

ACTION ITEM

ADOPTED

At the ORDINARY Meeting held on 30 June 2015

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: 91 **CP - LEP008/13 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lot 5 DP 237575, 35 Chapel Street, Richmond - (95498, 124414)**

Previous Item: 1, Ordinary (3 February 2015)

Mr Max Fragar and Mr Phil Smith addressed Council, speaking against the item.

MOTION:

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

Refer to RESOLUTION

154 RESOLUTION:

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

That

1. Council support the planning proposal seeking to rezone land being Lot 5 DP 237575, 35 Chapel Street, Richmond for residential purposes, being the R2 Zone.
2. Council does not endorse any proposed subdivision layout/plan submitted with the planning proposal as this will need to be subject to a development application should the planning proposal result in making the plan.
3. The planning proposal be forwarded to the Department of Planning and Environment for a 'Gateway' determination.
4. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.

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 Calvert	NIL
Councillor Creed	
Councillor Ford	
Councillor Lyons-Buckett	
Councillor Paine	
Councillor Porter	
Councillor Rasmussen	
Councillor Reardon	

Councillors Mackay and Tree were not in the Chamber when the vote was taken.

Councillors Conolly and Williams were absent from the meeting.

Item: CP - LEP008/13 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lot 5 DP 237575, 35 Chapel Street, Richmond - (95498, 124414)

Previous Item: 1, Ordinary (3 February 2015)

Applicant Name:	Max Fragar, Fragar Planning and Development
Planning Proposal No:	LEP008/13
Property Address:	35 Chapel Street, Richmond
Owner:	Mr P and Mrs K Smith
Date Received:	12 November 2013
Recommendation:	Council not support the planning proposal

REPORT:

Executive Summary

This matter was last considered at a Council meeting of 3 February 2015 when the item was deferred pending a site inspection by Councillors.

This report discusses additional information provided by the applicant in support of their planning proposal to rezone the land and permit the subdivision of part of Lot 5 DP 237575, 35 Chapel Street, Richmond for residential purposes.

The additional information was submitted in response to a previous report to Council and site inspection by Councillors. However, as discussed in this report, it is considered that the additional information does not address the major constraints limiting the land's potential for residential development and accordingly it remains the Council staff's recommendation that the planning proposal not be supported.

Consultation

The planning proposal has not been exhibited as there are a number of outstanding matters that have not been satisfactorily resolved. If the planning proposal was to proceed it would be exhibited in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* (the Act) and associated Regulations and as specified in the 'Gateway' determination administered by the Department of Planning and Environment (DP&E).

Background

On 3 February 2015 Council considered a report regarding this planning proposal that seeks to amend *Hawkesbury Local Environmental Plan 2012* (the LEP) in order to rezone and permit the subdivision of part of Lot 5 DP 237575, 35 Chapel Street, Richmond for residential purposes. A copy of the Council report is attached to this report.

In summary the report identified a number of major constraints that limited the land's potential for residential development such as flooding, proximity to a wetland, proximity to a State listed heritage item, there being no legal frontage to a road (as access is via a tree lined, heritage listed, Right of Carriageway) and traffic impacts onto Kurrajong Road/March Street.

The report argued that the planning proposal did not propose suitable resolution of these issues and recommended that Council not support the planning proposal.

Following consideration of the report Council resolved to defer the matter for a site inspection. A site inspection with the Mayor Councillor Ford, and Councillors Rasmussen, Calvert and Reardon, the

applicant, the applicant's consultant engineer, the land owners, and Council staff occurred on 19 March 2015 and the applicant subsequently submitted additional information to Council on 17 and 29 April 2015.

Additional information submitted by applicant

On 17 April 2015 the applicant provided additional information within respect to the following:

- access
- permissible uses under the existing RU2 Rural Landscape zone
- allowable uses in the proposed R1 General Residential zone
- various matters identified in the report to Council of February 2015.

Access

The applicant has advised that the current intention is to develop the land as a private estate under a community title scheme with the Chapel Street extension being a private road with upgrade and maintenance to be part of a community title scheme.

Further the applicant states:

"Developing the land as a community title development is only one option. Unless circumstances change it is envisaged that the road access via the two Right of Ways will remain a private road and a suitable management agreement to ensure upgrade and maintenance of the road can be addressed at Development application stage."

We again refer to the legal advice that was included as part of the submission to Council in 2008 which stated that the Lot 5 DP 237575 has a right of carriageway easement to the eastern extension of Chapel Street. If the property is subdivided in the future, the right of carriageway must be registered on each individual new title created. Consent of the owner of the land over which the existing right of carriageway exists is not required."

