



Hawkesbury Local Planning Panel

Date of meeting: 20 April 2023
Location: By audio-visual link
Time: 10:00 AM

BUSINESS PAPER

HAWKESBURY LOCAL PLANNING PANEL

Table of Contents

Meeting Date: 20 April 2023

Table of Contents

1. PROCEDURAL MATTERS 5

 Welcome 5

 Attendance 5

 Declaration of Interest 5

2. REPORTS FOR DETERMINATION 6

 2.1.1 CP - DA0200/22 - Lot 3 DP 270515, 88B Bulgamatta Road BERAMBING NSW 2758 -
 (475542) 6

 2.1.2 CP - DA0306/22 - Lot X DP 161237, 1 Livingston Street WINDSOR NSW 2756 - (88858,
 107, 95498)..... 37

 2.1.3 CP - DA0114/22 - Lot 28 DP 1184227, 35 Hadden Ridge Road Wilberforce Subdivision -
 (50124) 87

HAWKESBURY LOCAL PLANNING PANEL

Table of Contents

Meeting Date: 20 April 2023

HAWKESBURY LOCAL PLANNING PANEL

1. PROCEDURAL MATTERS

Meeting Date: 20 April 2023

1. PROCEDURAL MATTERS

Welcome

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

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

Attendance

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

Declaration of Interest

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

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

2. REPORTS FOR DETERMINATION

2.1.1 CP - DA0200/22 - Lot 3 DP 270515, 88B Bulgamatta Road BERAMBING NSW 2758 - (475542)

Directorate: City Planning

DEVELOPMENT INFORMATION

Application Number:	DA0200/22
Date Received:	20 June 2022
Proposal Details:	Eco-Tourist Facility – Use of five cabins as an eco-tourist facility
Estimated Cost:	\$535,000.00
Zoning:	RU2 Rural Landscape
Legal Description:	Lot 3 DP 270515
Property Address:	88B Bulgamatta Road BERAMBING NSW 2758
Area:	20.4800Ha
Applicant:	David Jones Building & Landscape Design
Owner:	Berambing Sustainable Developments Pty Limited
Exhibition Dates:	5 to 19 August 2022
Submissions:	Nil
Key Issues:	<ul style="list-style-type: none">• Categorisation and Permissibility• Development History• Bushfire

Recommendation: Approval subject to conditions.

EXECUTIVE SUMMARY

Reason for Consideration by Local Planning Panel

Conflict of Interest – The subject property is owned by a relative of a Councillor.

Proposal

The proposal involves the use of five buildings at 88B Bulgamatta Road, Berambing, as cabins that are part of an eco-tourist facility. The five cabins have been constructed and are identified as the 'Dream Cabin' (Cabin 2), 'Love Studio' (Cabin 5), 'Enchanted Cave', 'Tree House' and 'Love Teepee'.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Development Consent No. MA1308/01 was originally issued for the construction and operation of a tourist facility on the subject land. This original consent was approved as a 'tourist facility' under the Hawkesbury Local Environmental Plan 1989 and approved six cabins within five buildings (one building was approved as an attached double cabin). The tourist facility was not constructed and developed in accordance with the approved plans and as a result Development Application No. DA0196/20 was lodged to formalise the use of the Enchanted Cave and Treehouse cabins.

At the time of lodgement, both tourist facilities and 'eco-tourist facilities' were prohibited under the Hawkesbury Local Environmental Plan 2012 and Development Application No. DA0196/20 was prepared on the basis that the land benefited from an 'existing use' right as a tourist facility. However, legal advice obtained by Council indicated that whilst Development Consent No. MA1308/01 had been secured, the works and use were carried out unlawfully and consequently the development was unable to be considered under the existing use right provisions of the Environmental Planning and Assessment Act 1979. Upon review of the assessment report and obtained legal advice, the Hawkesbury Local Planning Panel resolved to determine the application with a refusal at its meeting of 21 July 2022.

Following the amendment of the Hawkesbury Local Environmental Plan 2012 to now permit eco-tourist facilities within the RU2 Rural Landscape zone, the subject application has been submitted to formalise the use of the five cabins as an eco-tourist facility. The approval of the proposed development would permit a total of nine cabins on the property as four cabins approved under Development Consent No. MA1308/01 have not been constructed to date.

An Asset Protection Zone has been established and the Dream Cabin is nominated as the 'refuge building' for the eco-tourist facility.

The Statement of Environmental Effects and Draft Plan of Management prepared in support of the application indicate that two visitors may be accommodated within each cabins, resulting in a total of ten guests that may be accommodated within the eco-tourist facility.

Permissibility

The site is zoned RU2 Rural Landscape and the proposed development may be categorised as an eco-tourist facility under the Hawkesbury LEP 2012. Eco-tourist facilities are a permissible form of development within the RU2 Rural Landscape zone.

Consultation

The application was notified between 5 and 19 August 2022 in accordance with Part A Chapter 3 of the Hawkesbury Development Control Plan 2002. No submissions were received in response to the notification of the application.

The development is categorised as a 'special fire protection purpose' and was referred to the Rural Fire Service as 'integrated development'. Upon review of the supplied Bushfire Assessment Report the RFS have issued their General Terms of Approval for the development.

Key Issues

The key issues of the development application are:

- Categorisation and Permissibility
- Development History
- Bushfire

RECOMMENDATION

That the Hawkesbury Local Planning Panel exercising the functions of Council pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 approve Development Application No. DA0200/22 for an eco-tourist facility on Lot 3 in DP 270515, known as 88B Bulgamatta Road, Berambing, subject to the prepared conditions of consent.

The reasons for approval are as follows:

- (a) The development is permissible as an eco-tourist facility under the Hawkesbury Local Environmental Plan 2012.
- (b) The development is generally consistent with the Hawkesbury Local Environmental Plan 2012, relevant environmental planning instruments, Hawkesbury Development Control Plan 2002 and policies that apply to the development.
- (c) The development is categorised as integrated development and General Terms of Approval have been issued by the Rural Fire Service.
- (d) The development is appropriately located and may be managed and maintained to minimise impacts to the natural environment.
- (e) The development is consistent with the ecological, environmental and cultural values of the area.
- (f) The application was notified in accordance with the Hawkesbury Development Control Plan 2002 and no objections to the development were received.
- (g) For the reasons given above, approval of the application is seen to be in the public interest.

BACKGROUND

Detailed Description of Proposal

Pursuant to Section 4.12(1) of the Environmental Planning and Assessment Act (EP&A) Act 1979 (as amended) this application seeks approval for the use of five buildings at 88B Bulgamatta Road, Berambing, as cabins forming part of an eco-tourist facility. Plans of the proposal are attached as Attachment 1 to this report.

Tourist accommodation known as the 'Love Cabins' is located on and currently operates from the subject property. The submitted application involves the use of five existing cabins that are identified as the Dream Cabin (Cabin 2), Love Studio (Cabin 5), Enchanted Cave, Tree House and Love Teepee.



Figure 1: The Dream Cabin



Figure 2: The Enchanted Cave Cabin

Development Consent No. MA1308/01 was originally issued for the construction and operation of a tourist facility on the subject land. This consent approved six cabins within five buildings, with the supplied documentation indicating that two of the cabins identified as the Dream Cabin and Love Studio (Cabins 2 and 5) have been constructed and will replace the corresponding cabins approved under Development Consent No. MA1308/01. The documentation further outlines that the three other existing buildings (Enchanted Cave, Tree House and Love Teepee) are in addition to the structures approved under Development Consent No. MA1308/01.

The Dream Cabin is located approximately 110m from the property's southern boundary, the Love Studio is located approximately 151m off the western boundary, the Enchanted Cave cabin is located approximately 158m off the northern boundary, the Treehouse cabin is located approximately 72m off the northern boundary, whilst the Love Teepee is located approximately 36m off the western boundary. These structures have been constructed using a variety of materials including hardwood, steel, sandstone, concrete and metal cladding to complement the bushland setting.

The facility is currently being used to provide short-term holiday accommodation. Bookings may be made through the Love Cabins' website, accommodation websites or via phone. The Draft Plan of Management indicates that each cabin may be occupied by a maximum of two guests and there is no fixed limit on the length of stay.

Cooking facilities and potable water is provided to each cabin. No meals are provided by the operator and guests are instead advised to bring their own provisions.

The Building Code of Australia (BCA) Reports prepared in support of the application indicate that minor upgrading works will be required for the buildings. Each of the cabins are serviced by all-weather parking bays.

The land is identified as bushfire prone land and forms of tourist accommodation are defined as a special fire protection purpose under the integrated development provisions of the EP&A Act 1979 and Rural Fires Act 1997. A referral of the development to the Rural Fire Service (RFS) has been undertaken.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023



Figure 3: The Enchanted Cave Cabin



Figure 4: The Love Teepee Cabin

An Emergency Management Plan has been prepared for the development and identifies the Dream Cabin as the refuge shelter for the development. An Asset Protection Zone (APZ) consisting of Inner and Outer Protection Zones has been established for the facility. The Bushfire Assessment Report outlines that the APZ will need to be maintained for a distance of 136m to the north, 120m to the east, 127m to the south and 100m to the west of the centralised Dream Cabin. The Dream Cabin is located within the Inner Protection Zone whilst the Love Studio, Enchanted Cave, Tree House and Love Teepee are located within the Outer Protection Zone.

The Emergency Management Plan indicates that bookings will be cancelled during periods of extreme fire danger.

The application is being reported to the Hawkesbury Local Planning Panel for determination as the owner is a relative of a Councillor.

Site and Locality Description



Figure 5: Aerial Imagery of Subject Property

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

The suburb of Berambing is located approximately 100km northwest of Sydney's CBD and approximately 40km northwest of Windsor.

The subject property forms part of a community title scheme and is legally identified as Lot 3 in DP 270515. Located north of Bulgamatta Road and Bells Line of Road, the land has a site area of approximately 20.4800Ha and is accessible via a sealed road within the community lot (Lot 1).

The property is currently operating as a tourist facility known as Love Cabins. Five tourist cabins are located on the property and form part of the existing tourist facility operations. Two of the cabins, the Dream Cabin and the Love Studio, were developed under Development Consent No. MA1308/01, although they were not constructed in accordance with the approved plans. The formalisation and use of these two cabins, as well as the existing Enchanted Cave, Tree House and Love Teepee cabins, are subject to the current development application.

Two outbuildings identified as the 'Rustic Shed' and a 'Storage Shed' are also located on the property. The Rustic Shed is used as an office for the Love Cabins, whilst the Storage Shed is under construction.

The property contains significant vegetation and is located within the vicinity of the Wollemi National Park. Surrounding development generally consists of rural properties, rural-residential properties and national park reserves. Bowens Creek is located approximately 190m north of the property.

Background and History

A review of Council's records identified the following applications of relevance to the subject matter:

Application	Date	Description	Determination
SA0007/94	19/12/1994	Subdivision – Community title subdivision to create to six rural lots and one community lot	Approval
MA1308/01	11/02/2003	Tourist Facility – Construction and operation of a tourist facility consisting of six cabins	Approval
DA0252/08	10/06/2008	Rural Sheds – Construction of two sheds	Approval
DA0196/20	21/07/2022	Tourist Facility – Use of two cabins as a tourist facility	Refusal

The land subject to this application was created with the registration of Development Consent No. SA007/94.

Development Consent No. MA1308/01 authorises development described as a tourist facility. This original consent approved six cabins within five buildings, with one building approved as an attached double cabin. Condition 41 of the consent outlines a maximum of 18 guests maybe accommodated within the six cabins.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

This consent included the following conditions relating to the obtainment of an Occupation Certificate:

36. *An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use. The occupation certificate will not be issued if any condition(s) of this consent are outstanding.*
39. *Completion of all road and drainage works required by subdivision consent SA0007/94.*

An Engineering Works Inspection was recorded on 18 July 2006 and appears to confirm that all works required under Condition 39 of the consent have been completed. However, no Occupation Certificate has ever been issued as required under Condition 36.

Development Application No. DA0196/20 was lodged to formalise the use of the Enchanted Cave and Treehouse cabins in association with the approved tourist facility use. However, the legal advice obtained by Council indicated that the development had not been undertaken in accordance with the conditions of Development Consent No. MA1308/01 and the application could not be considered under the existing use right provisions. At its meeting of 21 July 2022 the Hawkesbury Local Planning Panel resolved to refuse the application for the following reasons:

Prohibition of Development

1. *The expansion of the tourist facility use has not been found to satisfy the 'existing use' right provisions of the Environmental Planning and Assessment Act 1979 and was, at the time of the lodgement of Development Application No. DA0196/20, prohibited under the Hawkesbury Local Environmental Plan 2012.*

Particulars:

- (a) *Tourist facilities, tourist and visitor accommodation and eco-tourist facilities are prohibited within the RU2 Rural Landscape zone under the Hawkesbury Local Environmental Plan 2012.*
- (b) *The application has not established that the development of the land as enabled by Development Consent No. MA 1308/01 has been undertaken in accordance with the conditions of that consent.*
- (c) *The application has not established that the development was carried out in accordance with the terms of the consent at the time the development became a prohibited form of development.*

In response to this determination, the Applicant has submitted the subject application to formalise the use of all existing cabins onsite as eco-tourist facilities, which is now a permissible use within the RU2 Rural Landscape zone.

It would appear the owner is reliant on Development Consent No. DA0252/08 for the approval the Rustic Shed and the Storage Shed. Both of these structures have altered designs and appearances in comparison to this approval.

Submissions

The application was notified between 5 and 19 August 2022 in accordance with Part A Chapter 3 of the Hawkesbury Development Control Plan (DCP) 2002. No submissions were received in response to the notification of the application.

HAWKESBURY LOCAL PLANNING PANEL**2. REPORTS FOR DETERMINATION****Meeting Date:** 20 April 2023**Consultation**

Internal Consultation	
Building	Council's Building Coordinator has inspected the buildings and reviewed the supplied BCA Reports. The Building Coordinator is generally supportive of the development subject to the imposition of conditions. In this regard the upgrading of the buildings will be required in accordance with the recommendations of the BCA Report.
Flora and Fauna	An APZ has been established and is to be maintained for the eco-tourist facility. The Flora and Fauna Report indicates that no additional trees are to be removed and Council's Parks Officer is supportive of the application.
Engineering	The Development Engineer has raised no objection to the existing internal access arrangements and parking.
Environmental Health	The Environmental Health Officer has raised no objection to the development as 18 guests are unlikely to generate noise issues for neighbours and no common kitchen facilities are used to provide food for guests of the cabins.
Sewer	<p>The Sewer Management Facility (SMF) Coordinator has advised that the existing onsite effluent systems have previously been inspected by Council. Should the application be approved the SMF Coordinator recommends the imposition of a condition requiring an updated 'Approval to Operate' Licence and inspections.</p> <p>The submitted Wastewater Report outlines that relatively minor upgrading works are required.</p>

External Consultation	
Rural Fire Service	The RFS have undertaken a review of the Bushfire Assessment Report prepared in support of the development. Upon review of this documentation the RFS have issued General Terms of Approval for the development.

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

- EP&A Act 1979
- EP&A Regulation 2021
- Biodiversity Conservation Act 2016
- Biodiversity Conservation Regulation 2017

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

- State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
 - Chapter 4 – Remediation of land
- State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
 - Chapter 4 – Koala habitat protection 2021
 - Chapter 9 – Hawkesbury- Nepean River
- Hawkesbury Local Environmental Plan (LEP) 2012
- Hawkesbury DCP 2002

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 Instruments:

State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 4.6(1) of the Resilience and Hazards SEPP outlines a 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 suitability of the land to operate and function as a tourist facility was accepted with the approval of Development Consent No. MA1308/01. It is considered unlikely that the subsequent development and use of the land for tourist accommodation would have contaminated the land. No evidence or obvious signs of contamination have been observed by Council staff during site inspections.

Based on its development history the property is considered suitable having regard to the provisions of the Resilience and Hazards SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 of the Biodiversity and Conservation SEPP applies to the subject land and aims to “*encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline”.*

The Central Coast Koala Management Area covers the Hawkesbury under Schedule 1 of the Biodiversity and Conservation SEPP. The Flora and Fauna Assessment Report confirms that the property contains a number of feed tree species listed under Schedule 2 of the Policy and that Koalas (*Phascolarctos cinereus*) have been previously recorded within 10km of the subject site according to the NSW BIONET Database (observations of Koalas occurred within 1-2km of the property in 2017 and 2020).

The Flora and Fauna Report details that no Koalas were observed during the fauna survey and no evidence of Koala habitation – such as scats, claw and scratch marks – were located on the site. Therefore, the subject site is considered to not form core koala habitat as defined under the Biodiversity and Conservation SEPP.

Whilst Koalas could use the subject property as part of a habitat corridor and transient individuals may occasionally use the site, a significant proportion of potential Koala feed trees will be retained on-site and none of these trees are proposed for removal. The Flora and Fauna Report therefore concludes that the development is acceptable having regard to the provisions of Chapter 4 of the Biodiversity and Conservation SEPP.

Chapter 9 'Hawkesbury-Nepean River' of the Biodiversity and Conservation SEPP was repealed following the lodgement of this application. The provisions of Chapter 9 were amended and consolidated into Chapter 6 'Water Catchments'. Section 6.65 of the Biodiversity and Conservation SEPP specifies savings and transitional provisions and confirms that the former provisions of Chapter 9 continue to apply to the subject application.

Chapter 9 of the Biodiversity and Conservation SEPP 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*". This Policy requires an assessment of development applications with regard to the general and specific considerations, policies and strategies set out in the Policy. Section 9.9(17) of the Biodiversity and Conservation SEPP further outlines that Council must consider 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*".

The eco-tourist facility is serviced by a series of onsite effluent disposal systems and has previously been subject to an Approval to Operate Licence and was inspected by Council. Council's SMF Officer has advised that the existing systems should be adequate for the development and has recommended the imposition of a condition requiring an updated Approval to Operate Licence.

Hawkesbury Local Environmental Plan 2012

The site is zoned RU2 Rural Landscape under the provisions of Hawkesbury LEP 2012. The Dictionary of the Hawkesbury LEP 2012 provides the following definition for eco-tourist facilities:

eco-tourist facility means a building or place that—

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

The cabins provide temporary tourist accommodation, are located within a bushland setting and are managed and maintained to minimise impacts to the natural environment. It is therefore considered that the operation of the cabins is consistent with the above definition of an eco-tourist facility.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Eco-tourist facilities are a permissible form of development within the RU2 Rural Landscape under the Hawkesbury LEP 2012.

Clause 5.13(3) of the Hawkesbury LEP 2012 outlines a “*consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:*

- (a) *there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and*
- (b) *the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and*
- (c) *the development will enhance an appreciation of the environmental and cultural values of the site or area, and*
- (d) *the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and*
- (e) *the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and*
- (f) *waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and*
- (g) *the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and*
- (h) *any infrastructure services to the site will be provided without significant modification to the environment, and*
- (i) *any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and*
- (j) *the development will not adversely affect the agricultural productivity of adjoining land, and*
- (k) *the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:*
 - (i) *measures to remove any threat of serious or irreversible environmental damage,*
 - (ii) *the maintenance (or regeneration where necessary) of habitats,*
 - (iii) *efficient and minimal energy and water use and waste output,*
 - (iv) *mechanisms for monitoring and reviewing the effect of the development on the natural environment,*
 - (v) *maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control’.*

The Statement of Environmental Effects provides an assessment of the application against the above provisions. The cabins are located within a bushland setting and views of Wollemi National Park, BOWENS CREEK GORGE and natural bushland are available. The structures are setback from Bulgamatta

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Road and located to avoid visibility above ridgelines. The form, materials and construction of the cabins are such that they blend into the forest landscape and rock outcrops.

The site has previously been cleared to establish the APZ and the further removal of canopy trees is not required. The Flora and Fauna Report includes mitigation measures to minimise ongoing impacts to the natural environment.

The approval of the proposed development in addition to the cabins approved under Development Consent No. MA01308/01 would permit a total of nine cabins on the property. However, each of the nine cabins are to accommodate a maximum of two guests and Condition 41 of Development Consent No. MA01308/01 permits a total of 18 guests. Therefore the total number of guests accommodated within the facility will not be altered with the formalisation of the five cabins.

The proposal is permissible and satisfies the provisions of the Hawkesbury LEP 2012.

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

Not applicable.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan 2002

The development has been considered against the provisions of the Hawkesbury DCP 2002:

Part A Chapter 3: Notification

The application was notified in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002 and no submissions were received in response to the notification of the application.

Part C Chapter 2: Car Parking and Access

Each of the cabins are serviced by all-weather parking bays within their immediate vicinity. A communal parking area is also provided adjacent to the Rustic Shed.

Section 2.5.5 of Part C Chapter 2 of the Hawkesbury DCP 2002 does not establish parking rates for forms of tourist and visitor accommodation. The Draft Plan of Management outlines that each cabin will accommodate a maximum of two guests and accordingly the provision of a single parking space per cabin is considered adequate.

Council' Development Engineer has raised no objection to the proposal on parking or access grounds.

Part C Chapter 7: Effluent Disposal

As detailed previously in this report, the cabins are serviced by onsite effluent disposal systems. The Effluent Disposal Report prepared in support of the application indicates that minor upgrading of the systems may be required and Council's SMF Officer has recommended the imposition of a condition requiring the obtainment of an updated Approval to Operate Licence to oversee such works.

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.

v. (Repealed)

Not applicable.

vi. Matters prescribed by the Regulations:

Should the application be approved, Council's Building Coordinator has advised that the upgrading of the buildings will be required in accordance with the recommendations of the BCA Reports.

Council's Building Coordinator has advised that the provisions of the Disability (Access to Premises – Buildings) Standards 2010 do not apply as the buildings are already in existence.

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:

These matters have been considered in the assessment of this application.

Council's vegetation mapping indicates that the vegetation onsite comprises Sydney Sandstone Gully Forest and Sydney Sandstone Ridgetop Woodland – Open Forest vegetation communities. However, ground truthing surveys undertaken in support of the Flora and Fauna Assessment Report indicates that the native vegetation is consistent with a Dry Sclerophyll formation of vegetation and more appropriately aligns with the Sydney Sandstone Ridgetop Woodland ecological community.

The vegetation onsite is not identified on the Biodiversity Values Map maintained by the Office of Environment. As detailed previously in this report the vegetation onsite is not identified on the Biodiversity Values Map and the applicable Biodiversity Offsets Scheme threshold of 1Ha established by Clause 7.2(1) and Column 2 of the Table under the Biodiversity Conservation Regulation 2017

Vegetation has previously been cleared for the establishment of an APZ around the existing cabins. The APZ is subject to ongoing maintenance to satisfy the requirements for Inner and Outer Protection Areas.

The supplied Flora and Fauna Assessment Report focuses on the impacts to terrestrial ecology associated with the APZ maintenance activities. Assessments of significance (the '5 Part test') have been undertaken in accordance with Section 7.3 of the Biodiversity Conservation Act 2016 and Section 5.7 of the EP&A Act 1979 and conclude that the development is unlikely to have a significant impact on species, populations and communities listed under the Biodiversity Conservation Act 2016 or Commonwealth Environment Protection Biodiversity Conservation Act 1999.

The vegetation occurring on the site is locally common and not consistent with a threatened ecological community. Based on the findings of the Flora and Fauna Assessment Report it is considered that the continued operation of the facility will have no significant impact on threatened species, communities, populations or their habitats.

c) Suitability of the site for the development:

These matters have been considered as part of the assessment of the development application.

The site is identified as bushfire prone land and the tourist accommodation is defined as a special fire protection purpose under Section 100B of the Rural Fires Act 1997. In this respect the application was referred to the RFS as integrated development.

An APZ has been established and is to be maintained for the eco-tourist facility. The centralised Dream Cabin is nominated as the refuge shelter for the development.

The RFS have undertaken a review of the Bushfire Assessment Report and Emergency Management Plan prepared in support of the development. Upon review of this documentation the RFS have issued General Terms of Approval.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

The Hydro Line Spatial Data Map maintained by the Department of Finance, Services and Innovation indicates that the land is also burdened by a number of identified watercourses. However, the structures appear to be in excess of 40m from these watercourses and the Department of Planning and Environment (DP&E) – Water is unable to issue retrospective approvals for works that have already been completed. Consequently, a referral to DP&E – Water under the Water Management Act 2000 is not required in this instance.

An inspection of the property did not indicate that the construction of the buildings had significantly disturbed the land or that erosion was an ongoing issue of concern.

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

The application was notified from 5 to 19 August 2022 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. No submissions were received in response to the notification of the application.

e) The Public Interest:

The development is permissible under the Hawkesbury LEP 2012 and General Terms of Approval have been issued by the RFS. The approval of the application is therefore seen to be in the public interest.

Matters for Consideration under the Biodiversity Conservation Act 2016

As detailed previously in this report the vegetation onsite is not identified on the Biodiversity Values Map and the applicable Biodiversity Offsets Scheme threshold will not be exceeded. As a result a Biodiversity Development Assessment Report is not required under the Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017.

Development Contributions

Based on the supplied value-of-works of \$535,000.00, the payment of a Section 7.12 (formerly known as 94A) Contribution of \$5,350.00 would be payable should the application be approved.

Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act 1979, with all matters specified under Section 4.15(1) having been taken into consideration. The development is permissible under the Hawkesbury LEP 2012 and the total number of guests accommodated within the facility will not be altered in comparison to that which was approved under Development Consent No. MA1308/01.

The RFS are supportive of the recommendations of the Bushfire Assessment Report and have issued General Terms of Approval for the development.

The development is acceptable and is recommended for approval subject to the imposition of conditions are attached as Attachment 2 to this report.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

ATTACHMENTS

AT - 1 Plans of the Proposal.

