

PLANNING PROPOSAL

M MONTGOMERY
P PLANNING
S SOLUTIONS

Lot 12 DP 1138749 (N0. 46)
Mulgrave Road Mulgrave



May 2012



CONTENTS

Introduction.....	1
Description of Site and Surrounds	2
Existing Zone.....	5
Part 1 – Objectives or Intended Outcomes	7
Part 2 – Explanation of Provisions	7
Part 3 – Justification	7
Section A – Need for the planning proposal.....	7
Section B – Relationship to strategic planning framework.....	7
Section C – Environmental, social and economic impact.....	14
Section D – State and Commonwealth Interests.....	16
Part 4 – Community Consultation	17
Conclusion.....	17

Attachments

1. Review of Planning Circulars
2. LEP Evaluation Criteria

This Planning Proposal was prepared by Robert Montgomery, Principal, Montgomery Planning Solutions in accordance with “A guide to preparing planning proposals” published by the NSW Department of Planning, 2009.



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Date: May 2012
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Introduction

Montgomery Planning Solutions has been engaged by the owner of the land to prepare this Planning Proposal to Hawkesbury City Council. The current owner only recently purchased the land, which has become somewhat rundown and neglected over a number of years by previous owners. A preliminary discussion was held with the Council's Director of City Planning in January 2009, where no objection was raised in principle to the proposal.

The land, which is 26.42 hectares in area, is currently zoned Rural Living under the provisions of Hawkesbury Local Environmental Plan 1989. The land is dissected by the Hawkesbury Valley Way flood evacuation road, which is elevated some metres above the ground. The land contains a dwelling, large farm building and farm office.

The Rural Living zone is somewhat of an anomaly in this location due to the surrounding land uses, which include the Windsor Sewage Treatment Plant, Elf Farms mushroom substrate production facility and various industrial activities. The current Rural Living zone precludes a number of uses which are suitable for the land.

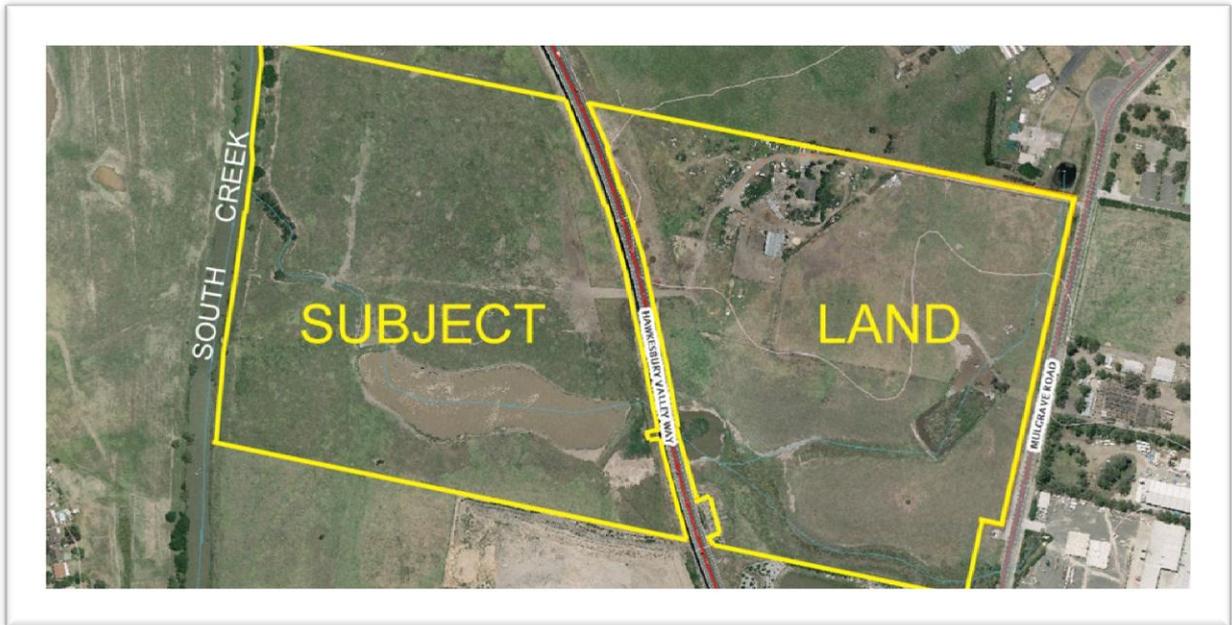
This planning proposal is prepared in accordance with "*A guide to preparing planning proposals*", 2009, published by the then NSW Department of Planning. This document also includes responses to various matters raised by the Council and the NSW Department of Planning and Infrastructure.

It is proposed that a draft local environmental plan be prepared to rezone the subject the land to RU1 Primary Production under Hawkesbury Draft LEP 2011.