With regard to upgrading of the carriageway the legal opinion also stated as follows:

'In relation to the resurfacing of the carriageway, whilst it is not your property you do have a registered right to use the same. In these times of access by motor vehicle an all-weather surface is necessary. The fact that the carriageway is already surfaced is not only a precedent for it being resurfaced but an admission of the necessity for all weather access. We can see no legal impediment to you having the carriageway resurfaced should an adjoining user object although it is our view that you cannot compel these users to contribute to the cost thereof where the existing surface is adequate for existing purposes.'

The applicant also claims that the proposed 5.5m wide road width is sufficient to cater for up to 200 townhouses and that, subject to detailed design and arborist advice, the proposed development would have no adverse impact on the heritage listed trees along Chapel Street.

Comment This additional information does not address the suitability of the right of carriageway to serve the 54 to 58 dwellings proposed in the planning proposal. As stated in the previous report to Council in general terms, it is good planning practice and an emergency services' priority to provide properties with direct vehicular access to a public road and avoid the use of Right of Carriageways or at least limit their use to serve a small number of lots. Like any other type of road, vehicular Rights of Carriageway require regular maintenance. Further, in this case, the practicality of access for larger vehicles (e.g. garbage, removalist, service vehicles) is constrained by the width and the physical location of the trees flanking the Right of Carriageway.

With respect to garbage, recyclables and green waste collection, Council's current practice is not to allow Council collection trucks or Council contractor collection trucks to

traverse private roads or Rights of Carriageways. These private roads are also generally not suitably designed (turning paths, height clearance, construction standards, etc.) for sustainable use by these vehicles. Hence, if the planning proposal was to proceed, collection of garbage, recyclables and green waste from the proposed development would need to be undertaken by private contractor under agreement with future owners. This would most likely require future owners to form a collective in order to secure such private collection. This, however, would not stop the potential for future land owners to seek collection services from Council in the event that the contractual arrangements could not be maintained or became cost prohibitive for land owners.

Inspection by Council staff revealed that due to the proximity of the proposed road to existing vegetation, approximately four to six trees would require removal and three of these trees are large and significant trees within the surrounding landscape. Removal of these trees would require permission of the owners of Hobartville Stud and the Heritage Council of NSW approval as the Hobartville site is a State listed Heritage Item. A site inspection revealed that many of these trees might be retained if the private road was re-aligned to the south; however, this would require the road to be constructed outside of the right of carriageway and hence would require permission of the owners of Hobartville Stud and the Heritage Council of NSW approval.

Further, the narrow width of the proposed private road carriageway is considered unacceptable on this site in terms of the potential conflicts between vehicles and pedestrians. The AMCORD guidelines referred to by the applicant for road widths are not mandatory, rather they are suggestions that a council may choose to adopt or adapt based on their individual circumstances. Further the provisions of AMCORD are best considered in light of an integrated planning framework/assessment for an area or region rather than on an ad-hoc site by site basis. Finally, even if the provisions of AMCORD were applied to this proposal the proposed access does not comply with AMCORD standards as no verge or parking is provided on the southern side of the proposed access.

Permissible uses under the existing RU2 Rural Landscape zone

The applicant has provided the following table summarising uses that are permissible with consent under the current RU2 zone and, in the applicant's opinion, an indication as to whether the use is suitable for the location.

RU2 – Rural Landscape	Suitable for the location	Marginally acceptable for the location	Economically viable but not suitable for the location
Agriculture		X	
Animal boarding or training establishments		X	
Boat sheds		X	
Building identification signs	X		
Business identification signs	X		
Cemeteries			X
Charter and tourism boating facilities		X	
Crematoria			X
Dual occupancies (attached)	X		

RU2 – Rural Landscape	Suitable for the location	Marginally acceptable for the location	Economically viable but not suitable for the location
Dwelling houses	X (one and an existing)		
Educational establishment;	X		
Entertainment facilities		X	
Environmental facilities	X		
Farm buildings			X Possibly not viable
Farm stay accommodation			X
Flood mitigation works	X		
Forestry			X
Funeral homes		X	
Helipads			X
Home-based child care	X		
Home industries	X		
Jetties			X
Landscaping material supplies		X	
Moorings			X
Places of public worship		X	
Plant nurseries	X		
Recreation areas	X		
Restaurants or cafes		X	
Roads	X		
Roadside stalls			X
Rural industries			X
Rural supplies			X
Rural workers' dwellings	X		
Water recreation structures	X		
Water storage facilities			X

Comment Whilst not all of the applicant's claims regarding suitable, marginally acceptable, and not suitable land uses are agreed with, it is not uncommon that some land uses which are permissible broadly throughout a zone may not be suitable on a specific property given the site's particular location and characteristics.

In considering the planning proposal, Council staff have not defended or challenged the suitability of the current RU2 Rural Landscape zone of the land, rather it is the proposed residential zone and proposed residential development and subdivision scale that has been called into question given the constraints of access to the site, impact of traffic generation, heritage impact considerations, and the surrounding development pattern.

