service 'Dial Before You Dig' on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

(vii) **Requirements of 88B Instrument**

The applicant must make themselves aware of any User Restriction, Easements and Covenants to this property and must 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) **Works on Public Land - Public Liability Insurance**

Any person or contractor undertaking works on public land must take out a Public Risk Insurance policy with a minimum cover of \$10 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent.

The policy is to note, and provide protection/full indemnification for Council, as an interested party. A copy of the policy must be submitted to Council prior to commencement of any works. The policy must be valid for the entire period that the works are being undertaken.

(ix) **Utilities and Services**

Utilities, services and other infrastructure potentially affected by construction and operation must be identified prior to construction to determine requirements for access to, diversion, protection, and/or support.

Consultation with the relevant owner and/or provider of services that are likely to be affected by the proposed development must be undertaken to make suitable arrangements for access to, diversion, protection, and/or support of the affected infrastructure as required. The cost of any such arrangements must be borne by the developer.

ATTACHMENTS:

AT - 1 Proposed Plans - *(Distributed under separate cover).*

AT - 2 Submissions received - *(Distributed under separate cover).*

oooO END OF REPORT Oooo

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Item: 012 CP - DA0308/21 - Lot 609 DP 222231, 18 Lieutenant Bowen Road, BOWEN MOUNTAIN NSW 2753 - (153849, 141548, 95498)

Directorate: City Planning

DEVELOPMENT INFORMATION

Application Number: DA0308/21
Date Received: 25/10/2021
Proposal Details: Telecommunications Facility
Estimated Cost: \$300,000.00

Legal Description: Lot 609 DP 222231
Property Address: 18 Lieutenant Bowen Road BOWEN MOUNTAIN NSW 2753
Area: 676m²
Zoning: RU5 Village under *Hawkesbury Local Environmental Plan 2012*
Applicant: Kordia Solutions Pty Ltd
Owner: Epsilon Distribution Ministerial Holding Corporation
Exhibition Dates: 8/11/2021 - 22/11/2021
Submissions: 28

Key Issues:

- ◆ Radiation exposure
- ◆ Impacts on the amenity of the locality and surrounding land uses
- ◆ Compliance with statutory requirements and guidelines

Recommendation: Approval, subject to conditions.

EXECUTIVE SUMMARY:

Reason for Consideration by Local Planning Panel

- Contentious Development – The application has received more than 10 unique submissions by way of objection.

Proposal

Telecommunications Facility.

Permissibility

The proposed development is permitted with consent on the land pursuant to State Environmental Planning Policy (Transport and Infrastructure) 2021.

Consultation

The application was notified to adjoining and adjacent properties between 8/11/2021 - 22/11/2021 in accordance with the requirements of Hawkesbury Development Control Plan 2002 and the Hawkesbury Community Participation Plan.

Key Issues

The key issues of this development application include:

- Radiation exposure
- Impacts on the amenity of the locality and surrounding land uses
- Compliance with statutory requirements and guidelines.

Recommendation

That DA0308/21 be approved subject to recommended conditions contained in this report.

REPORT:

Development Application No. DA0308/21 seeks consent for the installation of a 25 metre high concrete monopole with associated triangular headframe, panel antennas and remote radio units to provide mobile phone coverage to the locality. The development is proposed on an existing Endeavour Energy communication site, and the application seeks to replace an existing antenna on the subject site with a new Dipole on top of the proposed telecommunications facility.

The maximum height of the structure is proposed to be 33.5 metres, and occupies an area of approximately 35m², and will be supported by an associated equipment unit shelter. The tower will be setback 9 metres from the front property boundary, 2 metres from the site boundary to the south, and 12 metres from the front property boundary to the north.

The proposal is to be carried out by Optus who have stated that the objectives of the proposal are to provide improved mobile phone coverage and capacity in the Bowen Mountain locality.

The subject site has an area of 676m², is owned and occupied by Endeavour Energy and contains an existing equipment building, lattice tower antenna and water tank.

In order to minimise the introduction of high structures in the locality an agreement has been made with the applicant and Endeavour Energy to co-site the existing communication antenna on the proposed tower and decommission the existing antenna.

The site boundary is currently fenced and the proposal will be accessed via Lieutenant Bowen Road.

The existing access is proposed to be used and no modification or removal of vegetation is proposed.

The following figures show the proposed development and proposed plans are attached as Attachment 1 to the report.

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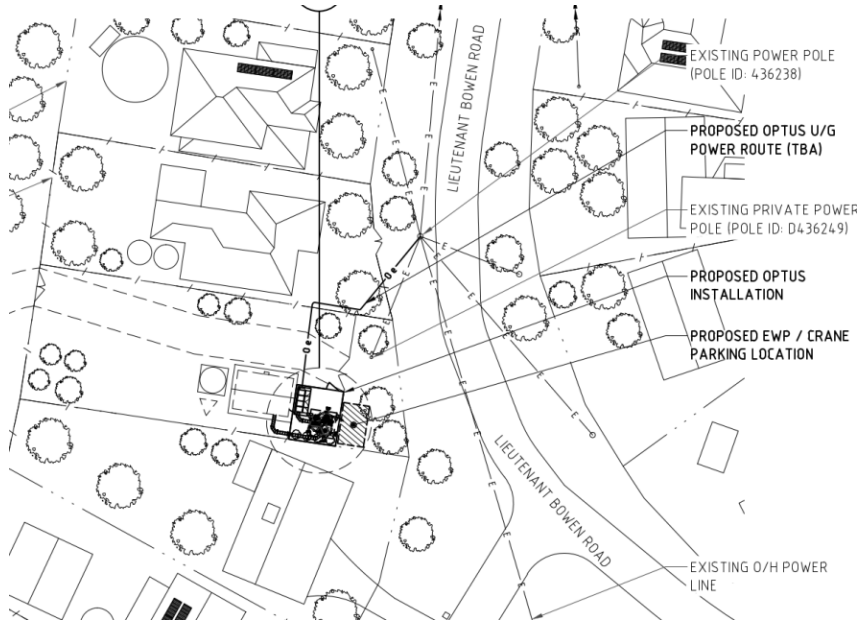


Figure 1: Overall site and locality plan extract

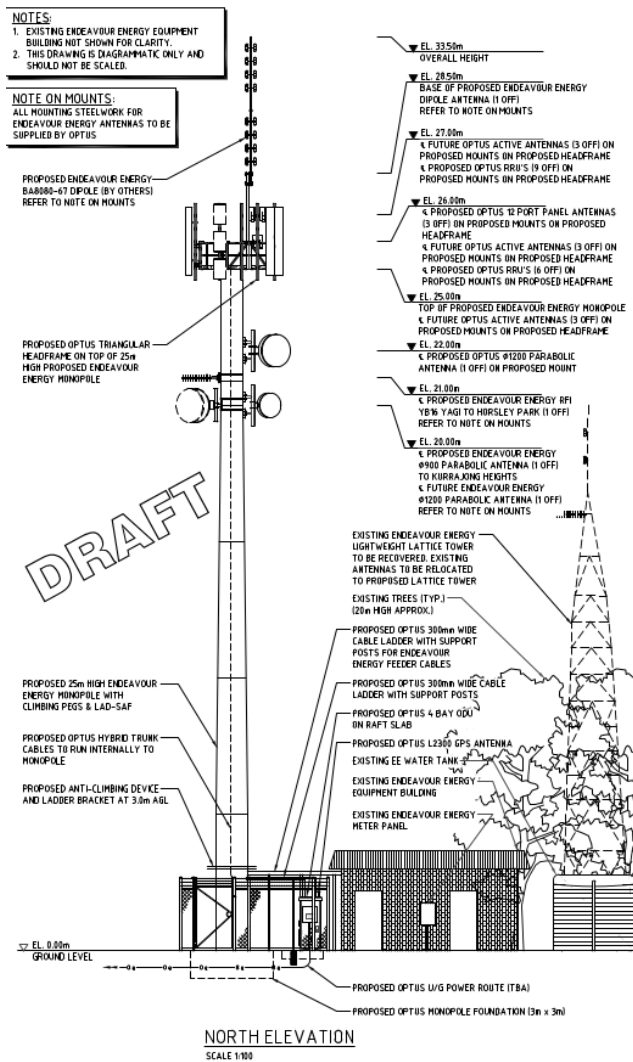


Figure 2: Elevation plan

The application is supported by the following:

- Statement of Environmental Effects
- Aeronautical Impact Assessment
- Environmental electromagnetic energy (EME) Report.

Site Description

The subject site is irregular in shape, totals 676m² in area and is occupied by an existing service building and 18 metre high antenna used by Endeavour Energy for communications.

The subject site is surrounded by residential development consisting of single and double storey buildings. An aerial photo of the site is included in Figure 3 below:



Figure 3: Aerial photo of site and locality

Bowen Mountain is located on an escarpment that backs onto the Blue Mountains National Park and runs in a north south direction. The subject site is located in the northern portion of Bowen Mountain and figure 4 identifies the location of the site.

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25 October 2021	Application lodged via the NSW Planning Portal.
8 November 2021	Application notified until 22 November 2021. A total of 28 submission raising objection to the proposal were received.
2 December 2021	Department of Defence advised that the height of the structure will infringe on the Obstacle Limitation Surface for RAAF Base Richmond.
9 December 2021	Applicant advised to address matters raised by the Department of Defence and issues raised as part of the notification of the application.
21 July 2022	Applicant provided response in relation to submissions received and an Aeronautical Impact Assessment addressing the concerns raised by the Department of Defence.
7 September 2022	Council received referral from Department of Defence raising no objection to the proposal subject to addressing advice in the correspondence.

A total of 28 submissions have been received in response to the application, are attached to this report, and available to view on Councils development application tracking system online. The issues identified in the submissions have been listed and considered in the assessment report below.

- Telecommunications Act 1997
- NSW Telecommunications Facilities Guideline Including Broadband (2010)
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - Chapter 9 Hawkesbury-Nepean River
- State Environmental Planning Policy (Resilience and Hazards) 2021
 - Chapter 4 Remediation of land

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- State Environmental Planning Policy (Transport and Infrastructure) 2021
 - Chapter 2 Infrastructure
 - Division 21 Telecommunications and other communication facilities
- Hawkesbury Local Environmental Plan 2012 (LEP 2012)
- Hawkesbury Development Control Plan (DCP) 2002.

Matters for consideration under Telecommunications Act 1997

The *Telecommunications Act 1997* sets out the requirements for low impact telecommunication facilities under Schedule 3 – Carriers' powers and immunities. If the proposed tower is deemed low impact by this Act then the proposal is exempt from requiring planning consent. In this case, the telecommunications tower is not deemed low impact and requires the consent of Council.

Matters for Consideration Under Part 6 of the Biodiversity Conservation Act 2016 No 63

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offset Scheme (BOS) will be triggered. The threshold has two elements:

- Whether the amount of native vegetation being cleared exceeds an area threshold,
- Whether the impacts occur on an area mapped on the Biodiversity Values Map published by the Environment Agency Head.

