

Rezoning of 46 Mulgrave Road, Mulgrave

Proposal Title : **Rezoning of 46 Mulgrave Road, Mulgrave**

Proposal Summary : **THE PLANNING PROPOSAL**

The planning proposal (TAG A) seeks to rezone Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave from Rural Living under Hawkesbury Local Environmental Plan 1989 to RU1 Primary Production under draft Hawkesbury Local Environmental Plan 2012.

Hawkesbury City Council has advised that the planning proposal is to facilitate a "truck depot" on the eastern part of the land, between Mulgrave Road and 'Hawkesbury Valley Way flood evacuation road'. The proposed RU1 zoning will allow agricultural production and related industries on the land. The current and proposed zoning extracts are at TAG B.

It should be noted that the land is proposed to be rezoned from Rural Living under LEP 1989 to RU4 Primary Production Small Lots under draft Hawkesbury LEP 2012.

THE SUBJECT LAND

The land is 26.42 hectares in area and has a frontage to Mulgrave Road of 308.8m to Mulgrave Road. It is dissected by the 'Hawkesbury Valley Way flood evacuation road', which is elevated some metres above the ground. The land is surrounded by the Windsor Sewage Treatment Plant (north), Elf Farms mushroom substrate production facility (south) and, a high school and various industrial activities (east). A location map and an aerial photo are at TAG C.

There is no constructed access to the 'flood evacuation road' from the land and there is no easement or right of way in favour of the subject land. A minor watercourse runs through the property and incorporates three dams. The land is below the 1-in-100 year flood level (17.3m AHD). It is gently undulating and ranges in height from approximately 5m AHD at the top of the bank of South Creek, to 16.5m AHD near the northern boundary. A dwelling house, a large farm building and a farm office are located on the higher parts of the land.

The Council's biodiversity map identifies a riparian corridor to the west of the site, along South Creek as "Connectivity Between Significant Vegetation". An extract from the Council's Acid Sulfate Map shows that the property is part Class 4 and Part Class 5. Current zoning map is at TAG D and relevant draft LEP maps are at TAG E.

PP Number : **PP_2011_HAWKE_002_00** Dop File No : **11/17498**

Proposal Details

Date Planning Proposal Received :	16-May-2012	LGA covered :	Hawkesbury
Region :	Sydney Region West	RPA :	Hawkesbury City Council
State Electorate :	RIVERSTONE	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

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Street : 46 Mulgrave Road
Suburb : Mulgrave City : Hawkesbury Postcode : 2756
Land Parcel : Lot 12 DP 1138749

DoP Planning Officer Contact Details

Contact Name : Cho Cho Myint
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RPA Contact Details

Contact Name : Philip Pleffer
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DoP Project Manager Contact Details

Contact Name : Derryn John
Contact Number : 0298601505
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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Metro North West subregion	Consistent with Strategy :	Yes
MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Yes
Lobbyists Code of
Conduct has been
complied with :

If No, comment : To the best of the knowledge of the regional team, the Department's Code of Practice in relation to communications and meetings with Lobbyists has been complied with. Sydney Region West has not met with any lobbyist in relation to this proposal, nor has the Regional Director been advised of any meetings between other departmental officers and lobbyists concerning the proposal.

Have there been
meetings or
communications with
registered lobbyists? :

No

If Yes, comment : The Department's "Table of contacts with Registered Lobbyists" has been checked on 16 May, 2012, and there have been no records of contact with Lobbyist in relation to this proposal.

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Supporting notes

Internal Supporting Notes : The planning proposal is of a minor nature and is to facilitate a "truck depot" on the land. It is not likely to have any adverse environmental impacts resulting from future likely land uses permissible in the proposed RU1 zone.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The application clearly identifies the objectives of the planning proposal to rezone Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave, from Rural Living (HLEP 1989) to RU1 Primary Production under draft Hawkesbury Local Environmental Plan 2012.

The objective of the planning proposal is to facilitate a "truck depot" and provide a more suitable zoning for the subject site which will permit a broader range of land uses related to agricultural production that are more in character with the surrounding land uses and major road infrastructure.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : The objectives of the Rural Living Zone under Hawkesbury Local Environmental Plan 1989 are to provide rural residential lifestyle, enable identified agricultural land uses, minimise conflict with rural living and land uses, and ensure that agricultural activity is sustainable.