Description of Site and Surrounds

The land is described as Lot 12 DP 1138749 (No. 46) Mulgrave Road Mulgrave. The land is 26.42 hectares in area and is rectangular in shape. The land has a frontage to Mulgrave Road of 308.8m to Mulgrave Road.

Figure 1: Site Boundary. Source:– NSW LPMA SIX Viewer



It is noted that there is no constructed access and it appears that there is no easement or right of way in favour of the subject land. Access under the roadway is therefore gained on an informal basis only.

The land 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 minor watercourse runs through the property and incorporates three dams. A dwelling house and farm buildings are located on the higher parts of the land.

Figure 2: View West towards Hawkesbury Valley Way



Figure 3: Dam near Mulgrave Road



Figure 4: Dwelling and Farm Buildings (view from Mulgrave Road)



Figure 5: Farm buildings



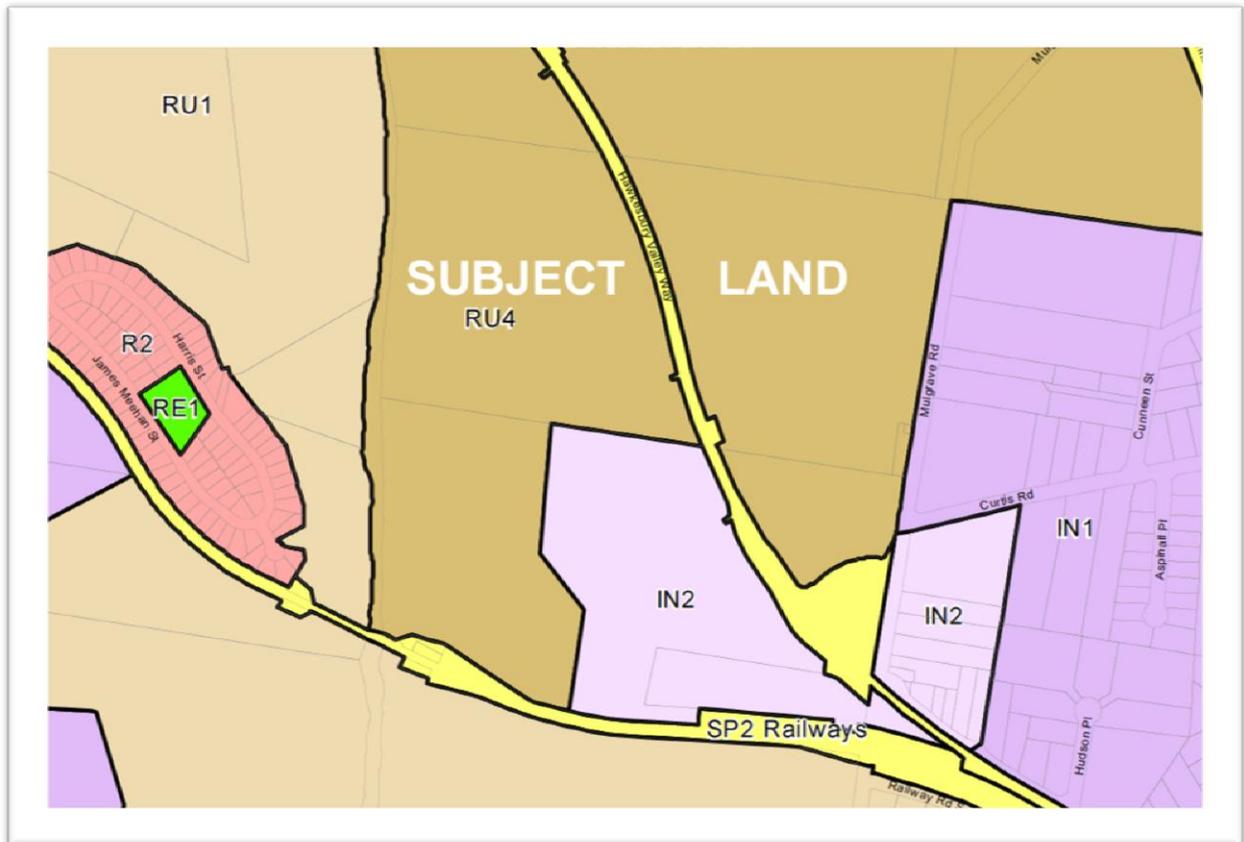
Figure 7: View to northwest across subject land from Mulgrave Road



Existing Zone

The land is zoned Rural Living under the provisions of Hawkesbury Local Environmental Plan 1989. At the time of preparing this planning proposal, Hawkesbury draft LEP 2011 is very close to gazettal. Therefore the proposed RU4 zone under the draft LEP is relevant. Figure 8 below shows the zoning of the subject land and surrounding land as proposed by draft Hawkesbury LEP 2011.