The proposal does not trigger the BOS requirement. In this regard the application does not exceed the area threshold and the land is not identified on the Biodiversity Values map.

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

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

State Environmental Planning Policy (Resilience and Hazards) 2021

On 1 March 2022, State Environmental Planning Policy No 55 – Remediation of Land was repealed and its provisions were transferred to Chapter 4 of SEPP Resilience and Hazards (together with the accompanying schedules) and renumbered accordingly.

The land has been historically used to support electrical infrastructure and contains an existing 20m high communications tower. The application does not seek to change the use of the land and the information accompanying the application does not raise any concerns in relation to suitability of the land from a contamination perspective.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The provisions of State Environmental Planning Policy (Infrastructure) 2007 applied at the time of lodgement of the application and have been transferred into State Environmental Planning Policy (Transport and Infrastructure) 2021 as part of a series of new consolidated SEPPs which commenced on 1 March 2022.

Chapter 2, Division 21 applies to Telecommunications and other communication facilities.

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This Policy sets out a consistent plan by which infrastructure services are developed in NSW. Section 2.143 of the policy allows telecommunication facilities to be carried out by any person with consent on any land.

Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.

The *NSW Telecommunications Facilities Guideline Including Broadband (2010)*, published in the NSW government Gazette No. 92 on 16 July 2010, and prepared by the Department of Planning and Environment outlines four principle requirements for the establishment of infrastructure facilities in NSW which state that a telecommunications facility:

1. is to be designed and sited to minimise visual impact
2. should be co-located wherever practical
3. Health standards for exposure to radio emissions will be met, and
4. Minimise disturbance and risk, and maximise compliance.

An assessment of the above principles has been carried out below:

Principle 1: Visual impact

As part of the site selection process the applicant had identified 5 sites within the surrounding locality which could provide mobile phone coverage to Bowen Mountain. The sites are shown in the Figure 5 below:

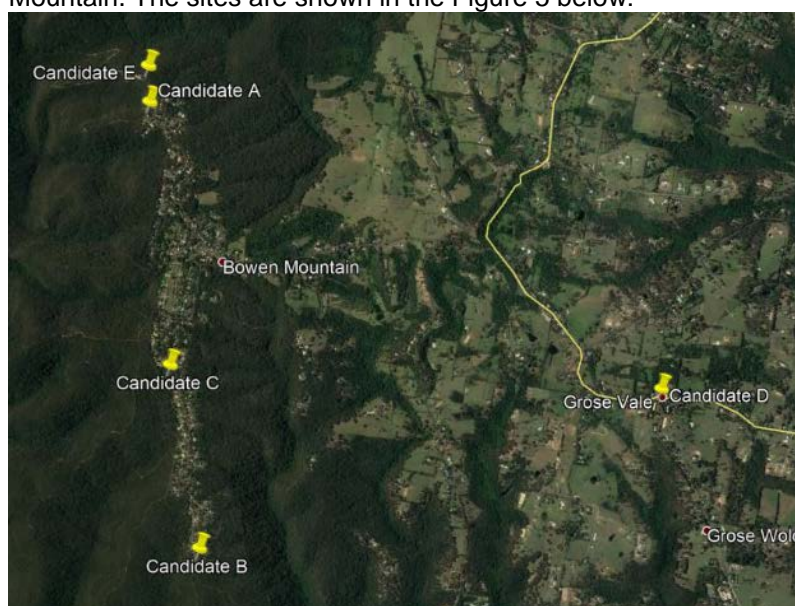


Figure 5: Investigated sites

The applicant identified that candidate E would have interfered with the existing Optus network, candidate D would not meet the coverage objectives for the locality, and candidate B & C would have resulted in the need to introduce a new vertical elements into the landscape.

The subject site, candidate A, was chosen as the property is currently used for communications and the proposal would reduce visual clutter and impacts on the locality by removing the existing communications tower and co-siting the antenna on the proposed monopole.

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The proposal also seeks to move the existing tower out of direct line of sight of the rear yards of the adjoining properties by bringing the tower to the front of the site as opposed to the rear of the site.



Figure 6: Location of proposed telecommunications tower (forward of the existing building)



Figure 7: Site photos of existing tower. 2 Maple Street image left and 16 Lieutenant Bowen Road image right



Figure 8: Photo montage

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The statement of environmental effects includes a visual impact assessment which shows that the location of the telecommunications facility will provide better screening than having it located in the same position as the existing antenna when viewed from the surrounding locality as it would be positioned amongst large mature trees at the front of the site.

The application proposes that ancillary facilities associated with the tower will be coloured and screened with landscaping to reduce the visibility of the structure and facility has been proposed at its minimum height to achieve the technical coverage requirements for the site.

A condition is recommended that the monopole and associated outdoor units shall be painted in 'Dull Grey' or similar to recede into the landscape.

The site is not located on or adjacent to a State or local heritage item and will not require the removal of vegetation.

The visual impact of the proposal in the Bowen Mountain locality is determined by both the terrain and the location of existing development along ridgelines. Given the substantial vegetation in the surrounding area, the proposed tower will be naturally screened from nearby dwellings and vegetation.

It is considered that the site selection process and the positioning on site has been designed and sited in accordance with principle 1 which is to minimise visual impact. Whilst the structure will be visible from certain vantage points the structure will not directly block or obstruct a significant view of a heritage item, landmark, vista or panorama.

Principle 2: Co-location

Co-location on existing structures or buildings in the locality is not possible given the terrain of the locality and lack of high structures that could be used for mobile phone coverage. Optus have considered the possibility of co-location on top of the existing communications tower on site, however it was not found to be feasible given the height and expected structural life of the tower.

Principle 3: Health standards

An EME Environmental Report accompanies the application in accordance with the format prescribed by Australian Radiation Protection Nuclear Safety Agency. The EME Report provides calculations of the maximum levels of radiofrequency (RF) electromagnetic energy (EME) around the proposed telecommunications facility.

The maximum human exposure levels have been calculated to be 1.82% of the public exposure limit. It should be noted that 100% exposure is deemed as the safe exposure limit as set by the Australian Radiation Protection Nuclear Safety Agency for members of the public.

If the consent authority determines to approve the development, Appendix B provides an example set of standard conditions of consent as a guide which include the need for a report showing compliance with the Australian Communications Industry Forum Industry Code titled ACIF C564:2004 *Deployment of Mobile Phone Network Infrastructure*. Suitable conditions have been recommended in this report based on these standard conditions.

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As a result of the above, health risks are not deemed as being significant and, once established, the tower poses little risk to health standards of the surrounding environment.

Principle 4: Minimise disturbance and risk, and maximise compliance

The proposed equipment is to be installed as per the manufacturer's specifications, wholly within the subject site and will be required to demonstrate compliance with any relevant site and height requirements specified by the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996 of the Commonwealth.

As part of the lodgement of the application the Department of Defence assessed this proposal for any potential impacts on the safety of military flying operations for aircraft using RAAF Richmond. This proposal has been assessed as having a negligible impact on operations at RAAF Richmond subject to various recommendations included in their correspondence.

Based on the above the proposed tower is considered to be acceptable having regard to the requirements specified under the SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

On 1 March 2022, Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2—1997) was repealed and its provisions were transferred to Chapter 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

The proposal is consistent having regard to the aims and objectives of Chapter 9. The proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context and the development is consistent with the general and specific aims, planning considerations, planning policies and recommended strategies which are to protect the quality of the water way.

Hawkesbury Local Environmental Plan 2012

The proposal is generally acceptable having regard to the requirements of LEP 2012. An assessment of the proposed development against the relevant provisions of the Plan follows:

Clause 2.2 Zoning of land to which Plan applies

The subject site is located within the zone RU5 Village on the Land Zoning Map.

Clause 2.3 Zone objectives and Land Use Table

The proposal is permitted with consent having regard to State Environmental Planning Policy (Transport and Infrastructure) 2021. The objectives of the zone are as follows:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

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- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To provide primarily for low density residential housing and associated facilities.*

The development has been considered having regard to the objectives of the zone, and it is noted that the proposal will not increase demand for public services or public facilities. The development will provide mobile phone coverage to the locality on a site that is currently used for providing public infrastructure.

Clause 4.3 Height of Buildings

The building height map specifies a 10m maximum building height. The definition for building height excludes communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Clause 5.10 Heritage Conservation

The subject site is neither a heritage item nor located in the vicinity of any heritage items.

Clause 6.4 – Terrestrial Biodiversity

The land is identified on the *Hawkesbury Local Environmental Plan 2012 Terrestrial Biodiversity Map* as being “Connectivity between significant vegetation”. The application does not propose the removal of any native vegetation, and the proposal is unlikely to result any adverse impacts on native flora and fauna.

Conditions have been recommended requiring the protection of vegetation onsite during the construction process and the development has been sited in a location that would avoid removal of existing vegetation.

Clause 6.1 – Acid Sulfate Soils

The land affected by the development falls within Class 5 as identified on the Acid Sulfate Soils Planning Map. The works proposed are unlikely to lower the water table and no further investigations in respect to acid sulfate soils are required under subclause (6). The proposal is consistent with the requirements of this clause.

Clause 6.7 – Essential Services

The land has suitable access to electricity and the proposal would not require any significant extension or modifications to existing services.

ii. **Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:**

No Draft Environmental Planning Instruments apply to the subject development.

iii. **Development Control Plan applying to the land:**

Hawkesbury Development Control Plan 2002

The proposal is acceptable having regard to the requirements of the DCP 2002. An assessment of the proposal against the relevant provisions of this plan follows:

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Part A Chapter 3 – Notification

The application was notified between 8/11/2021 - 22/11/2021 in accordance with Chapter Three of the DCP and the Hawkesbury Community Participation Plan. Council received 28 submissions raising objection to the proposal. The issues raised in the submissions have been reviewed and considered under the public consultation section of this report below.

Part C Chapter 1 – Landscaping

The site layout plan shows landscaping at the base of the proposed communications tower along the southern property boundary in order to screen the base of the communications facility. Existing vegetation at the front of the site is proposed to be retained. It is recommended that landscaping consist of trees and shrubs along the southern property boundary and at the front property boundary to screen the infrastructure. Suitable conditions have been recommended in this regard.

Part C Chapter 2 – Car parking and Access

Council's DCP does not specify car parking requirements for a telecommunications facility.

The application states that traffic generated by the proposal is expected to be 2 – 4 trips per year. The existing cleared areas on the site are considered to be acceptable for parking based on traffic generation. It is however noted that the existing driveway crossing and driveway access has not been formalised. Conditions are recommended requiring the driveway crossing and driveway access be constructed in accordance with Councils requirements.

Part C Chapter 4 – Soil and sediment erosion

Suitable conditions in respect to earthworks have been recommended in this regard.

Part D: Chapter 5 – Telecommunications

This chapter specifies that Mobile Phone Base Stations shall be located in accordance with the following table.