AT - 2 Recommended Conditions of Consent.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

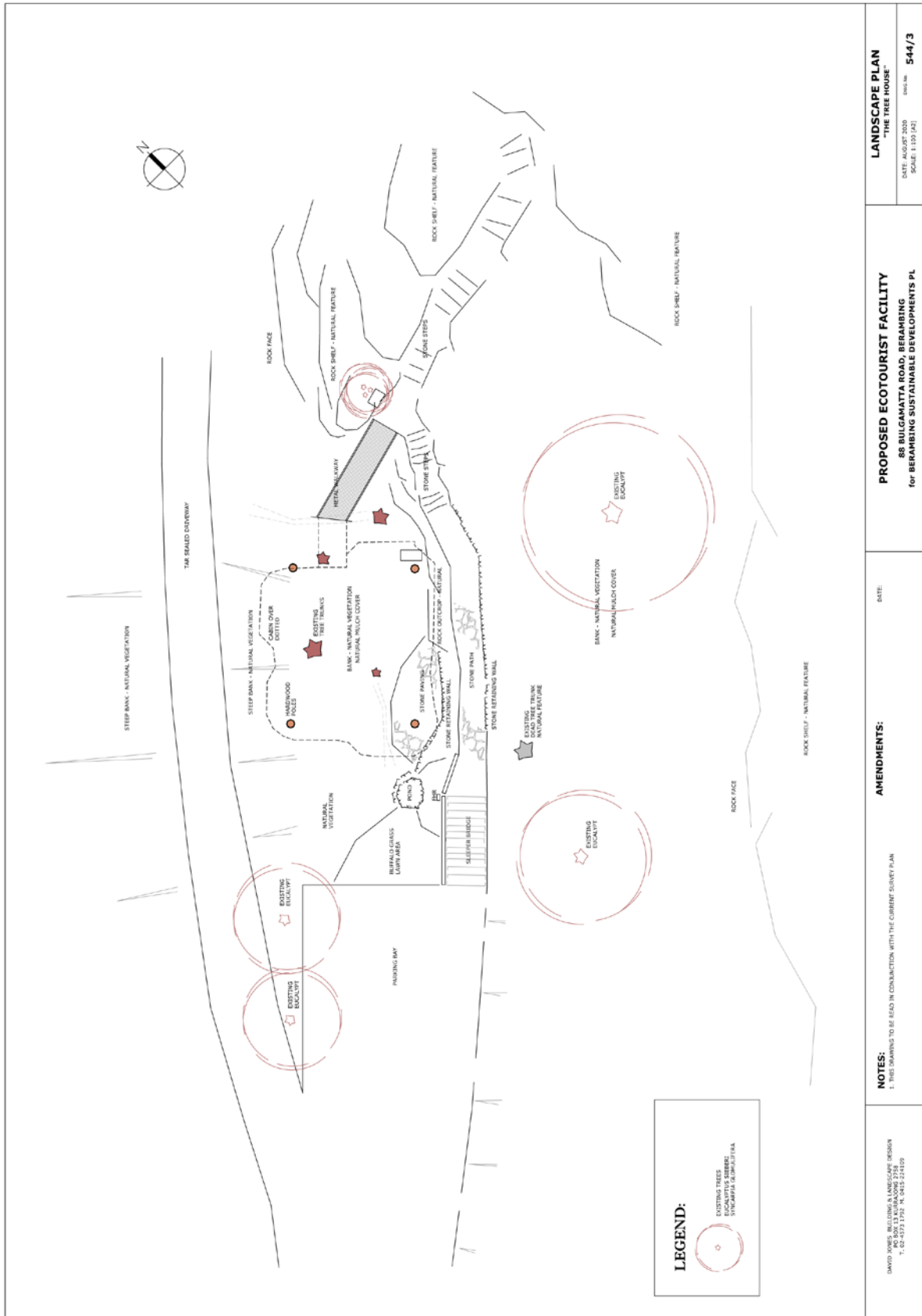
AT - 1 Plans of the Proposal



HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023



HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

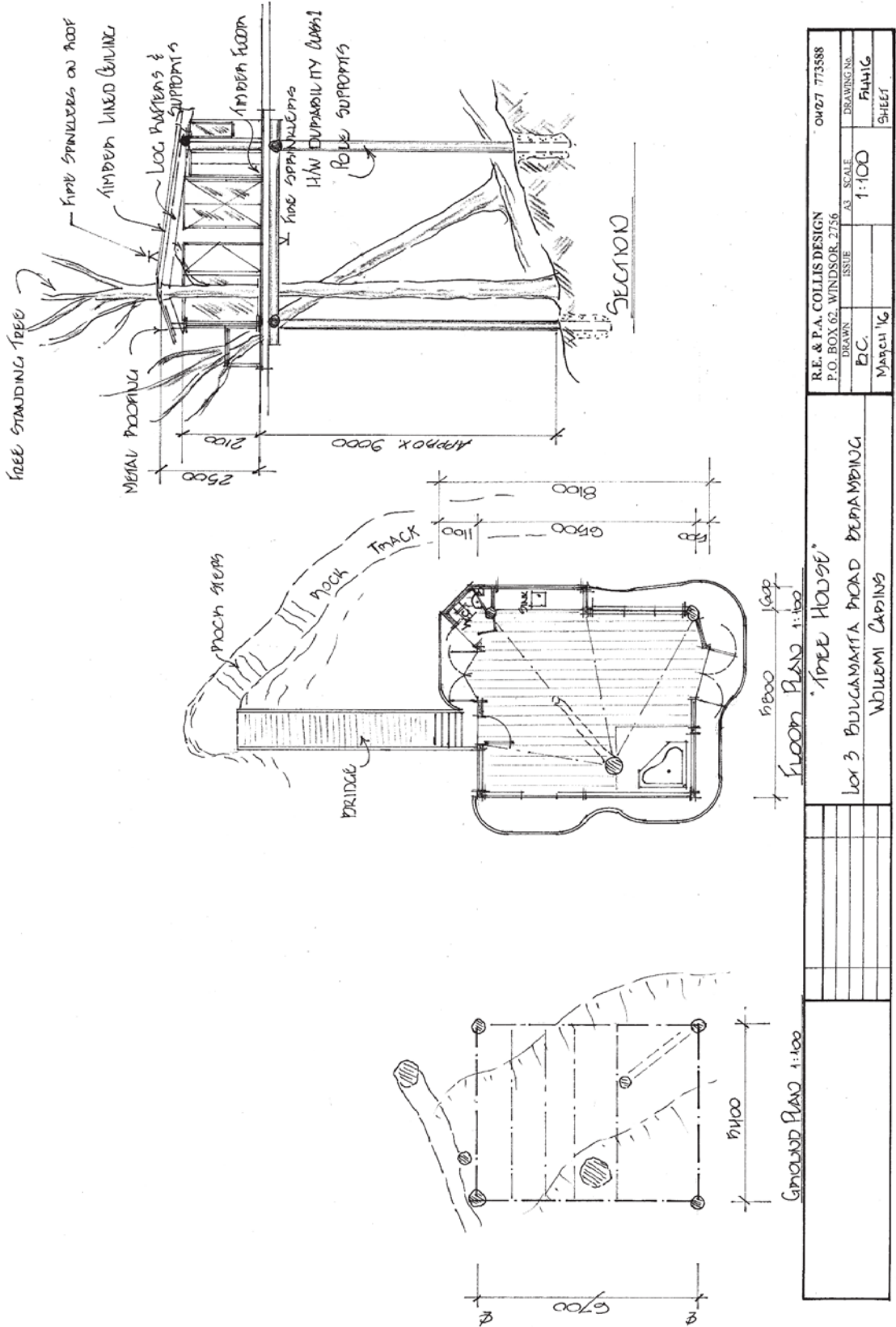


<p>DAVID JONES - BUILDING & LANDSCAPE DESIGN T. 02 4377 7192 M. 0412 226189</p>	<p>NOTES: 1. THIS DOCUMENT TO BE READ IN CONNECTION WITH THE CURRENT SURVEY PLAN</p>	<p>AMENDMENTS: DATE:</p>	<p>LANDSCAPE PLAN "THE CAVE" DATE: AUGUST 2022 SCALE: 1:100 (A3) DRAWING NO. 544/4</p>
<p>PROPOSED ECOTOURIST FACILITY 88 BULGAMATTA ROAD, BERAMING for BERAMING SUSTAINABLE DEVELOPMENTS PL</p>			

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

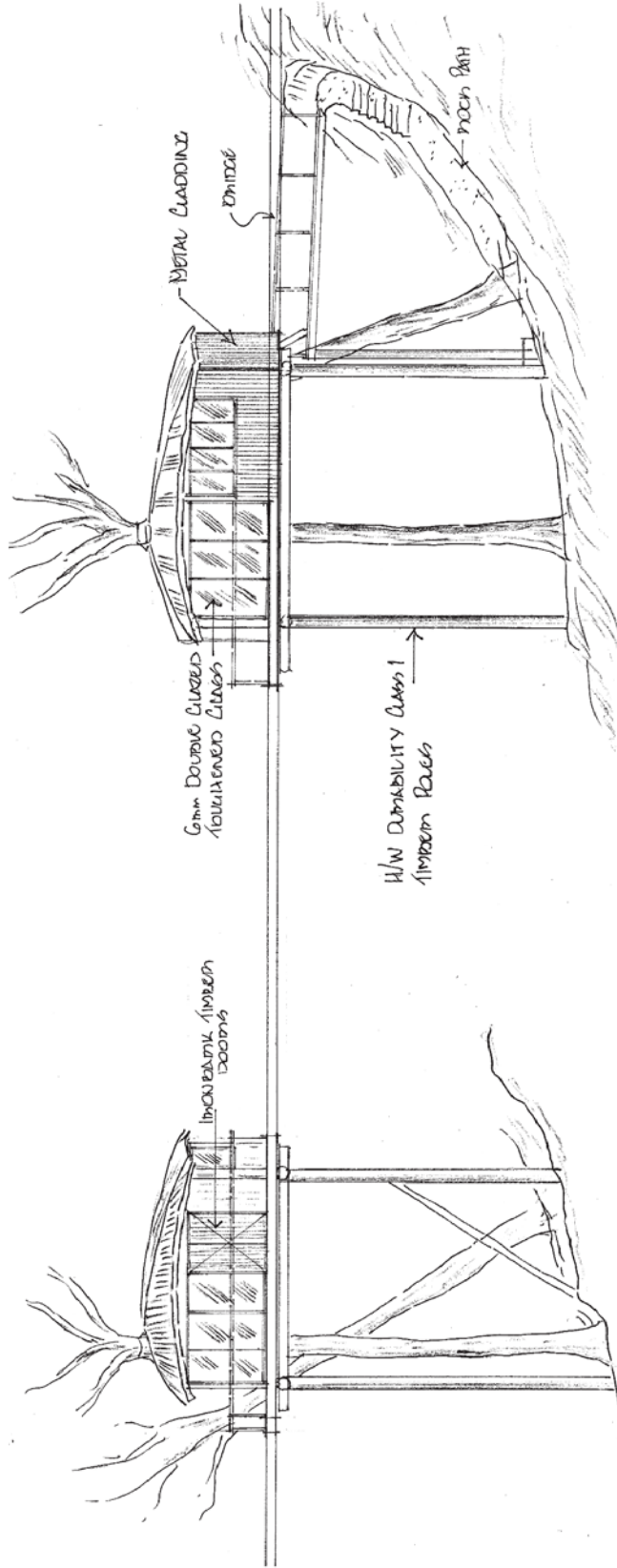


R.E. & P.A. COLLIS DESIGN P.O. BOX 62, WINDSOR, 2756		0427 773588
DRAWN	ISSUE	DRAWING NO.
E.C.		1:100
March '16		FLOORING SHEET
"TREE HOUSE"		
LOT 3 BULGAMARTA ROAD BULGAMATING		
WOLEMI CARPENS		

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

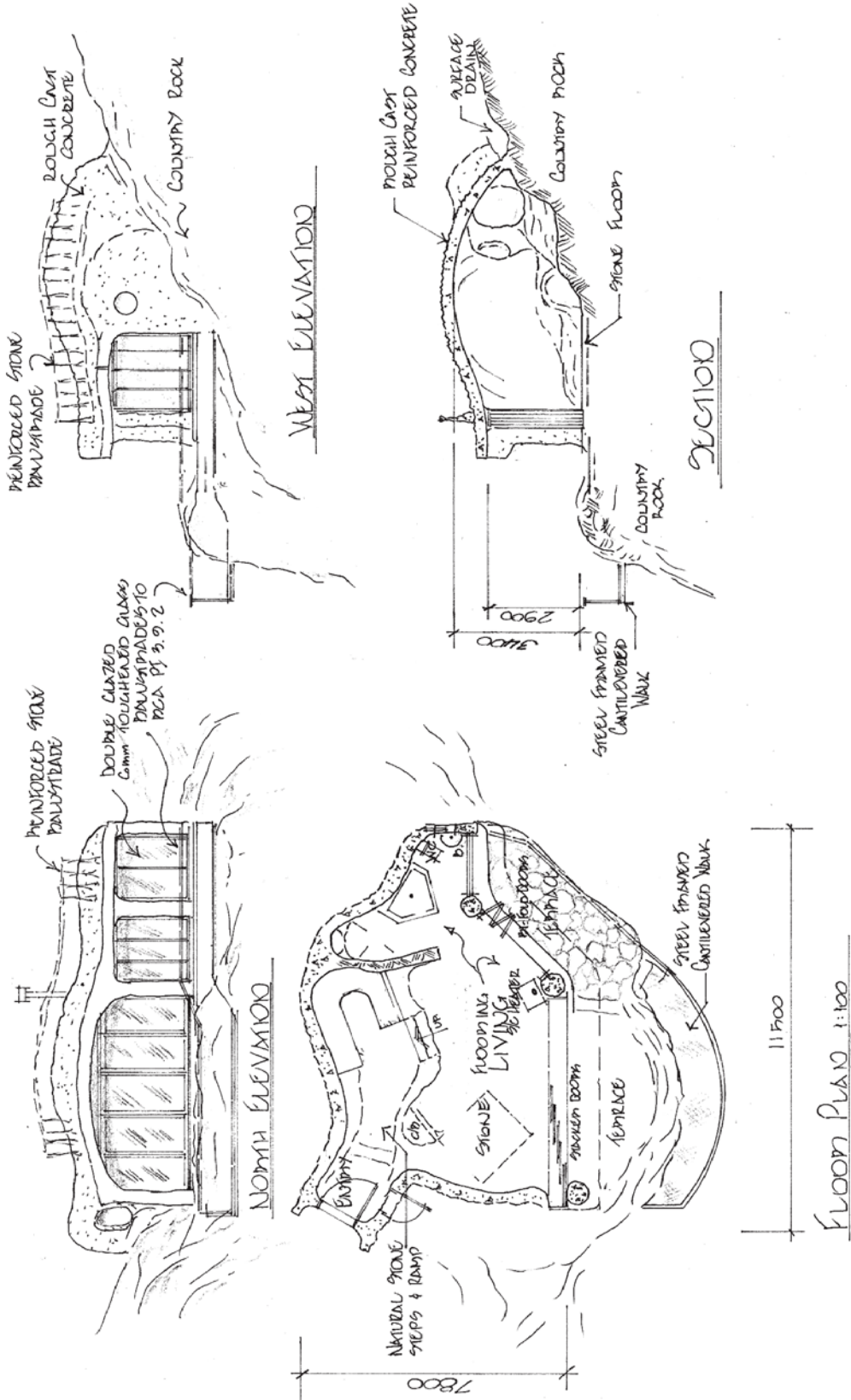
Meeting Date: 20 April 2023



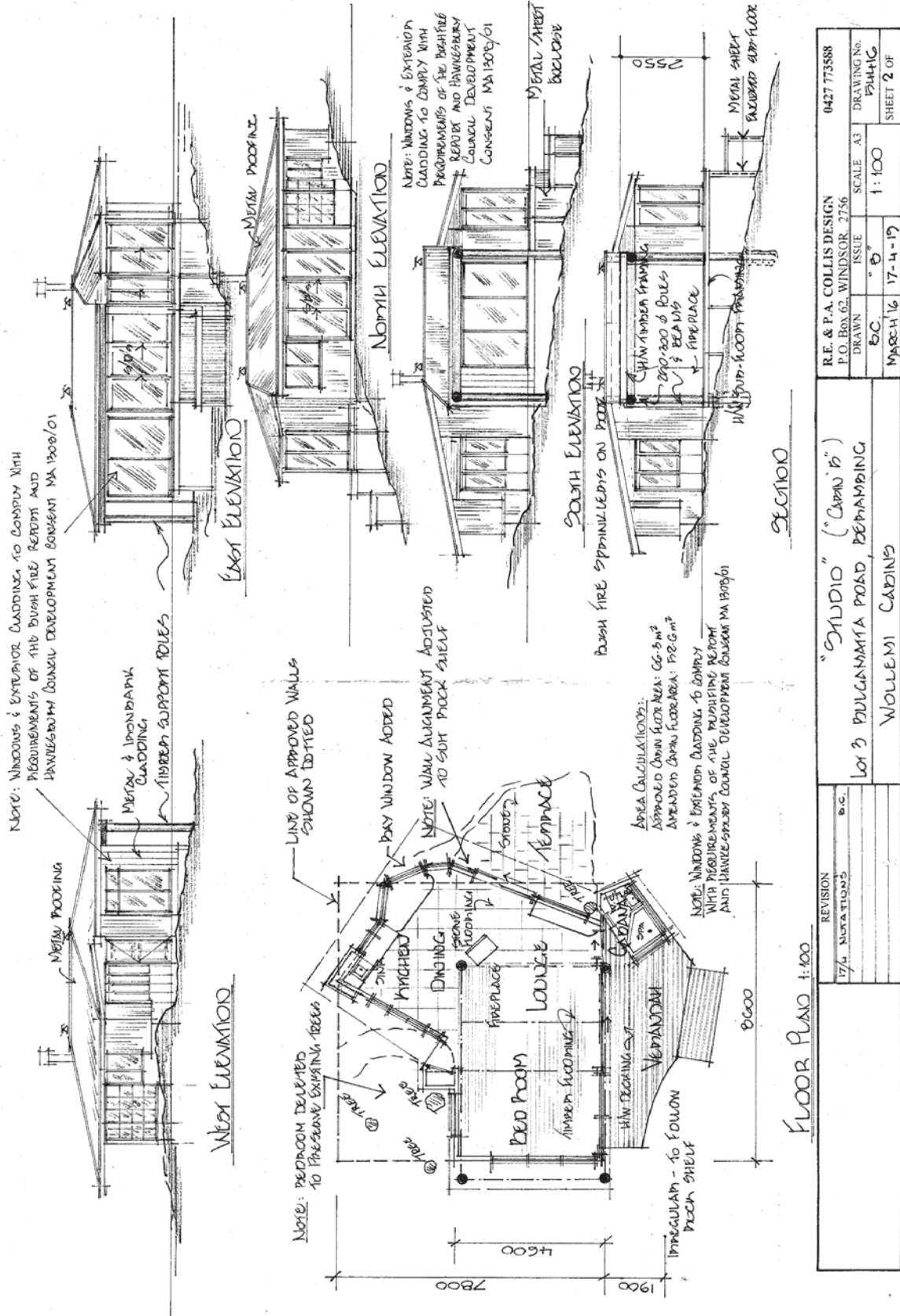
WEST ELEVATION

NORTH ELEVATION

R.E. & P.A. COLLIS DESIGN P.O. BOX 62, WINDSOR, 2756 0427 773588		DRAWING NO. 77116 ISSUE		SCALE 1:100 SHEET	
"Tree House" LOT 3 BULGARATA ROAD, BERRIMONG WOLLEMI CABINS				DRAWN RCC	
				ISSUE	
				SCALE	
				1:100	
				SHEET	
				77116	
				MARCH '16	



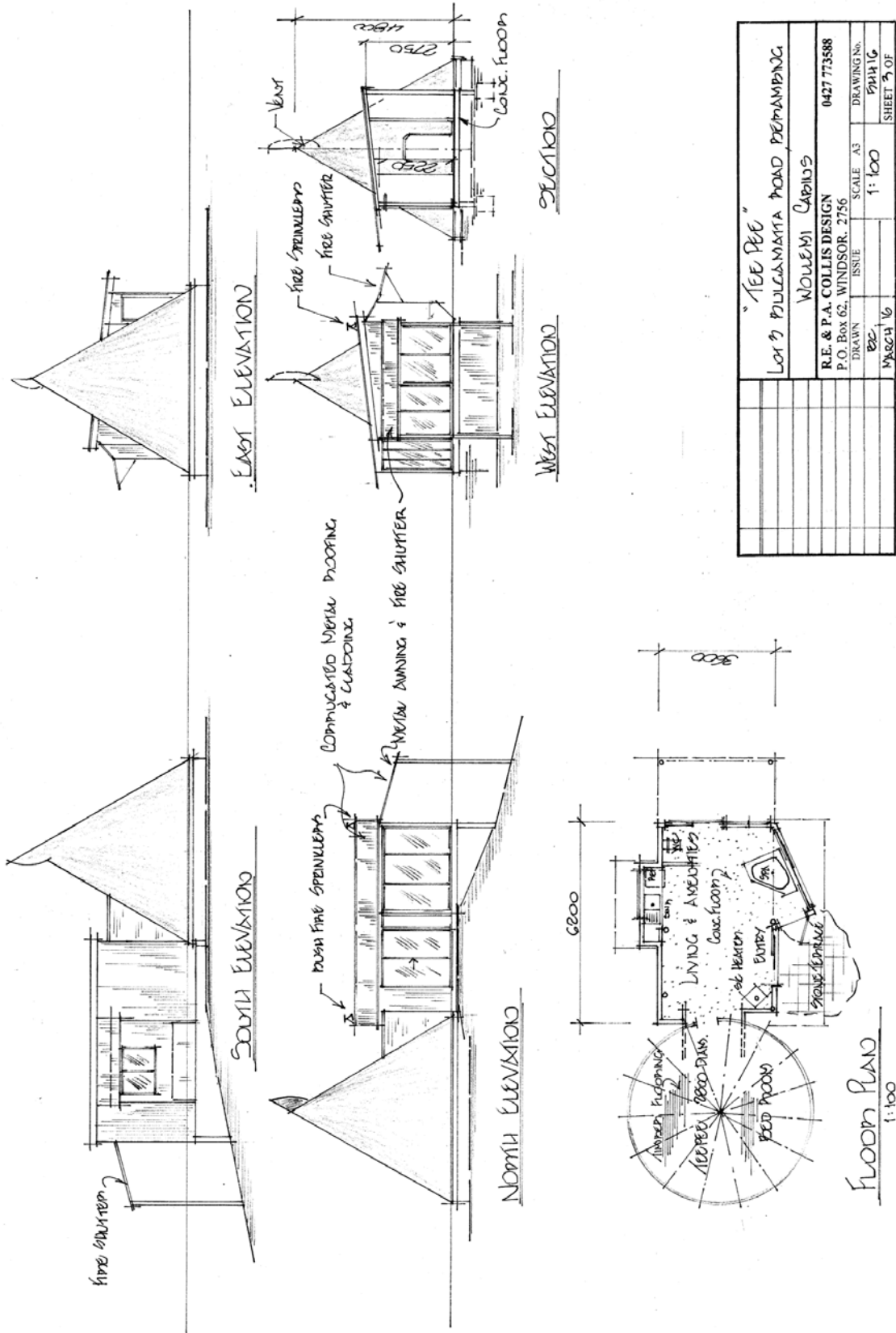
R.E. & P.A. COLLIS DESIGN P.O. BOX 62 WINDSOR, 2756		OM27 773588
DRAWN B.C.	ISSUE A3 SCALE 1:100	DRAWING NO. PHILIP SHEET
"THE ENCHANTED CAVE" LOT 3 BULGAMATA ROAD, BERRAMONG WOLLEMI CABINS		MARCH '16



RE. & P.A. COLLIS DESIGN		0427 773588	
P.O. Box 62, WINDSOR, 2756		DRAWING NO: PL1411G	
DRAWN	ISSUE	SCALE	A3
B.C.	17-11-19	1:100	SHEET 2 OF

"STUDIO" ("CAPRI 15")
 LOT 3 PULGANMATA ROAD, BERRAMBING
 WOLLEMI CARDS

REVISION	B.C.
17/11	MUTATIONS

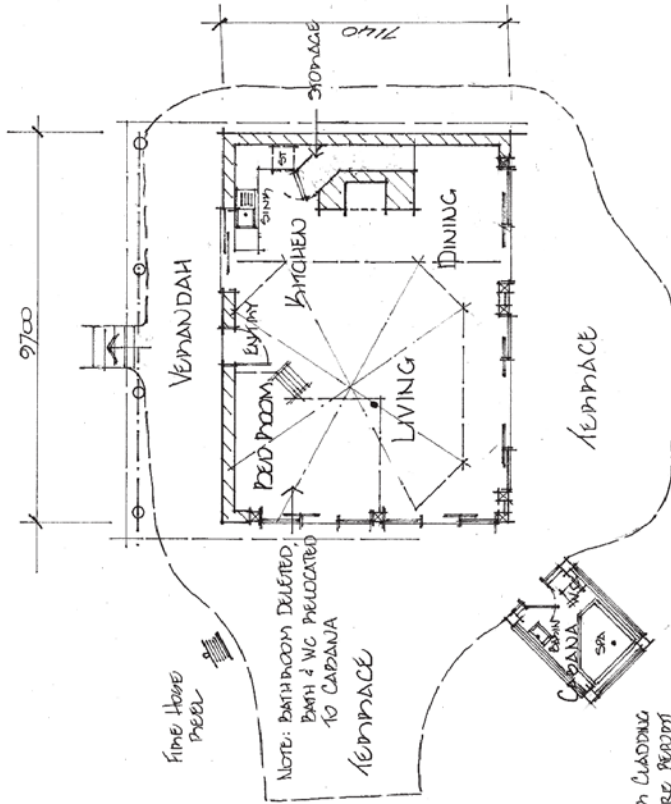


"TEE PEE"		SCALE A3		DRAWING No.	
LOT 3 MULGAHAMA ROAD BERRAMBONG		1:100		P19116	
MOLLEMI CAPILLO		ISSUE		SHEET 3 OF	
R.E. & P.A. COLLIS DESIGN		DRAWN		MARCH 16	
P.O. Box 62, WINDSOR, 2756		ISSUE		1:100	

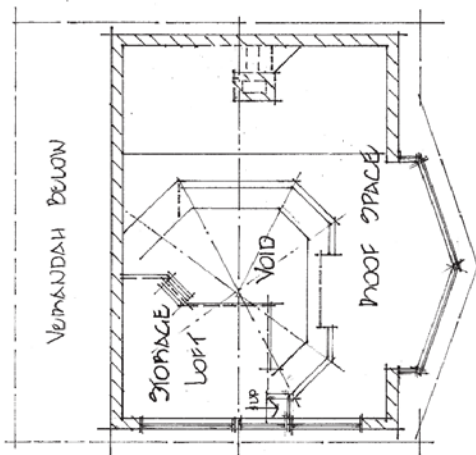
HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023



