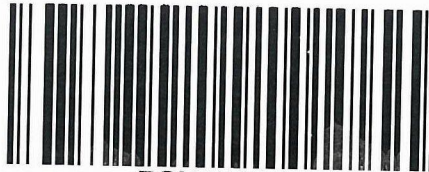


Hawkesbury City Council

Our Ref: LEP89004/10

21 September 2011



PCU026295



366 George Street
(PO Box 146)
Windsor NSW 2756
Phone: 02 4560 4444
Facsimile: 02 4587 7740
DX: 8601 Windsor

Mr Peter Goth
Regional Director
Sydney West
Department of Planning and Infrastructure
Locked Bag 5020
PARRAMATTA NSW 2124

Department of Planning
Received
22 SEP 2011
Scanning Room

Dear Mr Goth

Planning Proposal to rezone Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave

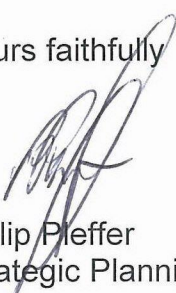
Council at its meeting of 13 September 2011 considered a report regarding a planning proposal to rezone Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave and resolved as follows:

That the planning proposal for Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave be supported and forwarded to the Department of Planning and Infrastructure for a "gateway" determination.

Accordingly in accordance Section 56(1) of the *Environmental Planning & Assessment Act 1979* a copy of the Council report including the planning proposal is enclosed for the Department's consideration.

Should you have any enquiries in relation to this matter please contact me on (02) 4560 4544.

Yours faithfully


Philip Pfeffer
Strategic Planning Co-ordinator

Where people make the difference.

All communications to be addressed to the General Manager
P.O. Box 146, Windsor NSW 2756
Website: www.hawkesbury.nsw.gov.au
E-mail: council@hawkesbury.nsw.gov.au
Hours: Monday to Friday 8.30am - 5.00pm

English

This document contains important information.

If you do not understand it please contact the Telephone Interpreting Service on 131 450 and ask them to contact Hawkesbury City Council on 02 4560 4444.

Arabic

هذا المستند يحتوي على معلومات هامة.
إذا لم تفهمه، يرجى الاتصال بخدمات الترجمة الهاتفية
على 131 450 وطلب منهم الاتصال
بمجلس مدينة هوكسبوري على 02 4560 4444.

Chinese

這份文件含有重要的資訊。如果你不懂它，

請致電 131 450，電話諮詢服務。

要求他們致電 02 4560 4444。

聯絡 Hawkesbury City Council 查詢。

Hindi

यह दस्तावेज़ महत्वपूर्ण जानकारी के लिए है।
यदि आप इसे समझ नहीं सकते, तो कृपया 131 450
पर कॉल करें और उनसे कहें कि वे Hawkesbury City Council
से संपर्क करें। 02 4560 4444 पर कॉल करें।

Filipino/Tagalog

Ang dokumentong ito ay mayroong mahalagang impormasyon.
Kung hindi niyo maintutuhan ito paksaagan ang Telephone
Interpreting Service sa 131 450 at iibigay sa kanila na (angon)
ang Hawkesbury City Council sa 02 4560 4444.

IsiXhosa

Ong dokumenti sikhethi xa na hlobozako.
Ako ne go fezhakile xa onikwa xa ee javha na ntu haka xa
kokuwawo pefu lelelona (Telephone Interpreting Service) na
131 450 i pobazigile xa go khatshirwa Hawkesbury City Council na
02 4560 4444.

[Agenda Report](#)

ACTION ITEM

ADOPTED

At the ORDINARY Meeting held on *13 September 2011*

User Instructions

To view the original Agenda Item, double-click on 'Agenda Report' blue hyperlink above.

Resolved Items Action Statement

Action is required for the following item as per the Council Decision or Resolution Under Delegated Authority.

ITEM: 203 **CP - Planning Proposal for Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave - (95498)**

MOTION:

RESOLVED on the motion of Councillor Rasmussen, seconded by Councillor Mackay.

Refer to RESOLUTION

3 RESOLUTION:

RESOLVED on the motion of Councillor Rasmussen, seconded by Councillor Mackay.

That the planning proposal for Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave be supported and forwarded to the Department of Planning and Infrastructure for a "gateway" determination.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

For the Motion	Against the Motion
Councillor Bassett	Nil
Councillor Calvert	
Councillor Conolly	
Councillor Ford	
Councillor Mackay	
Councillor Rasmussen	
Councillor Reardon	

Councillor Tree	
Councillor Whelan	

Councillors Paine, Porter and Williams were absent from the meeting.

ITEM: CP - Planning Proposal for Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave - (95498)

REPORT:

Executive Summary

This report discusses a planning proposal which seeks to rezone Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave from Rural Living to Mixed Agriculture under Hawkesbury Local Environmental Plan 1989 (LEP 1989) or RU1 Primary Production under draft Hawkesbury Local Environmental Plan 2011 (dLEP 2011).

Consultation

The planning proposal has not been exhibited. If the planning proposal is to proceed it will be exhibited in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and associated Regulations.

Site and Surrounds

The site is generally rectangular in shape and has an area of approximately 26.42ha. The site fronts Mulgrave Road to the east with industrial zoned land beyond, the McGraths Hill Sewage Treatment Plant to the north, South Creek to the west with Mixed Agriculture zoned land beyond, a mushroom substrate production facility to the south. The Hawkesbury Valley Way Flood Evacuation Route/Jim Anderson Bridge passes through the middle of the site.