Zone	Locational Criteria
Any land zoned Rural, Residential, Special Uses, Open Space, Environmental Protection, Nature Reserve, Proposed Road under HLEP 1989 and <u>land</u> immediately adjacent to these zones.	A minimum of 300 metres from any school, childcare centre or hospital.
Any land zoned Rural, Residential, Special Uses, Open Space, Environmental Protection, Nature Reserve, Proposed Road under HLEP 1989 and land immediately adjacent to these zones.	A minimum of 300 metres from any residential <u>dwelling</u> unless annual average exposure at any such premises is less than 0.2 $\mu\text{W}/\text{cm}^2$.
All zones, including the above.	<p>To minimise visual impact, no tower may be constructed closer than 100 metres or three times the height of the tower, whichever is the greater, to any residential <u>dwelling</u>.</p> <p>This criteria does not apply to residences in business, industrial, nature reserves and special use zones.</p> <p>This condition does not apply in cases of co-location or location on existing built structures.</p>

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No school, child care centre or hospital sites have been identified within a 300m radius of the proposed location and the application demonstrates that the maximum EME levels have been calculated to be 1.82% of the public exposure limit.

The closest dwelling is located approximately 4.5m to the south of the telecommunications facility and the public exposure limit within 50m of the facility is lower than the maximum exposure limit distance band of 200-300m. The application states that:

"At a fundamental level, telecommunications facilities must be located near the area they are to provide mobile telecommunications coverage to. It is important to note that there are no viable locations identified what are capable of achieving the coverage objectives located greater than 300m from a dwelling."

The proposal has been designed and sited in accordance with the *NSW Telecommunications Facilities Guideline including Broadband (July 2010)* and the proposal has been designed in a way to incorporate the existing communications facility as part of the development and minimise visual impact of high structures in the locality.

Based on the above it is considered that the proposal is acceptable having regard to the general objectives contained under chapter 5.1 and it would be unreasonable to demonstrate compliance with the setback requirements specified in the DCP in an instance where the application has been able to demonstrate that the development is acceptable having regard to the matters specified in SEPP (transport and infrastructure) 2021 and the *NSW Telecommunications Facilities Guideline including Broadband (July 2010)*.

Chapter 5.2 and 5.3 specifies the key assessment criteria to be considered as part of the assessment and have been considered below:

Key assessment criteria	Comment
Proposals for telecommunication facilities should utilise buildings, structures or other non-residential and non-community based features of the built environment for support of towers, antennae and ground based facilities, wherever possible.	The service area does not contain any buildings, structures or towers that could be used to support telecommunications in the locality. The proposal seeks to utilise an existing non-residential site for the proposed telecommunications facility.
Proposals for towers greater than 5 metres in height are encouraged to locate in commercial/industrial zones, and/or premises used for commercial premises.	The application proposes to remove an existing communication tower and co-site the antenna on the new structure.
Proposals for towers should provide evidence of investigation into co-locating with other carriers, wherever possible.	Investigation into co-location with other carriers in the Grose Vale locality identified that the existing facility would not achieve the coverage objectives to service the Bowen Mountain area.
Proposals for towers in rural zones should avoid locations in close proximity from any residences.	The application has demonstrated that any tower in Bowen Mountain escarpment would be in close proximity to residences and that the proposal will utilise an existing site used for commercial/communication purposes.
Proposals for towers and/or other telecommunication works should avoid environmentally sensitive lands including wetlands, creeks and protected habitats of endangered flora and fauna.	The site has not been identified as containing any significant flora and fauna and no vegetation is proposed to be removed to support the proposal.

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Key assessment criteria	Comment
Proposals for towers should be located to have minimal visual impact.	The tower has been located forward of the rear yards of adjacent residential properties. It will also result in the removal of an existing tower which is in direct view of adjoining properties.
Proposals for aerial cabling will only be considered where there is existing aboveground cables or wires within the same street or locality. Where underground services are provided, every effort should be made to coordinate the provision of underground telecommunication facilities.	No aerial cabling proposed. Mobile phone telecommunication facility proposed.
Any proposal for a tower needs to justify the location in terms of “servicing areas”.	The application has justified the location of the development, and the proposal will deliver mobile phone coverage to the locality.
The need for the proposal with respect to expansion of the carrier's network and alternatives examined within the proposed area to be covered.	There are no mobile phone towers in the Bowen Mountain locality and Optus has identified a need for improved coverage.
The proximity of the proposed facility to residential and community facility land uses.	<p>The proposal is located on land used for the purposes of a communications facility.</p> <p>The Endeavour Energy equipment will be reinstated on the new structure and the existing antenna be demolished.</p> <p>The residential interface will be maintained similar to the existing site condition.</p>
Any guidelines, advice or supporting information submitted by the proponent or other authorities which may be relevant.	The proposal has been considered having regard to the requirements of the Department of Defence and the NSW Telecommunications Facilities Guideline including Broadband (July 2010).
The visual impact of the proposal and measures to ameliorate this impact.	Visual impacts have been ameliorated as discussed previously in the report.
Site access, security and landscaping proposals	Assessed against DCP chapters above and conditions recommend in relation to access, and landscaping.
The impact of electromagnetic radiation on public health, safety and other electronic communications.	<p>Optus has obligations to comply with mandated standards set by (Australian Radiation Protection and Nuclear Safety Agency) ARPANSA.</p> <p>EME exposure levels are 98.18 times lower than the public exposure limit of the ARPANSA Standard.</p>
Any submissions received from the public.	Assessed under the public submission section of the report below.

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- iv. **Planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:**

Not applicable.

- vi. **Matters prescribed by the Regulations:**

The Regulations require that the development is to Comply with the National Construction Code and be levied against Council's S94A Development Contributions Plan.

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

The likely impacts in relation to the development have been assessed having regard to the relevant planning requirements applicable to the development and the *NSW Telecommunications Facilities Guideline including Broadband (July 2010)*.

- c) **Suitability of the site for the development**

The location and setting of the proposed development is suitable with regard to the relevant environmental planning policies and potential environmental impacts which have been discussed previously in this report. There are no environmental or physical constraints that would prevent the proposed use from occurring on the land.

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

RAAF Base Richmond

The Department of Defence advised that the height of the structure will infringe on the Obstacle Limitation Surface for RAAF Base Richmond.

The applicant provided an Aeronautical Impact Assessment addressing the concerns raised by the Department of Defence.

Council received referral from Department of Defence raising no objection to the proposal subject to conditions which are included in the recommended conditions section of this report.

Public Submissions

A total of 28 submissions were received following the notification of the proposal raising objections to the proposed development. The issues within the objections are summarised and considered below:

Issues	Comment
Location of tower	
Inconsistent with requirements specified under Hawkesbury Local Environmental Plan and Hawkesbury Development Control Plan in relation to zoning and height.	The proposal has been assessed against the requirements specified under Hawkesbury Local Environmental Plan and Hawkesbury Development Control Plan in the report above.
Visual impact of the tower on: <ul style="list-style-type: none">the streetscape,adjacent dwellings,neighbouring dwellings,	The proposal seeks to minimise visual impacts by locating the tower on a site that is currently utilised for communications purposes, and removing an existing antenna on the site.

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Issues	Comment
<ul style="list-style-type: none"> surrounding locality, views. 	The proposal to have the tower located at the front of the site will reduce potential visual impacts on adjacent properties by bringing the tower forward of the adjacent dwellings rear yards.
Windy location.	Any tower will be designed to consider wind loadings. Engineering specifications will be provided prior to the issue of any construction certificate.
Impact on the Cargo Observatory in terms of lighting and conflict with the RFS helicopter operations.	<p>The Aeronautical Impact Assessment identifies that there are other taller structures near the site so no lighting should be required on the monopole.</p> <p>The applicant indicates that no more lights would be provided than what would otherwise be picked up from the surrounding residential area.</p> <p>Airservices Australia (ASA) is responsible for recording the location and height of tall structures. The information is held in a central database managed by ASA and relates to the erection, extension, or dismantling of tall structures.</p> <p>In accordance with the recommendations of the Department of Defence, conditions are recommended requiring the details of the constructed tower to be sent to ASA for registration.</p>
Should be located in other areas considered. i.e. candidate E site, near the Cargo Observatory.	The application outlines why each of the possible candidate sites that were investigated were not suitable. It is noted that candidate E was not deemed to be suitable given potential interference with the established Optus network.
Inconsistency with the Telecommunications (Low-impact Facilities) Determination 1997 Specifically, Part 7 Co located facilities item 2 (f).	Whilst the application proposes to replace an existing tower the proposal is for a new tower and co-location opportunities with other mobile towers were not possible in the locality.
<p>Inconsistency with the NSW telecommunications facilities guideline including broadband.</p> <p>Specifically;</p> <ul style="list-style-type: none"> Section 5.1, Table 1, Number 8, and Section 5 (a-c). 	The requirements specified under Section 5.1 of the guidelines relate to specific requirements for exempt and complying development and does not apply to applications seeking development consent.
Hawkesbury DCP specifies that if a facility does not emit less than 0.2uw/cm2 radiation it must be at least 300m from a residential dwelling.	This has been considered in the assessment report above.
Exposure	
<p>Impact of radiation and emissions on:</p> <ul style="list-style-type: none"> Adjacent and surrounding dwellings, School bus pick up areas, Interference on medical equipment. 	<p>Exposure of radiation and radio frequency is detailed in the assessment report above.</p> <p>Mobile phones and towers are often located in close proximity to electronic devices without any interference and the risk on interference on medical equipment would be low.</p>

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Issues	Comment
Development of the site will affect community wellbeing.	Telecommunication facilities on poles and or buildings are common in residential and rural communities and the proposal will provide improved communication facilities within the locality.
Lack of onsite testing and modelling.	An EME Environmental Report accompanies the application in accordance with the format prescribed by Australian Radiation Protection Nuclear Safety Agency.
Future additions to the tower will increase exposure to radiation and emission than what is proposed as part of the current application.	Any future changes or additions will be required to comply with the requirements specified under the Telecommunications Act 1997 and NSW Telecommunications Facilities Guideline Including Broadband (2010).
Acoustics	
Noise pollution from air conditioning equipment operating 24 hours a day 7 days a week.	<p>The applicant confirms that</p> <p>'the equipment shelter will emit only minimal noise from the air conditioning units, which will enable the equipment to stay within normal operating temperatures. The operation of the air conditioning units will not result in any unacceptable adverse noise impacts to the nearest sensitive noise receptors given the isolated location of the proposed equipment shelter in the context of the area.'</p> <p>Conditions in relation to noise generation are recommended in this report.</p>
Flora and Fauna	
Lack of information in relation to flora and fauna impacts i.e. impact to trees, koala habitat.	<p>No adverse impacts are expected on flora and fauna habitat as existing vegetation will remain.</p> <p>Mobile towers are often located in areas surrounded by native vegetation and no evidence has been provided demonstrating that flora and fauna would be adversely impacted by emissions from the tower.</p>
Impact on adjacent Crown Land	
Potential impact on Crown Land to the west of the site which is identified as part of the Blue Mountains National Park, subject to Aboriginal Land Claims and used by the NSW Rural Fire Service for bushfire fighting trails/use.	<p>The application was notified to adjoining neighbours, including the property directly to the west identified as Crown Land.</p> <p>No objections to the proposal were received from the NSW Crown Lands in relation to the impact of the proposed development.</p>
Bushfire risk	
Lack of assessment in relation to bushfire risk associated with the use of the property and potential for lightning strikes.	<p>The applicant has confirmed that the facility is prefabricated and designed in accordance with the Building Code of Australia, and Australian Standards and is intended to serve the purpose of providing critical communications to the public and the emergency services during times of natural disasters including bushfires and flooding.</p> <p>The applicant has advised that</p> <p>"The proposed facility is designed with lightning arrest and earth systems designed in accordance with</p>