FLOOR PLAN 1:100



LOFT PLAN 1:100

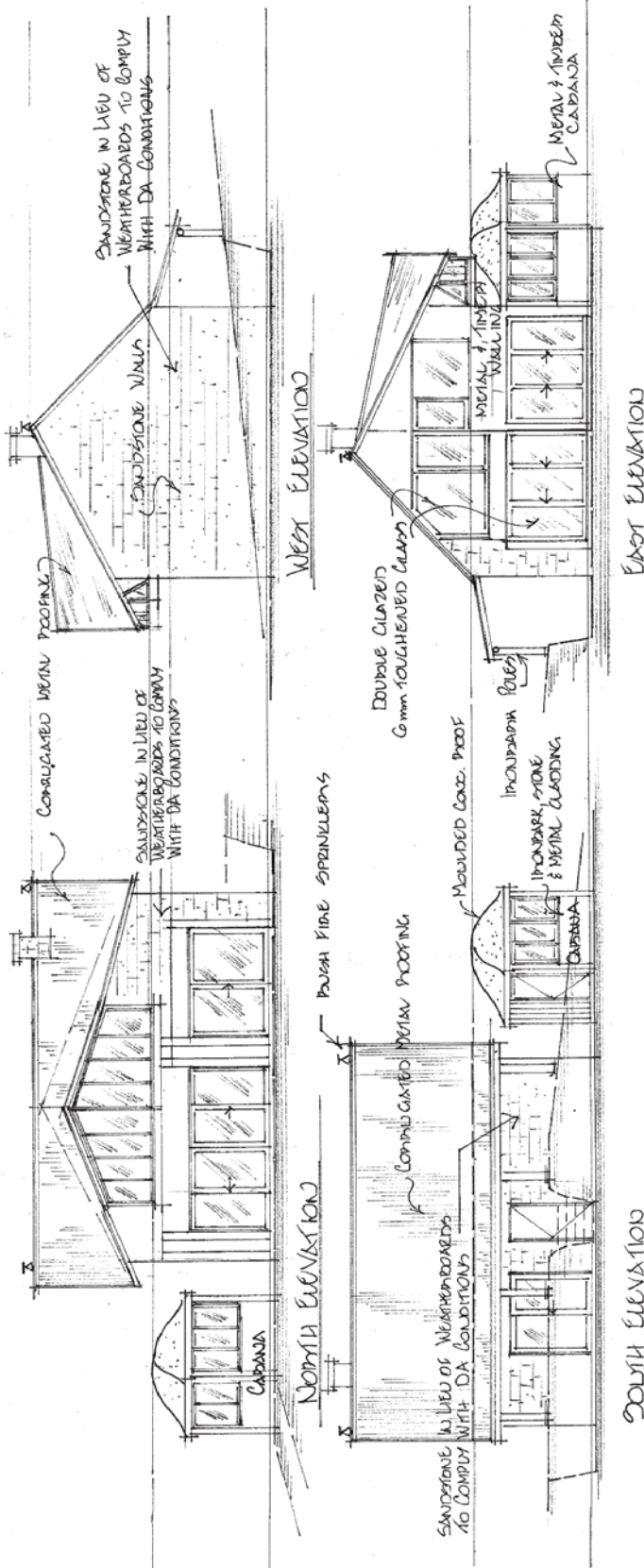
NOTE: WINDOWS & EXTERIOR CLADDING TO COMPLY WITH THE PUSH FIRE REPORT AND HAWKESBURY COUNCIL DEVELOPMENT COMMENT NA 1208/01

REVISIONS	DATE	BY	DESCRIPTION
1/1			
R.E. & P.A. COLLIS DESIGN P.O. BOX 62 WINDSOR, 2756 DRAWN: P.C. ISSUE: B SCALE: 1:100 MARCH 16, 17-4-19			
"DREAM CABIN" (CABINS 2) LOT 3 BULGAMMATA ROAD, BULGAMMING WOLLEMI CABINS			
DRAWING NO.			0427173480
SHEET			4 OF 4

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023



NOTE: WINDOWS & EXTERIOR CLADDING TO COMPLY WITH THE BUSHFIRE PREVENT AND HAWKESBURY COUNCIL DEVELOPMENT CONSENT MA 17008/01

REVISION					
17/6 NOTATIONS					
"DREAM CABIN" (CABIN 2) Lot 3 BUCUMARITA ROAD, BERRANGING WOLLEMI CABIN 2 R.E. & P.A. COLLIS DESIGN 0427 773588 P.O. Box 62, WINDSOR, 2756 DRAWN ISSUE SCALE A3 DRAWING No. PC 8 1:100 MARCH '16 17-11-19 SHEET 9 OF					

HAWKESBURY LOCAL PLANNING PANEL**2. REPORTS FOR DETERMINATION****Meeting Date:** 20 April 2023**AT - 2 Recommended Conditions of Consent****Hawkesbury Local Planning Panel Recommended Conditions**

Application Number: DA0200/22
Proposal Details: Eco-Tourist Facility – Use of five cabins as an eco-tourist facility

Legal Description: Lot 3 DP 270515
Property Address: 88B Bulgamatta Road BERAMBING NSW 2758

Applicant: Mr D Jones
Owner: Berambing Sustainable Developments Pty Limited

Conditions**Development Description:**

Eco-Tourist Facility – Use of five cabins as an eco-tourist facility

General Conditions**1. Approved Plans and Supporting Documentation**

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

a) Plans Reference:

Drawing Number/Name	Prepared by	Date
Drawing No. 544/1 'Site Plan'	David Jones Building & Landscape Design	April 2020
Drawing No. 544/3 'Landscape Plan – The Tree House'	Two Form Architecture & Interior Design	August 2020
Drawing No. 544/4 'Landscape Plan – The Cave'	David Jones Building & Landscape Design	August 2020
Drawing No. 54416 'Tree House – Ground, Floor and Section Plans'	David Jones Building & Landscape Design	March 2016
Drawing No. 54416 'Tree House – North and West Elevations'	David Jones Building & Landscape Design	March 2016
Drawing No. 54416 'The Enchanted Cave'	David Jones Building & Landscape Design	March 2016
Drawing No. 54416 Sheet 2 Rev 'B' 'Studio – Cabin 5'	David Jones Building & Landscape Design	17 April 2019
Drawing No. 54416 Sheet 3 'Tee Pee'	David Jones Building & Landscape Design	March 2016
Drawing No. 54416 Sheet 4 Rev 'B' 'Dream Cabin – Cabin 2'	David Jones Building & Landscape Design	17 April 2019
Drawing No. 54416 Sheet 5 Rev 'B' 'Dream Cabin – Cabin 2'	David Jones Building & Landscape Design	17 April 2019

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

b) Documents Reference:

Document	Prepared by	Date
'Bushfire Assessment Report'	Blackash Bushfire Consulting	30 September 2021
'Draft Plan of Management 2022'	David Jones Building & Landscape Design	
'Wollemi Cabins Emergency Management Plan'	Wollemi Cabins	
'Flora and Fauna Assessment' Report	Fraser Ecological Consulting	27 March 2022
'Arboricultural Impact Assessment Report'	Evolution Arbor and Consulting	5 August 2020
'On-Site Wastewater Management Assessment & Design' Report	Kerry Flanagan Wastewater	22 February 2019

No uses or works other than those approved are permitted by this consent.

2. Integrated Development – General Terms of Approval

The following General Terms of Approval, as referred to under Section 4.50 of the *Environmental Planning and Assessment Act 1979*, are attached and form part of the consent conditions for this approval:

- a) Rural Fire Service – The General Terms of Approval (Reference No. DA20220707009152-Original-1) dated 9 November 2022 are attached and form part of this consent.

3. Prescribed Conditions – Compliance with National Construction Code

All building works must comply with the requirements of the National Construction Code (Building Code of Australia).

4. Building Information Certificate Required to be Obtained

Building Information Certificates under Division 6.7 of the *Environmental Planning and Assessment Act 1979* must be obtained for the 'Dream Cabin' (Cabin 2), 'Love Studio' (Cabin 5), 'Enchanted Cave', 'Tree House' and 'Love Teepee' within a period of 60 days from the date of the consent.

5. Civil Works Specification

All civil construction works required by this consent shall be undertaken in accordance with Hawkesbury Development Control Plan 2002 – Appendix E 'Civil Works Specification'.

6. Implementation of Environmental Protection Measures

Environmental protection measures shall be implemented during construction and vegetation maintenance works in accordance with Section 9 of the 'Flora and Fauna Assessment' Report prepared by Fraser Ecological Consulting and dated 27 March 2022.

7. Sewer Authority – Hawkesbury City Council

This development falls within the Sewerage Scheme controlled by Hawkesbury City Council. The development involves connection to an on-site sewage management system and Council is the approving authority for all sewer works.

Prior to issue of a Building Certificate

8. Section 7.12 (Monetary) Contributions

A contribution under Section 7.12 (formerly known as Section 94A) 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 **\$5,350.00**.

This fee is based on the supplied value-of-works of \$535,000.00.

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

Contributions must be receipted by Council and evidence of payment must be provided prior to the issue of any Building Information 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.

9. Refuge Building – Bushfire Construction Requirements

The nominated Refuge Building – identified as the 'Dream Cabin' (Cabin 2) – must be constructed to comply with Section 3 and Section 5 (BAL 12.5) of Australian Standard AS3959:2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard 'Steel Framed Construction in Bushfire Areas' (incorporating Amendment A – 2015). The Refuge Building must also comply with the construction requirements of Section 7.5 of 'Planning for Bush Fire Protection 2019'.

Certification from a Bushfire Planning and Design (BPAD) Accredited Practitioner that the Refuge Building satisfies the above requirements must be provided to Council prior to the release of any Building Information Certificate.

10. Bushfire – Certification of General Terms of Approval

Certification from a Bushfire Planning and Design (BPAD) Accredited Practitioner that the General Terms of Approval (Reference No. DA20220707009152-Original-1) issued by the Rural Fire Service and dated 9 November 2022 have been satisfied must be provided to Council prior to the release of any Building Information Certificate.

11. Eco-Tourist Facility – Upgrading Works Required – Tourist accommodation

Part 3.7.2 of the Building Code of Australia (BCA) requires lighting to assist evacuation upon activation by a smoke alarm for all buildings containing tourist accommodation.

A lighting system complying with Part 3.7.2.5 of the BCA must be installed within the buildings. A Certificate of Compliance from the installer must be provided to Council prior to the issue of a Building Information Certificate for the relevant cabin.

12. Eco-Tourist Facility – Plan of Management

The 'Draft Plan of Management 2022' prepared by David Jones Building & Landscape Design shall be updated to incorporate the following operational requirements and conditions of this consent:

- (a) The Plan must include the 'Wollemi Cabins Emergency Management Plan' prepared by Wollemi Cabins;
- (b) The number of guests accommodated in the cabins as part of the eco-tourist facility the subject of this consent, as well as the tourist facility approved under Development Consent No. MA1308/01, is not to exceed a combined total of 18 persons at any one time;
- (c) A maximum of two guests may be accommodated within the 'Dream Cabin' (Cabin 2), 'Love Studio' (Cabin 5), 'Enchanted Cave', 'Tree House' and 'Love Teepee' cabins at any one time;
- (d) Any continuous length of stay within the eco-tourist facility cabins is to be restricted to no more than four weeks;
- (e) A Guest Register must be prepared and made available to Council on request;
- (f) Guests of the eco-tourist facility shall not bring or keep domestic pets on the site; and
- (g) No commercial food preparation shall be undertaken onsite to service guests of the eco-tourist facility.

The Plan of Management must be submitted to and approved by Council prior to the release of any Building Information Certificate.

13. On-Site Sewage Management – Approval Required

Prior to the issue of the Building Information Certificate for the relevant cabin, approval must be obtained for the installation of any on-site sewage management system that was not included in the Septic Application No. S0028/07 'Approval to Install' and any amendments to the existing systems will also need to be lodged and assessed for approval. The application must be submitted to Council together with 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 Approval to Operate the system must be obtained from Council.

Prior to the Operation of the Eco-Tourist Facility

14. Eco-Tourist Facility – Potable Water

Potable water shall be provided to the development in accordance with the Public Health Act 2010, associated Regulations and NSW Health 'Private Water Supply Guidelines'.

A Quality Assurance Plan covering water supply to the cabins within the eco-tourist facility is to be developed and implemented in accordance with the Private Water Supply Guidelines. A copy of the Quality Assurance Plan must be provided to Council prior to the use or operation of any cabin within the eco-tourist facility development.

15. Eco-Tourist Facility – Private Water Supplier

The eco-tourist facility is to be registered with Council as a private water supplier prior to the use or operation of any cabin within the eco-tourist facility development.

Use of the Development

16. Eco-Tourist Facility and Tourist Facility – Maximum Guest Numbers

The number of guests accommodated in the cabins as part of the eco-tourist facility the subject of this consent, as well as the tourist facility approved under Development Consent No. MA1308/01, is not to exceed a combined total of 18 persons at any one time.

A maximum of two guests may be accommodated within the 'Dream Cabin' (Cabin 2), 'Love Studio' (Cabin 5), 'Enchanted Cave', 'Tree House' and 'Love Teepee' cabins at any one time.

17. Eco-Tourist Facility – Short-Term Tourist Accommodation Only

The eco-tourist facility cabins must not be used for permanent occupation as residences and shall only be used for short-term accommodation for tourists visiting the locality. The buildings must not to be made available for long-term accommodation.

Any continuous length of stay within the eco-tourist facility cabins is to be restricted to no more than four weeks.

18. Eco-Tourist facility – Plan of Management

The operation of the eco-tourist facility must be undertaken in accordance with the approved Plan of Management.

The Plan of Management is to be reviewed at least yearly and be made available for inspection by authorised Council inspectors/officers upon request.

19. Eco-Tourist Facility – Guest Register

A Guest Register must be prepared and maintained for the eco-tourist facility. This register is to be kept onsite and a copy must be made available to Council on request.

20. Eco-Tourist Facility – Prohibition of Domestic Pets

Guests of the eco-tourist facility shall not bring or keep domestic pets on the site.

21. Eco-Tourist Facility – Service of Food

No commercial food preparation shall be undertaken onsite to service guests of the eco-tourist facility.

22. Eco-Tourist Facility – Neighbourhood Amenity

Any activity carried out in accordance with this approval shall not give rise to offensive noise, air pollution (including odour) or pollution of land and/or water as defined by the *Protection of the Environment Operations Act 1997*.

23. Eco-Tourist Facility – Waste Generation

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.

24. Annual Fire Safety Statement

The owner of the buildings 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 buildings exist and are being maintained. The Annual Fire Safety Statement shall 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 shall also be:

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

25. General Terms of Approval – Asset Protection Zones

The approved Asset Protection Zones are to be provided and maintained as required under Figure 6 of the 'Bushfire Assessment Report' prepared by Blackash Bushfire Consulting and dated 30 September 2021 and the General Terms of Approval (Reference No. DA20220707009152-Original-1) issued by the Rural Fire Service and dated 9 November 2022.

Advisory Notes

(i) Disability Discrimination Act 1992 – Equitable Access

The Applicant must make themselves aware of the Disability Discrimination Act 1992 and assess their responsibilities and liabilities with regards to the provision of access for all people.

(i) Requirements of 88B Instruments

The applicant shall make themselves aware of any easements, user restrictions or covenants over the 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.

(ii) 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.

(iii) Utilities and Services

Utilities, services and other infrastructure potentially affected by construction and operation shall be identified prior to construction to determine any 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 development shall 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 shall be borne by the developer.

oooO END OF REPORT Oooo

HAWKESBURY LOCAL PLANNING PANEL**2. REPORTS FOR DETERMINATION****Meeting Date:** 20 April 2023**2.1.2 CP - DA0306/22 - Lot X DP 161237, 1 Livingston Street WINDSOR NSW 2756 - (88858, 107, 95498)****Directorate:** City Planning**DEVELOPMENT INFORMATION**

Application Number:	DA0306/22
Date Received:	01/09/2022
Proposal Details:	Recreation Facility (outdoor) - Demolition of Existing Structure and Construction of a New Two Storey Building Containing Club Facilities, Canteens, Storage Area and Amenities
Estimated Cost:	\$1,672,393.00
Legal Description:	Lot B DP 38709 Lot C DP 38709 Lot Y DP 161764 Lot 110 DP 630860 Lot X DP 161237 Lot A DP 38709 Lot 1 DP 654523
Property Address:	1 Livingston Street WINDSOR NSW 2756
Area:	4.4520 Hectares 2.0420 Hectares 1.1330 Hectares 3.9320 Hectares 1887.00 Square Metres 1.9760 Hectares 3.4150 Hectares
Zoning:	RE1 Public Recreation under <i>Hawkesbury Local Environmental Plan 2012</i> .
Applicant:	Barbara Tarnawski Architects
Owner:	Hawkesbury City Council
Exhibition Dates:	06/10/2022 - 20/10/2022
Submissions:	Nil
Key Issues:	<ul style="list-style-type: none">• Compliance with Council's Flood Policy 2020• Compliance with Plan of Management – Windsor Foreshore Park

Recommendation: Approval subject to conditions.

EXECUTIVE SUMMARY

Reason for Consideration by Local Planning Panel

- Conflict of interest – the landowner is the Council.

Proposal

The proposal before the Hawkesbury Local Planning Panel involves the demolition of the existing two storey building and construction of a new two storey building at Governor Phillip Park, adjacent to the Hawkesbury River. The existing building has been used for the purpose of recreation facility (outdoor) by Windsor Power Boat Club. The building was significantly damaged in the March 2021 flooding incident.

The ground floor of the new building will contain toilets for public and member use, a storage area for Council use, a canteen and a separate crash boat storage area for the club. The first floor of the new building will be occupied by the Windsor Power Boat Club and will contain club facilities including toilets, a control room, storage area, kiosk and canteen, and club room spaces. The construction of the new two storey building will not alter the current operation of the building. No changes are proposed to car parking or landscaping on the site, with the existing conditions to be retained.

Permissibility

The subject site is zoned as RE1 Public Recreation under the provisions of Hawkesbury local Environmental Plan 2012. The proposed development is defined as 'recreation facility (outdoor)' which is a permissible use within the RE1 Public Recreation zone.

Consultation

The application was notified between 06/10/2022 and 20/10/2022 in accordance with Part A Chapter 3 of the Hawkesbury Development Control Plan 2002 and the Hawkesbury Community Participation Plan – Notification of Development Applications. No submissions were received.

Key Issues

The key issues of the development application are:

- Compliance with Council's Flood Policy 2020
- Compliance with Plan of Management – Windsor Foreshore Park.

RECOMMENDATION

That the Hawkesbury Local Planning Panel exercising the functions of Council pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979* grant Development Consent to DA0306/22 for Recreation Facility (Outdoor) - Demolition of Existing Structure and Construction of a New Two Storey Building Containing Club Facilities, Kiosk, Storage Area and Amenities at Lot B DP 38709, Lot C DP 38709, Lot Y DP 161764, Lot 110 DP 630860, Lot X DP 161237, Lot A DP 38709, and Lot 1 DP 654523, known as 1 Livingston Street, Windsor, subject to the prepared conditions of consent.

The reasons for approval are as follows:

1. The development is permissible within the RE1 Public Recreation zone under Hawkesbury Local Environmental Plan 2012 and generally satisfies the requirements of the applicable planning provisions.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

2. The proposed development satisfies the controls of Flood Policy 2020 and associated Schedule of Flood Related Development Controls.
3. The proposal is consistent with the Windsor Foreshore Parks – Plan of Management.
4. The development provides for the continuation and enhancement of a valuable facility that services the recreational uses of the river.
5. The development will not significantly impact the traffic conditions of the local traffic network.

For the reasons given above, approval of the application is seen to be in the public interest.

BACKGROUND

Detailed Description of Proposal

Pursuant to Section 4.12(1) of the Environmental Planning and Assessment Act (EP&A) 1979 (as amended) this application seeks the consent of the Hawkesbury Local Planning Panel to demolish the existing two storey building and construction of a new two storey building. The subject building has been used in association with the Windsor Power Boat Club for a number of years which was significantly damaged in the March 2021 flooding incident. The building is particularly situated at 1 Livingston Street Windsor which is legally described as Lot X in DP 161237.

Construction of the new two storey building will consist of the followings:

- The ground floor will contain toilets for public and member use, a storage area for Council use, a canteen and a separate crash boat storage area for the club.
- The first floor of the building will be occupied by the Power Boat Club and will contain club facilities including toilets, a control room, storage area, kiosk and canteen, and club room spaces.

The existing building has an overall footprint of approximately 304.7m². The footprint of the proposed new building is for approximately 280m² with the layout of the new building to be similar to the existing building albeit slightly narrower and longer. There is no change proposed to the orientation of the building. The height of the building will be reduced to 8.28m from the original height of 8.9m.

The proposed building is located over 40m to the south of the Hawkesbury River and 49.43m to the southern boundary. An asphalt car parking area having 11 car parking spaces is located to the south of the building.

No change of use is proposed as part of the development. The proposed development will remain consistent with what is existing which is primarily for the use as the Windsor Power Boat Club, with the remainder of the building comprising of public toilets, canteens and a storage area used for Council's power boats and equipment.

The proposed hours of operation for the boat club at upper level are as follows:

Monday to Thursday - 7am to 9pm,

Friday - 7am to 11 pm,

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Saturday - 7am to 12 am,

Sunday - 7am to 9pm.

The lower and upper-level kiosks / canteens will work in conjunction to support the operation of the boat club, with the lower-level canteen operating from 7:30am to 3:30 pm on weekends mainly. This lower level canteen may be used during the weekdays for special public events and for boat club events.

Upper level area would likely be used for club meeting and committee meetings accommodating maximum of 10 to 15 people most of the times. During any boat racing events it may accommodate approximately 100 people.

This building composition is consistent with what was existing on the site. No changes are proposed to car parking or landscaping on the site, with the existing conditions to be retained.

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

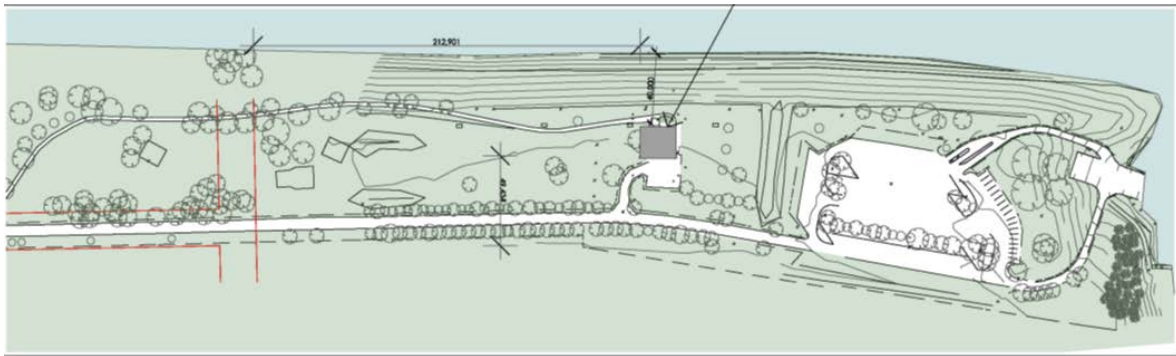


Figure 1: Site Plan showing the location of the proposed Windsor Power Boat Club building



Figure 2: The proposed ground floor and first floor of the building





Figure 3: The elevations of the building

The following documents were submitted in support of the development application:

- Statement of Environmental Effects prepared by Urbis and dated 16 August 2022
- Acid Sulfate Soil Assessment prepared by JK Environments and dated 8 July 2022
- Flood Impact and Evacuation Plan prepared by Barker Ryan Stewart and dated August 2022
- Access Report prepared by Vista Access Architects and dated 29 June 2022
- Building Code of Australia Assessment Report prepared by Accurate Fire & Building Consulting and dated 28 June 2022.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Site Description

The proposed development is located within Governor Phillip Park which consists of a number of properties and known as 1 Livingston Street Windsor. Governor Phillip Park contains Lot B DP 38709, Lot C DP 38709, Lot Y DP 161764, Lot 110 DP 630860, Lot X DP 161237, Lot A DP 38709 and Lot 1 DP 654523. Governor Phillip Park contains picnic shelters with BBQs, picnic tables, clubhouse building with amenities, boat launch facilities, children playground, asphalt car parking, turf overflow car parking facilities and jetty/pontoon.

This particular building to be demolished and reconstructed is located on Lot X DP 161237. This site currently accommodates the existing Windsor Power Boat Club house which is a two storey brick and concrete building with an ancillary car park and boat ramp facilities. The building is owned by Hawkesbury City Council. Part of the building was previously leased to Windsor Power Boat Club with the remainder comprising public toilets and a storage area Council uses for power boats and equipment. Surrounding the subject site are predominantly recreational and rural agricultural lands.



Figure 4: Aerial image of the subject site



Figure 5: Locality Map



Figure 6: Windsor Power Boat Club Building as existing

Background and History

The following Development Applications are related to the subject site:

- DA476/84 Erect a brick club facility and public amenities (approved 13/12/1984)
- B53/1985 Building permit for Clubhouse Amenity Building (approved 11/02/1985)

Council records indicate that part of the building was leased to Upper Hawkesbury Power Boat Club till 2017. Council is currently in negotiation to enter into a new lease with Windsor Power Boat Club.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Submissions

The application was notified between 06/10/2022 and 20/10/2022 in accordance with Chapter Three of the Hawkesbury Development Control Plan 2002 (HDCP), Notification of Development Applications. No submissions were received.