Figure 8: Extract from Draft Hawkesbury LEP 2011 Land Zoning Sheet 8



The RU4 land use table is reproduced on the following page.

Zone RU4 Rural Small Holdings

1 Objectives of zone

- To enable sustainable primary industry and other compatible land uses.
- To maintain the rural and scenic character of the land.
- To ensure that development does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To ensure that development occurs in a manner 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.

2 Permitted without consent

Bed and breakfast accommodation, Environmental Protection Works; Extensive Agriculture (excluding within an area mapped as Environmental Constraint Area); Home Occupations

3 Permitted with consent

Animal Boarding and Training Establishments; Boat Sheds, Boarding Houses; Building Identification Signs, Business Identification Signs; Cemeteries; Child Care Centres; Charter and Tourism Boating Facilities, Community Facilities; Dual Occupancies (Attached); Dwelling Houses; Educational Establishments; Entertainment Facilities; Environmental Facilities; Extensive Agriculture (within an area mapped as Environmental Constraint Area); Farm Buildings; Farm Stay Accommodation; Flood Mitigation Works; Food and Drink Premises; Home Based Child Care; Home Industries; Horticulture; Intensive Livestock Agriculture; Intensive Plant Agriculture; Landscape and Garden Supplies; Moorings, Places of Public Worship; Public Administration Buildings; Recreation Areas; Recreation Facilities (indoor); Recreation Facilities (outdoor); Registered Clubs; Roads; Roadside Stalls; Rural Supplies; Rural Workers Dwellings; Tourist and Visitor Accommodation; Veterinary Hospitals; Water Recreation Structures, Waterbodies (artificial)

4 Prohibited

Any development not specified in item 2 or 3

Part 1 – Objectives or Intended Outcomes

The objective of the planning proposal is to provide a more suitable zoning for 46 Mulgrave Road Mulgrave to permit a broader range of land uses which are more in character with the locality.

The intended outcome is that the owner of the land will lodge a development application to establish a truck depot on part of the land.

Part 2 – Explanation of Provisions

It is intended to amend Hawkesbury Local Environmental Plan 2011 Land Zoning Map Sheet 18 to identify the zoning of the land as RU1 – Primary Production.

Part 3 – Justification

Section A – Need for the planning proposal

1. *Is the planning proposal a result of any strategic study or report?*

No. The planning proposal is a result of a formal request on behalf of the owner of the land.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Yes. It is considered that the planning proposal is the best means of achieving the objective and intended outcome for the land.

3. *Is there a net community benefit?*

In our submission, there are no external benefits or costs associated with the proposal. The planning proposal applies to a single parcel of land only. The proposal is to change from one rural zone to another (ie RU4 to RU1). The change in zoning shifts the focus of land use from residential activity to agricultural production and related industries. In particular, the intended outcome is to establish a truck depot on part of the land. Considering the surrounding land uses and major road infrastructure, the RU1 zone is more suited to the land.

Section B – Relationship to strategic planning framework.

4. *Is the planning proposal consistent the objectives and actions contained within the applicable regional or subregional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

The applicable subregional strategy is the North West Subregional Strategy, prepared under the 2005 *City of Cities: A Plan for Sydney's Future* (Metropolitan Strategy).

The Strategy identifies an employment capacity target for Hawkesbury of 3,000 new jobs by 2031. This planning proposal, (although applying to a single parcel of land only) will assist in adding to employment land stocks and meeting the target.

The proposal would fall within Category 2 Employment Lands – “Land with Potential To Allow for a Wider Range of Employment Uses”. The land is within an area which is well serviced by public transport (being located just over 400 metres from Mulgrave Rail Station) and flanked on two sides by industrial development and on one side by the Windsor Sewage Treatment Plant.

Figure 9: Subject Land and Surrounding Uses. Source: NSW LPMA SIX Viewer



It is therefore submitted that the planning proposal is consistent with the applicable sub-regional strategy.

5. Is the planning proposal consistent with the local Council’s Community Strategic Plan or other local strategic plan?

The Council’s Community Strategic Plan 2010 – 2020 is a high level document which contains “directions” and “strategies”, rather than specific actions. In relation to “supporting business and local jobs”, the strategy contains the following relevant directions and strategies:

Directions:

- Plan for a range of industries that build on the strength of the Hawkesbury to stimulate investment and employment in the region.

- Offer an increased choice and number of local jobs and training opportunities to meet the needs of Hawkesbury residents and to reduce their travel times

Strategies:

- Implement Employment Lands Strategy

In my submission the planning proposal satisfies the relevant Directions of the Community Strategic Plan. In relation to the Hawkesbury Employment Land Strategy¹, it is considered that the proposal is consistent with Strategy 6: “Investigate the nature of employment activities on non-employment zoned lands and their contribution to agriculture and tourism sectors”.