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Issues	Comment
	Australian standards. Mobile facilities are common place across Australia including a number of elevated positions within communities, there is not evidence to suggest that a telecommunications facilities increases lightning strikes."
No mention as to how the block is to be maintained due to bushfire risk and leaf litter build up.	Conditions are recommended in relation to maintenance of the site.
Impact on property values	
Infrastructure in close proximity to houses will negatively impact on property values.	Property values are not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act. The application proposes to utilise an existing site that contains a communications tower and will improve mobile phone coverage in the locality.
Consultation	
Absence of community consultation.	The application has been notified in accordance with Councils notification process.
Level of detail submitted	
The application does not consider 5G.	The application does not refer to 5G, and only considers 3G and 4G.
The plans are identified draft and not final.	The plans are identified as draft because they have not been approved. The applicant has confirmed that amended plans excluding draft can be provided if necessary.

e) The Public Interest:

The proposed facility will provide improved mobile phone coverage to the locality, and will provide a service that is needed for the Bowen Mountain locality and its surrounds.

The development would have a positive social and economic impact to the locality as it is integral to the provision of quality telecommunications infrastructure and will provide for improved telecommunication connections for businesses and community, or in the event of a natural disaster or emergency.

The application is considered to be in the public's interest by providing improved telecommunication services, and the ability to interconnect remote residential areas.

The matters raised in public submissions have been assessed in detail but are not considered to be sufficient to justify refusal of the application.

Development Contributions

Councils Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015) applies to the proposal. It is noted that whilst the proposal is for infrastructure the works are not being carried out by Council or the NSW State Government, therefore the proposal is not excluded from contributions under this plan.

Conclusion

The application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act 1979 and the proposal considered acceptable having regard to the relevant planning controls applicable to the development including the NSW Telecommunications Facilities Guideline Including Broadband (2010) produced by the Department of Planning.

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Accordingly, it is recommended that the proposal be supported subject to conditions recommended in this report.

305. Local Planning Panel Recommended Conditions of Approval

1. **Approved Plans and Supporting Documentation**

The development must be carried out generally in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where amended in red on the plans and/or amended by other conditions of consent:

a) Plans Reference:

Drawing Number/Name	Prepared by	Issue No.	Date
Site Layout Sheet 1 of 2 S2648A-P1	Kordia Solutions Pty Ltd	02	7/04/2021
Site Layout Sheet 2 of 2 S2648A-P2	Kordia Solutions Pty Ltd	02	7/04/2021
Site Elevation S2648A-P3	Kordia Solutions Pty Ltd	02	7/04/2021

b) Document Reference:

Document	Prepared By	Date
Aeronautical Impact Assessment	Avlaw Pty Ltd, trading as Avlaw Aviation Consulting	15/03/2022
Environmental EME Report RFNSA No. 2753010	Kordia Solutions Pty Ltd	22/09/2020

No works, other than those approved (including raising or lowering of ground levels on the site, or construction of retaining walls on any property boundary) are permitted by this consent.

Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and
- (iii) any conditions contained in this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.

2. **Appointment of a Principal Certifying Authority**

No work shall commence until:

- a) A Building Construction Certificate is issued by:
 - (i) Council; or
 - (ii) An Accredited Certifier;

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- b) A Principal Certifying Authority is appointed for the building/engineering works and the following details relating to the carrying out of the works have been provided:
 - (i) name and licence number of the builder undertaking the construction works;
or
 - (ii) name and permit number of the owner-builder (if relevant);
- c) The Principal Certifying Authority has:
 - (i) provided a copy of the notice of its determination to the consent authority, and to Council (within two days after the date of the determination);
 - (ii) notified the person having benefit of the consent of any critical stage inspections and other inspections that it requires to be carried out in relation to the approved work;
 - (iii) notified Council of its appointment (not less than two days before commencement of building work);
- d) The person having benefit of the consent (if not carrying out work as an owner-builder) has:
 - (i) appointed a principal contractor who must hold a 'contractor licence' if any residential building work is involved;
 - (ii) notified the Principal Certifying Authority of the appointment of the principal contractor;
 - (iii) notified the principal contractor of any critical stage inspections or any other inspections that are required to be carried out in relation to the approved work;
- e) At least two days' notice are to be provided to Council of the date on which it is proposed to commence work associated with this development consent.

3. 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.

4. 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).

5. Colours

The monopole and associated outdoor units shall be painted in 'Dull Grey' or similar to recede into the landscape. Details are to be provided to Council for approval prior to the issue of a Construction Certificate.

6. Tower Height

The height of the tower must not exceed 25m in height above ground level and any antenna must not exceed 33.5m in height above ground level.

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7. Tree Protection

The consent does not permit the removal of trees. Trees on site are required to be protected during construction under the supervision of an appropriately qualified arborist (AQF Level 5).

8. Works on Public Land - Not Permitted Without Approval

No work can be undertaken within adjoining public lands (i.e. Parks, Reserves, Roads 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 any damaged areas.

9. Excavation - Aboriginal Relics

If any Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) all excavation or disturbance of the area must stop immediately in that area; and
- b) Heritage NSW must be advised of the discovery.

All necessary approvals from the Heritage NSW must be obtained and a copy provided to Council prior to works recommencing.

Note: If an Aboriginal object is discovered, an Aboriginal Heritage Impact Permit may be required under the *National Parks and Wildlife Act 1974*.

Prior to the Issue of Construction Certificate

10. Long Service Levy Payment

The payment of a long service levy as required under Part 5 of the *Building and Construction Industry Long Service Payments Act 1986* is required. Evidence that the levy has been paid, is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: All building works valued at \$25,000 or above are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Payments Corporation offices or most councils.

11. Driveway Construction - Rural in Council Road Reserve

An 'Agreement Form for Driveways' must be submitted to Council prior to the issue of a Construction Certificate. Evidence of lodgement and payment for this application must be provided to the Accredited Certifier.

The vehicular crossing must:

- a) have a minimum width of four metres within the road reserve;
- b) not interfere with existing public infrastructure;
- c) have a finish matching the road construction fronting the property (all-weather crushed rock/bitumen/asphalt) or concrete; and

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- d) be constructed in accordance with Council's 'Driveway Specification' and the Hawkesbury Development Control Plan 2002 - Appendix E - Civil Works Specification.

Note: The 'Agreement Form for Driveways' and the 'Driveway Specification' are available from Council's website.

12. Driveway Construction - Within Property

A standard rural residential vehicular driveway must be constructed within the property to the existing front gate.

The driveway must:

- a) have a minimum width of four metres;
- b) be constructed of all-weather rock, be sealed at grades greater than 17%, concrete at grades greater than 20% and not exceed 25%;
- c) be constructed in accordance with Council's 'Driveway Specification' and the Hawkesbury Development Control Plan 2002 - Appendix E - Civil Works Specification; and
- d) include adequate drainage to prevent erosion.

Details of the driveway are to be included on the plans submitted to the Accredited Certifier prior to issue of a Construction Certificate.

13. Airspace

Before the release of the Construction Certificate a report must be given to the Certifying Authority:

- a) showing compliance with any relevant site and height requirements specified by the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996 of the Commonwealth, and
- b) showing that it does not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport (other than the RAAF Richmond) operating within 30 kilometres of the proposed development and reported to the Civil Aviation Safety Authority Australia.

14. Section 94A (Monetary) Contributions

A contribution under Section 94A(7.12) of the *Environmental Planning and Assessment Act 1979* must be paid in accordance with the following:

- a) Contribution Required

In accordance with Council's Section 94A Contributions Plan 2015, a monetary contribution (indexed at the time of payment) must be paid to Council for the amount specified below.

- b) Amount of Contribution

The amount of the contribution is \$3,000.00

This fee is based on the supplied value-of-works of \$300,000.00.

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The contribution amount detailed in (b) will be indexed at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics (Table 6401.0).

Contributions must be receipted by Council and evidence of payment submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Please present a copy of this condition when paying the contribution at Council's Customer Service Centre so that it can be recalculated.

Note: In the event that the estimated value of works increases in association with the Construction Certificate the Section 7.12 contribution payable is to be based on the revised value of works.

15. Structural Engineers Design - Concrete and Structural Steel

A qualified Structural Engineer's design for all reinforced concrete and structural steel shall be provided to the Certifying Authority prior to issue of Construction Certificate.

Prior to Any Works Commencing on Site

16. Principal Certifying Authority - Details

The applicant shall advise Council of the name, address and contact number of the Principal certifier, in accordance with Section 6.6(2) of the *Environmental Planning and Assessment Act 1979*.

17. 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.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer;
- b) be attached to an approved on-site effluent disposal system;
- c) be a temporary chemical closet that is regularly maintained; and
- d) appropriate facilities for the disposal of sanitary items are to be provided within the toilet.

18. 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 Builder.

19. 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;

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- 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.

20. Safety Fencing

The site is to be secured by a fence, in accordance with NSW WorkCover requirements, to prevent unauthorised access during the period of all works.

21. Erosion and Sediment Control for Minor Development

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)'.

During Construction

22. Construction Hours

The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:

- a) between 7:00 am and 5:00 pm, Mondays to Saturdays inclusive;
- b) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- a) the delivery of materials is required outside these hours by the Police or other authorities; or
- b) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and
- c) residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

23. 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.

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- 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.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council shall be obtained prior to any closing of the road reserve or footpath area. The closure shall take place in accordance with Council's written approval. The area shall be signposted and such signposting be maintained in a way that ensures public safety at all times.

24. Loading and Unloading During Construction

The following requirements apply.

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.

25. Critical Stage Inspections

Prior to the commencement of building work and at nominated stages during the construction of the building, a minimum of 48 hours' notice is required to be provided to allow the Principal Certifying Authority to ensure that the critical stage inspections are undertaken.

Note: Critical stage inspections are required to be carried out in accordance with Clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

26. Management of Overland Flows

The works associated with the development shall ensure that:

- a) all natural water flow from adjoining properties is not impeded or diverted; and
- b) surface and subsurface water flows are not redirected or concentrated onto adjoining properties.

Prior to Issue of Occupation Certificate and Commencement of Use

27. Landscape Screen Planting

Landscape screen planting must be provided along the front and southern property boundary and consist of a mixture of shrubs and trees in order to screen the base of the development up to a height of 10 metres. The landscape screen planting must remain in place and be maintained for the life of the development.