Consultation

Internal Consultation	
Development Engineering	<p>A Flood Impact and Evacuation Plan has been prepared and concluded that the proposed development will not result in any loss in flood storage or any measurable adverse impacts to the river hydraulics. Council's Development Engineer has reviewed the submitted report and considered it as compliant to Council's Flood Policy 2020 and associated Schedule of Flood Related Development Controls.</p> <p>Council's Development Engineer has also reviewed the submitted stormwater concept plan. He has raised no objection to the proposal subject to the imposition of conditions.</p>
Building	<p>The proposal was referred to Council's Building Coordinator who has raised no objections subject to the inclusion of conditions.</p>
Environmental Health	<p>An Acid Sulfate Soil Assessment report has been prepared which recognises the depth of the piles to be installed and has drilled boreholes commensurate with this. The report concludes that an Acid Sulfate Soil Management Plan is not considered necessary for the proposed development. However, it states that where piles are deeper than 15m BGL, further assessment may be necessary. Council's Environmental Health Officer (EHO) has raised no objection to the conclusions and recommendations of this report.</p> <p>Council's EHO has reviewed the proposed canteens within the building and has raised no objection to the proposal subject to the imposition of conditions.</p>
Infrastructure	<p>The proposal was referred to Council's Wastewater Technical Officer who has raised no objections subject to the inclusion of conditions.</p>
Park	<p>The application was reviewed by Council's Park section. No objection was raised. The proposal was found consistent with Windsor Foreshore Parks (Incorporating the Great River Walk) - Plan of Management.</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

External Consultation – not required	
Natural Resources Access Regulator	<p>The subject site is located on the bank of Hawkesbury River. The proposed demolition and reconstruction works are located more than 40m from the river. However, there will be stormwater drainage works within 40m of the river.</p> <p>In accordance with Section 41 of the Water Management (General) Regulation 2018, public authorities (which includes local councils) are exempt from the requirement to obtain a Controlled Activity Approval.</p> <p>In this regard, the proposal does not require a Controlled activity Approval and therefore the proposed development does not constitute integrated development under Section 4.46 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

Council Policies, Procedures and Codes to which the matter relates

Local Government Act 1993

Biodiversity Conservation Act 2016

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- Chapter 4 – Koala Habitat Protection 2021, and
- Chapter 9 – Hawkesbury Nepean River.

State Environmental Planning Policy (Resilience and Hazards) 2021

- Chapter 2 – Coastal Management
- Chapter 4 – Remediation of Land

Hawkesbury Local Environmental Plan 2012 (LEP 2012)

Hawkesbury Development Control Plan 2002 (HDCP 2002)

Flood Policy 2020

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

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

4.15 Evaluation

*(1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

(a) the provisions of—

(i) any environmental planning instrument, and

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

(iii) any development control plan, and

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

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

(v) (Repealed)

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

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

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

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

(e) the public interest.

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

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

Local Government Act 1993

The subject land, where the building is located, is owned by the Hawkesbury City Council and is classified under the *Local Government Act 1993* as community Land.

This land forms part of the Governor Phillip Park and is covered by the Windsor Foreshore Parks - Plan of Management (PoM) dated July 2013. The PoM provides the framework for managing community land and crown land in accordance with the *Local Government Act 1993* and the *Crown*

Lands Act 1989 and other relevant legislation and policies. Community land must be managed in accordance with the PoM and includes the nature and use of the land to be consistent with the designated categories and core objectives.

In the PoM, the Power Boat Club is identified as a lease, having a clubhouse and meeting rooms. The use and built form of the existing clubhouse is also authorised in the PoM. It is considered that the proposed development is consistent with the identified functions, uses and values of the Governor Phillip Park, providing active recreation use for the community.

Biodiversity Conservation Act 2016

- All development applications are to have regard to the provisions contained in the *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulation 2017*. The Biodiversity Values Map identifies land with high biodiversity values that are particularly sensitive to impacts from development and clearing.
- The subject site where the building will be constructed does not contain areas mapped on the Biodiversity Values map. No vegetation clearing is proposed as part of the development and as such, the proposal would have no significant impact on the existing biodiversity.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

This Policy came into effect on 1 March 2022 and repeals a number of SEPPs that would have been applicable for this site. The content of these SEPPs has been placed into SEPP (Biodiversity and Conservation) 2021 and the following relevant chapters of this SEPP are as follows:

- Koala Habitat Protection 2021 – Chapter 4, and
- Hawkesbury-Nepean River – Chapter 9

Chapter 4 Koala Habitat Protection 2021

Chapter 4 applies to local government areas listed in Schedule 2, for which the Hawkesbury Local Government Area is listed, and for land that has an area of more than 1 hectare.

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

Under Part 4.2 Development control of koala habitats, where there is no approved koala plan of management for land, Clause 4.9 applies.

This Clause provides that:

- (2) *Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.*
- (3) *If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application.*
- (4) *If the council is satisfied that the development is likely to have a higher level of impact on koalas or koala habitat, the council must, in deciding whether to grant consent to the development application, take into account a koala assessment report for the development.*

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

- (5) *However, despite subsections (3) and (4), the council may grant development consent if the applicant provides to the council—*
- (a) *information, prepared by a suitably qualified and experienced person, the council is satisfied demonstrates that the land subject of the development application—*
 - (i) *does not include any trees belonging to the koala use tree species listed in Schedule 2 for the relevant koala management area, or*
 - (ii) *is not core koala habitat, or*
 - (b) *information the council is satisfied demonstrates that the land subject of the development application—*
 - (i) *does not include any trees with a diameter at breast height over bark of more than 10 centimetres, or*
 - (ii) *includes only horticultural or agricultural plantations.*

The location of the proposal is devoid of trees with no trees proposed for removal and were the application to be supported, Council would be satisfied that no further investigation would be required and that there would be no issues that would prevent Council from granting consent in respect to the requirements of Chapter 4.

Chapter 9 Hawkesbury-Nepean River

Chapter 9 'Hawkesbury-Nepean River' of the Biodiversity and Conservation SEPP was repealed following the lodgement of this application. The provisions of Chapter 9 were amended and consolidated into Chapter 6 'Water Catchments'. Section 6.65 of the Biodiversity and conservation SEPP specifies savings and transitional provisions and confirms that the former provisions of Chapter 9 continue to apply to the subject application.

Chapter 9 of the Biodiversity and Conservation SEPP 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*'. This Policy requires an assessment of development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

The proposed new building will be constructed at the same location as the existing building with slightly reduced footprint. No changes to the existing landscaping or existing parking area are proposed. Council's Development Engineer has reviewed the submitted stormwater concept plan and considered it as satisfactory. The application is supported by an erosion and sediment control plan. Hawkesbury City Council is the sewer authority operating within this area. The proposed development will utilise the existing septic system which is a pump-out system. The proposed development will not have any adverse impact on the water quality of the river. The proposed development is considered satisfactory as per Clause 9.5(3) water quality.



Figure 7: Existing Windsor Power Boat Club Building and the proposed Windsor Power Boat Building

Hawkesbury Nepean Scenic Quality Study identified Governor Phillip Park as a viewpoint. The proposed new building will replace the existing deteriorated building with slightly reduced footprint and slightly reduced height. The new building will be constructed at the same location and will not disturb any additional area. The proposed building is consistent with the Council's Plan of Management of Windsor Foreshore Park. No removal of vegetation is proposed as part of the development. The external design, colour and material of the proposed building complements the landscaping character. It is considered that the proposed development will not have any adverse impact on the riverine scenic quality and thus satisfies Clause 9.5(7) Riverine Scenic Quality.

The proposed development will provide a replacement, restored recreational facility for the community, and will support the protection of the surrounding riverine corridor for tourist and recreational use. The proposed development is considered satisfactory as per Clause 9.5(11) Recreation and tourism.

State Environmental Planning Policy (Resilience and Hazard) 2021

This Policy came into effect on 1 March 2022 and repeals several State Environmental Planning Policies that would have been applicable for the subject site. The content of these policies has been placed into SEPP(RH) 2021 and the following relevant chapters of this policy are as follows:

- Chapter 2 - Coastal Management
- Chapter 4 - Remediation of Land

Chapter 2 - Coastal Management

The aim of this Plan is to promote an integrated and coordinated approach to land use planning in the coastal zone and provide management objectives for each coastal management area.

The site is mapped as Coastal Environmental Area and Coastal Use Area for which Division 3 Clause 2.10 and Division 4 Clause 2.11 are required to be considered. The relevant clauses of the SEPP and an assessment against those clauses are provided below:

Division 3 Coastal Environment Area

This division of Chapter 2 of the SEPP relates to land within the coastal environment area and requires a consent authority to consider whether a proposed development is likely to cause an adverse impact to the matters listed in Clause 2.10 as listed below:

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - coastal environmental values and natural coastal processes,*
 - the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - Aboriginal cultural heritage, practices and places,*
 - the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*
 - the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*

- (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The proposed development will demolish the existing club building which is severely damaged by flood and reconstruct the building with the similar footprint at the same location. The proposed development is confined to the existing building footprint and will not interfere with coastal processes or adversely impact the environmental value of the area. The proposal will not compromise the integrity or resilience of the biophysical, hydrological or ecological environment. Rather, it will facilitate the restoration of the facility back to its original operation allowing active recreation uses on the River. The proposed development is unlikely to have any impacts in relation to the matters listed in Clause 2.10.

Division 4 Coastal use area

This division of Chapter 2 of the SEPP relates to land within the coastal use area and requires a consent authority to consider whether a proposed development is likely to cause an adverse impact to the matters listed in Clause 2.11 as listed below:

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that—*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The proposal is confined to the existing building footprint. The proposed development has been designed and sited so as to provide increased functionality and amenity to the area without adversely

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

impacting on the surrounding environment. The proposed development is unlikely to have any impacts on the area mapped as coastal use area in relation to the matters listed in Clause 2.11.

Chapter 4 - Remediation of Land

The objective of this chapter is to provide a state-wide planning approach to the remediation of contaminated land and to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 4.6(1) and 4.6(2) of SEPP Resilience and Hazard states as below;

- (1) *A consent authority must not grant 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.*
 - (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- The existing Club House Building was constructed under a Building Permit (B53/1985 dated 11 February 1985). Council records indicate that the site has historically been used for recreational facility (outdoor) purposes and has not been used for any purposes that would have contaminated the land. It is proposed to demolish the existing building and construct the new building on the same footprint. Further the proposed development does not involve any change of use. On this basis, the proposal is considered acceptable having regard to the requirements of this Plan.

Hawkesbury Local Environmental Plan 2012

Under Hawkesbury LEP 2012, the subject site is zoned RE1 Public Recreation. The following is a summary of the clauses under HLEP 2012 applicable to the development.

Clause 2.2 Zoning of Land to which Plan applies

The site is zoned part RE1 Public Recreation. The proposed development involves demolition of an existing building which was approved under DA476/84 (Erect a brick club facility and public amenities) and re-construction of the building at the same location. The building has been operating as Windsor Power Boat Club for a number of years and is identified within Council's Plan of Management for Windsor Foreshore Park. Governor Phillip Park contains boat launching facilities and famous for organising a number of boat races throughout the year. The existing Windsor Power Boat Club building is associated with the boat club facilities and boat race events.

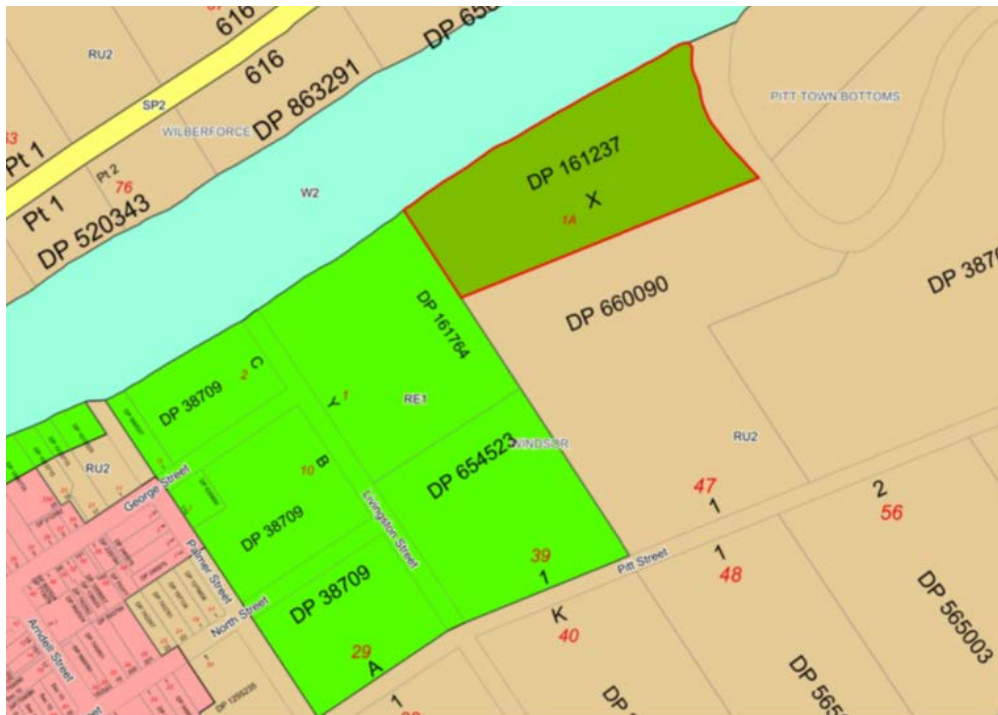


Figure 8: Zoning map

The Hawkesbury LEP 2012 provides the following definition for a recreation facility (outdoor).

recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

The proposed development is most appropriately categorised as a recreation facility (outdoor) under the Hawkesbury LEP 2012. The proposed demolition and reconstruction of the club building is permissible on the basis that recreation facility (outdoor) is permissible with consent in the RE1 Public Recreation zone.

Clause 2.3 – Zone objectives and Land Use Table

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives for RE1 Public Recreation zone are as follows:

RE1 Public Recreation:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect and enhance the natural environment for environmental purposes.

- *To restrict development on land required for future open space purposes.*

The proposal is considered consistent to the objectives of the zone it will provide necessary infrastructure to the users of the Governor Philip Park who generally uses boat club facility.

Clause 4.3 – Height of Buildings

Clause 4.3(2) and associated Height of Building Map of the Hawkesbury LEP 2012 do not establish a maximum building height control for the RE1 zone. The existing building had a building height of 8.9m with the proposed building height is to be 8.28m. The proposed building height appropriately responds to the surrounding context of the site and complements to the existing size and scale of the building.

5.21 Flood Planning

Clause 5.21 of Hawkesbury Local Environmental Plan 2012 applies to the development. The site has a 1:100 Average Recurrence Interval (ARI) flood level of 17.3m and the proposal is located on land that is categorised as having an Extreme Flood Risk during the 1:100 year ARI. The site is located within the floodway zone.

The portion of the site proposed to accommodate the Windsor Power Boat Club Building has an RL ranging between 9.78m to 10.08m and the structure has a proposed finished floor level of 10.15m. This will result in the structure being fully inundated in a 1:00 year flood event. According to Council's Flood Policy 2020 the location of the Windsor Power Boat Club Building is categorised as H6.

A Flood Impact and Evacuation Plan, prepared by Barker Ryan Stewart, dated 17 August 2022, was submitted in support of the application. The report describes the design flood behaviour for the subject site as below:

'The site backs directly onto the Hawkesbury River and is thus subject to mainstream flooding in large rainfall events. The site starts to become impacted by a flood event just greater than the 1 in 5 year Average Recurrence Interval (ARI)) as the buildings floor level is approximately RL 10.00m AHD. George Street and so the sites vehicular access is relatively flat and sits at a level slightly higher than the floor level of the building. Peak flood levels were obtained from the Hawkesbury Nepean Regional Flood Study...for Windsor the 1 in 5 year ARI flood level is 9.85m AHD, the 1 in 10 year ARI is 11.93m AHD and the 1 in 100-year ARI is 17.32m AHD and the Probable Maximum Flood (PMF) is 26.72m AHD. The site is also considered to be in an extreme flood risk precinct in accordance with the Flood Risk Map from the Hawkesbury Floodplain Risk Management Study and Plan.'

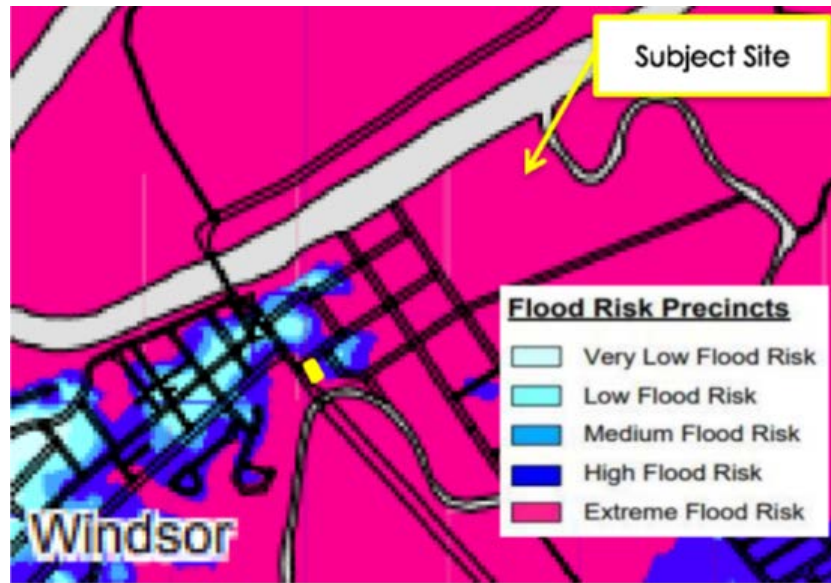


Figure 9: Flood risk map from Hawkesbury Floodplain Risk Management Study & Plan (Bewsher Consulting 2012) as shown in the submitted Flood Impact and Evacuation Plan, dated 17 August 2022

Clause 5.21 of HELP 2012 requires Council to consider the following:

- (2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*
 - (a) *is compatible with the flood function and behaviour on the land, and*
 - (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
 - (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
 - (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- (3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
 - (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
 - (b) *the intended design and scale of buildings resulting from the development,*
 - (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*

- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

The submitted Flood Impact and Evacuation Plan provided the following responses against clause 5.21(2) and 5.21(3):

- *The existing masonry building appears to have been on the site for some time and definitely prior to July 1997. Due to foundation issues the building will be replaced with a similar shaped structure that will be structurally built to withstand the forces of the river in flood.*
- *The use of the facility will be for recreational purposes associated with boating on the river.*
- *The footprint of the proposed building at 280 sqm approx. is the same as the footprint of the existing building and awning, albeit slightly narrower and longer than the existing. There is not considered to be any adverse or cumulative flood impacts. The reason for this is that there is no change in the building orientation and shape and so will be impact the river hydraulics in the same way as the existing building. Any backwater flooding from the river would also fill the proposed building in the same way the existing building would be inundated. Therefore, provided the proposed building is made of flood compatible materials and is designed and constructed to withstand the forces of flooding there will be no loss in flood storage and no measurable adverse impacts to the river hydraulics.*
- *The proposed concrete filled concrete block construction will be substantially more flood compatible than the existing brick and concrete structure and will be structurally designed to withstand the forces of flood waters up to the 1% AEP ARI event (inclusive of any uplift and carry away forces). All electrical fittings will be constructed in a manner compatible with being inundated by flood waters without having an electrocution risk together with insulation, flooring and its fit out.*
- *All items stored within the shed are to either be removed and relocated from the site in the event of a flood or thoroughly secured to avoid them being carried away by flood waters.*
- *Rising flood free access is available away from the site via George Street up towards the centre of Windsor.*
- *As the site will start to become inundated during the 1 in 5 year ARI flood event, a full evacuation of the property is to be undertaken prior to this event.*
- *A flood response and evacuation plan are to be utilised by users of the site. As the proposed building is not for residential use, the implementation of the flood response and evacuation plan will enable the site to be used safely for recreational purposes.*
- *The location of the proposed building is to be located in the same location as the existing building and so no adverse effects are likely to be realised as the current structure has shown no adverse effects such as avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses.*
- *The impact of climate change resulting in a 500mm increase in water level will not increase the risk to the property or the proposed shed. That is the proposed building will still be well above the high tide water level and in a 1 in 100 year flood event the proposed shed would already be underwater.*

The Flood Assessment Report also provided an Evacuation Capability Assessment, Flood Emergency Response Plan, and Action Plan.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

An assessment of the application against the relevant controls of Flood Policy 2020 and its supporting Schedule of Flood Related Development Controls is provided below:

Flood Policy 2020

6.1 New Development and Additions and Alterations to, or the Redevelopment of, existing lawful Compatible Development in Hazard Category H6		
Requirement	Proposed	Complies
Permissibility:		
<p>H6.1 Development for the purposes of uses listed as:</p> <ul style="list-style-type: none"> • Critical Uses and Facilities, • Sensitive Uses and Facilities, • Single Residential Uses, • Multi Residential Uses, • Tourist Accommodation Uses, • Commercial Uses 1, • Commercial Uses 2, Industrial Uses, • Commercial/Industrial – Highly Vulnerable Uses, • Agricultural Uses 2, • Recreational Uses 1 and • Other Uses 2 <p>in Table 2 of this Schedule are not permitted on land within Hazard Category H6.</p>	<p>The application is for a building which is defined as recreational facility (outdoor). Recreational facility (outdoor) is identified in Recreational Uses 2 category in this Policy and is a compatible use in the H6 Category.</p>	Yes
<p>H6.2 Development is not permitted in a floodway area or flow path, other than:</p> <ul style="list-style-type: none"> • open style fencing that does not impede floodwater flows; or • farm buildings or buildings or structures ancillary to agriculture or recreational uses where it is demonstrated that the 	<p>The building is proposed to be ancillary to recreation uses and replaces an existing building for the same purpose.</p> <p>The new building will be constructed at the same location and will not increase the floor area or height of the existing building. The new building will impact the river</p>	Yes

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

6.1 New Development and Additions and Alterations to, or the Redevelopment of, existing lawful Compatible Development in Hazard Category H6		
<p>development will not increase flood effects elsewhere, having regard to:</p> <ul style="list-style-type: none"> - loss of flood storage, - changes in flood levels and velocities caused by changes to flow paths, - the cumulative impact of development in floodplain, and - the development withstanding forces from floodwater, impacts from debris and buoyancy forces. 	<p>hydraulics the same way as the existing building.</p> <p>The proposed building will be made of flood compatible materials and will be designed and withstand the forces of flooding, there will be no loss in flood storage and no measurable adverse impacts to the river hydraulics.</p>	
<p>H6.3 Development for the purpose of uses listed as Earthworks in Table 2 of this Schedule must demonstrate that the development will not increase flood effects elsewhere, having regard to:</p> <ul style="list-style-type: none"> • changes in flood levels and velocities caused by changes to flow paths, and • the cumulative impact of development within the floodplain. 	<p>Not applicable. No cut and fill involved.</p>	<p>N/A</p>
Land Levels		
<p>H6.4</p> <p>A new building (including any non-habitable buildings ancillary to Compatible Development, such as garages, carports, animal shelters and other outbuildings) must not be erected on any land within Hazard Category H6 that lies at a level lower than 3.0 metres below the Flood Planning</p>	<p>1:100-flood level: 17.3m</p> <p>3m below: 14.3m</p> <p>Land level: 10m approx.</p> <p>The proposed building is a replacement of the existing damaged building located at an approximate land level of 10m AHD. This is 7.3m below the 1:100 flood level and 4.3m below the permissible level (land not less than 3m below). However, the proposed building is ancillary to the recreational facility (outdoor) use which is listed as recreational uses 2 in Table 2 of this Schedule.</p>	<p>Yes</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

6.1 New Development and Additions and Alterations to, or the Redevelopment of, existing lawful Compatible Development in Hazard Category H6		
<p>Level (1:100 ARI flood level for the land), other than:</p> <ul style="list-style-type: none"> • Farm buildings and other buildings and structures ancillary to the purposes of uses listed as Agricultural Uses 1 in Table 2 of this Schedule, or • Buildings and structures ancillary to the purposes of uses listed as Recreational Uses 2 in Table 2 of this Schedule. 	<p>Therefore, the proposal is compliant with this control.</p>	
<p>H6.5 Farm buildings and other buildings and structures ancillary to agriculture or recreational uses may be located on land lying more than 3.0 metres below the Flood Planning Level (1:100 ARI flood level for the land) subject to meeting the requirements (where relevant):</p> <ul style="list-style-type: none"> • Development Control H6.2, Development Control H6.14, • Development Control H6.15, and • Development Control H6.16. 	<p>The proposed building is related to recreational facility (outdoor) and is permissible to be built on land lying more than 3.0m below the flood planning level.</p> <p>Refer to comments in relevant sections in this table.</p>	<p>Yes</p>
Floor Levels		
<p>H6.6 All floor levels of buildings for the purposes of uses listed as:</p> <ul style="list-style-type: none"> • Agricultural Uses 1 • Recreational Uses 2 • Earthworks • Other Uses 1 <p>in Table 2 of this Schedule must be no lower than 3 metres</p>	<p>1:100-flood level: 17.3m</p> <p>3m below 17.3m: 14.3m</p> <p>Floor level: 10.15m</p> <p>Level difference: 7.15m</p> <p>The proposed building is related to recreational facility (outdoor) listed under Recreational Uses 2 and is permissible to have floor level lower than 3m below the flood planning level.</p>	<p>Yes</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

6.1 New Development and Additions and Alterations to, or the Redevelopment of, existing lawful Compatible Development in Hazard Category H6		
<p>below the Flood Planning Level (1:100 ARI flood level for the land), other than:</p> <ul style="list-style-type: none"> • Farm buildings and other buildings and structures ancillary to the purposes of uses listed as Agricultural Uses 1, or • Buildings and structures ancillary to the purposes of uses listed as Recreations Uses 2. 		
<p>H6.7 Where the lowest floor area is elevated above ground level (where raised building construction is used), the undercroft area must not be enclosed. No walls, doors, blockwork, cladding or the like is to be affixed around or within the undercroft area. Decorative features will be considered on merit.</p>	The proposal is not for a raised building construction.	N/A
<p>H6.8 Undercroft areas may be used for car parking purposes</p>	An undercroft area is not proposed.	N/A
<p>H6.9 An undercroft area shall not exceed 2.1 metres above ground level. Any slab installed for car parking purposes shall be at ground level to maintain a clearance of 2.1 metres to the underside of the lowest floor area.</p>	An undercroft area is not proposed.	N/A
<p>H6.10 Where required by Hawkesbury City Council, an area must be provided within the building for the storage of goods, valuable possessions or potentially hazardous or polluting materials at a level above the Flood Planning Level (1:100 ARI flood level for the land).</p>	The only items to be stored on site are those related to the recreational use of the site. These will be stored securely within the building.	Yes
Cut and Fill		
<p>H6.11</p> <p>Importation of fill to the land/property and/or</p>	No cut and fill are proposed.	Yes

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

6.1 New Development and Additions and Alterations to, or the Redevelopment of, existing lawful Compatible Development in Hazard Category H6		
<p>excavation works, are not permitted, other than to facilitate development for the purposes of:</p> <ul style="list-style-type: none"> • environmental protection works; • bank restoration/stabilisation works; • boat ramps. 		
<p>H6.12</p> <p>A balance of cut and fill must be used on the site to create a level building platform or driveway access on land. Cut and fill must not exceed a depth of 1 metre of cut or 1 metre of fill in these situations.</p>	No cut and fill are proposed.	Yes
<p>H6.13</p> <p>All buildings and structures must be constructed using flood compatible building materials.</p>	Flood compatible materials will be used for the new building.	Yes
<p>H6.14</p> <p>An engineering report, prepared by a suitably qualified and experienced structural engineer, must be provided to demonstrate that new buildings and structures are able to withstand forces from floodwater, impacts from debris, and buoyancy forces (See Section E – <i>Information Required</i> of this Schedule).</p>	The applicant submitted 'Flood impact and evacuation plan' which is reviewed by Council's Senior Development Engineer and is considered as satisfactory. Appropriate condition has been included in the recommendation to provide an engineering report demonstrating that new buildings and structures are able to withstand forces from floodwater, impacts from debris, and buoyancy forces prior to issue construction certificate.	Yes
Emergency Management		
<p>H6.15 An Evacuation Capability Assessment must be provided for all new development or additions, alterations or redevelopment that results in an intensification of the occupancy of the site (See Section E – <i>Information Required</i> of this Schedule)</p>	The applicant submitted 'Flood impact and evacuation plan' which is reviewed by Council's Senior Development Engineer and is considered as satisfactory. The report contained assessment in relation to flood evacuation routes.	Yes

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

6.1 New Development and Additions and Alterations to, or the Redevelopment of, existing lawful Compatible Development in Hazard Category H6

H6.16 A Site Flood Emergency Response Plan must be provided when elements of the development, including vehicular and pedestrian access are below the Flood Planning Level (See Section E – Information Required of this Schedule)	The applicant submitted 'Flood impact and evacuation plan' which is reviewed by Council's Senior Development Engineer and is considered as satisfactory. The report contained flood emergency response plan.	Yes
---	--	-----

Council's Senior Development Engineer has reviewed the submitted flood assessment report. No objections to the proposed development were raised given that flood storage capacity for the subject site will not be reduced due to the proposed development and there will not be any significant impact on the flood behaviour for the locality.