Allowable uses in the proposed R1 General Residential zone

The applicant has provided the following table summarising uses that are permissible with consent in the proposed R1 General Residential zone and, in the applicant's opinion, an indication as to whether the use is suitable for the location.

R 1 – General Residential	Suitable for the location	Marginally acceptable for the location	Economically viable but not suitable for the location.
Animal boarding or training establishments		X	
Attached dwellings	X		
Boarding houses	X		
Building identification signs	X		
Business identification signs	X		
Camping grounds			X (Adjoining dwellings and seniors living)
Caravan parks			X (Adjoining dwellings and seniors living)
Child care centres	X		
Community facilities	X		
Dwelling houses	X (one only and existing)		
Educational establishments	X		
Environmental facilities	X		
Exhibition homes	X		
Flood mitigation works	X		
Group homes	X		
Home-based child care	X		
Home industries	X		
Hostels		X	
Multi dwelling housing	X		
Neighbourhood shops		X	
Places of public worship	X		
Public administration buildings			X
Recreation areas	X		
Recreation facilities (indoor)		X	
Recreation facilities (outdoor)		X	
Registered clubs		X	
Residential accommodation			The following types of residential accommodation are not suitable for the location: • residential flat buildings • shop top housing

R 1 – General Residential	Suitable for the location	Marginally acceptable for the location	Economically viable but not suitable for the location.
Residential flat buildings			X
Respite day care centres			X
Roads	X		
Semi-detached dwellings	X		
Seniors housing	X		
Shop top housing			X
Tourist and visitor accommodation			The following tourist and visitors accommodation is not suitable for the location: • backpackers accommodation • farm stay accommodation • hotel or motel accommodation
Veterinary hospitals		X	
Water storage facilities			X

The applicant advises that although certain uses are shown as suitable for the location, the intention of the owner is to develop the land proposed to be rezoned R1 - General Residential for residential purposes to include:

- detached dwellings on individual community titled lots with a minimum lot size of 450 m²
- semi-detached and attached dwellings.

The applicant has also suggested as an alternative to only a zone change that a LEP schedule amendment may be a suitable mechanism to ensure that unsuitable uses are not permitted uses; for example residential flat buildings and caravan parks.

Comment As stated in the report to Council of 3 February 2015, the proposed R1 General Residential zone would permit a wide range of residential development including residential flat buildings. It is considered that permitting such development on this land would be inconsistent with the type and character of surrounding residential development which is predominantly single storey detached dwellings and low scale aged housing. The suggestion by the proponent to exclude such development from the site by way of a separate clause is inconsistent with the DP&E's guidelines for LEPs which do not allow individual clauses to prohibit otherwise permissible development established by the respective zone.

Council's previous approach to the zoning of land for the purposes of medium density development has been to restrict such development to within 1km of a railway station or 500m of a commercial zone in the townships of Richmond, North Richmond, Windsor, South Windsor, and Hobartville. Most of the land subject to the planning proposal is greater than 1km (measured in a straight line) from the Richmond Railway Station. Furthermore, the dominant residential zoning in the vicinity of the site is R2 Low Density Residential not an R1 General Residential zone.

Various Matters Identified in Previous Report to Council

The applicant has provided the following additional commentary regarding the following matters.

Visual impact

On site development will be seen against a backdrop of urban development.

Effect on nearby wetland

The overall site contains a wetland on the lower lying northern portion of the site. The subject site does not include the area identified as wetland or significant vegetation. The impact of any future development on issues such as water and river scenic quality can be addressed at development application stage. Future development applications on the site should address:

- Detail design of buildings when viewed from the north
- Boundary setback to provide separation buffers between future development on the subject site and the area mapped wetland and significant vegetation
- Soil erosion management plan
- Drainage plan to ensure drainage resulting from future development on the site drains above the wetland
- Tree preservation and additional screen planting.

Proximity to and impact on adjacent heritage item (Hobartville Stud)

The heritage listed trees along Chapel Street will be protected while also providing for private road access. It is also noted that Chapel Street is not the primary access to Hobartville.

Service availability

The site is located approximately 485 metres north-west of the Richmond town centre, and has good access to public roads and public transport services.

Comment:

Whilst this additional commentary is noted it does not resolve the fundamental concerns raised in the previous Council report regarding access to the site and the impact of additional vehicular traffic on the Chapel Street and Kurrajong Road - March Street intersection.

Conformance to the Hawkesbury Community Strategic Plan

The following provisions of the HCSP are of most relevance to this residential development planning proposal.