The subject land was not specifically included in the Employment Lands Study, as the brief was to examine existing industrial and commercial land, some specific sites and gateway areas generally. However, there is no doubt that the current Rural Living zone is not appropriate due to the flood prone nature of the land, the surrounding land uses and the elevated Hawkesbury Valley Way flood evacuation route which bisects the land.

There is the potential for the land to contribute to employment opportunities in the agricultural sector if it was zoned appropriately. Strategy 6 of the Employment Lands Study is relevant in terms of the subject land:

“Strategy 6: Investigate the nature of employment activities on non-employment zoned lands and their contribution to agriculture and tourism sectors.

The economic analysis found that there are a significant number of jobs located outside the LGA south area and on agriculturally zoned land. Manufacturing and accommodation and other tourism related jobs are additional to agriculture jobs. A deeper picture of the LGAs economy can only be gained through comprehensive analysis of all aspects of employment. This should include a detailed analysis of industrial activities on nonindustrial zoned land such as ‘rural industries’ on mixed agricultural land.”²

Although Hawkesbury City Council has not carried out this further analysis to date, it is clear that the subject site can make a positive contribution to employment, with the appropriate zone applied to the land.

6. Is the planning proposal consistent with applicable state environmental planning policies?

A review of state environmental planning policies reveals that the following may be applicable and relevant:

- SEPP 30 – Intensive Agriculture.
- SEPP 55 – Remediation of Land
- SREP No. 20 – Hawkesbury - Nepean River

SEPP 30 – Intensive Agriculture

The planning proposal is consistent with this SEPP.

¹ Hawkesbury Employment Lands Strategy, SGS Economics and Planning, adopted in December 2008.

² IBID, pg 122

SEPP 55 – Remediation of Land.

The land has been used for agriculture for many years. The planning proposal does not rezone the land for residential use or for any purpose which may expose people to any potential contamination. In fact the proposal will reduce this risk by zoning the land as *Mixed Agriculture*.

Notwithstanding, it is noted that the Department of Planning Local Plan Making Guidelines states as follows:

In some cases it will be necessary to undertake technical studies or investigations to justify different aspects of a planning proposal. Generally, these studies or investigations should not be carried out in the first instance. Instead, the issues giving rise to the need for these studies or investigations should be identified in the planning proposal. The initial gateway determination will then confirm the studies or investigations required and the process for continuing the assessment of the proposal, including whether it will need to be resubmitted following completion of the studies or investigations.

In terms of this planning proposal, it is considered that no study is warranted in order to progress the draft LEP. Any future development application for the use of the land may then require further investigation.

SREP No. 20 – Hawkesbury - Nepean River

In accordance with clause 120 of Schedule 6 to the Environmental Planning and Assessment Act 1979, this REP is deemed to be a State Environmental Planning Policy.

The aim of SREP 20 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.

Part 2 of SREP 20 provides general planning considerations, specific planning policies and recommended strategies. There are a number of strategies which may be relevant in the context of any future development application for a land use permitted in the Mixed Agriculture zone.

2) Environmentally sensitive areas

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.

Note. *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.*

It is considered that the planning proposal will result in appropriate provisions contained within Hawkesbury LEP 2011 to ensure that any future land use is managed in an appropriate manner.

(3) Water quality

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 future. When water quality goals are set by the Government these are to be the goals to be achieved under this policy.

Note. Aquatic ecosystems and primary contact recreation have the same meanings as in the document entitled Australian Water Quality Guidelines for Fresh and Marine Waters, published in 1992 by the Australian and New Zealand Environment and Conservation Council.

It is considered that the Planning Proposal will not create adverse impact on water quality. Any subsequent development proposal will need to incorporate suitable protection mechanisms in this regard.

(6) Flora and fauna

Policy: Manage flora and fauna communities so that the diversity of species and genetics within the catchment is conserved and enhanced.

The land is cleared pasture, with a few trees associated with the dwelling house and in the vicinity of the dams. It is considered that future development in accordance with the proposed Mixed Agriculture zone would not create adverse impact in terms of flora and fauna.

(7) Riverine scenic quality

Policy: The scenic quality of the riverine corridor must be protected.

It is considered that the proposed rezoning is consistent with the Riverine Scenic Quality policy of SREP 20.