The Council considers that these objectives are not valid in respect of the land as the adjoining neighbours are currently being used as a Windsor High School, sewerage treatment plant, and industrial development. The land on the western side of South Creek and the southern side of the rail line is, however, zoned as Mixed Agriculture under Hawkesbury Local Environmental Plan 1989 and is proposed to be zoned RU1 Primary Agriculture under the draft Hawkesbury LEP 2012.

The proposed RU4 Primary Production Small Lots under draft Hawkesbury LEP 2012, however, has similar objectives to the current Rural Living zoning of the land with greater emphasis on primary agricultural production. The proposed zone will facilitate the proposed "truck depot" on the land and will allow additional uses associated with agricultural production and related industries on the land.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

1.2 Rural Zones

3.4 Integrating Land Use and Transport

* May need the Director General's agreement

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

SREP No. 20 - Hawkesbury-Nepean River (No. 2 - 1997)

e) List any other matters that need to be considered :

SEPP NO.55 – REMEDIATION OF LAND

Clause 6 of State Environmental Planning Policy No.55 – Remediation of Land requires the consent authority to consider whether land is contaminated prior to rezoning land.

The subject site is currently zoned as Rural Living and occupied by a dwelling house and farm buildings. As outlined in the planning proposal, the site has been used for agricultural purpose for many years and the proposed zone (i.e. RU1 Primary Production under draft Hawkesbury Local Environmental Plan 2012) is largely consistent with existing zoning.

The rezoning of the site will permit a broader range of land uses which are more in character with the locality such as rural industries, rural supplies and truck depots.

Considering the past and present uses of the site, Council considered that it is unlikely the site will be contaminated and detailed investigation is not considered necessary at this stage. SEPP No. 55 – Remediation of Land may be applicable at the Development Application stage. See details in the planning proposal at TAG A.

The Department's view:

Agreed with Council's consideration that detailed investigation on contamination can be carried out at DA stage.

SREP NO. 20 – HAWKESBURY - NEPEAN RIVER

The aims of SREP No. 20 – Hawkesbury-Nepean River 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.

Council has considered that the planning proposal is consistent with the relevant strategies and policies contained within SREP 20 and will not create adverse impact on the riverine scenic quality, flora and fauna, water, environmental and scenic quality of the area. Any subsequent development proposal will need to incorporate suitable protection mechanisms in this regard.

The Department's view:

It is agreed with Council that the planning proposal will not have adverse impact on the riverine scenic quality, flora and fauna, water, environmental and scenic quality of the area. These are issues which are to be appropriately considered at development assessment stage.

In addition, the draft Hawkesbury LEP 2012 also contains model provisions on protection of natural resource management (i.e. wetlands, acid sulfate soils, flood planning, terrestrial biodiversity and bushfire etc.) for consideration by Council at development assessment stage.

SEPP 30 - INTENSIVE AGRICULTURE

Council has advised that the planning proposal is consistent with the provisions of the SEPP.

The Department's view:

SEPP 30 does not apply to the planning proposal.

SECTION 117 DIRECTIONS

The following table lists the S117 Directions which are relevant to the proposal.

1.2 RURAL ZONES

The planning proposal does not rezone land to residential, business, industrial, village or tourist zone and does not contain provisions which will increase the permissible density of land within a rural zone. The change of zoning between the rural zones will facilitate additional uses associated with agricultural production.

The Department's view:

The planning proposal is not inconsistent with the direction.

3.4 INTEGRATED LAND USE AND TRANSPORT

The draft LEP will provide employment opportunities in a locality which is well serviced by public transport. The draft LEP is consistent with the relevant Guidelines and policy.

The Department's view:

The planning proposal is not inconsistent with the direction.

4.1 ACID SULFATE SOILS

The direction applies as Council's Acid Sulfate Map (TAG E) shows that part of the property is affected by Class 4 Acid Sulfate Soils. The draft Hawkesbury LEP 2012 contains a local (model) acid sulfate soils clause (Clause 6.1). No works are proposed as part of the planning proposal which would trigger an assessment of acid sulfate soils (i.e. development application). Notwithstanding, the proposal is considered to be of minor significance and is therefore consistent.

The Department's view:

Council has not considered an acid sulfate soil study assessing the appropriateness of the change of land use in accordance with clause 6 of the direction.