Looking After People and Place

Directions

- Be a place where we value, protect and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes
- Offer residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury
- Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury
- Have future residential and commercial development designed and planned to minimise impacts on local transport systems, allowing easy access to main metropolitan gateways

Strategy

- Upgrade the necessary physical infrastructure and human services to meet contemporary needs and expectations

Shaping Our Future Together

Direction

- 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 fees and charges for the preparation of an amendment to the local environmental plan.

Conclusion

It is recommended that Council not support this planning proposal to allow development of the land for residential purposes due to the inappropriateness of the proposed zone, inadequate vehicular and pedestrian access to the site, and the determinant impacts of the proposed development on the Chapel Street and Kurrajong Road - March Street intersection.

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 Council not support the planning proposal seeking to rezone and permit the subdivision of part of Lot 5 DP 237575, 35 Chapel Street, Richmond for residential purposes.

ATTACHMENTS:

AT - 1 Report to Council dated 3 February 2015

AT - 1 Report to Council dated 3 February 2015

Item: CP - LEP008/13 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lot 5 DP 237575, 35 Chapel Street, Richmond - (95498, 124414)

REPORT:

Executive Summary

This report discusses a planning proposal which seeks to amend *Hawkesbury Local Environmental Plan 2012* (the LEP) in order to rezone and permit the subdivision of part of Lot 5 DP 237575, 35 Chapel Street, Richmond for residential purposes.

As discussed in this report, the land has a number of major constraints that limit its potential for residential development including flooding, proximity to a wetland, proximity to a State listed heritage item, there being no legal frontage to a road (as access is via a tree lined, heritage listed, Right of Carriageway) and traffic impacts onto Kurrajong Road / March Street.

It is considered that the planning proposal does not present a resolution to these complexities of the site for the intended purpose, particularly traffic impacts and access to the site and the heritage impacts of that access. Accordingly, it is recommended that Council not support the planning proposal.

Consultation

The planning proposal has not been exhibited as there are a number of outstanding matters that have not been satisfactorily resolved. If the planning proposal was to proceed it would be exhibited in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* (the Act) and associated Regulations and as specified in the "Gateway" determination administered by the Department of Planning and Environment (DP&E).

Background

For more than 20 years Council has considered and rejected a range of requests by the land owners (Mr and Mrs Smith) to vary the Council's local environmental plans in order to allow residential subdivision of this property. Following is a chronology of such requests and associated Council decisions.

August 1993 - Plan submitted to Council for 46 lots.

October 1998 - Re-submission of August 1993 plan from McKinlay Morgan & Associates Pty Ltd. McKinlay Morgan advised to submit a site specific Local Environmental Plan application with accompanying Local Environmental Study considering matters such as visual impact, effect on wetlands, proximity to heritage items, service availability.

February 1999 - Request from owners for Council to include land in Council's Urban Development Strategy. Suggestion by owner of approximately 30 lots.

March 1999 - Letter from Council advising owners that property falls outside the Urban Land Strategy investigation areas and that if they wish to pursue the matter they should submit a detailed application.

May 1999 - Rezoning submission received by Falson and Associates Pty Ltd with proposal for 46 lots (same plan as 1993 plan).

August 1999 - Letter from Council to Falson and Associates requesting further information and clarification of some matters.

April 2000 - Response received from Falson and Associates with number of proposed lots reduced to 38.

June/July 2000 - Matter reported to Council's General Purpose Committee. Recommendation that proposal not be supported, suggestion that a lower density development addressing concerns raised in report may be considered by Council. Ordinary Meeting of Council deferred matter pending submission of further information from applicant. Petition from some residents of William Cox Drive objecting to proposal was received.

December 2000 - Additional information, including traffic report, received from Falson and Associates and proposal amended to 18 lots.

January 2001 - Meeting with Council staff, Mr Glenn Falson and Mr Smith. Additional information / clarification of issues requested by Council staff.

November 2003 - Letter from owners requesting advice regarding possibility of subdivision of land into 8 to 10 allotments.

April 2004 - Letter from Council advising of previous matters which require consideration/additional information.

October 2006 - Letter from owners requesting property be considered for residential rezoning in new City wide LEP.

November 2006 - General report to Council regarding City wide LEP. Mr Smith addressed Council.

December 2006 - Letter from Council advising of "conversion" nature of new City wide LEP and information to be submitted with rezoning request.

April 2007 - Notice of Motion regarding anomalies in Hawkesbury Local Environmental Plan 1989. Subject property nominated for change to residential zone or zone for aged care facility.

May 2007 - Report to Council regarding investigations resulting from Notice of Motion. Council resolved that the land be subject to a further report to Council following the release of the State Government Subregional Study.