The landscape screen planting is to be carried out prior to the issue of any Occupation Certificate.

The entire site is required to be maintained in a clean manner, including mowing and removal of leaf litter in order to reduce potential bush fire risk.

28. Survey Certificate at Completion

A Survey Certificate, prepared by a Registered Surveyor, is to certify the location of the building in relation to the boundaries of the allotment.

The certificate is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

29. Occupation Certificate - Prior to Commencement of Use

The development shall not be occupied or used prior to the issuing of a Final Occupation Certificate or Interim 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 issue.

30. Mechanical Plant During Occupation and Ongoing Use

All mechanical plant system(s) or other plant and equipment that generates noise must be located on the site (including in a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa above the ambient background noise at the boundary adjacent to any habitable room of adjoining residential premises.

All mechanical plant system(s), air-conditioning or other plant and equipment that generates noise on the site must not be able to be audible in any habitable rooms of a neighbouring residence between 10pm and 7am.

31. Airservices Australia – Records

The applicant provide Airservices Australia (ASA) with “as constructed” details. The details can be emailed to ASA at vod@airservicesaustralia.com upon completion.

32. Existing Communications Tower

The existing communications tower on the site is required to be demolished within 3 months of the commencement of the use of the telecommunications facility.

33. Electromagnetic Emissions

Where the development is part of infrastructure for a public mobile phone network – the Council must, before commencement of use, be given:

- (i) in the case of development that will produce electromagnetic radiation-a report in the format required by the Australian Radiation Protection Nuclear Safety Agency that shows the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and
- (ii) a report showing compliance with the Australian Communications Industry Forum Industry Code entitled CIF C564:2004 Deployment of Mobile Phone Network Infrastructure.

Advisory Notes

(i) Equitable Access

The applicant shall make themselves aware of the *Discrimination Against People with Disabilities Act (DDA)* and assess their responsibilities and liabilities with regards to the provision of access for all people.

(ii) Compliance with Building Code of Australia

The applicant is advised to consult with the PCA about any modifications needed to comply with the BCA prior to submitting the application for a Construction Certificate.

(iii) Acid Sulfate Soils - Monitoring of Excavation During Works

All excavations are to be monitored to ensure that acid sulphur soils are not encountered during works. Signs that may indicate the presence of acid sulphur soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

(iv) Site Contamination Discovered During Demolition or Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, then the applicant must be immediately notified and works must cease. Works must not recommence on site until the consultation is made with Council.

(v) Dial Before You Dig

Prior to commencement of work, the free national community service 'Dial Before You Dig' shall be contacted on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

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(vi) Requirements of 88B Instrument

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.

(vii) Department of Defence

The applicant is required to make detailed enquiries with the Department of Defence prior to the commencement of any works in order to ensure there are no requirements concerning the methods of construction or installation of the approved structures.

ATTACHMENTS:

AT - 1 Proposed Plans - *(Distributed under separate cover).*

AT - 2 Submissions received - *(Distributed under separate cover).*

oooO END OF REPORT Oooo

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Item: 013 CP - DA0239/21 - Lot 1 DP 715623, 87 Bells Line of Road, KURRAJONG
NSW 2758 - (153544, 36126, 95498)

Directorate: City Planning

DEVELOPMENT INFORMATION

Application Number: DA0239/21
Date Received: 9/09/2021
Proposal Details: Commercial Premises - Construction of Retail Premises,
Shopping Centre and Restaurant or Cafe, Associated Car parking,
Loading Areas and Landscaping Works
Estimated Cost: \$7,881,426.00
Legal Description: Lot 1 DP 715623
Property Address: 87 Old Bells Line Of Road KURRAJONG NSW 2758
Area: 2003m²
Zoning: B1 Neighbourhood Centre under Hawkesbury Local Environmental
Plan 2012
Applicant: Simon Ochudzawa
Owner: MPK Commercial Pty Limited
Exhibition Dates: 30/09/2021 - 14/10/2021
Submissions: 28

Key Issues:

- ◆ Sewage management
- ◆ Building height
- ◆ Parking/Traffic

Recommendation: Refusal

EXECUTIVE SUMMARY:

Reason for Consideration by Local Planning Panel

- Contentious Development – The application has received more than 10 unique submissions by way of objection.
- Departure from Development Standards – The proposed development contravenes the maximum 10 metre Building Height development standard imposed by Clause 4.3 Hawkesbury Local Environmental Plan 2012 by more than 10%.

Proposal

Commercial Premises - Construction of Retail Premises, Shopping Centre and Restaurant or Café, including associated car parking, loading areas and landscaping works.

Permissibility

The proposed development is permitted with consent on the land pursuant to Hawkesbury Local Environmental Plan 2012.

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Consultation

The application was notified to adjoining and adjacent properties between 30/09/2021 - 14/10/2021 in accordance with the requirements of Hawkesbury Development Control Plan 2002 and the Hawkesbury Community Participation Plan.

Key Issues

The key issues of this development application include:

- Building height
- Sewage management
- Parking/Traffic

Recommendation

That DA0239/21 be refused for the reasons contained in this report.

REPORT:

Development Application No. DA0239/21 seeks consent for a 4 storey Commercial development comprising of a supermarket, 5 retail premises, 2 restaurants, retail kiosk/café and associated parking, storage areas, loading areas and landscaping at the above address.

During the course of the assessment of the application the applicant had submitted amended plans in order to respond to matters concerning height of the building, servicing, traffic and parking. The current proposal has been detailed below.

Basement 2

- direct vehicular access via Timms Hill Road
- service lift, general lift and three stairways
- total of 37 car parking spaces (16 staff, 2 accessible public/staff, 18 general, 1 doctor)
- loading and unloading areas for goods, waste and ambulance
- cleaners store and bathroom
- three general storage areas 10m² to 12m²

Basement 1

- direct vehicular and pedestrian access via Timms Hill Road
- service lift, general lift and three stairways
- 15 car parking spaces, 1 accessible space, 2 motorcycle parking areas and 5 bicycle parking areas
- plant/service storage rooms
- 26 m² trolley storage room
- 645 m² supermarket

Ground Level

- direct pedestrian access via Old Bells Line of Road
- service lift, general lift and three stairways
- three retail shops (142m², 96m², 135m²)
- public toilets
- 38m² kiosk
- internal seating area (140m² approx.)
- outdoor terrace area (280m² approx.)

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First Floor

- Internally accessed via service lift, general lift and three stairways
- two retail shops (98m² and 165m²)
- two restaurants (135m² and 91m²)
- 223m² outdoor terrace area

The following figures show a 3D impression of the development and proposed plans are included as Attachment 1 to the report.



Figure 1: View of north eastern boundary and Old Bells Line of Road frontage



Figure 2: View from corner of Old Bells Line of Road and Timms Hill Road

The application is accompanied by a written request pursuant to Clause 4.6 of Hawkesbury Local Environmental Plan 2012 seeking to justify the contravention of a development standard. The request seeks a variation to Clause 4.3 of Hawkesbury Local Environmental Plan which specifies a maximum building height of 10 metres for the subject site. The submitted plans identify a maximum building height of 11.2 metres above the natural ground level.

Site Description

The subject site is irregular in shape, totals 2,003m² in area and is located on the corner of Old Bells Line of Road and Timms Hill Road. The site is surrounded by a mixture of retail and residential development consisting of single and double storey buildings. A locality plan and aerial photo of the subject site is included in Figure 3 below.

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Figure 3: Locality plan left and aerial photo right (site marked in red)

Background and History

9 September 2021	Application lodged via the NSW Planning Portal.
20 September 2021	Initial review letter sent to the applicant advising that the proposal is not supported as the site does not have access to reticulated sewerage system and the site will not be able to effectively dispose of wastewater.
8 November 2021	Application notified 30/09/2021 - 14/10/2021.
23 November 2021	Applicant provided response in relation to onsite pump out system.
10 February 2022	Following a detailed assessment of the proposal the applicant was advised that the proposal was not considered to be acceptable due to: <ul style="list-style-type: none"> Proposed onsite sewage management, Building height, Existing electrical assets, Parking Controls, Waste Management,

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- Engineering Matters,
- Building,
- Excavation,
- Public Infrastructure, and
- Issues raised in the submissions

Applicant advised that the proposal is not supported and recommended that the application be withdrawn until the above matters could be addressed.

21 July 2022

Applicant provided amended plans and response to issues raised.

The amended designs have been assessed as part of the preparation of this report.

Submissions

A total of 28 submissions have been received in response to the application and are available to view on Councils development application tracking system online. The issues identified in the submissions have been listed and considered in the assessment report below.

Council Policies, Procedures and Codes to which the matter relates

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - Chapter 9 Hawkesbury-Nepean River
- State Environmental Planning Policy (Resilience and Hazards) 2021
 - Chapter 4 Remediation of land
- Hawkesbury Local Environmental Plan 2012 (LEP 2012)
- Hawkesbury Development Control Plan (DCP) 2002.

Matters for Consideration Under Part 6 of the Biodiversity Conservation Act 2016 No 63

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offset Scheme (BOS) will be triggered. The threshold has two elements:

- whether the amount of native vegetation being cleared exceeds an area threshold,
- whether the impacts occur on an area mapped on the Biodiversity Values Map published by the Environment Agency Head.

The proposal does not trigger the BOS requirement. In this regard the application does not exceed the area threshold and the land is not identified on the Biodiversity Values map.

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

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

State Environmental Planning Policy (Resilience and Hazards) 2021

On 1 March 2022, State Environmental Planning Policy No 55 – Remediation of Land was repealed and its provisions were transferred to Chapter 4 of SEPP Resilience and Hazards (together with the accompanying schedules) and renumbered accordingly.

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The objectives of this SEPP are to “*promote the remediation of contaminated land for the purpose of reducing the risk of human health or any other aspect of the environment*”. Section 4.6 outlines the consent authority “*must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The application is accompanied by a site contamination investigation assessment report which considers the potential risk of contamination existing on the land. The report identifies that the site is suitable for commercial land use based on an assessment of the history of the site and onsite testing conducted. The proposal is satisfactory having regard to the matters required to be satisfied under this chapter.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

On 1 March 2022, Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2—1997) was repealed and its provisions were transferred to Chapter 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

The proposal has been assessed having regard to requirements of Chapter 9. As part of the assessment of the proposal the applicant has been required to demonstrate that suitable sewage service is available to service the facility. Section 9.7 (17) is relevant to the proposal and requires the consent authority to consider:

(17) Sewerage systems or works

Definition:

Development for the purpose of any sewerage system or work which stores, treats or disposes of sewage (including domestic on-site disposal systems that are ancillary to development which requires consent) but not including a public utility undertaking.

Consent required.