Most of the site is cleared low lying flood liable land with an elevation less than 11.1m AHD (i.e the 1 in 5 year flood event height). A small raised part of the site is located near the northern boundary between the Jim Anderson Bridge and Mulgrave Road. This area has a maximum height of approximately 16.5m AHD and contains a dwelling, various sheds, animal pens, motor vehicles, and assorted farm machinery.

A minor water course runs through the property and incorporates three dams.

The site falls within the South Creek Catchment Area and is partly within an area of Regional Scenic Significance (Landscape Unit No 3.3.1) under of *Sydney Regional Environmental Plan No. 20 Hawkesbury - Nepean River (No.2 – 1997)*.

Description of Proposal

The planning proposal seeks to rezone Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave from Rural Living to Mixed Agriculture under Hawkesbury Local Environmental Plan 1989 (LEP 1989) or RU1 Primary Production under draft Hawkesbury Local Environmental Plan 2011 (dLEP 2011).

The applicant for the planning proposal is Montgomery Planning Solutions (MPS). MPS claim that the current Rural Living zone is somewhat of an anomaly in this location due to the surrounding land uses, which include the sewage treatment plant, mushroom substrate production facility and various industrial uses. Further MPS claim the current Rural Living zone precludes a number of uses which are suitable for the site and that the objectives of the Rural Living zone are not valid in respect of the subject land. In particular, MPS note that road transport terminals, rural industries, sawmills, stock and sales yards and truck depots are prohibited in the Rural Living zone however permitted with consent in the Mixed Agriculture zone.

The objective of the planning proposal is:

To provide a more suitable zoning for 46 Mulgrave Road Mulgrave, than the current Rural Living Zone, which has more appropriate objectives and which will permit a broader range of land uses which are more in character with the locality.

MPS offer the following justification for the rezoning:

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 severing of the land by the elevated Hawkesbury Valley Way flood evacuation route.*
2. *The residential 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 existing infrastructure.*
6. *The proposal is appropriate in terms of the NSW Flood Plain Development Manual.*
7. *There will be no adverse environmental or visual impact as a consequence of more intensive use of the land.*

NSW Department of Planning's Gateway Process

In July 2009, the NSW Government changed the way that local environmental plans (LEPs) are developed and approved. This system is known as the 'gateway' plan-making process.

The gateway process has the following steps:

Planning proposal - This is prepared by a Council or the Minister for Planning and Infrastructure and is to explain the intended effect of a proposed local environmental plan and sets out the justification for making that plan.

Gateway - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultation occurs with relevant public authorities and, if necessary, the proposal is varied.

Community consultation - The proposal is publicly exhibited for a minimum period of either 14 or 28 days depending on the nature of the proposal. Any person making a submission may also request a public hearing be held.

Assessment - The relevant planning authority considers public submissions and the proposal is varied as necessary. Parliamentary Counsel then prepares a draft local environmental plan, the legal instrument.

Decision - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW legislation website.

Assessment

Section 117 Directions

Section 117 directions are issued by the Minister for Planning and Infrastructure and apply to planning proposals. Typically, the 117 directions will require certain matters to be complied with and/or require

consultation with government authorities during the preparation of the planning proposal. The key 117 directions, given the objective of the planning proposal, are as follows:

1.2 Rural Zones - planning proposals must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone and must not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).

The proposal seeks to change the rural zone of the land but not change it to a residential, business, industrial, special use or special purpose zone.

4.1 Acid Sulfate Soils - requires consideration of the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of Department of Planning and Infrastructure (DP&I). The subject site is partly Class 4 and partly Class 5 on the Acid Sulfate Soils Map held by Council. MPS notes that LEP 1989 contains the model acid sulfate clause, i.e. clause 37A. MPS advise that no works are proposed as part of the planning proposal that would trigger an assessment of acid sulfate soils and the proposal is of minor significance. Given the current provisions LEP 1989 and the minor nature of the planning proposal it is considered that a detailed consideration of the DP&I's Acid Sulfate Soils Planning Guidelines is not required at this stage. The DP&I will consider this as part of their "gateway" determination and if required can request further information/consideration of this matter.

4.3 Flood Prone Land - this direction applies when a planning proposal creates, removes or alters a zone or provisions that affect flood prone land. The planning proposal seeks to change the rural zone of the land. However, it does not affect the current flood related development controls in LEP 1989. Given the minor nature of the planning proposal it is considered that strict compliance with this direction is not required.

4.4 Planning for Bushfire Protection - requires consultation with the NSW Rural Fire Service and compliance with Planning for Bushfire Protection 2006.

7.1 Implementation of the Metropolitan Strategy - requires planning proposals to be consistent with the NSW Government's Metropolitan Strategy City of Cities, A Plan for Sydney's Future.

The 117 directions do allow for planning proposals to be inconsistent with the directions. In general terms a planning proposal may be inconsistent with a direction only if the DP&I is satisfied that the proposal is:

- (a) justified by a strategy which:
 - gives consideration to the objectives of the direction, and
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
- (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) is of minor significance.

State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are *State Environmental Planning Policy No. 55 Remediation of Land* and *Sydney Regional Environmental Plan No. 20 Hawkesbury - Nepean River (No.2 – 1997)*.

SEPP 55 requires consideration as to whether or not land is contaminated, and if so, is it suitable for future permitted uses in its current state or does it require remediation. The SEPP may require

Council to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines. MPS advise that the land has been used for agriculture for many years and the planning proposal does not rezone the land for residential use or for any purpose which may expose people to any potential contamination.

Further MPS note that the Department of Planning and Infrastructure's Local Plan Making Guidelines States:

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.

MPS claim that 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.