October 2007 - Proposal received from Montgomery Planning Solutions for 16 lots. Reported to Council on 8 July 2008 whereby Council resolved:

"That:

1. *The proposed rezoning of 35 Chapel Street, Richmond for residential purposes not be supported at this time and this land be considered in future land planning strategies.*
2. *This land be considered further when Council has finalised a residential strategy that is consistent with the North West Subregional Strategy and further work has been undertaken on the Flood Risk Management Plan for the Hawkesbury."*

In general terms, throughout the various proposals and discussions, Council staff have requested the follows matters be addressed in any rezoning proposal:

- Visual impact
- Effect on nearby wetland
- Proximity to and impact on adjacent heritage item (Hobartville Stud)
- Service availability
- Department of Planning Section 117 directions
- Provisions of SREP No 20 Hawkesbury - Nepean (No.2 -1997)
- Details and justification of lot sizes, configuration and density

- Aircraft noise
- Impact on flora and fauna
- Traffic impacts, in particular operation of intersection of Chapel Street and Kurrajong Road - March Street
- Legal access over Right of Carriageway and adequacy of access

The planning proposal, the subject of this report, was received by Council in November 2013. Following an initial staff assessment, in March 2014 the applicant was advised in writing of a number of concerns regarding the proposal and invited to withdraw the application due to the extent of concerns. In response, the applicant provided additional written information in April 2014, met with Council staff in August 2014, and provided further additional information in November 2014.

Planning Proposal

Fragar Planning and Development (the applicant) seeks an amendment to the LEP in order to rezone and permit the subdivision of Lot 5 DP 237575, 35 Chapel Street, Richmond for residential purposes. Specifically, the applicant requests that part of the land (approximately 3.5ha) be rezoned from RU2 Rural Landscape to R1 General Residential and that the minimum lot size for the land to be rezoned be reduced from 10ha to 450m².

The area of land subject to the planning proposal is shown in Figure 1 below.



- Lot 5 DP237575
- Subject site proposed for rezoning

Figure 1: Subject site

The applicant advises that the overall intention of the planning proposal is to develop the land mainly for residential purposes to include:

- detached dwellings on individual titled lots with a minimum lot size of 450 m²; and
- semi-detached and attached dwellings.

The applicant advises that the expected development yield would be between 54 and 58 dwellings. The applicant has not provided a concept plan of subdivision and has not been requested to do so as it is considered that there are pre-determinative matters that preclude support for the planning proposal as outlined below.

Subject Site and Surrounds

The property is located on the western edge of the Richmond township approximately 1 km from the Richmond railway station.

The property is located to the south of Chapel Street, Richmond and is accessed via a right of carriageway over an access handle of an adjoining property (Hobartville Stud). The site does not front a public road and the legal status/suitability of this accessway will be discussed later in this report.

The property has a total area of 8.099 ha and is presently zoned part RU2 Rural Landscape (approx. 6.6ha) and part E2 Environmental Conservation (approx. 1.5ha). Under the current provisions of LEP 2012 zone, the property has a minimum lot size for subdivision of 10ha; hence at present the property does not have subdivision potential.

The property varies in height from approx. 21m AHD to 18m AHD in the area where the new lots are proposed. This is an area of approx. 3.5ha with the higher land fronting the right of carriageway. Beyond this upper plateau the land then falls sharply to the north-west to low lying land with a height of approximately 9m AHD.

Improvements on the land are mainly within the eastern corner of the property and consist of a dwelling with onsite disposal of effluent, a tennis court and associated driveway and landscaping. The balance of the property mainly consists of grass lands and a wetland (see Figure 1).

R2 Low Density Residential and RE1 Public Recreation zoned land is located to the south, Hobartville Stud is located to the west, Kurrajong Road is located to the north, two dwellings with an aged care village (Hawkesbury Village) beyond is located to the north-east and R1 General Residential zoned land (John Tebbutt Mews) is located to the east. The minimum lot size of surrounding land zoned R1 General Residential and R2 Low Density Residential is 450m². Hobartville Stud is listed as a heritage item on Schedule 1 of HLEP 2012 as well as being State heritage listed. The property shares an accessway (via a Right of Carriageway) from Chapel Street with Hobartville Stud. The accessway is flanked by an avenue of trees that lead to Chapel Street. The avenue of street trees in Chapel Street is also heritage listed under the LEP.

Beyond the immediately surrounding properties, the main distant views to the property are from the west through to north across the floodplain.