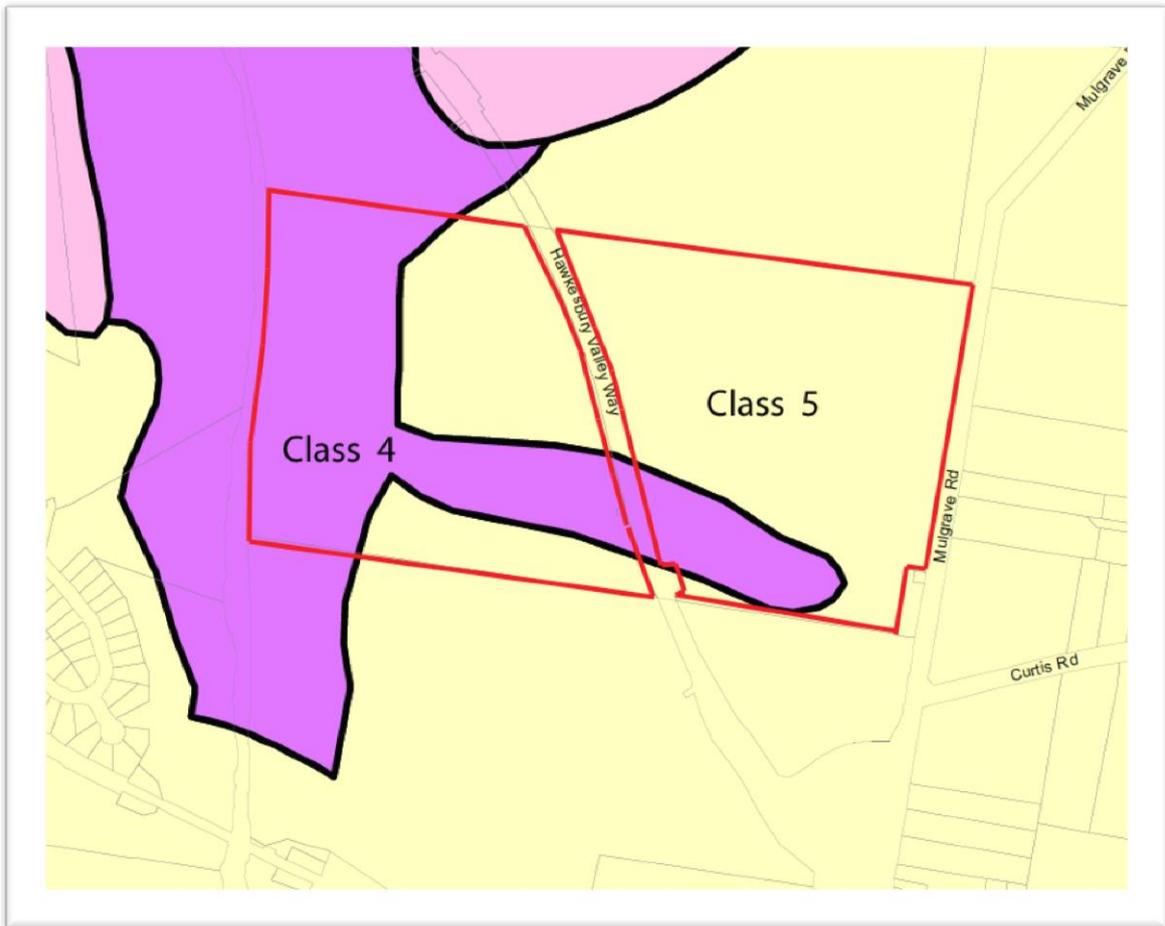
It is submitted that the Planning Proposal is consistent with the relevant strategies and policies contained within SREP 20.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The following table lists the S117 Directions which are relevant to the proposal, with commentary re consistency.

Direction	Consistency	Reason
1.2 Rural Zones	Yes	<p>The draft LEP does not rezone land to residential, business, industrial, village or tourist zone.</p> <p>The draft LEP does not contain provisions which will increase the permissible density of land within a rural zone.</p> <p>The subject land does not have frontage to a classified road.</p>
3.4 Integrated Land Use and Transport	Yes	<p>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.</p>
4.1 Acid Sulfate Soils	Yes	<p>Figure 10 below is an extract from the Council's Acid Sulfate Map, which shows that the property is part Class 4 and Part Class 5.</p> <p>Hawkesbury LEP 1989 contains the Model acid sulfate clause (37A). No works are proposed as part of the draft LEP which would trigger an assessment of acid sulfate soils. Notwithstanding, the proposal is considered to be of minor significance and is therefore consistent.</p>
4.3 Flood Prone Land	Yes	<p>The draft LEP does not rezone land to residential, special use or special purpose zone.</p> <p>The draft LEP does not contain any of the provisions listed in clause (6) (a) to (e).</p> <p>The draft LEP is consistent with clauses (4), (7) and (8).</p>