The aim of SREP No 20 (No. 2 – 1997) 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. This requires consideration of the impacts of the development on the environment, the feasibility of alternatives and consideration of specific matters such as environmentally sensitive areas, water quality, water quantity, flora and fauna, riverine scenic quality, agriculture, and metropolitan strategy. It is considered that the planning proposal achieves satisfactory compliance with the provisions of SREP No 20 (No. 2 – 1997).

Land Use Permissibility differences between Rural Living and Mixed Agriculture

Under the current provisions of LEP 1989 extractive industries, forestry, junk yards, mineral sand mines, mines, poultry farms, piggeries, road transport terminals, rural industries, rural workers dwellings, sawmills, stock and sale yards, truck depots are permitted in the Mixed Agriculture zone however prohibited in the Rural Living zone. Hence, rezoning the land to Mixed Agriculture would make these uses permitted with consent on the subject site.

The site is in a highly visible location, in particular when viewed from Jim Anderson Bridge, hence the visual impact of these uses would have to be carefully considered in the event of a development application being submitted to Council. Given the flood affectation of the land, its relatively low height and close proximity to South Creek it is considered that the potential for the site to be developed for these uses is limited and would most likely occur within the vicinity of the current structures on the land. Such development potential however could also act as an incentive to improve the current relatively poor appearance of the site and provide for a more visually acceptable and formalised structures, parking areas, and storage areas.

Draft Hawkesbury Local Environmental Plan 2011

Under Draft LEP 2011 the subject site is proposed to be zoned RU4 Rural Small Holding (now known as RU4 Primary Production Small Lots due to a recent amendment to the Standard Order Instrument). MPS request that the land be zoned RU1 Primary Production being the equivalent zone to Mixed Agriculture in LEP 1989.

The McGraths Hill Sewage Treatment Plant to the north of the site is proposed to be zoned RU4 and the mushroom substrate production facility to the south of the site is proposed to be zoned partly RU4 and IN2 Light Industry. If this rezoning occurs then the subject site would be an isolated parcel of RU1 Primary Production land on the eastern side of South Creek. So as to bring about consistency in zone application, however not to complicate or delay this rezoning, it is recommended that the zoning of the McGraths Hill Sewage Treatment Plant and the mushroom substrate production facility be considered in the event that the subject site be rezoned to RU1.

Flooding

As mentioned above, most of the site has an elevation less than 11.1m AHD (i.e the 1 in 5 year flood event height) and a small raised part of the site is located near the north boundary has a height of approximately 16.5m AHD. The 1 in 100 year flood event level for the area is 17.3m AHD.

MPS note that the New South Wales Floodplain Development Manual, April 2005, encourages a merit based approach for development decisions in the floodplain and argues that the flood prone nature of the land renders it unsuitable for rural residential development and that the land is better suited for the range of uses permitted in the Mixed Agriculture zone.

As mentioned previously there are a number of uses that are permissible with consent in the Mixed Agriculture zone which are prohibited in the Rural Living zone. The flood affectation of the land does not necessarily make the land unsuitable for these additional uses however the flood affectation will impact upon the location, design, scale and operation of any such development.

Conformance to Community Strategic Plan

The proposal is consistent with the Shaping our future together Directions statement;

- A balanced set of decisions that integrate jobs, housing, infrastructure, heritage, and environment that incorporates sustainability principles

Financial Implications

The applicant has paid the fees required by Council's Revenue Pricing Policy for the preparation of a local environmental plan.

Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

RECOMMENDATION:

That the planning proposal for Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave be supported and forwarded to the Department of Planning and Infrastructure for a "gateway" determination.

ATTACHMENTS:

- AT - 1** Planning Proposal for Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave prepared by Montgomery Planning Solutions dated November 2010 and letter by Montgomery Planning Solutions dated 12 January 2011.

**AT - 1 Planning Proposal for Lot 12 DP 1138749, 46 Mulgrave Road, Mulgrave
prepared by Montgomery Planning Solutions dated November 2010**

Planning Proposal



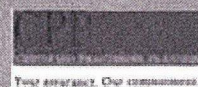
**Lot 12 DP 1138749 (No. 46)
Mulgrave Road Mulgrave**



**Submitted to
Hawkesbury City Council**

November 2010

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1. Introduction

Montgomery Planning Solutions has been engaged by the owner of the land to prepare a rezoning submission (Planning proposal) to Hawkesbury City Council. The current owner has recently purchased the land, which became 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 and it was conceded that the current Rural Living zone is not the most appropriate zone for the land.

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 bisected by the Hawkesbury Valley Way flood evacuation road, which is elevated some metres above the ground. The land contains a dwelling and large farm building.

The Rural Living zoning is somewhat of an anomaly in this location due to the surrounding land uses, which include the Windsor Sewerage 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 submission provides a review of environmental considerations and the information necessary to allow Council to make an informed decision with respect to preparing a draft local environmental plan.

It is recommended that Council prepare a draft local environmental plan to rezone the land to either:

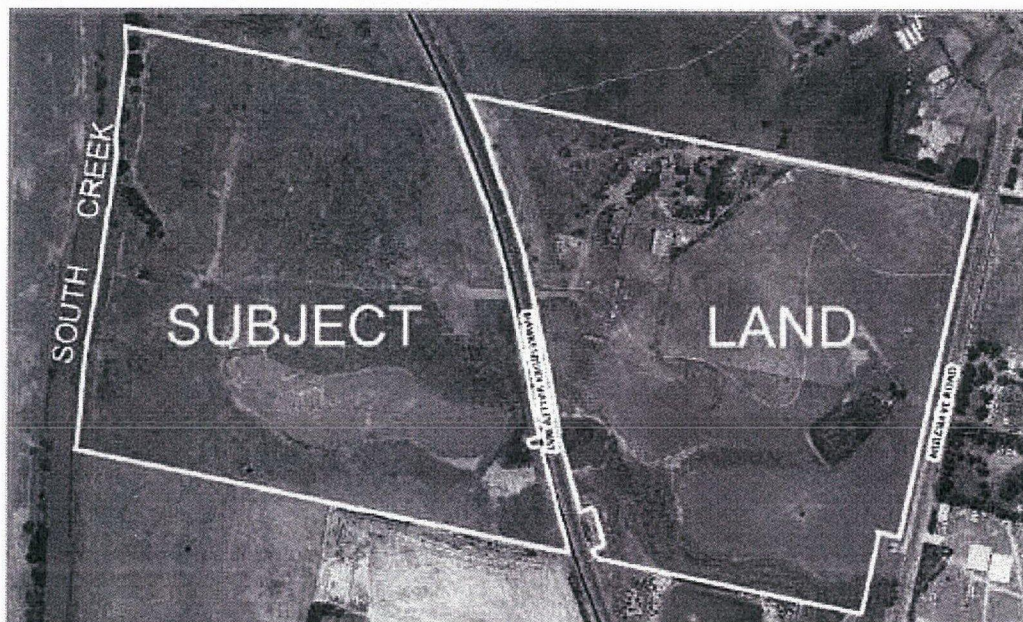
- Mixed Agriculture under Hawkesbury Local Environmental plan 1989; or
- RU1 Primary Production under Hawkesbury Draft LEP 2009 (when gazetted)

2. The Site

2.1 Description of Site

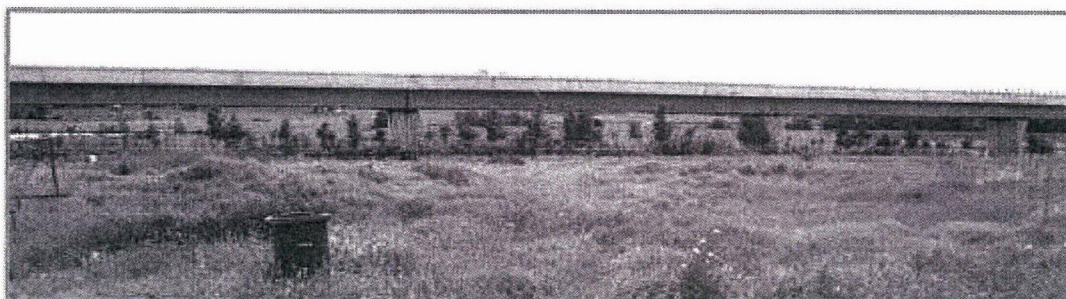
The land is described as Lot 12 DP 1138749 (No. 46) Mulgrave Road Mulgrave. The land is 26.42 hectares in area and is rectangular in shape. The land has a frontage to Mulgrave Road of 308.8m and a similar length frontage to South Creek.

Figure 1: Site Boundary Source – NSW LPMA SIX Viewer



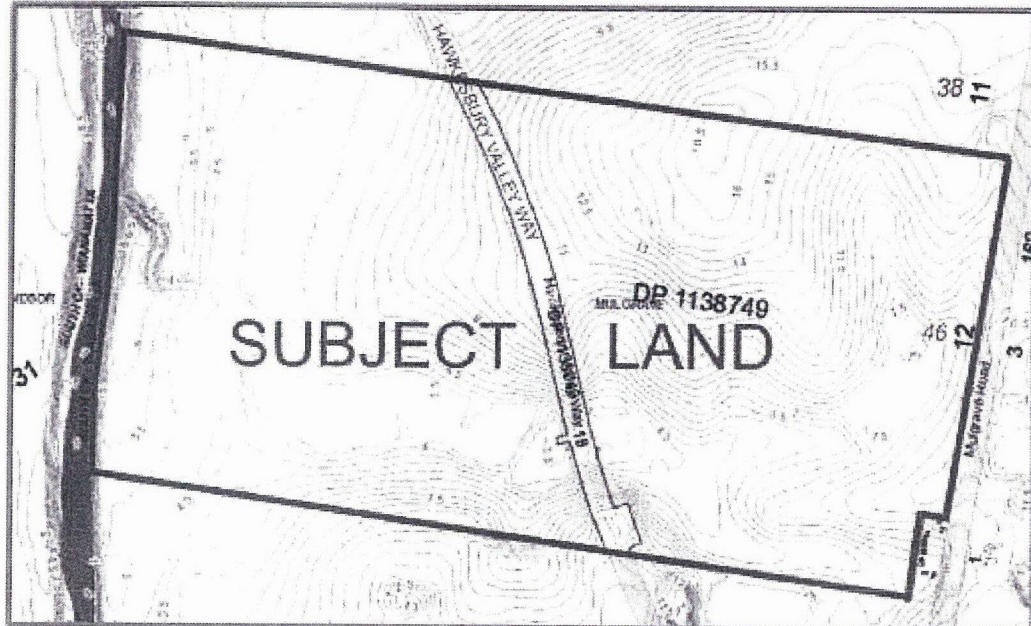
The land is severed by the Hawkesbury Valley Way flood evacuation route. The road is elevated in this section, and access from the eastern part to the western part of the land is gained under the elevated road. There is no constructed access and it appears that there is no easement or right of way in favour of the subject land. Access under the roadway is therefore gained on an informal basis only.

Figure 2: View West towards Hawkesbury Valley Way



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.

Figure 3: Contours Source HCC GIS map (contours at 0.5m intervals)



A minor watercourse (currently dry) runs through the property and incorporates three dams.

Figure 4: Dam near Mulgrave Road



A dwelling house and farm building are located on the higher parts of the land.