The submitted Flood Emergency Response Plan addressed the following specific actions in accordance with the relevant NSW SES 'Floodsafe' guides:

- preparing for a flood,
- responding when a flood is likely, including evacuation routes and when to leave, and
- responding during a flood, including what to do if isolated.

The proposed development has been found to be consistent with the provisions of Council's Flood Policy 2020 and Schedule of Development Related Controls and has demonstrated that the proposal is compatible with the flood function and behaviour of the land, the application is recommended to be supported.

Clause 6.1 Acid sulfate soils

Hawkesbury LEP identifies the site has having Class 4 acid sulfate soil. An Acid Sulfate Soil Assessment report, prepared by JK Environments and dated 8 July 2022 was submitted. Soil excavation will be primarily associated with the piling process for the proposed development. The report identified that piling will extend to a maximum proposed depth of approximately 5m below ground level (BGL), however, may extend beyond 5mBGL if no suitable sub-surface load bearing material is encountered. The report concludes as below,

'The detection of net acidity results in samples BH1 (1.75-7.95m), BH2 (5.5-5.7m), BH3 (4-4.2m), BH3 (14.5- 15m) and BH4 (9-9.2m) are considered to be indicative of acidic soils associated with organic/humic material as indicated by peat inclusion within the silty clay soil between depths of approximately 4.5mBGL to 13.5mBGL, rather than PASS materials as significant concentrations of oxidisable sulfur, demonstrated by the low SCR% results, were not encountered in the samples.

Based on the weight of evidence collected and evaluated for this assessment, there is considered to be a low potential for ASS materials (AASS or PASS) to be disturbed during the proposed development described in Section 1.2 of this report. On this basis, an ASSMP is not considered necessary for the proposed development.

In the event excavation, such as piling, is to extend beyond 15mBGL, further assessment may be required.'

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Council's Environmental Health Officer has reviewed the submitted report and raised no objections to the conclusion of the report. Appropriate conditions will be included in the recommendation to reflect the findings of the report.

Other Provisions

LEP	Proposed
5.10 Heritage conservation	The application is not within a heritage conservation area or within the vicinity of a heritage item identified under Schedule 5 of HLEP2012.
6.2 Earthworks	The application does not propose any significant earthworks. The proposed works are unlikely to result in any detrimental negative impacts in the locality and are limited to those associated with site preparation and service provision. No cut and fill is proposed.
6.4 Terrestrial biodiversity	The site is subject to biodiversity controls. The location of the building is mapped as biodiversity significant, however no vegetation is proposed for removal therefore no Biodiversity Development Assessment Report is required in this instance.
6.5 Wetlands	The site is not subject to wetlands controls.
6.6 Development in areas subject to aircraft noise	The site is not subject to aircraft noise.
6.7 Essential services	The site is capable of connecting to essential services. the existing building is connected to the sewerage system owned by Hawkesbury Council. No alteration is proposed to the existing access arrangement. The concept stormwater management plan is considered satisfactory.

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 Instrument applies to this development proposal.

iii. Development Control Plan applying to the land:

The proposal is generally consistent with the aims and objectives of the Hawkesbury DCP 2002. An assessment of the proposal against the relevant provisions of this Plan follows:

Part A Chapter 3 - Notification

The application was notified from 06/10/2022 to 20/10/2022 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002 and the Hawkesbury Community Participation Plan. No submissions were received in response to the proposal.

Part C Chapter 2 – Car Parking and Access

This chapter aims to ensure that adequate and convenient off-street parking facilities are provided for all vehicles generated by the new development and to ensure minimum interference to the flow of traffic on the street network.

HDCP 2002 does not establish any particular parking rate for recreational uses (outdoor). An asphalt car parking area having 11 car parking spaces is located to the south of the building.

Upper level area of the building would likely be used for club meeting and committee meetings accommodating maximum of 10 to 15 people most of the times. The existing car parking area is to be retained. No changes are proposed to the existing access arrangement. It is noted that the Governor Philip Park precinct contains adequate number of car parking spaces for people visiting the park and using the boat ramp facilities. The proposed Windsor Power Boat Club Building will be mainly used by the club members, the canteens will be operating in association with the club facilities. During any boat race events there is ample spaces are allocated for overflow parking purpose within the Governor Philip Park precinct. It is considered that the existing parking arrangement with the precinct is adequate for the proposed development.

Part C Chapter 4 – Soil Erosion and Sediment Control

A plan for soil erosion and sediment control was submitted with the application. Appropriate conditions will be applied to manage sediment and erosion for the site.

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:

No planning agreement or draft planning agreement is applicable to the proposed development.

v. (Repealed)

Not applicable.

vi. Matters prescribed by the Regulations:

These matters have been considered in the assessment of this application. The EP&A Regulation 2021 outlines that the development is to comply with the National Construction Code/Building Code of Australia (BCA) and the Disability (Access to Premises – Buildings) Standards 2010.

An Access Review Report has been prepared in support of the application and demonstrates that the proposed works are capable of satisfying the accessibility requirements of the Disability (Access to Premises – Buildings) Standards 2010, BCA and relevant Australian Standards.

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 proposal is unlikely to have a detrimental environmental or economic impact in the locality and is assessed to be relatively small in scale and acceptable in design. Surrounding land uses consist of recreational and rural-agricultural uses of which the proposal is considered to be in keeping with the existing uses and recreational character of the locality.

Windsor Foreshore Parks (Incorporating the Great River Walk) – Plan of Management July 2013 identifies the major use of Governor Phillip Park for boating access to the river. The PoM states,

'Four large events that cater for a large number of visitors include: the Bridge to Bridge Power Boat Race (May); Bridge to Bridge Water Ski Classic (November); Hawkesbury 120 Ski Race

Classic (August); and the Powerboat Spectacular Windsor (September) are held within this park each year.'

The existing club house building at the Governor Phillip Park plays an important role in those events. The PoM also identifies that Upper Hawkesbury Power Boat Club was leased for 5 years from 1 February 2012 to 31 January 2017.

The subject site is identified as an extremely flood risk precinct. The proposed development will demolish the existing club house building which is damaged by flood incident and will replace with similar size and similarly oriented building at the same location. The proposed development is unlikely to reduce the flood storage and to impact the river hydraulics. The new building will be made of flood compatible materials and is designed and constructed to withstand the forces of flooding.

Adequate parking facilities are available within Governor Philip park precinct. The proposed development is unlikely to have any adverse impact on the traffic flows based on the total number of people expected to be in the club house building on any usual day. The park has areas dedicated for over flow parking facility during any race events.

The proposed operating hours are considered acceptable and will cater for the need of the users of the boat club facility. Council's Environmental Health Officer raised no objection to the operating hours subject to conditions that no live music or bands to be operated on the premises.

The proposed development is not expected to have an unreasonable impact upon the existing streetscape or existing character of the immediate locality. The proposed improvement to the existing boat club building will have a positive social impact to the community.

c) Suitability of the site for the development:

The site is considered able to support the proposed development. The proposed development is considered to be site responsive and would be a scale that would be in keeping with the surrounding area.

The use of the site is permissible and consistent with the recreational character of the locality and would increase the amenity of the existing recreational facility and support the Hawkesbury community through the provision of improved services.

The subject site is not affected by bushfire.

The site has a 1:100 Average Recurrence Interval (ARI) flood level of 17.3m and the proposal is located on land that is categorised as having an Extreme Flood Risk during the 1:100 year ARI. The site is located within the floodway zone. A Flood Impact and Evacuation Plan, prepared by Barker Ryan Stewart, dated 17 August 2022, was submitted in support of the application. The report concluded that provided the proposed building is made of flood compatible materials and is designed and constructed to withstand the forces of flooding there will be no loss in flood storage and no measurable adverse impacts to the river hydraulics. This matter has been considered in the assessment of this application and has been detailed in the sections above.

The proposed development has been assessed to support the objectives of the zone and as discussed is found to be a suitable form of development within the local area.

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

The application was notified between 06/10/2022 and 20/10/2022 in accordance with Chapter Three of the Hawkesbury Development Control Plan 2002 (HDCCP), Notification of Development Applications. No submissions were received.

e) The Public Interest:

The application has been assessed to be generally compliant with the applicable plans, policies and controls and represents an acceptable form of development within the local area and as such, is not contrary to the public interest.

Development Contributions

Clause 2.7 of the Hawkesbury Section 94A Contributions Plan 2015 outlines the types of developments that are exempted from the payment of development contributions. Clause 2.7 includes the following;

- *an application by or on behalf of Council for community infrastructure, such as but not limited to libraries, community facilities, recreation areas, recreation facilities and car parks.*

The subject land is owned by Council and has been utilised as a recreation facility (outdoor) for a number of years. The development is therefore exempt from contributions under the Hawkesbury Section 94A Contributions Plan 2015.

Conclusion

The application has been assessed having regard to the heads of consideration under Section 4.15 of the EP&A

Act. The application is considered to represent a satisfactory form of development and is recommended for

approval subject to standard building and development conditions included as an attachment to this report.

ATTACHMENTS

AT - 1 Plans of the Proposal – *(Distributed under separate cover).*

AT - 2 Conditions.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

AT - 2 Conditions



Development Assessment Report - Part 2

Development Application No	DA0306/22
Proposal	Recreation Facility (outdoor) Demolition of Existing Structure and Construction of a New Two Storey Building Containing Club Facilities, Canteens, Storage Area and Amenities
Legal Description	Lot B DP 38709 Lot C DP 38709 Lot Y DP 161764 Lot 110 DP 630860 Lot X DP 161237 Lot A DP 38709 Lot 1 DP 654523
Property Address	1 Livingston Street WINDSOR NSW 2756

Recommendation

That development application DA0306/22 at
Lot B DP 38709
Lot C DP 38709
Lot Y DP 161764
Lot 110 DP 630860
Lot X DP 161237
Lot A DP 38709
Lot 1 DP 654523,

1 Livingston Street WINDSOR NSW 2756 for Recreation Facility (outdoor) Demolition of Existing Structure and Construction of a New Two Storey Building Containing Club Facilities, Canteens, Storage Area and Amenities be approved subject to the following conditions:

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 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 Ref No.	Drawing Description	Prepared by	Issue No.	Date
20110301	Cover Sheet and Location Plan	Barbara Tarnawski Architects Pty Ltd	D	19/07/22
20110302	Site Plan	Barbara Tarnawski Architects Pty Ltd	D	19/07/22
20110303	Upper Level	Barbara Tarnawski Architects Pty Ltd	D	19/07/22
20110304	Lower Level	Barbara Tarnawski Architects Pty Ltd	D	19/07/22
20110305	Elevations	Barbara Tarnawski Architects Pty Ltd	D	19/07/22
20110306	Elevations	Barbara Tarnawski Architects Pty Ltd	D	19/07/22
20110307	Sections	Barbara Tarnawski Architects Pty Ltd	D	19/07/22
20110308	Images, Material and Finishes	Barbara Tarnawski Architects Pty Ltd	D	19/07/22

366 George Street (PO Box 146), WINDSOR 2756 | council@hawkesbury.nsw.gov.au | hawkesbury.nsw.gov.au | (02) 4560 4444



Interpreter Service available, call 131 450 131 450 خدمة الترجمة الشفوية متاحة للتصديق على رقم 131 450 131 450 可提供傳譯服務，請致電 131 450 131 450 Hemm servizz tal-interpretu, ċempel 131 450

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023



	Schedule			
Sheet No. 1 of 7	Title Page & General Notes	Broadcrest Engineering and Environmental Consultants	A-02	21/07/22
Sheet No. 2 of 7	Drainage Plan	Broadcrest Engineering and Environmental Consultants	A-02	21/07/22
Sheet No. 3 of 7	Drainage Plan	Broadcrest Engineering and Environmental Consultants	A-02	21/07/22
Sheet No. 4 of 7	Drainage Plan	Broadcrest Engineering and Environmental Consultants	A-02	21/07/22
Sheet No. 5 of 5	Drainage Plan	Broadcrest Engineering and Environmental Consultants	A-02	21/07/22
Sheet No. 6 of 5	Drainage Plan	Broadcrest Engineering and Environmental Consultants	A-02	21/07/22
Sheet No. 7 of 5	Drainage Plan	Broadcrest Engineering and Environmental Consultants	A-02	21/07/22

b) Document Reference:

Document Title	Reference	Prepared By	Date
Flood Impact and Evacuation Plan	210438, Rev 3	Barker Ryan Stewart	17/08/2022
Acid Sulfate Soil Assessment	E34985Blet - ASS	JK Environments	8/07/2022

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.

2. 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 a 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).

3. 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);
- 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.

4. **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.

5. **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.

6. **Sewer Authority - Hawkesbury City Council**

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

7. **Council Sewer Main - Zone of Influence**

This development impedes upon the 'Zone of Influence' of a Council owned sewer main. The applicant must consult with Councils' Infrastructure Services Department prior to applying for a Construction Certificate.

Note: Significant variation to the design of the foundations to the proposed development may be required.

8. **Asbestos Removal**

If asbestos containing materials are encountered during construction or demolition work; measures must be in place in accordance with SafeWork NSW guidelines and the *Occupational Health & Safety Regulation 2001*. Work must not commence or continue until all the necessary safeguards required by SafeWork NSW are fully in place.

In accordance with Safework NSW requirements, a SafeWork NSW licensed Asbestos Removalist is to be engaged to undertake asbestos removal.



Prior to commencing demolition of buildings likely to comprise asbestos containing material(ACM), a commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring 400mm x 300mm must be erected in a prominent visible position on the site in accordance with Australian Standard AS 1319 - 'Safety Signs for the Occupational Environment'.

The person entitled to act on this consent must notify adjoining residents in writing five working days prior to the demolition.

Asbestos waste must only be disposed of at a landfill site authorised to receive such waste. All receipts and supporting documentation must be retained in order to verify lawful disposal and are to be made available to Council on request.

9. **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).

10. **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.

11. **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

12. **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 \$250,000 and above are subject to the payment of a Long Service Levy at the rate of 0.25%. Payments can be made at Long Service Payments Corporation offices or most councils.

13. **Section 307 Compliance Certificates - Council Infrastructure (Water Supply and Sewerage)**



This development affects Council's infrastructure and there are specific requirements to be addressed in order for this development to proceed. This may involve the carrying out of work and/or payment of contributions.

The applicant is required to apply to Council (as the infrastructure authority) under Section 305 of the *Water Management Act 2000* for a Section 307 Compliance Certificate (issued under the *Water Management Act 2000*).

Prior to the issue of any Construction Certificate either a Section 306 'Notice of Requirements' or a Section 307 Compliance Certificate under the *Water Management Act 2000* must be provided to the Certifier.

Notes: Application forms and other related documents associated with connection to Council's sewer are available at Council website: <https://www.hawkesbury.nsw.gov.au/for-residents/waste-water/sewer-works/sewer-works>

14. Detailed Drainage Design

A detailed drainage design of the site must be submitted to and approved by a Certifier prior to the release of the Construction Certificate. The detailed plan must:

- a) be generally in accordance with Stormwater Concept Plan, Project ID 2083-SW, Revision A-02, prepared by Broadcrest Engineering and Environmental Consultants on 21/07/2022;
- b) the stormwater outlet on the riverbank be designed and be consistent with the proposed future embankment works by Council's Park Section;
- c) drain to the existing stormwater outlet;
- d) indicate the method of disposal of all stormwater and must include existing ground levels, finished surface levels on all paved areas, estimated flow rates, invert levels and sizes of all pipelines;
- e) be to the satisfaction of the Certifier;
- f) be designed to cater for a 1 in 20 year Average Recurrence Interval storm event;
- g) show details of any overflow drainage paths and that they be designed to cater for 1 in 100 year Average Recurrence Interval storm event; and
- h) comply with the Hawkesbury Development Control Plan 2002 - Appendix E and Australian Standard AS 3500 - 'Plumbing and Drainage' unless a variation is specifically noted and approved by the Development Application concept drainage plan.

15. Earthworks - No Fill Permitted

It must be clearly noted on plans submitted to the Certifier prior to issue of the Construction Certificate that no fill must be imported onto the site as part of this development.

16. 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 Certifier prior to issue of the Construction Certificate.

17. Flood Prone Land - Flood Compatible Construction



All buildings/structures must have flood compatible structural components up to and including the 100 year Average Recurrence Interval (ARI) flood level. The materials used in the construction must be consistent with any structural engineering certificate regarding the ability of the building/structure to withstand the forces of floodwater. All electrical circuits or conduits located below the 1 in 100 year Flood Level are to be made fully flood compatible and suitable for continuous underwater immersion. Conduits are to be self-draining.

A written specification of the proposed materials to be used must be provided to the Certifier prior to the issue of a Construction Certificate.

Note: Advice on suitability of materials for use on flood liable land can be found in the publication 'Reducing Vulnerability of Buildings to Flood Damage' (Chapter 4.3 - Construction Materials).

18. **Flood Prone Land - Engineers Certification**

The 100 year Average Recurrence Interval (ARI) flood level for this site is RL 17.32 metres AHD (Australian Height Datum).

An engineer's certificate must be provided deeming compliance with the following requirements during a 100 year ARI flood event:

- a) Debris: Damage to the proposed structure/s sustained in a flood will not generate debris capable of causing damage to downstream buildings or property. This includes securing of utilities and equipment including tanks, A/C units and similar;
- b) Structural Soundness: Any part of the structure will be able to withstand the force of floodwaters (including lateral forces, buoyancy forces, unbalanced hydrostatic forces) and the impact of debris; and
- c) Foundations: The footing system must be structurally stable during flooding and must consider the soil properties when wet, possible erosion and scouring or liquefaction, subsidence or collapse due to saturation.

The Engineers Certificate must be submitted to the Certifier prior to issue of the Construction Certificate.

19. **Upper-Level Food Premises - Exhaust System Required**

If the total maximum electrical power input of the proposed cooking appliance exceeds 8kw/h or a total gas power input exceeding 29MJ/h, then an approved method of local exhaust must be provided in accordance with Australian Standard AS 1668 - 'The use of mechanical ventilation and air-conditioning in buildings, Part 2 Mechanical ventilation for acceptable indoor-air quality'.

Details of the mechanical exhaust system must be provided to the Certifier prior to the issue of the Construction Certificate.

20. **Upper-Level Food Premises - Construction and Fit out General Requirement**

Detailed plans of the kitchen, bar and food preparation and storage areas must be prepared by a suitably qualified person and certified in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and AS 4674 - Design, Construction and Fit out of Food Premises and must be submitted to and approved by Council prior to a Construction Certificate being issued.

- a) The construction, fit out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and Australian Standard AS 4674 - 'Design, construction and fit out of food premises'.
- b) The cooking appliances require an approved air handling system designed in accordance with AS1668.1 - 'The use of ventilation and air conditioning in buildings - Fire and smoke control in buildings' and AS1668.2 - 'The use of ventilation and air conditioning in buildings - Mechanical



ventilation in buildings' or alternative solution satisfying the performance objectives of the Building Code of Australia. No approval is granted for the burning of wood fired fuel.

- c) Cooking must not commence until an air handling system, in accordance with the BCA is installed and operational.
- d) The floor of the food premises must be finished in an approved non absorbent material, evenly laid, or graded and drained to a trapped floor waste.
- e) The floor must be coved at the intersection with the walls.
- f) The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other rigid, smooth-faced impervious material.
- g) Ceilings within the food preparation and storage areas must be free of gaps and open joints and must be finished with an impervious sealed material. Drop in panels are not permitted in food preparation areas, food storage areas or areas where open food is displayed or served.
- h) Hand wash basin/s, with hot and cold running water mixed through a common spout, hand wash soap and hand drying facilities must be provided in all food preparation bar areas, and toilets used by food handlers and must be no further than 5m travel distance from a place where a food handler is handling food. All taps to hand wash basins must be hands free. (For example: sensor taps, knee operated taps or foot pedal taps). Liquid soap and paper towel dispensers or other hand drying facilities must be located next to and in close proximity the hand wash basin.
- i) A double bowl sink or two compartment tub (the capacity of which must be capable of fitting all food contact equipment) must be provided in the food preparation area, in addition to the hand basin,

OR

alternatively a single bowl sink and a dishwasher must be provided in the food preparation or designated area, (where all the food contact equipment will fit in the dishwasher) in addition to the hand basin.
- j) The appliances used to store potentially hazardous food must have a capacity to keep food hotter than 60oC or colder than 5oC and be provided with a thermometer, accurate to 1oC and which can be easily read from outside the appliance.
- k) All food is to be transported, stored and displayed in a manner that protects the food from likely contamination in accordance with the provisions of Standard 3.2.2 of the Food Standards Code under the *Food Act 2003*.
- l) All service pipes, electrical conduits, refrigeration condensate pipes and the like must be chased into walls and floors or at least 25mm off the wall.
- m) All openings in walls, floors and ceilings, through which service pipes pass, must be vermin proof.
- n) Where fittings are butt joined together they must be sealed to eliminate any cavities or crevices. Alternatively, a clear space of at least 75mm is to be provided between fittings.
- o) The following requirements apply to clearances and supports of equipment:
 - (i) all stoves, refrigerators, cupboards and similar fittings must have metal legs made of non-corrosive metal or moulded plastic at a minimum height of 150mm above the floor. If placed flush on solid plinths the solid plinth is to be a minimum of 75mm high; and
 - (ii) all shelving must be fixed 25mm clear of the walls on solid metal brackets.
- p) A grease trap (if required by Sydney Water) must not be installed in any kitchen, food preparation or food storage area. The grease trap room must have a piped connection to the boundary so that it can be emptied. Note: Sydney Water Authority also have requirements for grease arrestors that you need



to comply with.

Note: Copies of AS 4674 - 'Design, construction and fit-out of food premises' may be obtained from the Standards Australia Customer Service on telephone 1300 65 46 46 or by visiting the website www.standards.com.au <<http://www.standards.com.au>>.

Copies of the Food Standards Code (Australia) may be obtained by contacting the Food Standards Australia and New Zealand Authority on telephone (02) 6271 2222, email info@foodstandards.gov.au or by visiting the website www.foodstandards.gov.au.

Details satisfying the above are required to be submitted to the Certifier prior to the issue of the Construction Certificate.

21. **Lower-Level Food Premises - Construction and Fit out General Requirement**

Detailed plans of the kitchen, bar and food preparation and storage areas must be prepared by a suitably qualified person and certified in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the Food Act 2003 and AS 4674 - Design, Construction and Fitout of Food Premises and must be submitted to and approved by Council prior to a Construction Certificate being issued.

- a) The construction, fit out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and Australian Standard AS 4674 - 'Design, construction and fit out of food premises'.
- b) The floor of the food premises must be finished in an approved non absorbent material, evenly laid, or graded and drained to a trapped floor waste.
- c) The floor must be coved at the intersection with the walls.
- d) The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other rigid, smooth-faced impervious material.
- e) Ceilings within the food preparation and storage areas must be free of gaps and open joints and must be finished with an impervious sealed material. Drop in panels are not permitted in food preparation areas, food storage areas or areas where open food is displayed or served.
- f) Hand wash basin/s, with hot and cold running water mixed through a common spout, hand wash soap and hand drying facilities must be provided in all food preparation bar areas, and toilets used by food handlers and must be no further than 5m travel distance from a place where a food handler is handling food. All taps to hand wash basins must be hands free. (For example: sensor taps, knee operated taps or foot pedal taps). Liquid soap and paper towel dispensers or other hand drying facilities must be located next to and in close proximity the hand wash basin.
- g) A double bowl sink or two compartment tub (the capacity of which must be capable of fitting all food contact equipment) must be provided in the food preparation area, in addition to the hand basin,

OR

alternatively a single bowl sink and a dishwasher must be provided in the food preparation or designated area, (where all the food contact equipment will fit in the dishwasher) in addition to the hand basin.

- h) The appliances used to store potentially hazardous food must have a capacity to keep food hotter than 60oC or colder than 5oC and be provided with a thermometer, accurate to 1oC and which can be easily read from outside the appliance.
- i) All food is to be transported, stored and displayed in a manner that protects the food from likely contamination in accordance with the provisions of Standard 3.2.2 of the Food Standards Code under the Food Act 2003.



- j) All service pipes, electrical conduits, refrigeration condensate pipes and the like must be chased into walls and floors or at least 25mm off the wall.
- k) All openings in walls, floors and ceilings, through which service pipes pass, must be vermin proof.
- l) Where fittings are butt joined together they must be sealed to eliminate any cavities or crevices. Alternatively, a clear space of at least 75mm is to be provided between fittings.
- m) The following requirements apply to clearances and supports of equipment:
 - (i) all stoves, refrigerators, cupboards and similar fittings must have metal legs made of non-corrosive metal or moulded plastic at a minimum height of 150mm above the floor. If placed flush on solid plinths the solid plinth is to be a minimum of 75mm high; and
 - (ii) all shelving must be fixed 25mm clear of the walls on solid metal brackets.