Figure 10: Extract from HCC DLEP 2011 Acid Sulfate Sheet 18



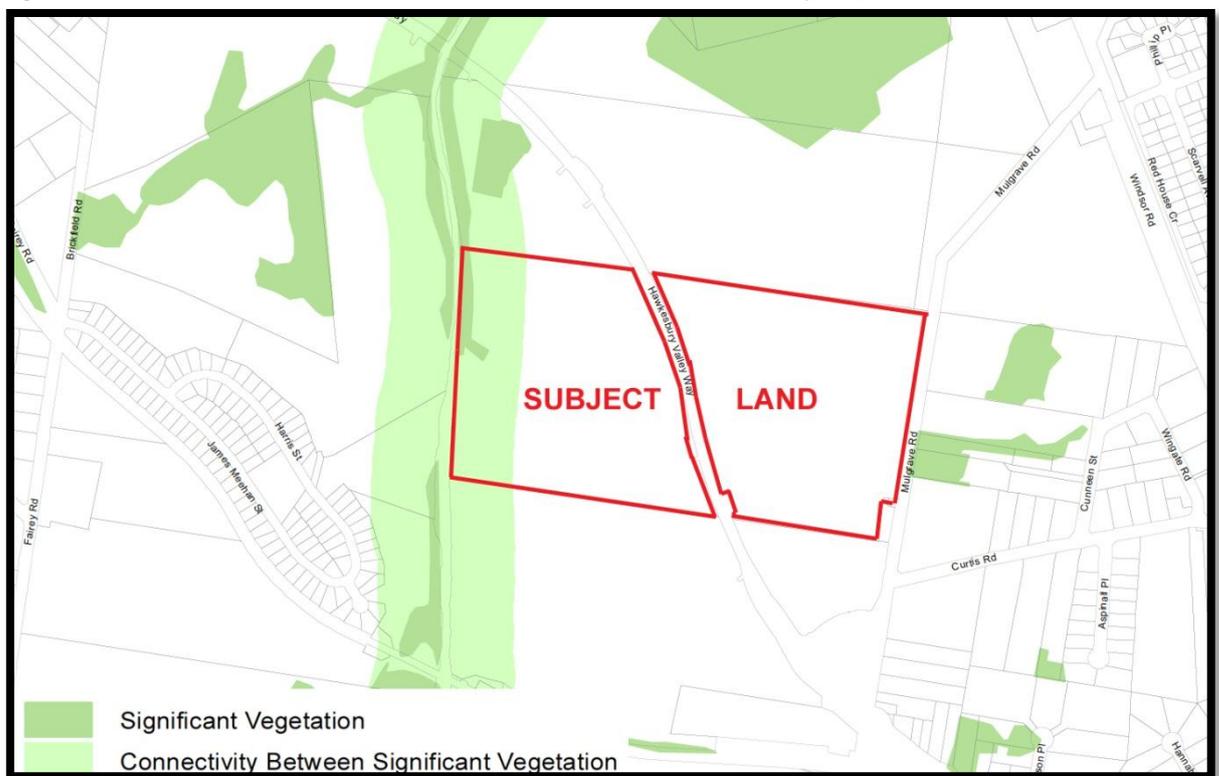
Section C – Environmental, social and economic impact.

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Council’s biodiversity mapping identifies a riparian corridor along South Creek as “Connectivity Between Significant Vegetation”.

The remainder of the land is not identified as containing any significant vegetation. Accordingly, the proposal is unlikely to adversely affect any critical habitat or threatened species. Figure 11 is an extract from the natural resources and biodiversity map held by the Council.