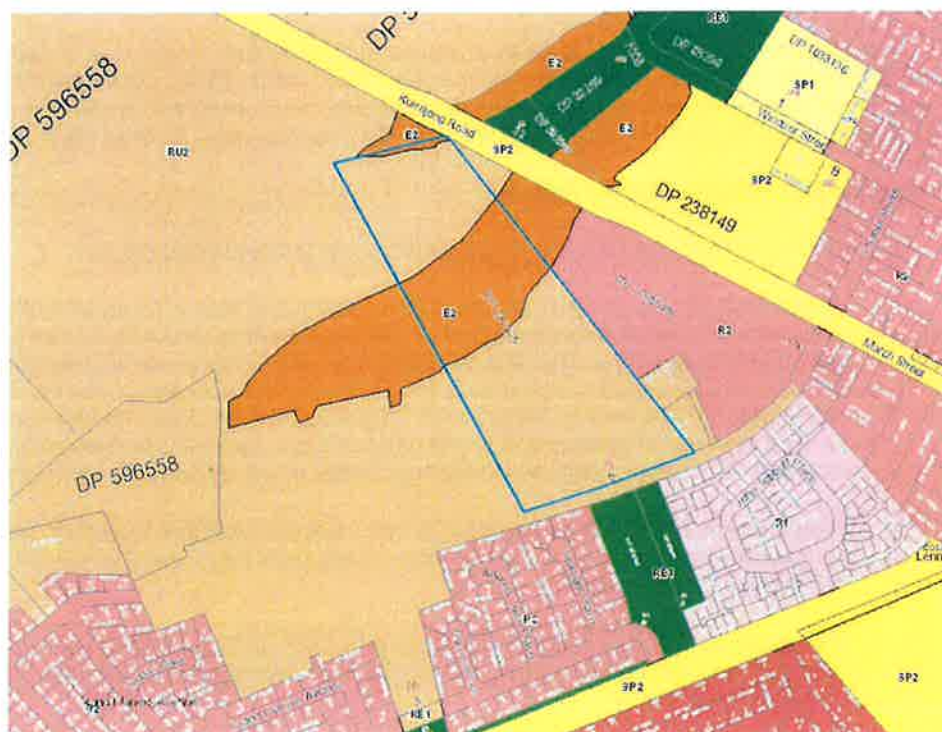


Figure 2: Land Zone Map extract

The height of the 1 in 100 year flood event for the surrounding area varies from 18.3m AHD at Yarramundi to 17.5m AHD at the North Richmond Bridge. The rear of the site is severely flood prone and only a small area immediately adjacent to the accessway is above the 1 in 100 year flood event level.

The land is partly affected by the 20 - 25 ANEF contour, however most of the land subject to the rezoning is not affected by the ANEF contours. The 20 - 25 ANEF affection does not represent a significant impediment to further residential development of this land.

The lower parts of the property are generally shown as either *Significant Vegetation* or *Connectivity Between Significant Vegetation* on the Terrestrial Biodiversity Map of LEP 2012 and the access handle is also shown as *Significant Vegetation*. Most of the land subject to the rezoning does not fall under either of these categorisations.

The site is not shown as being bushfire prone on the NSW Rural Fire Service's Bushfire Prone Land Map.

The land contains Class 4 and Class 5 acid sulphate lands as shown on the Acid Sulphate Soils Planning Map. The Class 4 land is generally in the low lying wetland area with the Class 5 making up the balance of the property.

The site is shown as being Agriculture Land Classification 5 on maps prepared by the former NSW Department of Agriculture. This classification is described as *Land unsuitable for agriculture or at best suited to only light grazing. Agricultural production is very low to zero as a result of severe constraints, including economic factors, which preclude land improvement.*

The site falls within the "Transition Area" as shown on the NSW Trade & Investment's Mineral Resources Audit 2104 map due to its proximity to the Richmond Lowland sand and gravel resource area. As a result, if the planning proposal is to proceed, referral to the Mineral Resources Branch of NSW Trade & Investment would be required.

The site falls within the Middle Nepean & Hawkesbury River Catchment Area of *Sydney Regional Environmental Plan No.20 Hawkesbury - Nepean River (No.2 - 1997)*. The lower parts of the site fall within an area of regional significance under this SREP and the wetland is also shown as a wetland under *Sydney Regional Environmental Plan No. 20 - Hawkesbury - Nepean River (No.2 - 1997)*.

Applicant's Justification of Proposal

The applicant has provided the following justification for the planning proposal:

- *The subject site would be developed more economically and to its full potential if it was rezoned to R1 General Residential or similar zone and the minimum lot size allowed for 450 m2 residential lots. This type of development would be in line with the character of the surrounding area and would contribute to the provision of the much-needed residential housing supply of Richmond. The proposed R1 Residential General zone will provide for a mix of residential housing types that can respond to market demand and increase the supply of affordable housing in close proximity to public transport services.*
- *Development of the land as proposed will be consistent with the objectives of the R1 General Residential zone, the Hawkesbury Residential Land Use Strategy 2011, relevant SEPPs and S117s directions.*
- *The proposed amendments to the Hawkesbury LEP 2012 zoning and minimum lot size maps will be the best means of achieving the intended objective to develop the site for residential purposes.*

A Plan for Growing Sydney and the Draft North West Subregional Strategy

The NSW Government's *A Plan for Growing Sydney (December 2014)* provides a long-term planning framework for the Sydney metropolitan area. The Plan's vision is "A strong global city, a great place to live".