Note: Copies of AS 4674 - 'Design, construction and fit-out of food premises' may be obtained from the Standards Australia Customer Service on telephone 1300 65 46 46 or by visiting the website www.standards.com.au <<http://www.standards.com.au>>.

Copies of the Food Standards Code (Australia) may be obtained by contacting the Food Standards Australia and New Zealand Authority on telephone (02) 6271 2222, email info@foodstandards.gov.au or by visiting the website www.foodstandards.gov.au.

Details satisfying the above are required to be submitted to the Certifier prior to the 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. **Trade Waste Agreement**

A Liquid Trade Waste application form must be submitted to Council for the discharge of trade waste to Council's sewer. Trade waste details are to be submitted to and approved by Council's Waste Management Branch prior to the release of the Construction Certificate.

24. **Acid Sulfate Soil Assessment Report Compliance**

The recommendations of the Acid Sulfate Soil Assessment Report, Ref No. E34985Blet - ASS prepared by JK Environments dated 8 July 2022 must be incorporated into the engineering design details prepared in relation to the approved development.

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

Prior to Any Works Commencing on Site

25. **Principal Certifier - 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*.

26. **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.

27. 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.

28. 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.

29. 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.

30. Demolition - General

All demolition works must be carried out in accordance with the following:

- a) all demolition work must be carried out strictly in accordance with Australian Standard AS 2601 - 'The Demolition of Structures';
- b) demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current SafeWork NSW 'Demolition License' and an appropriate SafeWork NSW Asbestos License and comply with SafeWork NSW Code of Practice 'How to Safely Remove Asbestos';
- c) site safety/security fencing must be provided prior to commencement of any work on-site and must be removed only when all hazards, including site waste, have been removed. The site safety/security fencing must comply with the following Australian Standards:
 - (i) Demolition Sites - Australian Standard AS 2601 - 'Demolition of structures';
 - (ii) Construction Sites - Australian Standard AS 4687 - 'Temporary fencing and hoardings';
 - (iii) Ongoing Site Safety/Security - Australian Standard AS 1725 - 'Chain-link fabric security fencing and gates';
- d) demolition work must be carried out only between the hours of 7am to 6pm Mondays to Fridays



and 8am to 4pm Saturdays. No work is to be carried out on Sundays or public holidays;

- e) no trees must be removed from the site unless they are shown for removal on the approved plans, or separately approved by Council;
- f) erosion and sediment control measures must be installed prior to any demolition works commencing and maintained in accordance with the requirements contained in the Hawkesbury Development Control Plan 2002;
- g) all waste 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;
- h) public footways and roadways adjacent to the site must be fully maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council;
- i) any materials stored on site must be stored away from any drainage path or easement, natural watercourse;
- j) demolition activity must not cause damage to or adversely affect the structural integrity of adjoining buildings;
- k) waste must be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation;
- l) no material is to be burnt on site;
- m) details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) must be kept on site as evidence of approved methods of disposal and recycling; and
- n) the site must be grassed or otherwise rendered erosion resistant immediately upon completion of demolition.

31. Demolition - Notice

- a) Notice is to be given to Council of the date on which it is proposed to commence demolition. This notice must:
 - (i) be given not less than two days before the date on which it is proposed to commence demolition work;
 - (ii) provide details of the name, contact details of the demolisher/contractor undertaking the work;
 - (iii) provide the relevant SafeWork NSW License details of the demolisher/contractor; and
 - (iv) details of the demolisher/contractors current Public Liability/Risk Insurance Policy providing for a minimum cover of \$10 million.
- b) Notice is to be given to adjoining property owners of the date on which it is proposed to commence demolition. This notice must:
 - (i) be given not less than two days before the date on which it is proposed to commence demolition work;
 - (ii) provide details of the name, contact details of the demolisher/contractor undertaking the work; and
 - (iii) provide the telephone number of SafeWork NSW Asbestos/Demolition Hotline - 1800 672 718.

32. Restriction of Site Access to Prevent Unauthorised Material

The property entry and exit points must 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.

33. **Demolition - Work Plans**

The demolition work must comply with the provisions of Australian Standard AS 2601 - 'The Demolition of Structures'. The work plans required by Australian Standard AS 2601 - 'The Demolition of Structures' must be accompanied by a written statement from a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard.

The work plans and the statement of compliance must be submitted and be to the satisfaction of the Principal Certifier prior to the commencement of works.

34. **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)*.

35. **Sydney Water - Endorsement of Approved Plans**

The approved plans must be submitted to and endorsed by Sydney Water via the 'Sydney Water Tap-in' website to determine whether the development will affect Sydney Water's water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to Sydney Water's website.

Evidence of the building plan approval must be forwarded to the Principal Certifier prior to the commencement of works.

During Construction

36. **Construction Hours**

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

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

37. **Site Management During Construction**

The following requirements relating to site management apply during and immediately following 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 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 must be obtained prior to any closing of the road reserve or footpath area. The closure must take place in accordance with Council's written approval. The area must be signposted and such signposting be maintained in a way that ensures public safety at all times.

38. Loading and Unloading During Construction

The following requirements relating to loading and unloading apply during construction:

- 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.

39. 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*.

40. Inspection and Compliance Certificates - Sewer Works

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

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.

41. Earthworks - General Requirements

All earthworks on site must comply with the following:

- a) topsoil must be stripped only from approved areas and must be stockpiled for re-use during site rehabilitation and landscaping;
- b) once the topsoil has been removed the natural batter must 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;
- c) no fill to be imported on site;
- d) where batters exceed a ratio of three horizontal to one vertical, retaining walls, stoneflagging or terracing must 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.

Note: ENM is defined by the Excavated Natural Material Exemption - NSW Environment Protection Authority.

42. Earthworks - Removal, Management and Transportation of Fill

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

- a) a NSW Environment Protection Authority licensed waste disposal facility. A copy of the receipts from the waste disposal facility must be kept and must be provided to the Principal Certifier prior to the issue of a Final Occupation Certificate, or authorised officer of Council upon request; or
- b) a site which has a current development consent for the importation of fill material or falls under exempt development provisions.

All removed excavated material must be transported and disposed of in accordance with the NSW Environment Protection Authority guidelines applicable at the time of removal.

43. 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.



44. **Asbestos Management**

If asbestos containing material (ACM) is encountered during any work, measures must be in place in accordance with SafeWork NSW Guidelines and the Work Health and Safety Regulation 2017. Work shall not commence or continue until all the necessary safeguards required by SafeWork NSW are fully in place.

Only contractors who are appropriately licensed for asbestos removal and disposal by SafeWork NSW may carry out the removal and disposal of ACM from demolition and construction sites.

Prior to commencing the removal of any structures containing asbestos, a commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring 400mm x 300mm must be erected in a prominent visible position on the site in accordance with Australian Standard AS 1319 - 'Safety Signs for the Occupational Environment'.

The person entitled to act on this consent must notify adjoining residents in writing five working days prior to the demolition work commencing.

Asbestos waste must only be disposed of at a landfill site authorised to receive such waste. All receipts and supporting documentation must be retained in order to verify lawful disposal and are to be made available to Council on request.

Prior to Issue of Occupation Certificate

45. **Suitability of Glazing - Windows and Doors**

Glazing materials installed in the building must 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.

46. **Suitability of Glazing - Balustrades**

Glass balustrades must be designed and installed in accordance with Australian/New Zealand Standard AS/NZS 1170.1 - 'Structural design actions - Permanent, imposed and other actions'.

Engineering certification must be provided to the Principal Certifier for glass balustrading used in the development prior to the issue of an Occupation Certificate.

47. **Food Premises - Certification of Fit-out**

Prior to the issue of any Occupation Certificate the food premises must be inspected by an appropriately qualified person who must certify that the premises, including the construction and installation of all equipment, fixtures, fittings and finishes therein, complies with the *Food Act 2003, Food Regulation 2010* and Australian Standard AS 4674 - 'Design, construction and fit-out of food premises'.

48. **Food Premises - Registration**

Occupation of the premises must not occur until an Application for Food Premises form has been completed by the occupant, and this has been receipted in writing by an Environmental Health Officer.

Evidence of compliance with the above must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate and the commencement of trading.



Note: The Application for Food Premises form can be downloaded from Council's website at www.hawkesbury.nsw.gov.au <<http://www.hawkesbury.nsw.gov.au>>

49. **Council Sewer - Trade Waste Agreement**

A Trade Waste Agreement must be entered into with Council for the discharge of trade waste to Council's sewer.

Evidence of the written agreement must be provided to the Certifier prior to the issue of any Occupation Certificate.

50. **Section 307 Compliance Certificate - Council Infrastructure**

Prior to the issue of any Occupation Certificate, the applicant must provide to the Certifier a copy of the Section 307 Compliance Certificate or a copy of the Section 306 Notice of Requirements in which states 'no minor or major works' issued by Council in relation to Council's Infrastructure.

51. **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.

52. **Flood Prone Land - Awareness and Evacuation**

The following requirements are to be prepared and installed prior to the issue of any Occupation Certificate:

- a) A flood emergency evacuation and management plan is to be prepared for the development. The plan must advise occupants of flood evacuation procedures and emergency telephone numbers. The evacuation procedures must be permanently fixed to the building in a prominent location and maintained at all times; and
- b) A flood warning sign is to be provided advising occupants that the site may be subject to inundation during times of flood. The sign must be constructed of durable material and installed in a prominent location within the site.

53. **Flood Prone Land - Engineers Certification**

The 100 year Average Recurrence Interval (ARI) flood level for this site is RL 17.32 metres AHD (Australian Height Datum).

An engineer's certificate must be provided deeming compliance with the following requirements during a 100 year ARI flood event:

- a) **Debris:** Damage to the proposed structure/s sustained in a flood will not generate debris capable of causing damage to downstream buildings or property. This includes securing of utilities and equipment including tanks, A/C units and similar;
- b) **Structural Soundness:** Any part of the structure will be able to withstand the force of floodwaters (including lateral forces, buoyancy forces, unbalanced hydrostatic forces) and the impact of debris; and
- c) **Foundations:** The footing system must be structurally stable during flooding and must consider the soil properties when wet, possible erosion and scouring or liquefaction, subsidence or collapse due to saturation.

The Engineers Certificate must be submitted to the Certifier prior to issue of the Occupation Certificate.

54. **Sydney Water Section 73 Compliance Certificate**

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023



A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be provided to the Principal Certifier prior to issue of the Occupation Certificate. For details refer to Sydney Water's website.

Operational Conditions

55. Hours of Operation

The premises must operate or trade only between the following hours:

Mondays to Thursday	7am to 9pm
Friday	7am to 11pm
Saturday	7am to 12am
Sunday/Public Holidays	7am to 9pm

Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.

56. Noise

The emission of noise associated with the operation of any mechanical plant and equipment shall comply with the following criteria:

- The LAeq (15 minute) noise level emitted from the use must not exceed the background noise level LA90 (15 minute) by more than 5dB when assessed at the boundary of any affected residence;
- The background noise level shall be measured in the absence of noise emitted from the use in accordance with Australian Standard AS 1055.1-1997-Description and measurement of environmental noise;
- The LAeq (15minute) noise level shall be adjusted to account for any applicable corrections for annoying noise characteristics in accordance with the NSW EPA Noise Policy for Industry.

Alternatively, compliance may be demonstrated through any appropriate method detailed in EPA Noise Policy for Industry. Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NSW EPA Noise policy for Industry, unless agreed in writing by the Manager Regulatory Services.

57. 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:

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

58. Lower-Level Food Premises - Service of Food - Restriction on Permitted Food Items

The service of food at the lower level food premises must comprise only pre-cooked, packaged items that have been prepared off site.

Note: A separate development application is to be lodged for any food service that would require the preparation and storage of food within the premises detailing compliance with:

- Food Act 2003*;
- Food Regulation 2015*;



- c) Australian Standard AS 4674 - 'Design, construction and fit-out of food premises'; and
- d) Council - Trade Waste Section.

59. **Live Entertainment not permitted**

The development shall not give rise to offensive noise to the neighbourhood. To this affect, the premises shall be operated in accordance with the following:

- a) Live bands and DJs are not permitted at the premises.
- b) Noise from amplified music should be kept to a minimum so that it cannot be detected at any nearby sensitive receiver such as a residence.
- c) The above does not prohibit the use of any background music at the premises.
- d) A further development application accompanied by an acoustic report will be required if any loud amplified music or live entertainment is desired at the premises.

60. **Lighting**

All external lighting associated with the development shall be managed in such a manner so as not to create a nuisance to the surrounding environment, properties and roadways. Lighting installations shall comply with Australian Standard AS 4282 - 'Control of the obtrusive effects of outdoor lighting'.

No flashing, moving or intermittent lighting, visible from any public place may be installed on the premises or external sign associated with the development.

61. **Flooding - Emergency Management**

A flood emergency evacuation and management plan is to be prepared for the development. The Plan must advise occupants of flood evacuation procedures and emergency telephone numbers. The Plan must be updated every two years.

62. **Neighbourhood Amenity**

Any activity associated with the operation of the educational establishment shall not give rise to offensive noise, air pollution (including odour) or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.

63. **Waste Generation**

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.

Advisory Notes

(i) **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.

(ii) **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.

(iii) **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.

(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, 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.

(v) **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.

(vi) **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.

(vii) **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.

(viii) **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.

(ix) **Inspection Requirements for Food and Drink Premises**

It is the applicants responsibility to ensure that the appropriate progress and final inspections of the food premises fit out have been carried out by the Principal Certifier.

Following the issue of an Occupation Certificate, Council's Environmental Management Section must be notified within seven days, for the premises to be registered with Council as a food business.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

2.1.3 CP - DA0114/22 - Lot 28 DP 1184227, 35 Hadden Ridge Road Wilberforce Subdivision - (50124)

Directorate: City Planning

DEVELOPMENT INFORMATION

Application Number:	DA0114/22
Date Received:	05/04/2022
Proposal Details:	Designated Development - Subdivision - 3 Lots Torrens Title
Estimated Cost:	277888.00
Legal Description:	Lot 28 DP 1184227
Property Address:	35 Hadden Ridge Road WILBERFORCE NSW 2756
Area:	94.0000 Hectares
Zoning:	RU1 Primary Production under <i>Hawkesbury Local Environmental Plan 2012</i> .
Applicant:	David Charles O'Connor
Owner:	MOC Pty Lmiited, Iontaobhas Pty Limited, Mr DC O'Connor
Exhibition Dates:	26/05/2022 - 27/06/2022
Submissions:	1
Key Issues:	<ul style="list-style-type: none">• Biodiversity• Management of wetland

RECOMMENDATION

It is recommended that DA0114/22 is approved subject to conditions.

EXECUTIVE SUMMARY

Reason for Consideration by Local Planning Panel

- Sensitive Development – The application falls into the category of sensitive development as it is Designated development.

Proposal

The application seeks consent for the Torrens Title subdivision of one lot into three. The subject site has a total site area of 94 hectares and will be subdivided to create two lots of 10 hectares and one residual lot of 74 hectares.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Permissibility

The site is zoned RU1 Primary Production and, in accordance with Clause 2.6 of Hawkesbury Local Environmental Plan 2012, subdivision of land can be carried out only with consent.

All three proposed allotments comply with the minimum lot size of 10 hectares in accordance with the Lot Size Map of Hawkesbury Local Environmental Plan 2012.

Consultation

The application was notified between 26 May 2022 to 27 June 2022 in accordance with Part A Chapter 3 of the Hawkesbury Development Control Plan (DCP) 2002 and the Hawkesbury Community Participation Plan.

A total of one submission was received in response to the notification of the application raising the following issues:

- Location of building envelope of Lot 3;
- Privacy and noise impacts from proposed driveway of Lot 3;
- Drainage impacts from proposed driveway of Lot 3;
- Biodiversity impacts.

RECOMMENDATION:

That the Hawkesbury Local Planning Panel exercising the functions of Council pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 approve Development Application No. DA0114/22 for Designated Development - Subdivision - 3 Lots Torrens Title of Lot 28 in DP 1184227, known as 35 Hadden Ridge Road, Wilberforce, subject to the prepared conditions of consent.

BACKGROUND

Detailed Description of Proposal

Pursuant to Section 4.12(1) of the EP&A Act 1979 (as amended) this application seeks the consent of the Hawkesbury Local Planning Panel for the Torrens Title Subdivision of 1 lot into 3 lots with the following dimensions:

Proposed Lot 1	10 ha
Proposed Lot 2	10 ha
Proposed Lot 3	74 ha
TOTAL	94 ha

Each allotment will be provided with vehicular access to the nominated building envelopes. A plan of the proposed subdivision attached as Attachment 1 to this report.

- The proposed development is designated development for the purposes of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation

2000 pursuant to Chapter 2, Clause 2.7(4) of State Environmental Planning Policy (Resilience and Hazard) 2021 because it comprises development for which consent is required on land identified as “coastal wetlands” on the *Coastal Wetlands and Littoral Rainforests Area Map* and pursuant to Chapter 9, Clause 9.9(19)(e) of State Environmental Planning Policy (Biodiversity and Conservation) 2021 as it is subdivision of land within mapped wetlands.

- The proposed development is integrated development within the meaning of section 4.46 of the Environmental Planning and Assessment Act 1979 as a bush fire safety authority is required pursuant to section 100B of the Rural Fires Act 1997.
- Proposed Lot 3 will contain that part of the site associated with Howes Creek wetland which is identified as “coastal wetlands” and “proximity area for coastal wetlands” on the *Coastal Wetlands and Littoral Rainforests Area Map* referred to in Chapter 2 of State Environmental Planning Policy (Resilience and Hazard) 2021. An extract from the *Coastal Wetlands and Littoral Rainforests Area Map* with the subject site outlined in yellow, the coastal wetland area marked in blue and the “proximity area” for the coastal wetland hatched in blue is provided below at Figure 1:

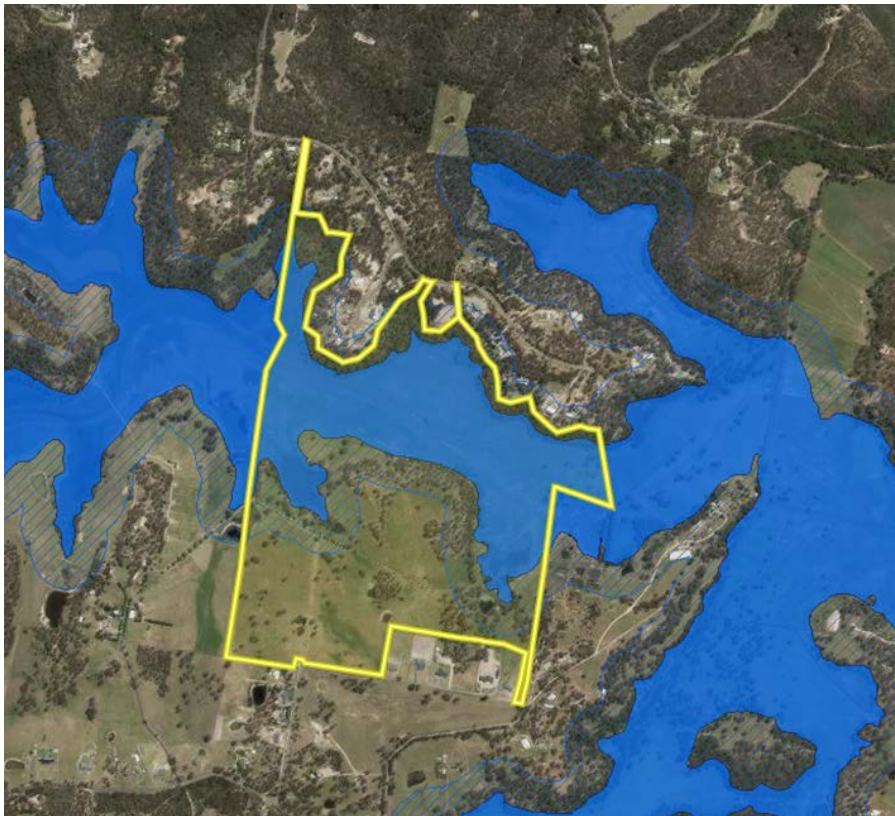


Figure 1: Extract from Coastal Wetlands and Littoral Rainforests Area Map (NSW Portal).

The part of the site comprising mapped “coastal wetlands” is approximately 40 hectares, while the part of the site comprising “proximity area for coastal wetlands” is approximately 17 hectares, including a further 9.1 hectares situated to the north of the site

Proposed Lot 3 will maintain the Howes Creek wetland and each lot will be supported by a Biodiversity and Rural Land Use Management Plan which provides measures to avoid, minimise and mitigate biodiversity impacts on each allotment.

The application seeks to amend or extinguish the positive covenant, numbered 2 in the plan, and replace it with the Biodiversity and Rural Land Use Management Plan for Lot 3.

Site and Locality Description

The site is legally described as Lot 28 in DP 1184227 and formally known as 35 Hadden Ridge Road Wilberforce. The site is located on the northern side of Hadden Ridge Road and is irregular in shape, has a primary frontage to Hadden Ridge Road and has a total site area of 93.9 hectares.

The site is currently separated into farm paddocks containing existing dams and patches of native canopy vegetation.

The site consists of the low-lying floodplain associated with the Howes Creek wetland with steep sandstone slopes in the north and gentle sandstone slopes in the south. The site is located within the floodplain of the Hawkesbury Nepean River backwater as well as being affected by rainfall runoff associated with the catchment of Howes Creek. The site is mapped as flood-prone land.

The site is mapped as bushfire prone land on the map maintained by the NSW Rural Fire Service.

An aerial image with the site highlighted in red is provided below at Figure 2:

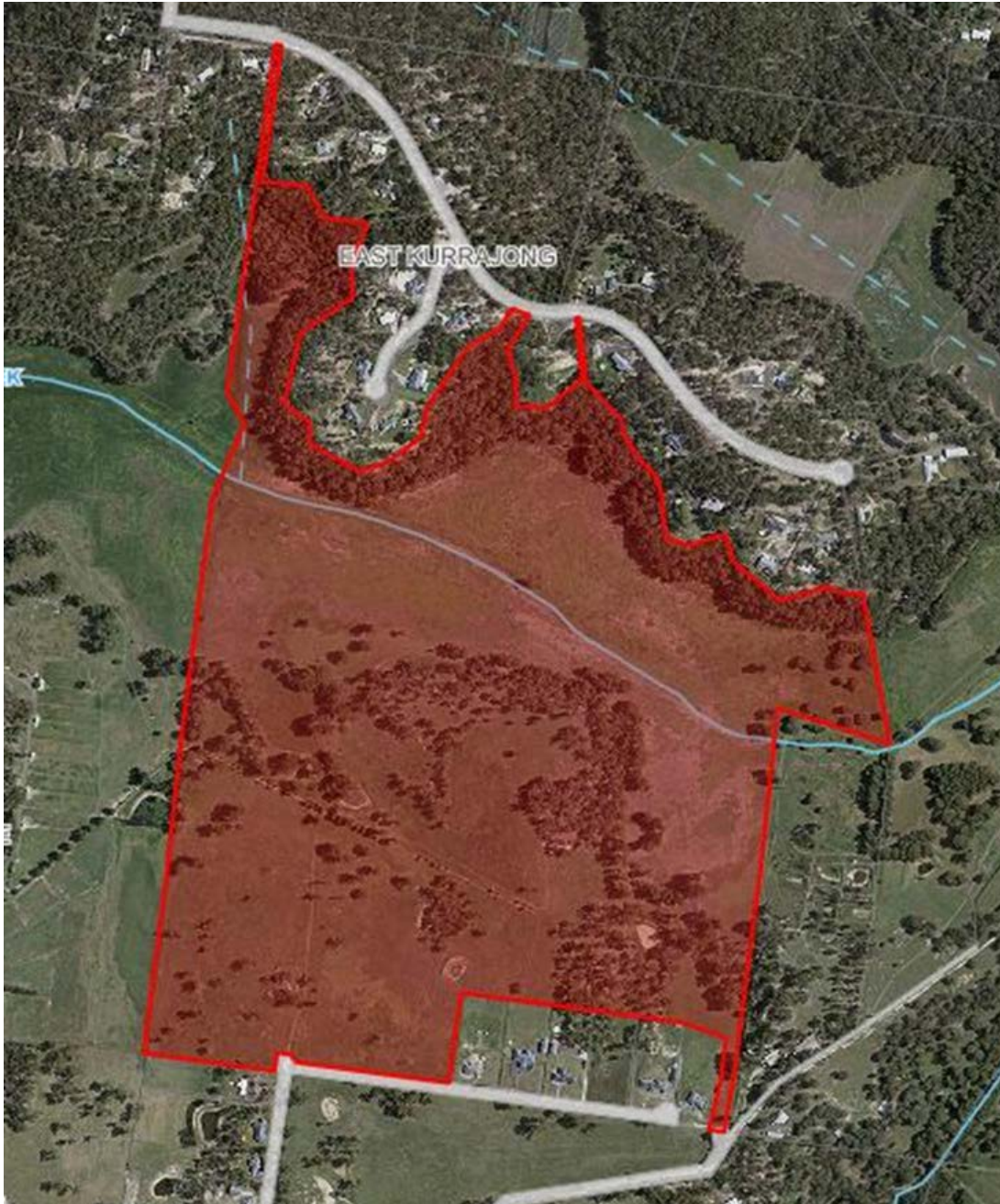


Figure 2: Aerial Image of subject site

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Background and History

The site is a residual lot from 3 subdivisions approved in 2010 which created 36 allotments including 33 lots of 1 ha in area for rural residential use and 3 residual lots for agricultural use, with the subject site being one of the residual lots. Prior to the subdivisions, the site comprised part of Hadden Farm.

The site is burdened by a number of covenants and restrictions (some as a result of the development consents issued for the previous subdivision of Hadden Farm), including:

(a) *Positive covenant numbered 2 in the plan: A Farm Management Plan prepared by Travers bushfire and ecology dated August 2011 ref no. A 10099, is to be implemented on the lot burdened to the satisfaction of Council.*

(b) *6. Restriction on the Use of Land numbered 7 in the plan: No development is permitted within the Conservation Zone identified in the Farm Management Plan prepared by Travers bushfire & ecology drawing no. A10099, dated 20/09/11, Amendment B.*

(c) *7. Right of Access 18 wide numbered 8 in the plan: Right of Access as described in Section 181 A Part 14 Schedule 8 of the Conveyancing Act 1919.*

(d) *8. Easement for Overhead Power Lines numbered 9 in the plan: The terms set out in Memorandum No 9262884 registered at Land and Property Information NSW, and incorporated in this document, subject to changing Integral Energy Australia to Endeavour Energy in Clause 5.1.*

The subject site was subject to Land and Environment Court proceedings which sought to subdivide the subject site into six allotments. This matter was dismissed.