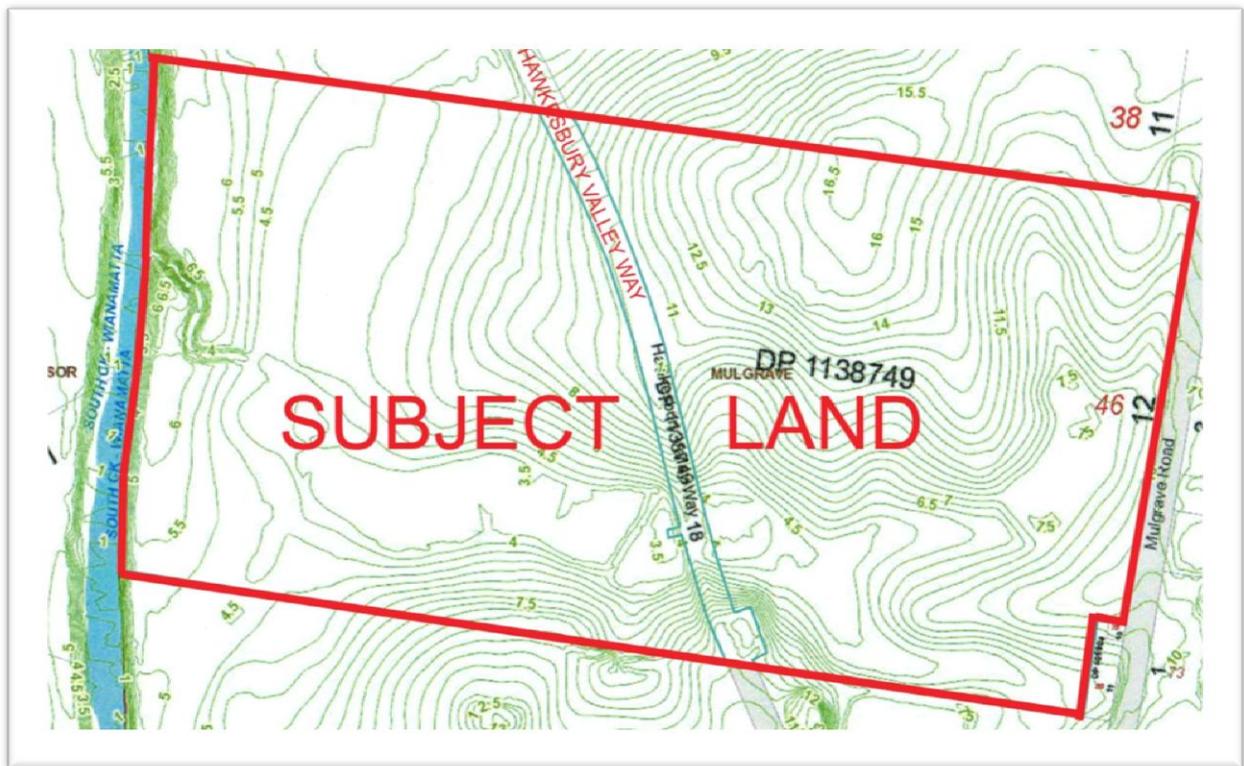
Figure 11: Extract form HCC DLEP 2011 Natural Resources Biodiversity Map Sheet 18



9. Are there any other likely environmental effects as a result of the planning proposal and how are these to be managed?

The land is below the 1-in-100 year flood level of 17.3m AHD. The land 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. This is detailed in the contour map shown below at Figure 12.

Figure 12: Contour Map 0.5m Intervals. Source: Hawkesbury City Council



The New South Wales Floodplain Development Manual, published in April 2005, states;

“The primary objective of the New South Wales Flood Prone Land Policy, as outlined below, recognises the following two important facts:

- Flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development; and
- If all development applications and proposals for rezoning of flood prone land are assessed according to rigid and prescriptive criteria, some appropriate proposals may be unreasonably disallowed or restricted, and equally quite inappropriate proposals may be approved.”³

The Manual also includes the following policy statement at page 1:

“The primary objective of the policy is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods, utilising ecologically positive methods wherever possible. That is:

- A merit approach shall be adopted for all development decisions in the floodplain to take into account social, economic and ecological factors, as well as flooding considerations.”

The Manual clearly advocates that decisions should be made on the merits of each specific proposal. In my opinion, the flood prone nature of the land renders it unsuitable for rural

³ Floodplain Development Manual: the management of flood liable land, NSW Government, April 2005, pg 1.

residential development in accordance with the current Rural Living zone. The land is better suited to the RU1 zone, which permits a range of uses which are more compatible with the frequency of flooding by South Creek. It is considered that the location of any buildings which may be constructed at some future time would be limited to the higher areas of the land between Hawkesbury Valley Way and Mulgrave Road.

In relation to the potential for future development of the land to impact on water quality, it is considered that there is unlikely to be any adverse impact on water quality due to the following:

- Any future truck depot building(s) and hard stand area will be located on the higher sections of the land between Hawkesbury Valley Way and Mulgrave Road, a minimum of some 350m from South Creek.
- Any future truck depot development will require suitable stormwater management, including a first flush system to contain any potential contaminants, and to ensure that no additional stormwater is conveyed to South Creek.
- Any future intensive agriculture on the lower areas of the land will be subject to the development application process. This would usually require runoff to be captured and re-used for farming activities.
- South Creek is by no means pristine. It drains a number of sewage treatment plants located upstream of the Hawkesbury LGA. Also the Windsor sewage treatment plant (operated by Hawkesbury City Council) is located on the adjoining land immediately downstream.

It is therefore submitted that the planning proposal is unlikely to impact on the water quality of South Creek (and the Hawkesbury Nepean system).

10. How has the planning proposal adequately addressed any social and economic effects?

The social and economic effects of the proposal are limited to those of the land itself. That is the land is currently zoned inappropriately as *Rural Living*. The proposal will have a positive social and economic effect by applying a more appropriate zone to the land and therefore allowing the land to be used for its best economic use. It is noted that the land has not been identified as containing any items of European or aboriginal cultural heritage.