This is to be achieved by the Plan's goals, which are:

- *a competitive economy with world-class services and transport*
- *a city of housing choice with homes that meet our needs and lifestyles*
- *a great place to live with communities that are strong, healthy and well connected*
- *a sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources*

A number of Directions accompany each of the goals.

The Plan divides the Metropolitan area up into the Metropolitan Urban Area and the Metropolitan Rural Area. The Hawkesbury Local Government Area (LGA) is in the Metropolitan Rural Area and is within the West Region sub-region with the Blue Mountains and Penrith LGAs.

The planning proposal is generally consistent with the provisions of *A Plan for Growing Sydney*.

The Draft North West Subregional Strategy (dNWSS) provides a broad framework for the long-term development of the north-western sector of Sydney, guiding government investment and linking local and state planning issues. It contains a number of key strategies, objectives and actions relating to the economy and employment, centres and corridors, housing, transport, environment and resources, parks and public places, implementation and governance, and identify a hierarchy of centres.

The planning proposal is generally consistent with the provisions of the dNWSS.

Hawkesbury Residential Land Strategy

The Hawkesbury Residential Land Strategy (HRLS) seeks to:

- accommodate, based on estimated demand, between 5,000 to 6,000 additional dwellings by 2031, primarily within the existing urban areas as prescribed in the dNWSS
- preserve the unique and high quality natural environment of the LGA
- accommodate changing population, which presents new demands in terms of housing, services and access
- identify on-going development pressures to expand into natural and rural areas, as well as new development both in and around existing centres
- identify physical constraints of flood, native vegetation and bushfire risk

To achieve this, the HRLS identifies residential investigation areas and associated sustainable development criteria.

The subject site is located within the Richmond investigation area and the proposal is generally consistent with the relevant sustainability development criteria.

Council Policy - Rezoning of Land for Residential Purposes - Infrastructure Issues

On 30 August 2011, Council adopted the following Policy:

"That as a matter of policy, Council indicates that it will consider applications to rezone land for residential purposes in the Hawkesbury LGA only if the application is consistent with the directions and strategies contained in Council's adopted Community Strategic Plan, has adequately considered the existing infrastructure issues in the locality of the development (and the impacts of the proposed development on that infrastructure) and has made appropriate provision for the required infrastructure for the proposed development in accordance with the sustainability criteria contained in Council's adopted Hawkesbury Residential Land Strategy.

Note 1:

In relation to the term "adequately considered the existing infrastructure" above, this will be determined ultimately by Council resolution following full merit assessments, Council resolution to go to public exhibition and Council resolution to finally adopt the proposal, with or without amendment.

Note 2:

The requirements of the term "appropriate provision for the required infrastructure" are set out in the sustainability matrix and criteria for development/settlement types in chapter six and other relevant sections of the Hawkesbury Residential Land Strategy 2011."

As will be discussed in a later section of this report, it is considered that the proposal has not adequately addressed the existing infrastructure issues in the locality of the development, primarily with respect to access to the site and the impact of additional vehicular traffic on the Chapel Street and Kurrajong Road - March Street intersection.

Section 117 Directions

Section 117 Directions are issued by the Minister for Planning and Infrastructure and apply to planning proposals. Typically, the Section 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 Section 117 Directions contain criteria to be considered if a proposal is inconsistent with those Directions.

The Section 117 Directions of most relevance to this proposal are follows:

- Direction 1.2 Rural Zones
- Direction 1.3 Mining, Petroleum Production and Extractive Industries
- Direction 3.1 Residential Zones
- Direction 3.3 Home Occupations
- Direction 3.4 Integrating Land Use and Transport
- Direction 4.1 Acid Sulfate Soils
- Direction 4.3 Flood Prone Land
- Direction 7.1 Implementation of the Metropolitan Strategy

It is considered that the proposal is consistent with or justifiably inconsistent with these directions.

State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are as follows:

- State Environmental Planning Policy No. 55 - Remediation of Land
- Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995)
- Sydney Regional Environmental Plan No. 20 - Hawkesbury - Nepean River (No.2 - 1997)

It is considered that the proposal is generally consistent with these policies.

Vehicle and Pedestrian Access to the Site

The site does not have direct vehicular or pedestrian frontage to a public road being Chapel Street. The site has access to Chapel Street via two Right of Carriageways. One Right of Carriageway is 9.145m wide, is part of the State Heritage listing and is located within the Hobartville Stud's access handle from Chapel Street. This access handle consists of a narrow bitumen sealed driveway lined by generally substantial, mature trees such as Bunya Pines and Celtis. The other Right of Carriageway is 4.57m wide and is located immediately to the north-west of the previously mentioned Right of Carriageway on adjoining lands. It is the Hobartville Stud Right of Carriageway that the proponent seeks to utilise.