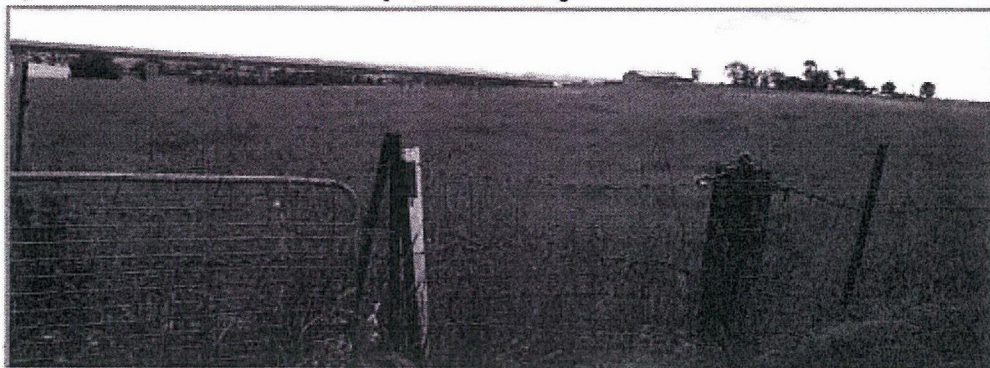
Figure 5: Dwelling and Farm Buildings (view from Mulgrave Road)



Figure 6: Farm buildings



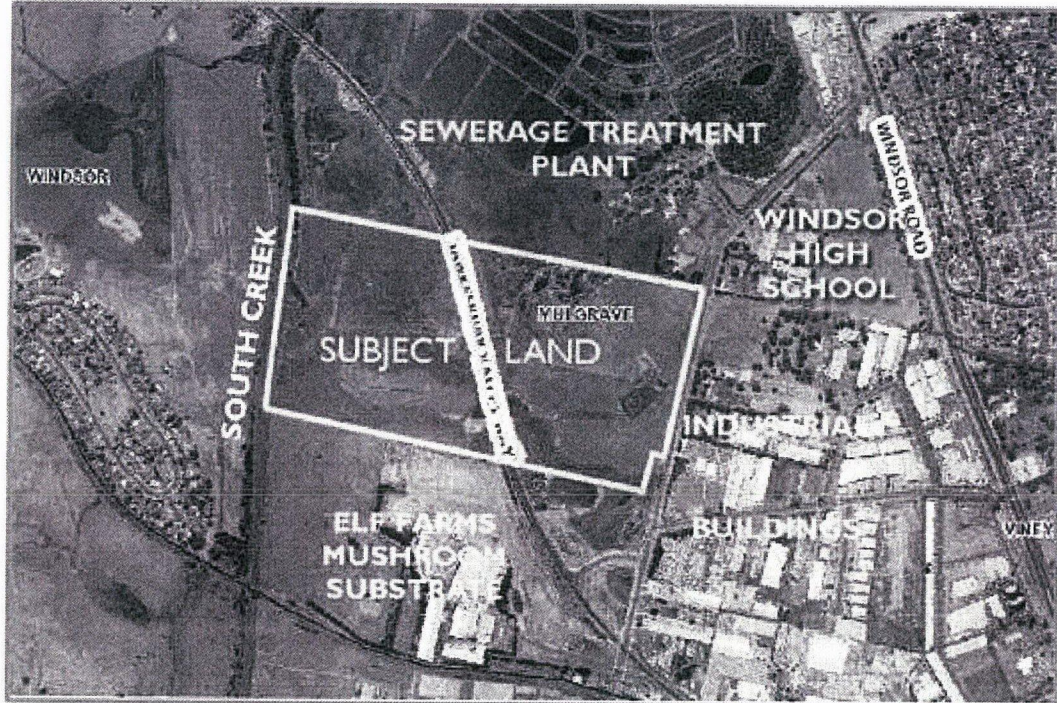
Figure 7: View to northwest across subject land from Mulgrave Road



2.2 Surrounding Land Use

The land is surrounded by a variety of land uses. Hawkesbury Sewage Treatment Plant adjoins to the north. The Elf Farms mushroom substrate production facility adjoins to the south, while a range of industrial land uses and Windsor High School are located on the eastern side of Mulgrave Road.