Additional matters for consideration by the consent authority:

- (a) *Whether the proposed development will be capable of connection to a Sydney Water Corporation Limited or council sewerage system either now or in the future.*
- (b) *The suitability of the site for on-site disposal of effluent or sludge and the ability of the sewerage systems or works to operate over the long-term without causing significant adverse effects on adjoining property.*
- (c) *The likely effect of any on-site disposal area required by the proposed development on—*
 - *any water bodies in the vicinity (including dams, streams and rivers), or*
 - *any mapped wetlands, or*
 - *any groundwater, or*
 - *the floodplain.*

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- (d) The scope for recycling and reusing effluent or sludge on the site.
- (e) The adequacy of wet weather storage and the wet weather treatment capacity (if relevant) of the proposed sewerage system or works.
- (f) Downstream effects of direct discharge of effluent to watercourses.
- (g) The need for ongoing monitoring of the system or work.

Currently there are no plans to provide reticulated sewer to the subject site by Council or Sydney Water and the development will rely in the need to have all wastewater pumped from the site. It is considered that the proposal to collect, treat and transport waste from the site is unacceptable having regard to the overall scale of the development and long term operation of the facility. This is particularly in relation to impacts on adjoining and surrounding properties in relation to traffic impact along Timms Hill Road, odour, noise and frequency of servicing.

Hawkesbury Local Environmental Plan (LEP) 2012

The proposal has been assessed having regard to the requirements of LEP 2012. As assessment of the proposed development against the relevant provisions of the Plan follows.

Clause 2.2 Zoning of land to which Plan applies

The subject site is located within the zone B1 Neighbourhood Centre.

Clause 2.3 Zone objectives and Land Use Table

The proposal is permitted with consent with the proposal being best defined as retail premises which includes, food and drink premises, kiosks and shops.

Clause 4.3 Height of Buildings

The building height map specifies a 10m maximum building height.

Originally the application proposed the building to be 14.5m above the natural ground level. Plans were submitted on 21 July 2022 in response to the original assessment reducing the degree of noncompliance. Based on the amended plans submitted the degree of noncompliance relates to the balustrade of the first floor terrace. The maximum building height has been measured at 11.2m above the natural ground level, and has been highlighted in Figure 4 below:

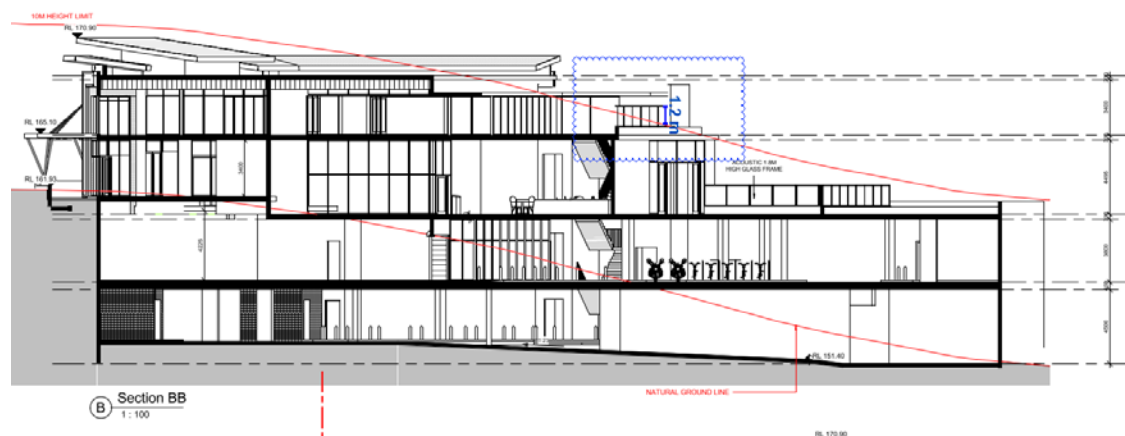


Figure 4: Degree of noncompliance marked and scaled in blue

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Whilst it is acknowledged that the majority of the building has been amended to comply with the maximum height requirement the proposal is not considered to be acceptable having regard to the following highlighted objectives of the clause.

(1) *The objectives of this clause are as follows—*

- (a) *to protect privacy and the use of private open space in new development and on adjoining land,*
- (b) *to ensure that the bulk of development is not excessive and relates well to the local context,*
- (c) *to nominate heights that will provide a transition in built form and land use intensity,*
- (d) *to ensure an appropriate height transition between new buildings and heritage items.*

The application proposes:

- active terrace areas above the maximum building height requirement which will overlook adjacent uses including residential development, and
- a building design that does not fit in with the bulk and scale of adjacent development which consists of small scale cafes, shops and residential dwellings between one and two stories in height.

Clause 4.6 Exceptions to development standards

A Clause 4.6 written request has been submitted in relation to Clause 4.3 of Hawkesbury Local Environmental Plan 2012

It is considered that the underlying purpose of the standard is to ensure buildings relate well to the local context, and the development provides for a transition in built form and land use intensity.

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

Compliance with the standard is not considered to be unreasonable given that the development can be designed to comply with the maximum building height. The variation request is also not considered to be well-founded or adequately demonstrates that there are sufficient environmental planning grounds to justify non-compliance given that:

- i. the justification presumes that a similar development could be constructed on the adjacent property No. 85 Old Bells Line of Road without consideration of matters such as servicing, sewer, traffic, access, relationship with adjacent development, and
- ii. the variation does not provide good design and amenity benefits, work to retain significant vegetation on the site, reduce impacts in privacy or amenity, promote ecologically sustainable development, or consider the constraints of the land such as servicing of reticulated sewer.

It should also be noted that the outdoor terraces are uncovered and the likelihood of intruding into the maximum building height control in the future is highly likely given that both terraces are highly exposed to the elements and no covered areas have been provided as part of the integral design.

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The proposal is not considered to be in the public interest as the development fails to meet both the objectives of the development standard as described above and the objectives of the zone listed below.

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To promote the development and expansion of business activities to meet the optimum employment and social needs of Hawkesbury.*

The overall development is not considered to be small scale in overall size and or land use intensity. The development would more than likely have a negative impact on business activities of Kurrjaong Village which are dominated by low scale cafes and shops for locals and tourists attracted to the locality due to its character.

Clause 5.10 Heritage Conservation

The subject site is neither a heritage item nor located in the vicinity of any heritage items listed under this plan.

Clause 6.4 Terrestrial Biodiversity

The subject site is not identified on the *Hawkesbury Local Environmental Plan 2012 Terrestrial Biodiversity Map*.

Clause 6.1 Acid Sulfate Soils

The subject site affected by the development falls within Class 5 as identified on the Acid Sulfate Soils Planning Map. The application is accompanied by a geotechnical report anticipate that the basement will not intercept the groundwater table. As the works proposed are unlikely to lower the water table no further investigations in respect to acid sulfate soils are required under subclause (6). The proposal is consistent with the requirements of this clause.

Clause 6.7 Essential Services

This clause requires that the consent authority must be satisfied that the disposal and management of sewage services are available or that adequate arrangements have been made to make them available when required.

The site does not have access to reticulated sewer and the wastewater management details provided with the application propose a pump out sewerage system to service the site.

The onsite wastewater report dated June 2022 identifies that the site would generate an average of 5,000 Litres of treated wastewater per day (45,000 Litres per week). Treated wastewater will be required to be pumped out twice weekly and de-sludged every three years. A separate arrangement will be required for the grease traps proposed to service the food premises.

As part of the collection of waste the application proposes that a 20,000l tanker will stand along the frontage of the development along Timms Hill Road. The sewerage management system is shown in Figure 5 below.

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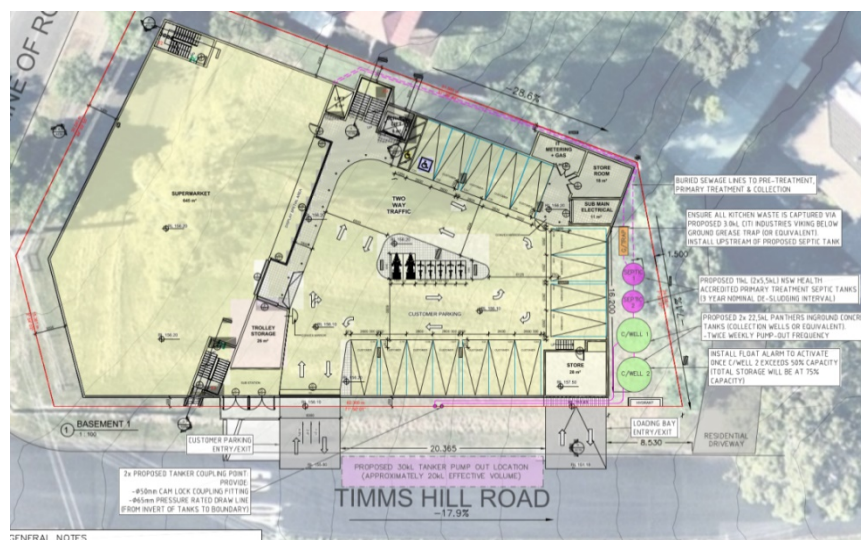


Figure 5: Sewerage system and location of pump out tanker parking

The proposal relies on a pump out system for the development is not considered to be acceptable and the application is unable to demonstrate that adequate arrangements can be made to service the development, particularly due to the overall scale and nature of the development and future ongoing impacts on the surrounding locality in terms of traffic, noise, odour, frequency of servicing and safety.

The application also fails to consider matters such as the cost of operating the system and the limitations of the system when it comes to the potential for any future change of use or establishment of wastewater generating activities permitted in the zone, such as medical centres, hair dressers, beauty salons, business/office premises, child care centres etc.

ii. Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:

No Draft Environmental Planning Instruments apply to the proposed development.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan 2002

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

Part A Chapter 3 – Notification

The application was notified between 8/11/2021 - 22/11/2021 in accordance with Chapter Three of the DCP and the Hawkesbury Community Participation Plan. Council received 27 submissions raising objection to the proposal and one submission in support. The issues raised in the objections have been reviewed and considered under the public consultation section of this report below.

Part C Chapter 1 – Landscaping

Minimal landscaping has been proposed along the road frontages and property boundaries in order to soften the appearance of the development. The landscape plan

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and design of the building does not provide suitable opportunity for landscaping given the minimal building setback proposed along Old Bells Line of Road and Timms Hill Road.

Furthermore the latest sewage plan provided shows infrastructure in areas where large trees are proposed to screen the 10m high basement wall from the adjoining residential property to the east.