Consultation

Internal Consultation	
Engineer	The Development Engineer has raised no objection to the proposal subject to the imposition of conditions.
Ecology	The Ecologist has raised no objection to the proposal subject to the imposition of conditions.
Environmental Health Officer	The Environmental Health Officer has raised no objection to the proposal subject to the imposition of conditions.
SMF Officer	The SMF Officer has raised no objection to the proposal subject to the imposition of conditions.

External Consultation	
Rural Fire Service	In accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979, the proposal is categorised as Integrated Development on the basis that a Bushfire Safety Authority from the Commissioner of the NSW Rural Fire Service is required under the provisions of section 100B of the Rural Fires Act 1997 development of bushfire prone land for a special fire protection purpose. Subdivision is identified as special fire protection purposes.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

External Consultation

The RFS have undertaken a review of the Bushfire Assessment Report prepared in support of the development. Upon review of this documentation the RFS have issued General Terms of Approval for the development.

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

The following is a list of legislation, environmental planning policies and development controls applicable to the application:

1. Biodiversity Conservation (BC) Act 2016
2. Coastal Management Act 2006
3. State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC2021): Chapter 4 - Koala Habitat Protection 2021 & Chapter 9 - Hawkesbury-Nepean River
4. State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH2021): Chapter 2 - Coastal Management & Chapter 4 - Remediation of Land
5. Hawkesbury Local Environmental Plan 2012 (LEP 2012)
6. Hawkesbury Development Control Plan 2002 (HDCP 2002).

Matters for Consideration under the Biodiversity Conservation Act 2016

All development applications are required to be assessed against *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulation 2017*. The subject property contains areas mapped on the Biodiversity Values map identified in figure 3 below.



Figure 3: Site mapped as containing areas of biodiversity

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Where there is a clearing or modification of native vegetation in accordance with the below table, it will trigger the requirement of Biodiversity Offset Scheme (BOS).

Table 1: Areas (Section 7.2(4) Biodiversity Conservation Regulation 2017)

Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply
Less than 1 hectare	0.25 hectare or more
Less than 40 hectares but not less than 1 hectare	0.5 hectare or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

The proposed subdivision will result in 2 lots of 10 hectares, which are the minimum lot size as prescribed in the Hawkesbury LEP 2012, and 1 residual lot of 74 hectares.

The proposed subdivision does not propose any vegetation removal therefore the Biodiversity Offset Scheme (BOS) is not activated by the proposed development as none of the thresholds have been met.

Matters for Consideration under the Coastal Management Act 2016

The objective of the Coastal Management Act 2016 (CM Act) is to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State and Howes Creek wetland is mapped as a coastal wetland under State Environmental Planning Policy (Resilience and Hazards) 2021's Coastal Wetlands and Littoral Rainforests Area Map.

In accordance with Section 6 of the CM Act, the management objectives for coastal wetlands are:

- (a) *to protect coastal wetlands and littoral rainforests in their natural state, including their biological diversity and ecosystem integrity,*
- (b) *to promote the rehabilitation and restoration of degraded coastal wetlands and littoral rainforests,*
- (c) *to improve the resilience of coastal wetlands and littoral rainforests to the impacts of climate change, including opportunities for migration,*
- (d) *to support the social and cultural values of coastal wetlands and littoral rainforests,*
- (e) *to promote the objectives of State policies and programs for wetlands or littoral rainforest management.*

Proposed Lot 3 will contain Howes Creek coastal wetland which has been used for the grazing of livestock. This use is to be retained and the Biodiversity and Rural Land Use Management Plan applicable to this allotment has provided a 37.7-hectare wetland management zone that details how the wetland is to be managed, protected and enhanced whilst maintaining the historical grazing use of this area. This includes the maintenance of existing fencing for stock management, erosion and sediment control, grazing and stock rotation, weed management, pasture improvement with the reduction of fertiliser use and retention of existing habitats within the wetland.

No physical works are proposed within the wetland and no effluent disposal or stormwater management will occur within or near Howes Creek wetland.

The application has demonstrated that the proposed subdivision will meet the management objectives of the coastal wetland.

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

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

4.15 Evaluation

- (1) **Matters for consideration—general** *In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*
- (a) *the provisions of—*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) *(Repealed)*

that apply to the land to which the development application relates,
 - (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
 - (c) *the suitability of the site for the development,*
 - (d) *any submissions made in accordance with this Act or the regulations,*
 - (e) *the public interest.*

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

State Environmental Planning Policy (Resilience and Hazard) 2021

This policy is applicable for the subject site and the following relevant chapters of this policy are as follows:

- Chapter 2 - Coastal Management
- Chapter 4 – Remediation of Land

Chapter 2 - Coastal Management

The aim of this Chapter is to promote an integrated and coordinated approach to land use planning in the coastal zone and provide management objectives for each coastal management area. The site is mapped as Coastal Wetlands, and Part 2.2 of Chapter 2 applies.

Part 2.2 Development controls for coastal management areas - Division 1 Coastal wetlands and littoral rainforest area

This division of Chapter 2 of the SEPP relates to land mapped as coastal wetlands and littoral rainforest areas and requires a consent authority to consider the matters listed in Clause 2.7 and 2.8.

Clause 2.7 identifies any development within coastal wetlands to be designated development and, at 2.7(4):

- (4) *A consent authority must not grant consent for development referred to in subsection (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.*

Clause 2.8 relates to development on land in proximity to coastal wetlands and requires the following:

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

Note—

The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

The proposed subdivision has provided detailed engineering plans demonstrating that the stormwater systems have been designed to ensure minimal impacts will occur to the biophysical, hydrological and ecological integrity of the coastal wetland. No effluent disposal systems are in, or within close proximity to, the wetland and the fencing proposed is compatible with the existing fencing currently within the wetland.

A comprehensive assessment of the ecological integrity of the wetland has been undertaken and found to be satisfactory subject to the implementation of the management plans.

Chapter 4 – Remediation of Land

The objective of this chapter is to provide a state-wide planning approach to the remediation of contaminated land and to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

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

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

In accordance with Clause 4.6(2), the application has included a Preliminary Investigation Report by EnviroTech dated 14 November 2018 which identified one area of concern that has used fill material to create a cattle loading pen. The report has concluded that:

1. *On the Monday 29th October 2018, a site inspection was conducted by Envirotech consultant Jack Hinchliffe;*
2. *At the time of inspection, the site consisted of a large cleared grassland area separated into farmland paddocks containing cows. The paddocks contained dams and at the Hadden Ridge Road entrance to site there was a cattle loading pen at the southern entrance to site. Howe's creek bisected the site flowing east to west through site;*
3. *The areas of concern include soils underneath and surrounding the cattle loading pen located in the southern portion of site which has the potential to be comprised of fill material, these contaminants include: Asbestos, Heavy Metals, Hydrocarbons & OC/OP Pesticides;*
4. *The site is not listed on any EPA records;*
5. *Photographic evidence supplied by the client; David O'Connor, showed the cut and fill was sourced from site used to create the base of the cattle loading pen. Therefore, the site shows no sign of contaminated fill material onsite.*
6. *Taking into consideration the evidence provided by David O'Connor regarding the photos of the cut and fill used to provide the base for the cattle pen (Appendix B), it is considered that the site does not require further testing and considered that the site is suitable to the proposed land use.*

The Preliminary Investigation Report has been reviewed by Council's Environmental Health Officer and recommended conditions have been provided which have been included in the draft conditions of consent.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

This policy is applicable for the subject site and the following relevant chapters of this policy are as follows:

- Koala Habitat Protection 2021 – Chapter 4;
- Hawkesbury-Nepean River – Chapter 9

Chapter 4 Koala Habitat Protection 2021

Chapter 4 applies to local government areas listed in Schedule 2, for which the Hawkesbury Local Government Area is listed, and for land that has an area of more than 1 hectare.

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

Under Part 4.2 Development control of koala habitats, where there is no approved koala plan of management for land, Clause 4.9 applies.

This Clause provides that:

- (2) *Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.*
- (3) *If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application.*
- (4) *If the council is satisfied that the development is likely to have a higher level of impact on koalas or koala habitat, the council must, in deciding whether to grant consent to the development application, take into account a koala assessment report for the development.*
- (5) *However, despite subsections (3) and (4), the council may grant development consent if the applicant provides to the council—*
 - (a) *information, prepared by a suitably qualified and experienced person, the council is satisfied demonstrates that the land subject of the development application—*
 - (i) *does not include any trees belonging to the koala use tree species listed in Schedule 2 for the relevant koala management area, or*
 - (ii) *is not core koala habitat, or*
 - (b) *information the council is satisfied demonstrates that the land subject of the development application—*
 - (i) *does not include any trees with a diameter at breast height over bark of more than 10 centimetres, or*
 - (ii) *includes only horticultural or agricultural plantations.*

The application has included a Flora and Fauna Assessment Report by Umwelt dated March 2022 which as carried out an assessment of the site and found:

The Site is located within the Central Coast Koala Management Area and contains the following Koala Use:

Tree Species:

- *Narrow-leaved Apple Angophora bakeri.*
- *Rough-barked Apple Angophora floribunda.*
- *Yellow Bloodwood Corymbia eximia.*
- *Cabbage Gum Eucalyptus amplifolia.*
- *Narrow-leaved Ironbark Eucalyptus crebra.*
- *Thin-leaved Stringybark Eucalyptus eugenioides.*
- *Red Ironbark Eucalyptus fibrosa.*
- *Grey Gum Eucalyptus punctata.*
- *Parramatta Red Gum Eucalyptus parramattensis subsp. Parramattensis.*
- *Narrow-leaved Scribbly Gum Eucalyptus racemosa (syn. sclerophylla).*
- *Forest Red Gum Eucalyptus tereticornis.*

Suitable habitat is present within the Site for the koala however no koalas were recorded within the Site during surveys by Umwelt or Travers Bushfire and Environmental (2019). There are also no records for koalas within the Site or within 2.5km of the Site over the past 18 years on the NSW Bionet Atlas of NSW Wildlife (DPIE 2022b).

Based on the detailed field surveys undertaken and the information available, it is considered that the Site does not contain Core Koala Habitat as defined in the SEPP Chapter 4.

It is considered that the proposed subdivision and future development will have no impact on koalas or Core Koala Habitat and only a low impact on areas of highly disturbed suitable koala habitat.

Section 4.9 of this SEPP should not prevent the Council from granting consent to the development application.

Given this information, Council can be satisfied that whilst the subject site is capable of being core Koala Habitat, no koalas are present on the site given its use for agricultural purposes, and the subdivision is likely to have low impact on Koalas and Koala habitat. As such development consent can be granted under this clause.

Chapter 9 Hawkesbury-Nepean River

Chapter 9 Hawkesbury-Nepean River of this plan applies to the subject site as Hawkesbury local government area is identified in Section 9.1. The aim of this chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The chapter includes general planning considerations and specific policies and recommended strategies for the assessment of development in relation to environmentally sensitive areas, water quality and quantity, flora and fauna, riverine scenic quality, agriculture, rural residential development, aquaculture, recreation and tourism.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

The site contains a regionally significant wetland, being Howes Creek Wetland, and the following assessment under the relevant parts of Chapter 9 are as follows:

Strategies	Applicant Comments	Council Comments
9.5 Specific planning policies and recommended strategies		
(1) Total catchment management		
Policy: Total catchment management is to be integrated with environmental planning for the catchment.		
Strategies:		
(a) Refer the application or other proposal for comment to the councils of each adjacent or downstream local government area which is likely to suffer a significant adverse environmental effect from the proposal.	N/A <i>Significant adverse environmental impact is not expected.</i>	The application is for subdivision purposes only and is unlikely to impact downstream local government areas.
(b) Consider the impact of the development concerned on the catchment.	<i>The Engineering Assessment (refer Appendix F) confirms that no catchment impacts are expected as:</i> <i>1. Effluent disposal systems are designed to be ecologically sustainable and not impact on the quantity or quality of groundwater resources, groundwater dependent ecosystems or downstream receiving waters.</i> <i>2. Stormwater management system has been designed to achieve a neutral or beneficial effect on receiving waters.</i> <i>The MP will also include management and other measures to protect and enhance the vegetation and important ecological areas on the site.</i>	The proposed stormwater and effluent disposal systems have been assessed by Council's relevant assessment officers and no concerns have been raised regarding stormwater management and effluent disposal and its effects on the catchment.
(c) Consider the cumulative environmental impact of	<i>The Engineering Assessment (refer Appendix F)</i>	The cumulative impact has been considered and the subdivision is unlikely to have

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
development proposals on the catchment.	<p><i>confirms that no cumulative impacts are expected as:</i></p> <p><i>1. Effluent disposal systems designed to be ecologically sustainable and not impact on the quantity or quality of groundwater resources, groundwater dependent ecosystems or downstream receiving waters.</i></p> <p><i>2. Stormwater management system has been designed to achieve a neutral or beneficial effect on receiving waters.</i></p> <p><i>The MP will also include management and other measures to protect and enhance the vegetation and important ecological areas on the site. It is unlikely that the 3 lot subdivision will create cumulative environmental impacts, given the positive outcomes proposed through the MP.</i></p>	any impacts upon the catchment.
<p>(2)Environmentally sensitive areas</p> <p>Policy: The environmental quality of environmentally sensitive areas must be protected and enhanced through careful control of future land use changes and through management and (where necessary) remediation of existing uses.</p> <p>Note—</p> <p>Environmentally sensitive areas in the Hawkesbury-Nepean catchment are: the river, riparian land, escarpments and other scenic areas, conservation area subcatchments, national parks and nature reserves, wetlands, other significant floral and faunal habitats and corridors, and known and potential acid sulphate soils.</p>		
<p>Strategies:</p> <p>(a) Rehabilitate parts of the riverine corridor from which sand, gravel or soil are extracted so that attached aquatic plant beds are replaced</p>	<p><i>No sand, gravel or soil will be extracted from the Riverine corridor. A MP has been prepared and</i></p>	Complies.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
<p>and water quality and faunal habitats improved.</p>	<p><i>attached in Appendix I which outlines detailed measures to rehabilitate the wetland corridor. The site is not located specifically within the riverine corridor.</i></p>	
<p>(b) Minimise adverse impacts on water quality, aquatic habitats, riverine vegetation and bank stability</p>	<p><i>The proposal has been designed and sited to mitigate adverse impact on the water quality associated with the Howes Creek Wetland. Houses will be sited outside the defined wetland or proximity to wetland area. The Engineering Assessment (refer Appendix F) confirms the following:</i></p> <p><i>Adverse impacts on water quality, aquatic habitats, riverine vegetation, bank stability, wetlands or water tables are not expected because:</i></p> <ol style="list-style-type: none"> <i>1. Only compatible fencing proposed in wetland areas similar to existing fencing.</i> <i>2. No effluent disposal or stormwater management in wetland areas or other aquatic habitats.</i> <i>3. No creek bank works are proposed.</i> <i>4. Effluent disposal systems designed to be ecologically sustainable and not impact on the quantity or quality of groundwater resources,</i> 	<p>Complies.</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
	<p><i>groundwater dependent ecosystems or</i></p> <p><i>downstream receiving waters.</i></p> <p><i>5. Stormwater management system has been designed to achieve a neutral or beneficial effect on receiving waters.</i></p>	
(c) Minimise direct and indirect adverse impacts on land reserved or dedicated under the <u>National Parks and Wildlife Act 1974</u> or the <u>Forestry Act 2012</u> and conservation area sub-catchments in order to protect water quality and biodiversity	<p><i>Not applicable. The site is not located within the</i></p> <p><i>vicinity of any National Parks or State Forests where there is the potential for impacts.</i></p>	Agreed – not applicable.
(d) Protect wetlands (including upland wetlands) from future development and from the impacts of land use within their catchments.	<p><i>Future development will be sited outside the</i></p> <p><i>wetland and proximity to wetland area.</i></p>	Agreed.
(e) Consider the need to include buffer zones (such as adequate fire radiation zones) for proposals on land adjacent to land reserved or dedicated under the <u>National Parks and Wildlife Act 1974</u> or the <u>Forestry Act 2012</u> .	<p><i>Not applicable.</i></p> <p><i>The site is not adjacent to land reserved or</i></p> <p><i>dedicated under the National Parks and Wildlife</i></p> <p><i>Act 1974 or the Forestry Act 1916.</i></p>	Agreed – not applicable.
(f) Consideration should be given to the impact of the development concerned on the water table and the formation of acid sulphate soils.	<p><i>No expected impact on the water table or salinity</i></p> <p><i>levels. Refer to (b) above for further information.</i></p>	The application has provided an Acid Sulfate Soil Assessment which has concluded that the proposed development will have very low risk for Lots 1 and 3 and no risk for Lot 2 of acidifying surface and ground water.
(g) New development in conservation area sub-catchments should be located in areas that are already cleared.	<i>The proposed house sites are located in cleared areas. No additional clearing is required.</i>	Complies.
<p>(3)Water quality</p> <p>Policy: Future development must not prejudice the achievement of the goals of use of the river for primary contact recreation (being recreational activities involving direct water contact, such as swimming) and aquatic ecosystem protection in the river system. If the quality of the receiving waters does not currently allow these uses, the current water quality must be maintained, or improved, so as not to jeopardise the achievement of the goals in the</p>		

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
<p>future. When water quality goals are set by the Government these are to be the goals to be achieved under this policy.</p> <p>Note—</p> <p><i>Aquatic ecosystems</i> and <i>primary contact</i> recreation have the same meanings as in the document entitled <i>Australian Water Quality Guidelines for Fresh and Marine Waters</i>, published in 1992 by the Australian and New Zealand Environment and Conservation Council.</p>		
<p>Strategies:</p> <p>(a) Quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters.</p>	<p><i>The Engineering Assessment (Appendix F)</i></p> <p><i>confirmed the following:</i></p> <p><i>Pollutant loads to receiving waters will not be increased because effluent disposal systems have been sized to be ecologically sustainable and positioned well away from water courses, and stormwater systems have been designed to meet the NorBE test.</i></p>	<p>Assessed as acceptable.</p>
<p>(b) Consider the need to ensure that water quality goals for primary contact recreation and aquatic ecosystem protection are achieved and monitored.</p>	<p><i>The Engineering Assessment confirmed that water quality for primary contact recreation and aquatic ecosystems protection are not eroded by the proposal.</i></p>	<p>Complies.</p>
<p>(c) Approve development involving primary contact recreation or the withdrawal of water from the river for human contact (not involving water treatment), such as showers, only in locations where water quality is suitable (regardless of water temperature).</p>	<p>Not applicable.</p>	<p>Not applicable.</p>
<p>(d) Do not carry out development involving on-site disposal of sewage effluent if it will adversely affect the water quality of the river or groundwater. Have due regard to the nature and size of the site.</p>	<p><i>On site effluent areas are proposed away from the wetland and associated native vegetation. Refer to the Concept Wastewater Management in Appendix F for further detail. Martens have confirmed that the Effluent disposal system has been designed to be ecologically sustainable and</i></p>	<p>Complies.</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
	<i>assimilate all nutrients generated.</i>	
(e) Develop in accordance with the land capability of the site and do not cause land degradation.	<i>The revised subdivision plan has been designed with regard to site topography, vegetation and the Howes Creek Wetland. The proposed boundaries have used existing fence lines where possible.</i>	Complies.
(f) Consider the need for an Erosion and Sediment Control Plan (to be in place at the commencement of development) where the development concerned involves the disturbance of soil.	<i>Not applicable. The proposal does not incorporate extensive earthworks or construction however an Erosion and Sediment Control Plan has been provided to satisfy this clause. Erosion and sediment control measures will ensure that land degradation does not occur (refer Appendix F).</i>	Not Applicable.
(g) Minimise or eliminate point source and diffuse source pollution by the use of best management practices.	<i>No point pollutant sources will be generated from the proposal and diffuse pollutant sources are managed by the proposed stormwater treatment system.</i>	Complies.
(h) Site and orientate development appropriately to ensure bank stability. Plant appropriate native vegetation along banks of the river and tributaries of the river, but not so as to prevent or inhibit the growth of aquatic plants in the river, and consider the need for a buffer of native vegetation.	<i>The MP attached in Appendix I proposes suitable rehabilitation of existing vegetation to enhance the wetland environment. The Engineering Assessment confirmed the development will not interfere with any bed or bank of a watercourse.</i>	Complies.
(i) Consider the impact of the removal of water from the river or from groundwater sources associated with the development concerned.	<i>Not applicable. Water will not be removed from the wetland area or ground water as part of the proposed development.</i>	Not applicable.
(j) Protect the habitat of native aquatic plants.	<i>The proposal will have no material impact on the habitat of native aquatic plants as determined in the engineering and flora and fauna assessments.</i>	Complies.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
(4)Water quantity		
Policy: Aquatic ecosystems must not be adversely affected by development which changes the flow characteristics of surface or groundwater in the catchment.		
<p>Strategies:</p> <p>(a) Future development must be consistent with the interim or final river flow objectives that are set for the time being by the Government.</p> <p>(b) Ensure the amount of stormwater run-off from a site and the rate at which it leaves the site does not significantly increase as a result of development. Encourage on-site stormwater retention, infiltration and (if appropriate) reuse.</p> <p>(c) Consider the need for restricting or controlling development requiring the withdrawal or impoundment of water because of the effect on the total water budget of the river.</p> <p>(d) Consider the impact of development on the level and quality of the water table.</p>	<p><i>Refer to extract from the Engineering Assessment</i></p> <p><i>(Appendix F) as follows:</i></p> <p><i>The following is observed and noted:</i></p> <p><i>1. The proposed stormwater system will ensure</i></p> <p><i>that river flow objectives are not compromised.</i></p> <p><i>2. Stormwater retention and re-use, together</i></p> <p><i>with the relatively small urban footprint</i></p> <p><i>compared to the remaining rural land, will</i></p> <p><i>ensure that stormwater runoff does not significantly increase.</i></p> <p><i>3. Significant water impoundments are not part</i></p> <p><i>of this development proposal.</i></p> <p><i>4. The effluent disposal system is designed to be</i></p> <p><i>ecologically sustainable and located above the water table.</i></p> <p><i>5. No works are proposed to interfere with the water table.</i></p> <p><i>6. Sediment and erosion control measures employed during construction will ensure that land degradation does not occur</i></p>	<p>Complies.</p>
(5)Cultural heritage		
Policy: The importance of the river in contributing to the significance of items and places of cultural heritage significance should be recognised, and these items and places should be protected and sensitively managed and, if appropriate, enhanced.		