Figure 8: Surrounding Land Use Source – NSW LPMA SIX Viewer



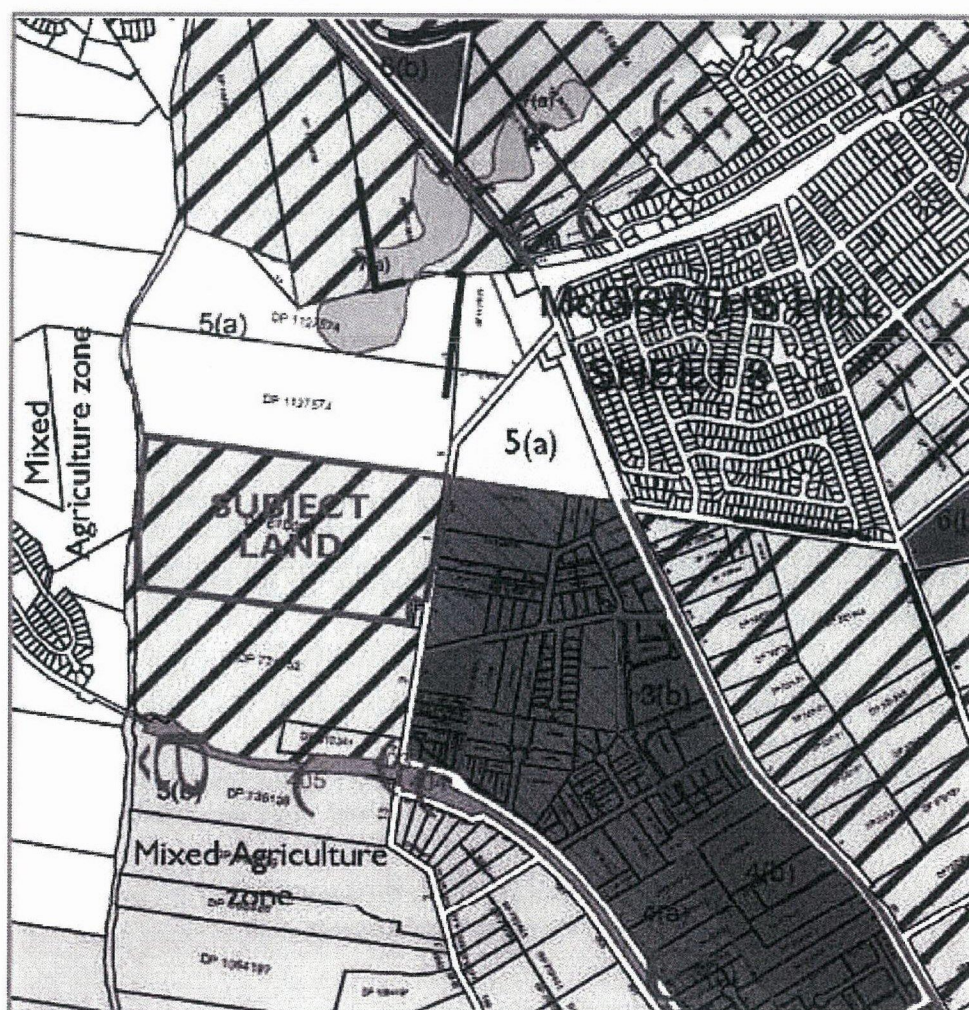
3. Statutory Context

3.1 Hawkesbury Local Environmental Plan 1989

The land is zoned "Rural Living" under the provisions of Hawkesbury LEP 1989.

The Hawkesbury Sewage Treatment Plant and the Windsor High School sites are both zoned Special Uses 5(a). The subject land and the adjoining land to the south¹ are zoned Rural Living. Land on the eastern side of Mulgrave Road is zoned 4(a) and 4(b) Light Industrial. The land on the western side of South Creek and the southern side of the rail line is zoned Mixed Agriculture.

Figure 9: Surrounding Zoning Source - LEP 1989 Map Sheet 3



¹ Draft Hawkesbury LEP 2009 proposes to zone the majority of the property to the south as IN2 Light Industry.

The objectives of the Rural Living Zone are:

- (a) *to provide primarily for a rural residential lifestyle,*
- (b) *to enable identified agricultural land uses to continue in operation,*
- (c) *to minimise conflict with rural living land uses,*
- (d) *to ensure that agricultural activity is sustainable,*
- (e) *to provide for rural residential development on former agricultural land if the land has been remediated,*
- (f) *to preserve the rural landscape character of the area by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping,*
- (g) *to allow for agricultural land uses that are ancillary to an approved rural residential land use that will not have significant adverse environmental effects or conflict with other land uses in the locality,*
- (h) *to ensure that development occurs in a manner:*
 - (i) *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 streams and wetlands, and*
 - (ii) *that satisfies best practice guidelines and best management practices,*
- (j) *to prevent the establishment of traffic generating development along main and arterial roads,*
- (k) *to ensure that development does not create unreasonable economic demands for the provision or extension of public amenities or services.*

In our view it is clear that these objectives are not valid in respect of the land. There is no rural residential lifestyle available, as the closest neighbours are a sewerage treatment plant and industrial development. The property is overlooked by vehicles travelling on the elevated roadway. In particular there is no privacy for the existing dwelling due to the recent construction of Hawkesbury Valley Way.

3.2 Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River

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. The following specific policies and strategies are relevant to the Planning Proposal:

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.*

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. It is considered that the Planning Proposal is consistent with the relevant strategies.

(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 have create adverse impact on water quality.

(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.

4. Environmental Considerations

4.1 Flooding

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.

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:

- o Flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development; and
- o 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."²

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:

- o 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 residential development in accordance with the current Rural Living zone. The land is better suited to the Mixed Agriculture zone, which permits a range of uses which are more compatible with the frequency of flooding by South Creek.

4.2 Traffic and Access

Access to the land is from Mulgrave Road. The land has a frontage to Mulgrave Road of some 309 metres. Adequate sight distance is available in both directions. Mulgrave Road is an industrial standard road which services the existing industrial area to the east.

² Floodplain Development Manual: the management of flood liable land, NSW Government, April 2005, pg 1.

4.3 Services

All services are connected to the site, ie water, power, sewer and telecommunications.

5. Appropriate Zone for the Site

Based on the impact of surrounding land uses and the flood affectation of the land, it is considered that the most appropriate zone for the site is Mixed Agriculture under Hawkesbury LEP 1989 or RU1 Primary Production under Hawkesbury Draft LEP 2009 (when gazetted)

This zone provides a wider range of permissible land uses, including a number of uses which are more suited to the site than rural residential development. For example, the following land uses are permissible in the Mixed Agriculture zone, but prohibited in the current Rural Living zone:

- road transport terminals,
- rural industries,
- sawmills,
- stock and sale yards,
- truck depots

Any of these land uses would be suitable for the land, subject to assessment of a development application, and would benefit from the proximity to the existing road network and supporting industrial activities located east of Mulgrave Road.