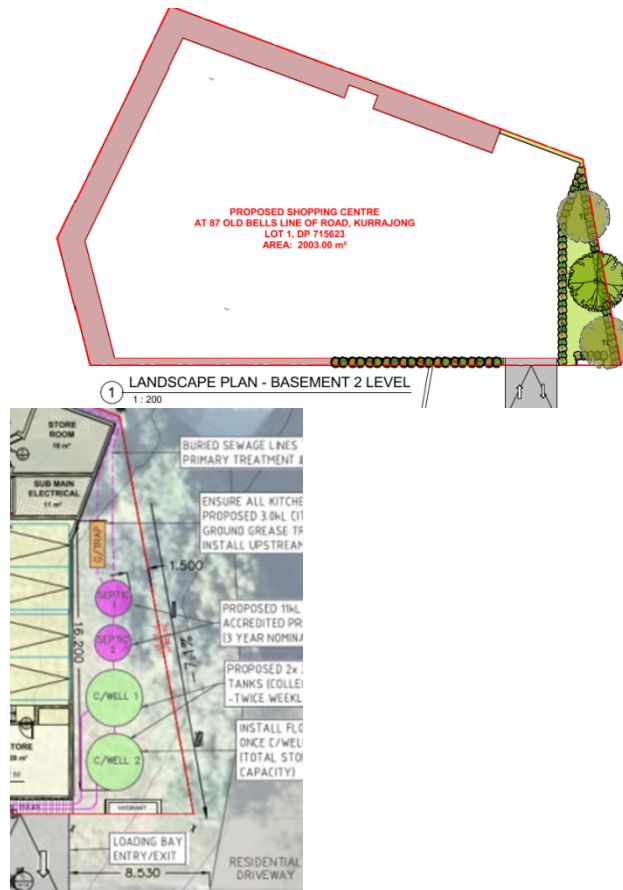


Figure 6: Tree planting left and sewerage system location right

Part C Chapter 2 – Car parking and Access

The DCP specifies 1 space per 30m² of gross floor area in commercial zones for shops and restaurants/refreshment rooms. A total of 53 spaces are proposed onsite as follows:

- 37 car parking spaces (16 staff, 2 accessible public/staff, 18 general, 1 doctor) on basement level 2
- 16 car parking spaces (15 general and 1 accessible), 2 motorcycle parking areas and 5 bicycle parking areas on basement level 1.

The application identifies the need to provide a minimum of 52 parking spaces based on the floor areas of the shops/refreshment rooms listed below.

- 645m² supermarket in basement 1
- three retail shops (142m², 96m², 135m²) on the ground floor
- 38m² kiosk on the ground floor
- two retail shops (98m² and 165m²) on the first floor
- two restaurants (135m² and 91m²) on the first floor.

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As part of the assessment of the application, the applicant was advised to include the indoor and outdoor seating areas of the building shown on the plans.

The applicant responded by referring to the definition for the Gross Floor Area contained under the LEP which excludes areas enclosed to a height of more than 1.4m on all sides.

It is considered that the internal and external seating areas should be considered as part of any calculation for traffic generation as the outdoor terraces are surrounded by 1.8m high acoustic glassed walls and are directly accessible from restaurants and kiosk which increase the potential for seating and traffic generation. This can be seen in the following extracts of the plans.

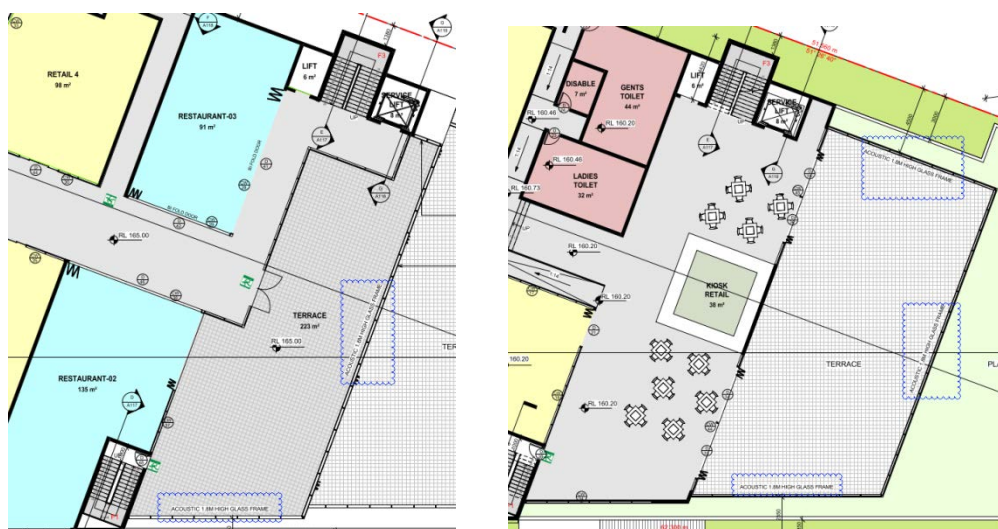


Figure 7: Acoustic wall surrounding outdoor terraced areas (first floor left and ground floor right)

Given the above it is considered that an additional 21.43 parking spaces should be provided for the development based on the floor areas specified below.

- internal seating area on the ground floor 140m² approx.
- outdoor terrace area on the ground floor 280m² approx.
- outdoor terrace area on the first floor 223m².

The proposal to provide 20 parking spaces less than what is specified under the DCP is not supported given the significant departure from the development control plan and limited number of on street parking spaces available in the locality.

Furthermore the proposal will rely on the need for septic tanker to park on Timms Hill Road which is not supported. It is required that any development of the site should be designed to comply with the minimum onsite parking requirements of specified under Hawkesbury Development Control Plan 2002 and provide suitable areas for the collection of waste.

Part C Chapter 3 – Signs

The development application was not accompanied by any details in relation to signage associated with the proposal. It is expected that a development of this nature would be accompanied by signage and should be shown at the application stage in order to consider the potential impacts signage would have on the locality having regard to the requirements specified under this chapter, and Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021 (formerly State Environmental Planning Policy 64 Signage).

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Part C Chapter 7– Effluent disposal

Section 7.4 of this chapter outlines the following regarding the use of a pump out service on unsewered land.

The only developments to be approved in respect of unsewered land that will rely on tanker removal of septic tank effluent are as follows:

- a) *Single dwelling houses;*
- b) *Light industry and single shops which do not require a water supply greater than that which can be delivered via a normal domestic connection without on-site storage or which are not connected to a reticulated water supply.*

Given intensity of the proposed land use and details provided with the application it is clear that the development would generate significant waste water demands than what is considered to be acceptable for unsewered land within the Hawkesbury.

It is further noted that the septic system (septic tanks, holding tanks, grease traps) have been designed to be located along the rear property boundary adjacent to residential development, with no assessment in relation to impacts on proposed landscaping, potential noise or odour on adjacent development.

iv. Planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:

Not applicable.

vi. Matters prescribed by the Regulations:

The Regulations require that the development is to Comply with the National Construction Code and be levied against Council's S94A Development Contributions Plan should the proposal be supported.

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

As part of the assessment of the proposal, the applicant was requested to provide specific details in relation to the following matters.

Waste Management

The application fails to demonstrate that the development would be adequately serviced in terms of garbage, recycling, trade waste and general commercial waste management.

The waste management plan assumes that Council vehicles will enter the basement to service the site, however Councils waste management services do not enter private developments and this arrangement would not be supported.

Furthermore the application is not accompanied by any specific details in relation to:

- *how much waste is expected to be generated for each tenancy,*
- *how waste would be stored and managed for all tenancies,*
- *expected trade waste volumes, treatment and management,*
- *location and servicing of grease traps,*
- *how waste storage areas will be cleaned/washed down,*
- *how waste would be collected,*

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- *how often waste vehicles will need to access the site, and*
- *if the loading bays are sufficient for the largest vehicles expected to service the site,*

Given the limited waste storage areas shown on the plans it is considered that the development does not provide sufficient area for waste storage and collection.

Engineering Matters

Councils Development Engineers have reviewed the documents and advise the following:

1. *Details are required to be submitted demonstrating vehicle access to the development complies with Council's DCP and AS2890.1. This includes longitudinal sections of both sides of the vehicle crossings, sections showing existing and proposed surface levels, gradients, chainages, etc. Driveway profiles within the public road reserve must also comply with Council's standard driveway profile.*
2. *An existing surface inlet pit located on Old Bells Line of Road has been identified on the survey plan. It is considered that insufficient details with respect to the stormwater drainage infrastructure located within the footpath area and private property have been provided.*

It is required that survey details with respect to the stormwater drainage infrastructure (such as pipe locations, dimensions, etc) are undertaken by a registered surveyor and be clearly shown on the drawings.

Should Council's stormwater drainage infrastructure traverse the development site, details must be provided demonstrating that access to this infrastructure is achievable at all times for any future maintenance and/or upgrade.

3. *Insufficient details have been provided to consider the impacts the development would have on the flow of the traffic on the street network, including existing and expected future traffic volumes relating to Hawkesbury road hierarchy.*
4. *The traffic and car parking impact assessment identifies that the accessible bay in basement level 1 car park and the accessible bay adjacent to the shared space in basement level 2 car park do not comply with AS2890.*
5. *The column or pillar proposed within the accessible bay in basement level 2 will restrict access to the bay, as shown on drawing A110, revision E dated 15/7/2021.*

Building

The plans submitted do not demonstrate that the site will be able to provide sufficient area or room to accommodate a plant room for heating, ventilation and air conditioning. Provision for plant is required to be incorporated in any building design.

Excavation

Given the extent and depth of proposed excavation the application will need to be supported by details in relation to the impacts associated with the construction of the development.

Details are required to be submitted which specify:

- *bulk earthworks,*
- *quantities of material to be exported from the site,*
- *site access,*

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- traffic management,
- suitability of the road infrastructure,
- number of heavy haulage vehicle movements,
- acoustic impacts associated with the excavation,
- vibration impacts associated with the works and export of material,
- hours, timeframes and scheduling of work, and
- any measures proposed to mitigate the impacts associated with the construction of the development.

Public Infrastructure

Given the pedestrian demand that would be generated by the development it would be required that footpaths be upgraded and provided for the entire frontage of the development.

Plans are required to be provided showing that suitable pedestrian access can be provided consistent with the requirements of Hawkesbury Development Control Plan 2002. Please note that the steepness of Timms Hill Road may result in changes to the grade of the land and must be shown.

Finally trees proposed to be retained in the road reserve must be protected as part of any proposed design.

In response to the above the applicant amended plans to identify internal storage areas and essential plant. The applicant suggested that Council condition the remaining aspects as part of a condition of consent.

This is not considered to be a suitable response having regard to the above issues as the information requested is required in order to make an informed decision of the likely impacts of the development. This is particularly given the overall size of the development, impacts associated with the development and constraints of the site.

c) Suitability of the site for the development

Insufficient information has been provided to consider the suitability of the site for the proposed development. This is particularly in relation to essential services, parking, access and traffic.

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

Public Submissions

A total of 27 submissions raising objection were received following the notification of the proposal raising objections to the proposed development and one submission in support. The concerns within the objections are summarised below:

- Adverse impact on the character and amenity of the Kurrjaong Village,
- Overbearing size, scale and bulk of the development on the streetscape and adjacent development,
- Impact on private open space,
- Impacts on views,
- Impact on existing businesses in the Kurrjaong Village,
- Impacts associated with pumping sewage from the site,
- Impact on traffic safety,
- Impact on water availability,
- Lack of on street parking in the locality and insufficient onsite parking,
- Unacceptable traffic impact on the intersections of Old Bells Line of Road, Grose Vale Road, Woodburn Road and Timms Hill Road,

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- Poor configuration of car parking spaces and suitability having regard to Australian Standards,
- 350 extra vehicle movements per day and number of vehicles accessing Timms Hill Road,
- Incorrect presumptions made in the traffic report and statement of environmental effects,
- Potential use of the restaurant as a hotel and increased patrons/trading hours,
- Limited landscaping and trees,
- Lack of articulation and setbacks, and
- Storage and management of waste.