Section D – State and Commonwealth Interests

11. Is there adequate public infrastructure for the planning proposal?

The land and the surrounding industrial area is serviced by electricity, telephone and communications, reticulated water and sewer. All of these services are currently connected to the land, and satisfy the current residential and farming needs of the property. The likely demand for services created by future land uses permissible in the RU1 zone would be minimal. In particular, a truck depot and more intensive agriculture would not be high users of the existing available services.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

As the gateway determination has not yet been issued, public authorities have not been consulted at this stage.

Part 4 – Community Consultation

The Council has suggested that a public exhibition period of 14 days would be sufficient community consultation for this planning proposal.

Conclusion

It is considered that this planning proposal satisfies all of the requirements for a Gateway Determination by the LEP Review Panel. In summary, the proposal is justified for the following reasons:

1. The Rural Living zone is clearly no longer appropriate for the site, considering the flood prone nature of the land, the surrounding land uses and the impacts of the elevated Hawkesbury Valley Way flood evacuation route.
2. The residential or rural living amenity of the land is extremely poor.
3. The land has the appropriate physical characteristics to support more intensive agriculture or other uses permitted in the Mixed Agriculture zone.
4. Intensive agriculture or other suitable uses may be inconsistent with the objectives of the current Rural Living zone.
5. The proposed rezoning will make use of the existing available infrastructure.
6. The proposal is appropriate in terms of the NSW Flood Plain Development Manual.
7. There will be no adverse environmental impacts resulting from future likely land uses permissible in the RU1 zone.

PS 06-005: Local environmental plan review panel – 16 February 2006

The Circular explains the role of the LEP review panel and sets out the evaluation criteria to be used. *Attachment 2* is the LEP pro-forma evaluation criteria for spot rezoning with comments relevant to the proposal. It is considered that the draft LEP would meet the evaluation criteria.

PS 06-008: Standard Instrument (LEPs) Order 2006 – 3 April 2006

The Circular gives an overview of the Order and its implications for preparing local environmental plans. Hawkesbury City Council has prepared its draft template LEP conversion, placed it on public exhibition and adopted a final draft LEP in the form of Draft Hawkesbury LEP 2011. The draft LEP is currently with the NSW Department of Planning and Infrastructure awaiting gazettal.

This planning proposal recommends that the land be rezoned to *RU1 Primary production* under Hawkesbury LEP 2011. **PS 06-013: Local environmental studies – 2 May 2006**

The Circular explains the processes used to identify when a local environmental study is required for an amendment to a local environmental plan. The Circular gives guidance on process, the information required to support rezoning applications, who prepares a local environmental study, terms of reference and what should occur with material prepared on behalf of a proponent.

In particular, the Circular states:

“The decision to rezone land and the amount of information required to make this decision is a matter for council. However, it is not appropriate that detailed local environmental study style rezoning applications be expected before council or the Director-General has agreed to proceed with a rezoning.

As such councils should refrain from asking for excessive amounts of detail before a proposal is considered by council and the Director-General.”

The Circular then provides a list to be used as a guideline for information to be provided. It is submitted that this report contains sufficient information to allow Council to resolve to prepare a draft local environmental plan.

PS 06-015: Spot rezoning – 15 June 2006

The Circular restates the evaluation criteria set down in PS 06-005 and concludes that the Department will continue to assess spot rezoning proposals on a merit basis.

It is submitted that the proposal has sufficient merit to warrant consideration under this Circular.

LEP Pro-forma Evaluation Criteria

Category 1: Spot Rezoning LEP

1.	Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)?	The LEP will be compatible with the draft North West Subregional Strategy. This is a minor spot rezoning, with no impact in terms of regional strategy.
2.	Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (s.117) directions?	The LEP will be consistent with State and Regional Policies. In regional terms the proposal is relatively minor and should be considered on merit.
3.	Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub regional strategy?	No.
4.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	The LEP may facilitate a permanent employment generating activity. There is no loss of employment land.
5.	Will the LEP be compatible/complementary with surrounding land uses?	The LEP will be compatible and complementary with the surrounding land uses. The surrounding uses are a mix of special uses and industrial.
6.	Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?	The land is somewhat unique in terms of physical characteristics and location. The draft LEP is unlikely to create a precedent.
7.	Will the LEP deal with a deferred matter in an existing LEP?	No.
8.	Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Yes. Land adjoining to the south is proposed to be zoned IN2 under draft Hawkesbury LEP 2009. Land on the corner of Mulgrave and Windsor Roads was recently rezoned to Light Industry 4(b) under Amendment 157 to HLEP 1989.