It is noted that intensive agriculture is permitted in both the Rural Living and Mixed Agriculture zones. However the objectives of the Rural Living zone are at odds with viable intensive agriculture.

6. Strategic Context

6.1 North West Subregional Strategy

This Draft Strategy was released for comment in December 2007. The Strategy identifies an employment capacity target for Hawkesbury of 3,000 new jobs by 2031. This proposal will assist in adding to employment opportunities in an area which is well serviced by road and rail transport.

Although technically not within an existing industrial zone, the land is effectively surrounded by industrial scale activities. The proposal could fall within Category 2 Employment Lands – *Land with Potential to allow for a Wider Range of Employment Uses*. The location is well serviced by public transport and its physical characteristics make it unsuitable for rural living development.

6.2 Hawkesbury Employment Lands Study

The Hawkesbury Employment Lands Study was adopted by Council in December 2008. The study was prepared to provide a planning framework to support and enhance the economic competitiveness of the Region. It was undertaken within the employment lands planning framework set by the Metropolitan Strategy and the draft North West Subregional Strategy.

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 non-industrial zoned land such as ‘rural industries’ on mixed agricultural land.”³

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 agriculture related jobs, with the appropriate zone.

³ Hawkesbury Employment Lands Strategy, SGS Economics & Planning, December 2008, pg 122.

Preliminary discussions were held with the Council's City Planning Director concerning the subject land. It was indicated that an industrial zone for the site may not be appropriate. However, the site may be suited to the Mixed Agriculture zone.

7. Section 117 Directions

The following S117 Directions (as issued by the Minister for Planning on 17 July 2007) are relevant to the proposal.

Direction	Consistency	Reason
1.2 Rural Zones	Yes	The draft LEP does not rezone land to residential, business, industrial, village, or tourist zone. The draft LEP does not contain provisions which will increase the permissible density of land within a rural zone. The subject land does not have frontage to a classified road..
4.3 Flood Prone Land	Yes	The draft LEP does not rezone land to residential, business, industrial, special use or special purpose zone. The draft LEP does contain any of the provisions listed in clause (6) (a) to (e). The draft LEP is consistent with clauses (4), (7) & (8).

It is submitted that the proposed draft LEP is consistent with all relevant Directions.

8. NSW Department of Planning Circulars

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 1 to this submission 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. Council has prepared its draft template LEP conversion. The draft LEP has been exhibited and Council is currently in the process of considering submissions received.

This submission recommends that the land be rezoned to Mixed Agriculture or alternatively RU1 Primary production, should the template LEP precede this draft plan.

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.

9. Justification for Rezoning

The NSW Department of Planning Circular PS 06-013, issued on 2 May 2006, suggests that the information submitted in support of a rezoning application should include compelling reasons for the proposed rezoning.

The reasons in support of the proposed rezoning are summarised as:

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 severing of the land by the elevated Hawkesbury Valley Way flood evacuation route.
2. The residential 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 existing infrastructure.
6. The proposal is appropriate in terms of the NSW Flood Plain Development Manual.
7. There will be no adverse environmental or visual impact as a consequence of more intensive use of the land.

10. Conclusion

The purpose of this submission is to examine the suitability of the land for rezoning to Mixed Agriculture. The current Rural Living zone is clearly inappropriate given the flood prone nature of the land, the surrounding land uses and the severing of the land by the elevated Hawkesbury Valley Way flood evacuation route.

It is considered that there will be no adverse environmental impacts arising from the proposal and this report has demonstrated that the subject land is suitable for rezoning.

Accordingly it is recommended that Council prepare a draft local environmental plan to rezone the land to Mixed Agriculture. Should the template LEP precede this draft plan, the appropriate zone for the land is RU1 Primary Production.

Attachment 1- LEP Pro-forma Evaluation Criteria Category 1: Spot Rezoning LEP

Attachment 1:
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.

Correspondence by Montgomery Planning Solutions dated 12 January 2011.

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Our Ref: 10/33
Your Ref: LEP89004/10

12 January 2011

The General Manager
Hawkesbury City Council
PO Box 146
Windsor NSW 2756



ABN: 25087661426

PO Box 49
Kurmond NSW 2757

Attention Philip Pleffer

Dear Philip

I refer to your letter dated 20 December 2010. You raised four matters which in your view require additional information. The following responses are provided.

1. Department of Planning Guide to Preparing Planning Proposals

The Planning Proposal submitted to Council was prepared generally in accordance with the DOP Guide. Your letter is not specific as to why the submitted proposal is not in accordance with the Guide. However, I assume that it is a matter of addressing the specific parts of the Guide under the specific headings.

Part 1 – Objectives or Intended Outcomes

Although not stated as an objective, the objectives are made clear in the Introduction on page 1 and under the heading *Appropriate Zone for the Site* on page 10. However, for strict adherence to the Guide, the objective of the planning proposal is as follows:

To provide a more suitable zoning for 46 Mulgrave Road Mulgrave, than the current Rural Living Zone, which has more appropriate objectives and which will permit a broader range of land uses which are more in character with the locality.

Part 2 – Explanation of Provisions

Section 5 – Appropriate Zone for the Site is in effect the explanation of the proposed provisions. For the sake of clarity, the following explanation is provided:

Given the of surrounding land uses, the impact of the elevated road and the flood affectation of the land, the provisions of the Rural Living zone are not suitable for the land.

This Mixed Agriculture zone provides a wider range of permissible land uses, including a number of uses which are more suited to the site than rural residential development. The following land uses are permissible in the Mixed Agriculture zone, but prohibited in the current Rural Living zone:

- road transport terminals,

- rural industries,
- sawmills,
- stock and sale yards,
- truck depots

Any of these land uses would be suitable for the land, subject to assessment of a development application, and would benefit from the proximity to the existing road network and supporting industrial activities located east of Mulgrave Road.