The presence of Class 4 acid sulfate soil on the subject land will trigger preparation of the acid sulfate soils management plan at development application stage on the land, under draft clause 6.1 Acid sulfate soils of the draft Hawkesbury LEP 2012. Accordingly, the proposed change of use is considered to be of a minor nature which can be dealt in detail at the Development approval stage, and, therefore, is justifiably inconsistent with the direction. The Director General's approval is required in accordance with clause 8(b) of the direction.

4.3 FLOOD PRONE LAND

The planning proposal does not rezone land to residential, special use or special purpose zone. It does not contain any of the provisions listed in clause (6) (a) to (e). Council is of the view that the planning proposal is consistent with clauses (4), (7) and (8).

The Department's view:

The planning proposal will potentially allow development within 1 in 100 year flood area, and therefore the direction applies. However, the proposed rezoning is not changing zones as identified in clause 5 and does not impose flood related controls as identified in clause 6 and 7 of the direction.

The planning proposal is to amend the draft Hawkesbury LEP which has appropriate (model) provision (Clause 6.3 Flood planning) for flooding which is consistent with the

NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. It also contains heads of consideration for Council to adequately assess development proposals which falls below the flood planning level.

Notwithstanding the above, it is considered that the planning proposal is justifiably inconsistent with the direction and is of minor significance. The Director General's approval is, therefore, required.

4.4 PLANNING FOR BUSFIRE PROTECTION

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

The Department's view:

The planning proposal has not addressed this direction, however, Council has advised that the land is bushfire prone. It is considered that the planning proposal is inconsistent with the direction.

A planning proposal may be inconsistent with the terms of the direction only if the relevant planning authority can satisfy the Director-General (or his delegate) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal. The direction requires Council to consult with the Commissioner of the NSW Rural Fire Service (RFS) prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.

It is recommended that Council consult the Commissioner of NSW RFS prior to undertaking community consultation in satisfaction of section 57 of the Act.

5.1 IMPLEMENTATION OF REGIONAL STRATEGY:

The planning proposal is not considered to be inconsistent with the draft North West Subregional Strategy.

Council has indicated that the planning proposal will "assist in adding to employment opportunities in an area which is well serviced by road and rail transport".

The draft North West subregional strategy stated that the adjoining areas to Mulgrave/Vineyard employment lands are predominantly rural and "are unlikely to be developed further within the life of the strategy due to flooding and flood evacuation constraints." The planning proposal is to allow "truck depots" in an area where currently many rural agricultural uses are permitted including rural residential, dual occupancy dwellings, tourist facilities, motels, boarding houses, childcare centres, education establishments, produce stores, institutuins, professional and commercial chambers, community facilities, bus depots and bus stations. The proposed RU1 Zone with its focus on agricultural production is considered to be a better fit for the area given the surrounding land uses and flood liability.

As discussed in the 4.3 FLOOD PRONE LAND, 4.1 ACID SULFATE SOILS and SEPP NO.55 -REMEDIATION OF LAND, the draft Hawkesbury LEP contains adequate provisions for consideration that can be considered at development assessment stage.

This planning report recommends that Council consult with the Department of Environment and Heritage, Hawkesbury-Nepean Catchment Management Authority and the Commissioner of NSW RFS.

7.1 IMPLEMENTATION OF THE METROPOLITAN PLAN FOR SYDNEY 2036:

The planning proposal is generally consistent with the objectives of the Metropolitan

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Strategy for Sydney 2036. The planning proposal, (although applying to a single parcel of land only) will allow additional land uses associated with agricultural production industry and has the potential to contribute to employment opportunities in the agricultural sector.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **No**

Comment : The rezoning is consistent with the character of the surrounding land uses, is not inconsistent with the strategic framework; presents no issues with regard to infrastructure servicing; is not a principal LEP; and does not reclassify public land.

Hence, the Regional Team consider the proposal as "low impact" and recommends a community consultation period of 14 days.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **June 2012**

Comments in relation to Principal LEP : The draft Hawkesbury LEP 2012 has been exhibited and reported to Council under section 68. The draft LEP is currently with the Department for review and is expected to be completed in June, 2012.

The draft PLEP zones the subject land to RU4 Primary Production Small Lots, which is a translation of the existing zone of Rural Living.