The applicant has provided amended plans which seek to address issues identified in the submissions received, and clarified that no hotel is proposed and references to other LGA's were errors in the reports submitted.

As discussed previously, it is considered that amended plans do not satisfactorily address the issues raised in relation to traffic, scale of the development, services, noise, traffic impact, landscaping and management of sewage.

Endeavour Energy

The application has been referred to Endeavour Energy for comment given the location of the proposed building to existing electrical assets. Endeavour Energy has reviewed the proposal and raised a number of matters in relation to:

- the buildings setback to overhead power lines along Old Bells Line of Road and compliance with the following requirements:
 - Australian/New Zealand Standard AS/NZS 7000 – 2016: 'Overhead line design' as updated from time to time.
 - 'Service and Installation Rules of NSW' which can be accessed via the following link to the Energy NSW website: <https://energy.nsw.gov.au/government-and-regulation/legislative-and-regulatory-requirements/service-installation-rules> .
- the need to ensure that the indoor electrical substation has been designed to cater for the development,
- protection of assets, and
- upgrade of street lighting.

The applicant was requested to address the above. The applicant has confirmed that above ground lines will be moved underground, space for an indoor electrical substation has been made on the upper basement plan and endeavour could recommend conditions to be imposed.

e) The Public Interest:

The proposed development is not in the public interest for the reasons identified in the report above and having regard to the concerns raised in the submissions received by the Council in relation to the application.

Development Contributions

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

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Conclusion

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

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

Local Planning Panel Recommended Reasons for Refusal

That development application DA0239/21 at Lot 1 DP 715623, 87 Old Bells Line of Road, KURRAJONG NSW 2758 for Construction of Retail Premises, Shopping Centre and Restaurant or Cafe, Associated Car parking, Loading Areas and Landscaping Works be refused for the following reasons:

1. Disposal and Management of Sewage

The development application does not provide adequate arrangements in relation to the disposal and management of sewerage.

Particulars

- a) Clause 6.7 of Hawkesbury Local Environmental Plan 2012 states:

“6.7 Essential services

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

...

(c) the disposal and management of sewage,

...”

- b) The site does not have access to reticulated sewer and the details provided with the application estimate an average of 5,000l of wastewater being generated per day and collected onsite.
- c) Wastewater is proposed to be pumped out by a 20,000L tanker twice weekly and the tanker will be required to stand on Timms Hill Road whilst wastewater is being pumped from the site.
- d) Section 7.4 of Part C Chapter 7 of Hawkesbury Development Control Plan (DCP) 2002 outlines that the only developments to be approved in respect of unsewered land that will rely on tanker removal of septic tank effluent are
- i. Single dwelling houses; and
 - ii. Light industry and single shops which do not require a water supply greater than that which can be delivered via a normal domestic connection without on-site storage or which are not connected to a reticulated water supply.
- e) It is considered that the frequency, access, traffic, and odour impacts associated with the proposed pump out system do not provide adequate arrangements for the disposal and management of sewerage on unsewered land.

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- f) The proposal is further considered to be unacceptable having regard to the requirements of Chapter 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021. In particular the matters required to be considered under Section 9.7 (17) Sewerage systems or works.

2. Height of Buildings

The proposed building does not comply with the development standard or objectives for maximum building height specified under Clause 4.3 of HLEP 2012.

Particulars

- a) Clause 4.3 of HLEP 2012 applies to the site and states:

“4.3 Height of Buildings

- (1) *The objectives of this clause are as follows—*
 - (a) *to protect privacy and the use of private open space in new development and on adjoining land,*
 - (b) *to ensure that the bulk of development is not excessive and relates well to the local context,*
 - (c) *to nominate heights that will provide a transition in built form and land use intensity,*
 - (d) *to ensure an appropriate height transition between new buildings and heritage items.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.”*

- b) The building height map specifies a maximum building height of 10 metres for the subject land.
- c) Section 'BB' shows a maximum height of 11.2m above the existing ground level and the proposal exceeds the ten metre maximum building height pursuant to Clause 4.3 of HLEP 2012.
- d) The proposed building fails to comply with the objectives of Clause 4.3 of HLEP 2012 because the bulk of the development is excessive, terraces will overlook adjacent development and the application does not provide for an appropriate transition in built form and land use intensity with surrounding development which is dominated by low scale residential and commercial land uses.
- e) The written request that seeks to justify the contravention of the maximum height development standard in Clause 4.3 of HLEP 2012 pursuant to Clause 4.6 of HLEP 2012.
- f) The written request does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances.
- g) The variation request is also not considered to be well-founded or adequately demonstrate that there are sufficient environmental planning grounds to justify non-compliance given that the development fails to meet both the objectives of the development standard and the objectives of the zone.

3. Character and Zone Objectives

The development is not compatible with the character of the locality and is inconsistent with the objectives of the B1 Neighbourhood Centre Zone contained in the Land Use Table of HLEP 2012.

Particulars

- a) Having regard to the excessive height and large scale of the development the proposed building is inconsistent with the character of adjoining residential and commercial uses, which are low scale in terms of intensity in land use, built form and reliance on services.
- b) The proposed building provides minimal opportunity for landscaping, does not provide sufficient onsite parking and relies on the need to use the road reserve to service the development due to the lack of sewage infrastructure in the locality.
- c) The proposal has not been designed to account for the natural slope of the land and proposes significant excavation works (up to 9.5m below the natural ground level) in order to provide the proposed basement parking and basement supermarket.
- d) The objectives for the B1 Neighbourhood Centre Zone as set out in the Land Use Table are:
 - *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
 - *To promote the development and expansion of business activities to meet the optimum employment and social needs of Hawkesbury.*
- e) The overall scale of the development is considered to be inconsistent with the objectives of the zone as the proposal does not provide for a small-scale retail development and has the potential to have a negative impact on the expansion of business activities of Kurrjaong Village which is based on providing low scale cafes and shops for locals and tourists who are attracted to the locality due to its character.

4. Car Parking and Traffic

The development application does not satisfactorily address the traffic impacts associated with the proposal and or provide for sufficient onsite parking having regard to the requirements of the Hawkesbury Development Control Plan (DCP) 2002.

Particulars

- a) Council requested details to be submitted demonstrating vehicle access to the development complies with Council's DCP and AS2890.1.

This includes longitudinal sections of both sides of the vehicle crossings, sections showing existing and proposed surface levels, gradients, chainages, etc. Driveway profiles within the public road reserve must also comply with Council's standard driveway profile.
- b) Insufficient details have been provided to consider the impacts the development would have on the flow of the traffic on the street network, including existing and expected future traffic volumes.

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- c) The proposal to use and occupy Timms Hill Road to service the proposed septic system will have an unacceptable impact on traffic flow and safety of Timms Hill Road.
- d) The DCP specifies 1 space per 30m² of gross floor area in commercial zones for shops and restaurants/refreshment rooms.
- e) The application fails to include the indoor and outdoor seating areas which have the potential to generate the need for additional parking.
- f) Outdoor areas will be enclosed by a 1.8m high acoustic wall and will be directly accessible from the proposed kiosk and restaurants.
- g) The gross floor area of the indoor and outdoor seating areas have been calculated to be approximately 642m² in area which results in the need to provide 21.4 parking spaces under the DCP.
- h) The significant departure from the DCP is not supported.

5. Insufficient Information

Insufficient information has been provided to carry out a proper assessment of the likely impacts of the proposed development with regard to Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Particulars

General

- a) A plan of management which details how the development will operate and is managed, has not been provided, which is not acceptable. Details in relation to staffing, hours of operation, security management, ongoing maintenance of landscaping, management and maintenance of the proposed effluent disposal system, waste collection and storage are required to enable a proper assessment of the impacts associated with the application.
- b) Air-conditioning units and/or mechanical plant have not been specified and is required in order to demonstrate that the installation will not have a negative impact on the appearance of the overall appearance of the building.

Public Infrastructure

- c) The Timms Hill Road verge is unformed and is required to be upgraded to support the development.
- d) A public infrastructure upgrade plan is required to be submitted showing what works are required to be carried along both road frontages in order to accommodate the new development and ensure appropriate pedestrian and vehicular access is provided.
- e) The plan is required to cover the entire road frontage and show kerb and guttering, pavement marking/signage, provision of a concrete footpath, street lighting and street tree planting.
- f) Upgrade works required to be undertaken must be clearly detailed on the plans including the need to remove existing vegetation or relocate any existing services required to support the proposal.

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- g) Insufficient details with respect to the stormwater drainage infrastructure located within the footpath area and on the private property have been provided.
- h) It is required that details with respect to stormwater drainage infrastructure (such as pipe locations, detention basins, dimensions, etc) are provided and clearly shown on the drawings.

Excavation

- i) The applicant was requested to submit details in relation to the proposed earthworks in order consider the impacts associated with the development, such as:
 - i. *quantities of material to be exported from the site,*
 - ii. *site access,*
 - iii. *traffic management,*
 - iv. *suitability of the road infrastructure,*
 - v. *number of heavy haulage vehicle movements,*
 - vi. *acoustic impacts associated with the excavation,*
 - vii. *vibration impacts associated with the works and export of material,*
 - viii. *hours, timeframes and scheduling of work, and*
 - ix. *any measures proposed to mitigate the impacts associated with the construction of the development.*

Signage

- j) The development application was not accompanied by any details in relation to signage associated with the proposal.
- k) It is expected that a development of this nature would be accompanied by signage and should be shown at the application stage in order to consider the potential impacts signage would have on the locality.
- l) Details of the proposed signage in the form of a signage plan and notations on the architectural plans (including elevation and site plans) are required to enable a full assessment having regard to Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021 and Part C Chapter 3 of Hawkesbury Development Control Plan 2002.

Waste storage and collection

- m) Insufficient information has been provided in relation to the proposed waste and recycling storage area, whether suitable storage areas are proposed and they will be maintained in a clean and tidy manner.
- n) Insufficient information has been provided to enable an assessment of the potential impacts associated with the pumping out of wastewater from the proposed septic tanks, in relation to odour impacts.

6. Precedent

The development application should be refused because the proposed development will set an undesirable precedent for development that is inconsistent with the Development Controls which apply to the proposal.

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7. Public Interest

The development application should be refused because the proposed development is not in the public interest given that the information submitted in support of the proposal has been unable to address the planning controls applicable to the development or concerns raised in the submissions received by Council in relation to the application

ATTACHMENTS:

AT – 1 Proposed Plans - *(Distributed under separate cover)*.

AT - 2 Submissions received - *(Distributed under separate cover)*.

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End of Business Paper

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