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
<p>Strategies:</p> <p>(a) Encourage development which facilitates the conservation of heritage items if it does not detract from the significance of the items.</p>	<p><i>Not applicable.</i></p> <p><i>The site does not comprise any listed heritage items.</i></p>	<p>Not applicable.</p>
<p>(b) Protect Aboriginal sites and places of significance.</p>	<p><i>An Aboriginal Archaeological Due Diligence Report has been prepared and attached in Appendix C. The Report confirms that the proposal does not require an Aboriginal Heritage Impact Permit (AHIP) and the works may proceed with caution. All registered AHIMS sites must be maintained, and no earthworks or soil disturbance can occur in these areas without an approved AHIP.</i></p>	<p>Complies.</p>
<p>(c) Consider an Aboriginal site survey where predictive models or current knowledge indicate the potential for Aboriginal sites and the development concerned would involve significant site disturbance.</p>	<p><i>The Aboriginal Due Diligence (Appendix C) provides relevant archaeological investigation methodologies which included background data base searches, archaeological survey and archaeological test excavation. The extensive assessment undertaken was in accordance with the Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW and concluded that:</i></p> <p><i>No Aboriginal sites (including Aboriginal objects or modified trees) were observed within or in the vicinity of the areas proposed for impacts.</i></p> <p><i>The potential for unidentified sites is low in the vicinity of the proposed impacts based on the landform (being upper slopes that do not provide direct access to water and a slope incline unsuitable for camping) in addition to the results of the previous archaeological test excavation program conducted by ELA (all 28 test pits excavated in similar landforms</i></p>	<p>Complies.</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
	<p><i>did not contain subsurface deposits).</i></p> <p><i>No potential historical heritage sites or items were identified within the areas proposed for impact and the potential for any such sites to occur is low based on the historical context of the Project Area and the extent of prior land clearance.</i></p>	
<p>(d) Consider the extent to which heritage items (either identified in other environmental planning instruments affecting the subject land or listed in Schedule 2) derive their heritage significance from the river.</p>	<p><i>Not applicable. The site is not located near or adjacent to a river nor does it contain items applicable to a river environment.</i></p>	<p>Not applicable.</p>
<p>(6)Flora and fauna</p> <p>Policy: Manage flora and fauna communities so that the diversity of species and genetics within the catchment is conserved and enhanced.</p>		
<p>Strategies, generally:</p> <p>(a) Conserve and, where appropriate, enhance flora and fauna communities, particularly threatened species, populations and ecological communities, aquatic habitats, wetland flora, rare flora and fauna, riverine flora, flora with heritage value, habitats for indigenous and migratory species of fauna, and existing or potential fauna corridors.</p>	<p><i>The flora and fauna assessment attached in Appendix D confirms the proposal will have no detrimental impact on flora and fauna communities. Particular emphasis was placed on threatened species, and appropriate assessment was undertaken in accordance with the Biodiversity Conservation Act 2016. This assessment concluded that no unacceptable impact was predicted.</i></p> <p><i>A MP (refer Appendix I) was prepared by Umwelt for the revegetation and management of wetland and vegetated areas in accordance with this clause and other relevant provisions.</i></p>	<p>Complies.</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
(b) Locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land.	<i>The proposed house sites and indicative driveways are located in the most disturbed parts of the site, typically cleared lands or exotic pasture areas.</i>	Complies.
(c) Minimise adverse environmental impacts, protect existing habitat and, where appropriate, restore habitat values by the use of management practices.	<i>The MP (Appendix I) has been prepared to generate longer term conservation benefits associated with the enhancement and restoration of habitat values. The Plan provides a program of works to achieve management and restoration of habitat values associated with vegetation on the site and Howes Creek Wetland.</i>	Provided.
(d) Consider the impact on ecological processes, such as waste assimilation and nutrient cycling.	<i>The Concept Wastewater Management assessment concludes that the effluent disposal systems can achieve a neutral or beneficial impact on receiving waters and associated ecosystems. Pollutant loads to receiving waters will not be increased.</i>	Considered and found acceptable.
(e) Consider the range of flora and fauna inhabiting the site of the development concerned and the surrounding land, including threatened species and migratory species, and the impact of the proposal on the survival of threatened species, populations and ecological communities, both in the short and longer terms.	<i>The flora and fauna assessment (refer Appendix D) confirmed that the proposed subdivision development will not have a significant effect on any threatened species, threatened communities, endangered populations, or their habitat.</i>	Considered and found acceptable.
(f) Consider the need to provide and manage buffers, adequate fire radiation zones and building setbacks from significant flora and fauna habitat areas.	<i>A Bushfire Protection Assessment has been prepared and attached in Appendix E. The Assessment confirms that the proposed development will provide compliance with PBP</i>	Considered and found acceptable.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
	<p><i>2019 in its entirety and the relevant Acceptable Solutions in this version of the PBP. The report also reviewed relevant ecology considerations and provided the following comment on impact of APZ on flora and fauna:</i></p> <p><i>Scattered patches of very poor quality Shale Sandstone Transition Forest trees are located within the proposed Asset Protection Zone to the future dwellings on proposed Lots 1 - 3. The management of this vegetation to Asset Protection Zone standards will not remove or impact this vegetation.</i></p> <p><i>Copses of Moderate/Poor quality Shale Stone Transition Forest exists within proposed Lots 2 & 3 and will be retained and not located within the proposed Asset Protection Zones to the future dwellings.</i></p>	
<p>(g) Consider the need to control access to flora and fauna habitat areas.</p>	<p><i>The flora and fauna assessment (refer Appendix D) did not definitively identify the need to control access to potential flora and fauna habitat areas.</i></p> <p><i>Although the MP has included recommendations to fence some vegetated areas to protect them from cattle and allow them to regenerate naturally.</i></p>	<p>Considered and found acceptable.</p>
<p>(h) Consider the need to maintain corridors for fish passage, and protect spawning grounds and gravel beds.</p>	<p><i>The Howes Creek Wetland will be maintained,</i></p>	<p>Considered and found acceptable.</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
	<i>used and rehabilitated in accordance with the MP attached in Appendix I. This area will be preserved and revegetated to allow regeneration of the wetland and potential seasonal marine habitats.</i>	
Strategies for wetlands:	<i>The Howes Creek Wetland will be maintained, used and rehabilitated in accordance with the MP attached in Appendix I. This area will be preserved and revegetated to allow regeneration of the wetland and potential seasonal marine habitats.</i>	Considered and found acceptable.
(8)Agriculture/aquaculture and fishing		
Policy: Agriculture must be planned and managed to minimise adverse environmental impacts and be protected from adverse impacts of other forms of development.		
Strategies: (a) Give priority to agricultural production in rural zones.	<i>Proposal is consistent with this provision, agriculture will be possible on all allotments within the proposed subdivision. The MP proposes managing and protecting the wetland through appropriate grazing. Refer to details in Appendix I.</i> <i>It should be noted however that the existing lot and proposed lots, although being suitable for grazing and small-scale agriculture, they are not sites suitable for agricultural pursuits that would support a living.</i>	Complies.
(b) Ensure zone objectives and minimum lot sizes support the continued agricultural use of Class 1, 2 and 3 Agricultural Land (as defined in the Department of Agriculture's Agricultural Land Classification Atlas) and of any other rural land that is currently sustaining agricultural production.	<i>The minimum lot size in the Hawkesbury LEP 2012 is 10ha. All sites comply with the minimum lot size.</i> <i>Site is Class 4 agricultural land and small-scale agricultural uses are possible, even on the 10ha allotments. Grazing of horses and cattle will assist with bushfire and weed management.</i>	Complies.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
(c) Incorporate effective separation between intensive agriculture and adjoining uses to mitigate noise, odour and visual impacts.	<i>Refer to Land Use Conflict Risk Assessment (LUCRA) included in Appendix K, however there are no intensive agricultural uses proposed on the site or adjoining the site.</i>	Complies.
(d) Protect agricultural sustainability from the adverse impacts of other forms of proposed development.	<i>Refer to LUCRA in Appendix K.</i>	The Land Use Conflict Risk Assessment has concluded that the proposed subdivision will create minimal conflicts with the adjoining rural residential sites that are within close proximity to the subject site.
(e) Consider the ability of the site to sustain over the long term the development concerned.	<i>The MP (Appendix I) includes provisions for the management, restoration and protection of the site in the short and long term.</i>	Complies.
(f) Consider the likely effect of the development concerned on fish breeding grounds, nursery areas, commercial and recreational fishing areas and oyster farming.	<i>The flora and fauna assessment (refer Appendix D) includes an assessment of any potential fish habitat including breeding grounds. There are no suitable streams located on the site for fish habitat or breeding.</i>	Consideration has been given and found acceptable.
(9)Rural residential development		
Policy: Rural residential development should not reduce agricultural sustainability, contribute to urban sprawl, or have adverse environmental impacts (particularly on the water cycle or on flora or fauna).		
Strategies: (a) Give priority to agricultural production in rural zones.	<i>Proposal is consistent with this provision, agriculture will be possible on all allotments within the proposed subdivision. The MP proposes managing and protecting the wetland through appropriate grazing. Refer to details in Appendix I.</i> <i>It should be noted however that the existing lot and proposed lots, although being suitable for grazing and small-scale agriculture, they are not sites suitable for agricultural pursuits that would support a living.</i>	Agricultural use of allotments maintained.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
(b) When considering a proposal for the rezoning or subdivision of land which will increase the intensity of development of rural land (for example, by increasing cleared or hard surface areas) so that effluent equivalent to that produced by more than 20 people will be generated, consider requiring the preparation of a Total Water Cycle Management Study or Plan.	<i>Not applicable to this Proposal. It is unlikely that more than 20 people will residing on the proposed subdivision of three lots.</i>	Not applicable.
(c) Maintain or introduce appropriate separation between rural residential use and agricultural use on the land that is proposed for development.	<i>Refer to LUCRA in Appendix K.</i>	Adequate separation has been provided between rural residential and agricultural use.
(d) Do not locate development in areas identified for future urban purposes in the Metropolitan Strategy.	<i>Not applicable to this Proposal.</i>	Not applicable.
(e) Consider the suitability of the land for keeping livestock, whether or not for commercial purposes, and appropriate mitigating measures to prevent land degradation.	<i>The proposed subdivision will not remove the ability for livestock to be grazed on site including horses and cattle. Appropriate measures are included in the MP relating to areas for grazing and areas to be protected through livestock fencing.</i>	Complies.
(f) Consider the ability of the land to accommodate on-site effluent disposal in the long term.	<i>The Engineering Assessment (Appendix F) confirmed the following: Pollutant loads to receiving waters will not be increased because effluent disposal systems have been sized to be ecologically sustainable and positioned well away from water courses, and stormwater systems have been designed to meet the NorBE test.</i>	Complies.
(g) Consider any adverse environmental impacts of	<i>The Engineering Assessment (Appendix F) confirmed that</i>	Complies.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
infrastructure associated with the development concerned.	<i>there will not be adverse impact from the infrastructure associated with the development of the sites including house locations, driveways and wastewater systems.</i>	
(12)Metropolitan strategy		
Policy: Development should complement the vision, goal, key principles and action plan of the Metropolitan Strategy.		
Strategies: (a) Consider the impacts of transport infrastructure proposals on water quality and air quality.	Not applicable.	Not applicable.
(b) Consider the impacts of metropolitan waste disposal on water quality.	Not applicable.	Not applicable.
(c) Consider the impacts of development on air quality.	<i>It is unlikely that there will be adverse air quality impacts from the proposed development.</i> <i>Appropriate erosion and sediment control measures and dust suppression will be used in the construction phases of any development on the site which can be conditioned by Council or a private certifier.</i>	Consideration has been given and found acceptable.
(d) Consider the need for waste avoidance, waste reduction, reuse and recycling measures.	<i>A WMP has been prepared for the site and proposal, included in Appendix H.</i>	Acceptable.
(e) Consider the implications of predicted climate change on the location of development and its effect on conservation of natural resources.	<i>Climate change was considered in the flooding impacts and all development areas are located above the 1% flood level, plus an additional allowance for climate change.</i>	Complies.
Part 9.3 Development Controls		
(19)Development in mapped wetlands		
Additional matters for consideration by the consent authority:		
(a) A Vegetation Management Plan is required for restoration or rehabilitation of a wetland	<i>MP has been prepared and attached at Appendix I. The MP outlines sustainable management,</i>	Management Plan provided and found to address the additional matters for consideration.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Strategies	Applicant Comments	Council Comments
and for any development in an ephemeral wetland. (b) Whether a Vegetation Management Plan should also be required for any development other than restoration or rehabilitation in a wetland that is not an ephemeral wetland. (c) Whether the development is likely to contaminate the soil resulting in a likely adverse impact on water quality when the wetland floods.	<i>restoration and rehabilitation of the Howes Creek Wetland and surrounding environment. The Engineering Assessment (refer Appendix F) confirmed the proposed development will have no detrimental impact on receiving waters or associated ecosystems due to integration of sustainable effluent disposal and stormwater systems that will achieve a neutral or beneficial effect on the site. Pollutant loads will not be increased.</i>	

The application has provided detailed reports and management plans to address the flora and fauna management, the stormwater management systems and effluent disposal systems for the proposed allotments which have demonstrated that the proposed subdivision will have minimal impacts in terms of water quality and quantity.

The development is therefore considered to be consistent with the provisions of Chapter 9 of SEPP (BC) 2021.

Hawkesbury LEP 2012

Under Hawkesbury LEP 2012, the property is zoned RU1 Primary Production. The following is a summary of the clauses under HLEP 2012 applicable to the development.

Clause 2.2 Zoning of Land to which Plan applies

The site is zoned RU1 Primary Production and in accordance with Clause 2.6 subdivision of land can be carried out only with consent.

Clause 2.3 – Zone objectives and Land Use Table

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives of the RU1 Primary Production zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage agricultural activities that do not rely on highly fertile land.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*
- *To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

The above objectives have been considered against the proposed subdivision and it is considered consistent with the above objectives.

Clause 4.1 – Minimum subdivision lot size

The proposed subdivision will result in two allotments having an area of 10ha and one allotment with 74ha.

The objectives of this clause are as follows:

- *to ensure that the pattern of lots created by subdivision and the location of any buildings on those lots will minimise the impact on any threatened species, populations or endangered ecological community or regionally significant wetland, waterways and groundwater as well as any agricultural activity in the vicinity,*
- *to ensure that each lot created in a subdivision contains a suitable area for the erection of a dwelling house, an appropriate asset protection zone relating to bush fire hazard and a location for on-site effluent disposal if sewerage is not available,*
- *to ensure a ratio between the depth of the lot and the frontage of the lot that is satisfactory having regard to the purpose for which the lot is to be used.*

HLEP 2012 Lot Size Map establishes minimum allotment sizes of 10ha for the subject site being zoned RU1 Primary Production. Each of the proposed allotments satisfies these requirements.

5.21 Flood Planning

The site is affected by flooding with the 1% AEP flood level being 14.2m for the site. However, all building envelopes, vehicular access and evacuation routes are above the 14.2m 1% AEP flood level and therefore compatible with the flood hazard categories required for residential development.

Council's Senior Subdivision and Development Engineer has reviewed the application and has raised no concerns regarding Clause 5.21, particularly given that the application is for subdivision and the only physical works proposed are the construction of the vehicular driveways. Appropriate conditions have been recommended which require all works to be above the 1% AEP flood level.

6.4 Terrestrial biodiversity

The site is mapped as containing significant vegetation on the Terrestrial Biodiversity Map and, as such, this clause applies. This clause provides the following:

- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider—*
 - (a) *whether the development—*
 - (i) *is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *is likely to have any adverse impact on the habitat elements providing connectivity on the land.*
 - (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The application has provided a Flora and Fauna Assessment Report by Umwelt dated March 2022 which has concluded that the proposed subdivision is unlikely to significantly affect threatened species and ecological communities, or their habitats, located on the proposed allotments, particularly as no vegetation removal is required.

The site contains a number of critically endangered ecological communities, particularly throughout the wetland, and each allotment has an individual Biodiversity and Land Management Plan that will manage each allotments' vegetation.

Accordingly, given the subdivisions provide nominated building envelopes within areas that are cleared of vegetation with minimal impacts, Council is satisfied that the proposal has been designed, sited and will be managed to avoid any significant adverse environmental impact.

6.5 Wetlands

The site is mapped as containing wetland on the Wetlands Map and, as such, this clause applies. This clause provides the following:

- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider—*
 - (a) *whether or not the development is likely to have any significant adverse impact on the following—*
 - (i) *the condition and significance of the existing native fauna and flora on the land,*
 - (ii) *the provision and quality of habitats on the land for indigenous and migratory species,*
 - (iii) *the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity,*
 - (iv) *the growth and survival of native fauna and flora,*
 - (v) *any wetlands in the vicinity of the development, and*
 - (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The application has provided a Biodiversity and Land Management Plan that will manage Howes Creek wetland.

No physical works are proposed within the wetland and no building envelopes, effluent disposal or stormwater management will occur within or near Howes Creek wetland therefore Council is satisfied that the proposal has been designed, sited and will be managed to avoid any significant adverse environmental impacts.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Other Provisions

LEP	Proposed
5.10 Heritage Conservation	The application is not within a heritage conservation area or within the vicinity of a heritage item identified under Schedule 5 of HLEP2012.
6.1 Acid Sulfate soil controls	Class 5 – low impact. The proposal is unlikely to lower the water table or expose acid sulfate soils as no significant excavation is proposed on the subject site. The application has provided an Acid Sulfate Soil
6.2 Earthworks	The application will require earthworks to construct the vehicular access driveways. The earthworks will be removed from the site in accordance with NSW EPA Guidelines.
6.6 Development in areas subject to aircraft noise	The land is not subject to aircraft noise.
6.7 Essential services	Before granting consent, Council must be satisfied that essential services are available. The required supply of water, electricity, disposal of sewage and stormwater is able to be provided as is road access.

The provision of (a)(ii) any proposed instrument that is or has been placed on exhibition and details of which have been notified to Council:

No draft Environmental Planning Instrument applies to this development proposal.

The provision of (a)(iii) any Development Control Plan applying to the land:

Hawkesbury Development Control Plan 2002

A full assessment of the proposal under DCP 2002 is illustrated in the following compliance table. The Non-compliances identified in the table are assessed below.

DCP 2002		
DCP Control Proposed Complies		
Part A: Introduction		
3.2 Notification		
3.2.1 Residential accommodation		
Subdivision	The proposal was notified from 26 May to 27 June 2022.	Yes
Letters to adjoining occupiers/owners: required	Site sign provided.	Yes
Site Sign: Not required	Advertising required.	Yes
Notice in Local Newspaper: N/A	One submission was received, and the matters raised are discussed under the community	

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

DCP 2002		
	consultation section of this report.	
Part D: Specific Development		
Chapter 3 Subdivision		
Clause 3.1 General Principles		
<ul style="list-style-type: none"> establish a consistent and coordinated approach to the creation of residential, rural residential and rural lots throughout Hawkesbury; 	The proposed subdivision provides a consistent and coordinated approach in the creation of rural residential lands.	Yes
<ul style="list-style-type: none"> ensure that subdivision is undertaken in an environmentally sustainable manner; 	Location of indicative building footprints are considered to be in an appropriate location given the cleared nature of these locations, flood prone nature of the proposed sites elsewhere on the site and the location of Howes Creek wetland.	Yes
<ul style="list-style-type: none"> facilitate different subdivision forms which have the effect of minimising environmental degradation; 	Subdivision pattern is supported as it reduces the environmental degradation of the sites and wetland.	Yes
<ul style="list-style-type: none"> address long term planning objectives as contained in Hawkesbury LEP by the creation of lots in locations and of sizes consistent with those objectives; 	The proposal is consistent with the planning objectives in the minimum size allotment clauses of the LEP and provides a regular pattern of subdivision.	Yes
<ul style="list-style-type: none"> ensure constructed vehicular access from gazetted public road system to each new lot; 	Provided.	Yes
<ul style="list-style-type: none"> ensure all lots created are physically capable of development; 	Capable of development.	Yes
<ul style="list-style-type: none"> adopt criteria for rural, rural-residential and residential lots which will ensure each lot is provided with an appropriate level of amenity, services and access; facilitate the supply of residential lots of a wide range of sizes and shapes which reflect the statutory visions of Hawkesbury LEP, the availability of 	Lot layout appropriate.	Yes

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

DCP 2002		
reticulated sewage and the need for frontage to public roads; and		
<ul style="list-style-type: none"> protect key cultural resources (places of environmental heritage value) from land use or management practices which will lead to their degradation or destruction. 	Howes Creek Wetland protected and enhanced.	Yes
Clause 3.2 Flora and Fauna Protection		
The application was supported by a Flora and Fauna Assessment Report and Biodiversity and Rural Land Use Management Plans by Umwelt which adequately addresses the requirements of this clause of the DCP.		
Clause 3.6 Flooding, Landslip and Contamination		
Access to the subdivision is located above the 1%AEP flood level. The potential for contamination to be on the land has been adequately addressed and a condition dealing with unexpected finds has been included in the draft conditions of consent.		
Clause 3.8 Rural and Rural-Residential Subdivision		
The layout of the proposed subdivision is acceptable in terms of the depth ratio under 3.8.1(d) of HDCP 2002.		

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

No planning agreement or draft planning agreement is applicable to the proposed development.

The provision of any (a)(iv) matters prescribed by the Regulations:

Division 8A of the EP & A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent.

The relevant prescribed conditions are included in the recommended draft conditions of consent.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

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

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report.

The proposed subdivision development is considered satisfactory in terms of environmental impacts given the comprehensive management plans provided that will manage the biodiversity and Howes Creek wetland on the allotments.

The c) Suitability of the site for the development:

The site is considered to be suitable for the proposed development. Adequate provisions have been provided to manage the biodiversity and Howes Creek wetland.

Vehicular access will be provided on each lot with nominated building envelopes and asset protection zones provided. The asset protection zones will not require vegetation removal as the building envelopes have been located on each proposed allotment in cleared areas.

The RFS have reviewed the proposed subdivision and have issued General Terms of Approval.

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

In accordance with Section 3.2 of Part A of HDCP 2002 and the Hawkesbury Community Participation Plan, owners of surrounding properties were given notice of the application. In response, one submission was received.

The following issues were raised:

Concern	Comment
<p>Privacy & amenity. The following concerns have been raised in regard to privacy impacts:</p> <p><i>The building envelope on the proposed Lot 3 is directly behind our property. This will change the outlook of our property from a rural setting to directly looking at the proposed building envelope. The privacy of our home will be affected as all our living areas are at the rear of our home, in full view of the proposed building envelope on the proposed Lot 3.</i></p> <p><i>Our block slopes down towards the building envelope so therefore a fence would not block the view like in a traditional suburban setting. These factors will directly impact our enjoyment of our property.</i></p>	<p>The location of the proposed building envelope will have minimal impacts to the neighbouring property in terms of privacy. The building envelope is located over 100m away from the rear boundary and is situated at a level approximately 5 metres below the neighbouring residence.</p> <p>Given the distance and lower level the building envelope is situated, direct overlooking is unlikely to occur to habitable rooms of the neighbouring dwelling.</p>
<p>Driveway impacts. The following concerns have been raised in regard to the location of the driveway:</p> <p><i>Lot 3 proposes a driveway to run the entirety of our western boundary fence and wrap around the back of our property. This will dramatically</i></p>	<p>The driveway does not position vehicles to face directly into the rear of the neighbouring property as it is offset at an angle therefore light spill will not be directed into the habitable areas of the neighbouring dwelling. Whilst vehicle movements past the neighbouring property will result in potential overlooking, this is not static</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Concern	Comment
<p><i>change the feel of the quiet area in which we live. One of the benefits of living on Hadden Ridge Road is the quiet road. The proposed driveway will impact our privacy as cars will be able to see directly into the rear of our home and into our whole backyard. Furthermore, the headlights from cars will shine directly into our home at night time. Visually, the driveway will detract from the rural outlook of our home and being so close to our fence, there will be increased noise of cars going in and out of the proposed Lot 3. Planting trees to hide the driveway is not desired, as this will impact on</i></p> <p><i>the rural view of our property. The driveway adds an extra risk to our children's safety when they play in the backyard, as cars will be driving so close to our fence.</i></p> <p><i>Therefore, the driveway will directly affect the privacy of our property, safety of our children and our overall enjoyment of this quiet rural setting.</i></p>	<p>and the amount of vehicle movements for a single residential dwelling will not result in continuous overlooking for continued lengths of time, particularly the property can be readily viewed from the street. Vehicular movements to and from the property will not have a significant noise impact as the vehicles will be passing and not stationary at this location.</p> <p>In terms of safety, the neighbouring property is fenced restricting access to the driveway from the neighbouring property.</p>
<p>Drainage impacts. The following concerns have been raised in regard to drainage of the driveway:</p> <p><i>The natural run of water goes down along the boundary fence into the dam in the proposed Lot 3. I am extremely concerned that the driveway will significantly affect the natural flow of water causing a boggy area at the corner of our property. This again will impact on drainage of our property and the amenity of our property. With Lot 3 so narrow to only allow a driveway, there is no other access to the proposed building envelope in heavy rainfall or potential flooding as most of Lot 3 is within the flood zone. The allocation of the drains in the proposed plans will mean the driveway will be built up, affecting the visual amenity of our property and potentially the natural flow of water.</i></p>	<p>The application has provided an Engineering Assessment by Martens which had provided details as to how the proposed driveways will be managed in terms of stormwater runoff. Vegetated swales, buffer zones and rain gardens will be used to manage stormwater from the driveways which have been assessed by Council's Development Engineer and found to be acceptable.</p> <p>The majority of the driveway will be excavated with a maximum 500mm fill in various points, however as this is a driveway with no permeant structures, the visual impacts will be minimal.</p>
<p>Impacts to the wetland and retention of agricultural land. The following concerns have been raised in regard to the subdivision of the subject site and its impact on the wetland and agricultural use of the site:</p> <p><i>When purchasing our land at Lot 22, 61 Hadden Ridge Road Wilberforce we reviewed the original subdivision plans of Hawkesbury Council and understood that the council was unable to consider further subdivision of Lot 28 DP 1184227. It was under this pretence that we</i></p>	<p>The subdivision will retain the wetland on Lot 3 with a management plan to ensure the wetland is maintained and enhanced whilst retaining the agricultural use of the site.</p> <p>It should be noted that the subdivision Lot 28 was created under was carried out under Hawkesbury LEP 1989 which contained a lot averaging clause that required a regionally significant wetland to be contained and managed on one allotment. Under Hawkesbury LEP 2012 this clause is absent, however Lot 3 will retain</p>

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Concern	Comment
<p><i>purchased our block of land knowing that the natural fauna and flora would be maintained ensuring both our outlook and the biodiversity of our backyard. This understanding was drawn from the original subdivision notes, that Lot 28 DP 1184227 was part of three residual lots intended to remain large lots for agricultural purposes and for the effective of management the Howes Creek Wetland. The current Development proposal clearly contradicts these original intentions of keeping Lot 28 as agricultural farm land as well as the intention of keeping the Howes Creek Wetland in a larger lot for conservation purposes (Hawkesbury City Council, 2010).</i></p>	<p>the Howes Creek wetland for conservation purposes therefore maintaining the natural flora and fauna outlook.</p>
<p>Impacts on flora and fauna and value of property. The following concerns have been raised in regard to the</p> <p><i>Overall, the rural setting in which we desired about our property on purchase will be lost and the privacy of this quiet rural location will be taken away from us if this development is allowed to be passed. This will significantly impact not only the market value of our property but most importantly the value of our property to us. Further to this, the flow on effect of the fauna and flora is of concern.</i></p>	<p>The subdivision will not have any detrimental impacts to the flora and fauna located on the proposed lots as comprehensive management plans have been provided to ensure the retention and enhancement of the biodiversity on these lots.</p> <p>In terms of market and property value, the applicant has a right under the Environmental & Planning Assessment Act, 1979 to the orderly and economic use and development of their land. Possible variation in surrounding property values does not constitute reasonable grounds for refusal of a development application.</p>

The e) Public Interest:

Having regard to the assessment contained in this report, it is considered that approval of the development is in the public interest.

Development Contributions

Neither Section 7.11 nor 7.12 Development Contributions are applicable to the proposed development.

Section 2.7 of the Hawkesbury Section 94 (7.11) Contributions Plan 2015 exempts Council developments from the payment of Section 7.11 Development Contributions. The proposal is also exempt from the payment of 7.12 Development Contributions under Section 2.7 of the Hawkesbury Section 94A (7.12) Contributions Plan 2015 based on the supplied value-of-works.

Conclusion

The application has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act 1979, with all matters specified under Section 4.15(1) having been taken into consideration. The proposed subdivision is permissible under, and satisfies the lot size controls, of the Hawkesbury LEP 2012.

HAWKESBURY LOCAL PLANNING PANEL

2. REPORTS FOR DETERMINATION

Meeting Date: 20 April 2023

Statement of reasons for approval

It is recommended that the application be approved on 20 April 2023 on the following grounds:

1. The proposed development is permissible under the Hawkesbury Local Environmental Plan 2012.
2. The proposed subdivision satisfies the minimum lot size controls of Clause 4.1(3) of the Hawkesbury Local Environmental Plan 2012.
3. The proposal is generally consistent with the Hawkesbury Local Environmental Plan 2012, relevant planning instruments, Hawkesbury Development Control Plan 2002 and policies that apply to the development.
4. The proposal is categorised as integrated development and General Terms of Approval have been issued by the Rural Fire Services.
5. The issues raised in the submissions have been considered and on balance do not warrant the refusal of the application.
6. For the reasons given above, approval of the application is seen to be in the public interest.

ATTACHMENTS

AT - 1 Subdivision Plan - *(Distributed under separate cover)*.

AT - 2 Conditions of Consent - *(Distributed under separate cover)*.

oooO END OF REPORT Oooo



Hawkesbury Local Planning Panel meeting

End of Business Paper

This business paper has been produced electronically to reduce costs, improve efficiency and reduce the use of paper. Internal control systems ensure it is an accurate reproduction of Council's official copy of the business paper.