Assessment Criteria

Need for planning proposal : The planning proposal is seeking to rezone the subject land from Rural Living under Hawkesbury Local Environmental Plan 1989 to RU1 Primary Production Zone under draft Hawkesbury Local Environmental Plan 2012. The draft LEP proposes to zone the subject land to RU4 Primary Production Small Lots, which is a translation of the existing zone.

As outlined in the Council's planning proposal, the current Rural Living Zone is "somewhat of an anomaly in this location" considering the nearby landuse which include sewerage treatment plant to the north, Elf Farms mushroom substrate production facility to the north and a range of industrial land uses and Windsor High School are located on the eastern side of Mulgrave Road.

The site is also severed by the 'Hawkesbury Valley Way flood evacuation route' which is

elevated some metres above the ground. It is noted that vehicles travelling on the elevated roadway overlook the property.

Given the adjoining landuses and elevated flood evacuation route bisecting the site, it is considered that Rural Living is no longer an appropriate zone. The proposed RU1 Primary Production Zone better reflects the existing character of the locality and enables a broader range of land uses associated with agricultural production and related industries. Council has advised that the planning proposal is to facilitate a "truck depot" proposed on the eastern part of the land, between Mulgrave Road and Hawkesbury Valley Way 'flood evacuation road'.

Consistency with strategic planning framework :

Council has advised that the planning proposal is consistent with Council's Community Strategic Plan 2010 and the Hawkesbury Employment Land Strategy.

The planning proposal is not inconsistent with the draft North West Subregional Strategy. It is generally consistent with the objectives of the Metropolitan Strategy for Sydney 2036. The planning proposal has the potential to contribute to employment opportunities in the agricultural sector.

Environmental social economic impacts :

HERITAGE

The subject site is not currently Heritage listed in Hawkesbury Local Environmental Plan 1989, not on the State Register, nor is it identified on the Commonwealth/National heritage registers.

Flora and Fauna

The Council's biodiversity mapping identifies a riparian corridor on the western part of the land along South Creek as "Connectivity Between Significant Vegetation". Council advised that the planning proposal is unlikely to adversely affect any critical habitat or threatened species.

It is considered that the impact of future development on the vegetation community on the land can be adequately addressed at development assessment stage.

Water Quality

In relation to the potential for future development of the land to impact on water quality, Council considered that there is unlikely to be any adverse impact on water quality of South Creek (and the Hawkesbury Nepean system).

It is considered that any future development on the land will be subject to the provisions in the draft LEP 2012 which deals with water quality issues. In addition, it is recommended that Council consult the Hawkesbury - Nepean Catchment Management Authority and the Office of Environment and Heritage.

Flooding

Issues involving flooding are discussed under S117 Direction 4.3 Flood Prone Land.

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Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 Month** Delegation : **DG**

Public Authority : **Hawkesbury - Nepean Catchment Management Authority**
Consultation - 56(2)(d) : **Office of Environment and Heritage**
: **NSW Rural Fire Service**
: **State Emergency Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
TAG A - Council's_planning_proposal.pdf	Proposal	Yes
TAG A - Revised_planning_proposal.pdf	Proposal	Yes
TAG_B_-_Zoning_Extracts.pdf	Proposal	Yes
TAG_C_-_Location_maps.pdf	Map	Yes
TAG_E_-_Draft_Hawkesbury_LEP_2012_relevant_maps.pdf	Map	Yes
TAG_D_-_Current_Zoning_map.pdf	Map	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.2 Rural Zones**
3.4 Integrating Land Use and Transport
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection

Additional Information : **It is recommended that the proposal proceeds with the following conditions:**

(1) The Director General agrees that any inconsistency with section

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117 directions:

- . 4.1 Acid Sulfate Soils; and
- . 4.3 Flood Prone Land;

are justified as minor matters.

(2) Consultation with the Commissioner of the NSW Rural Fire Service, in accordance with S.117 Direction 4.4 Planning for Bushfire Protection, prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made;

(3) Community consultation under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for 14 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009);

(4) consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Department of Environment and Heritage;
- Hawkesbury-Nepean Catchment Management Authority; and
- Commissioner of NSW RFS;

(5) a public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act; and

(6) the timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Supporting Reasons :

Given the adjoining landuses and elevated flood evacuation route bisecting the site, it is considered that the proposed RU1 Primary Production Zone better reflects the existing character of the locality and will permit a broader range of land uses related to agricultural production.

Signature:



Printed Name:

DERRYN JOHN

Date:

21/5/12