It is considered that the proposed LEP provisions will achieve the Objective for this planning proposal.

Part 3 - Justification

The justification is set out on page 14 of the submitted Planning Proposal. Notwithstanding that most of the matters are addressed in various sections of the Planning Proposal, the following specific answers are provided to the questions posed in the DOP Guide.

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

No.

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 for this site.

3. Is there a net community benefit?

In our submission, the planning proposal is a minor, site specific LEP. There will be no external benefits or costs associated with the proposal.

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 Planning Proposal is not inconsistent with the North West Subregional Strategy. Refer to Section 6.1 of the Planning Proposal.

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

The Council's Strategic Plan is a high level document which does not contain specific objectives which would be relevant to this Planning Proposal.

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 (Rural Lands) 2008

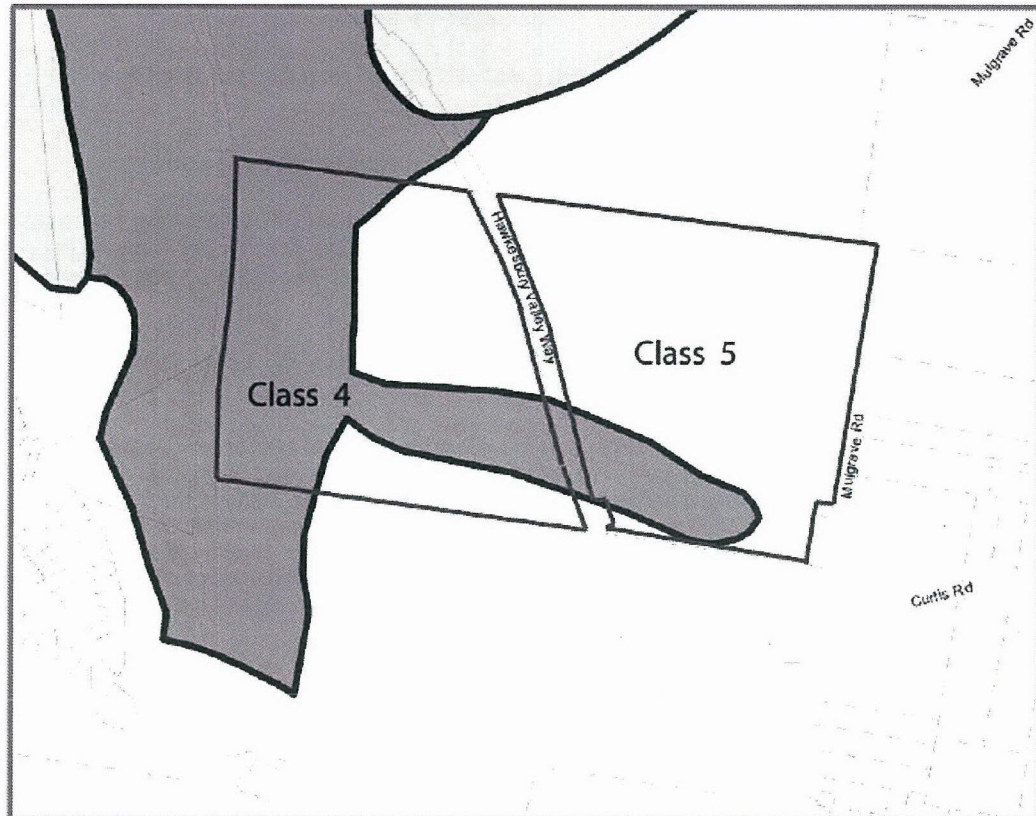
It is considered that the Planning Proposal is not inconsistent with these Policies.

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. The table effectively replaces the table on page 12 of the Planning Proposal.

Direction	Consistency	Reason
1.2 Rural Zones	Yes	The draft LEP does not rezone land to residential, business, industrial, village or tourist zone. The draft LEP does not contain provisions which will increase the permissible density of land within a rural zone. The subject land does not have frontage to a classified road.
1.5 Rural Lands	Yes	The draft LEP is consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.
4.1 Acid Sulfate Soils	Yes	Figure 1 below is an extract from the Council's Acid Sulfate Map, which shows that the property is part Class 4 and Part Class 5. 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.
4.3 Flood Prone Land	Yes	The draft LEP does not rezone land to residential, special use or special purpose zone. The draft LEP does not contain any of the provisions listed in clause (6) (a) to (e). The draft LEP is consistent with clauses (4), (7) and (8).

Figure 1: Extract from HCC DLEP 2009 Acid Sulfate Sheet 18



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.

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

This question is addressed in Section 4 of the Planning Proposal.

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* and 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.

There are no negative effects.

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

Yes. There will be no additional demands placed on public infrastructure.

2. State Environmental Planning Policy 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.

3. Section 117 Direction 4.1 Acid Sulfate Soils

As detailed above, 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 with this Direction.

4. Zoning of Lot 13 DP 1138749 (84) Mulgrave Road

As you are aware, Montgomery Planning Solutions made a formal submission to Council in response to the exhibition of draft Hawkesbury LEP 2009 on behalf of the owner of this land. The submission, dated 12 April 2010, requests Council to extend the proposed IN2 zone on the land to the northern boundary. Should Council agree to amend draft LEP 2009 as requested there would be no isolated parcel of Rural Living land.

As all matters have now been addressed in accordance with your letter of 20 December 2010, your attention in advancing the draft LEP is now requested.

Yours sincerely



Robert Montgomery MPiA, CPP
Principal

0000 END OF REPORT 0000