The owner of the land has provided a legal opinion regarding the current and future use of the Right of Carriageway. The conclusion of this legal opinion is as follows:

- *Lot 5 DP 237575 has a Right of Carriageway easement to the eastern extension of Chapel Street.*
- *If the property is subdivided in the future, the Right of Carriageway must be registered on each individual new title created.*
- *Consent of the owner of the land over which the existing Right of Carriageway exists is not required.*

The proponent has provided an indicative plan (see Attachment 1 of this report) showing a proposed 5.5m wide access carriageway between the existing trees. Council's DCP requirement for the proposed development (54 - 58 residential dwellings) is for a 15m road reservation comprising an 8m wide road and 3.5m wide verges. Hence in terms of road width and verges the proposal is significantly inconsistent with Council's standard.

The proponent claims that reduced road widths for residential subdivisional are acceptable on a case by case basis and cites the provision of Australian Model Code For Residential Development (AMCORD) as an appropriate alternative standard.

The following extracts from AMCORD have been provided by the proponent in support of the use of a narrower road design standard. These are as follows:

- A carriageway width of 3 metres is adequate for a local "Access Lane" where the maximum daily traffic is less than 100 vehicles per day (typically 10 single dwellings or 20 townhouses). For these streets, on-street parking is NOT permitted and the design speed is 15km/hr. Pedestrian access may need to be separately considered. The alignment of Access Lanes can meander through a site based upon the swept path needs of the maximum length vehicle expected on a regular basis. Dwelling setback based upon noise attenuation methods employed.
- A minimum carriageway width of 3.5 metres is adequate for a local "Access Place" where the maximum daily traffic is less than 300 vehicles per day (typically 30 single dwellings or 60 townhouses). For these streets shared pedestrian traffic is permitted and the design speed is 15km/hr. If on-street parking is permitted it is to be in the form of separated indented parking bays. The alignment of Access Places can meander through a site based upon the swept path needs of the maximum length vehicle expected on a regular basis. Verge widths of 3.5m both sides also required for utility services, landscaping and noise attenuation setback for dwellings.
- A maximum carriageway width of 5.5 metres is adequate for an "Access Street" where the maximum daily traffic is between 300 to 1,000 vehicles per day (typically up to 100 single dwellings or 200 townhouses). For these streets, on-street parking is permitted and the design speed is 40km/hr. Verge widths of 4m both sides also required for utility services, landscaping and noise attenuation setback for dwellings.
- For "Access Streets" accommodating higher daily traffic volumes of between 1,000 to 2,000 vehicles per day, the design speed is 40km/hr still applies, however the carriageway width increases to a minimum of 7.5m with on-street parking permitted. Verge widths of 4m both sides also required for utility services, landscaping and noise attenuation setback for dwellings.
- Separated 1.2m wide footpaths are typically introduced on one side only of access streets accommodating in excess of 1,000 vehicles per day.
- Bicycle traffic shares the road space for access streets, access places and access lanes accommodating less than 2,000 vehicles per day.

The proponent claims that based on the above extracts the proposed 5.5m wide road carriageway is acceptable for the proposed number of lots/dwellings and that it can be accommodated within the existing right of carriage way without requiring the removal of existing trees along Chapel Street. Further, the proponent claims that on-street car parking and a verge would only be required should individual lots obtain direct access from Chapel Street, however, should parking within a 2.5 metre wide kerb be required, it can be provided along the northern boundary of the right of carriage way without impacting on the heritage listed trees along this road.

Comment

The proposal for the existing Right of Carriageway to service 54 to 58 dwellings is considered to be unsatisfactory and unsustainable. In general terms, it is good planning practice to provide properties with direct vehicular access to a public road and avoid the use of Right of Carriageways or at least limit their use to serve a small number of lots. Like any other type of road, vehicular Right of Carriageways require regular maintenance. In this regard, council staff's experience is that disputes often arise between respective land owners over the frequency of maintenance, the nature/extent of maintenance works and apportionment of costs between users. With the greater number of land owners using a Right of Carriageway there is the greater potential for such disputes to arise. Further, in this case, the practicalities of access for larger vehicles (e.g. garbage, removalist, service vehicles) is constrained by the width and the physical location of the trees flanking the Right of Carriageway.

Further without direct public road access to the proposed subdivision all roads within the subdivision would need to be private roads as it is legally not possible to create an isolated public road. Therefore, if the proposed development was to eventuate, vehicular access to the properties would be via a public road (Chapel Street), a Right of Carriageway over Hobartville Stud, and then private roads within the subdivision.

With respect to garbage, recyclables and green waste collection, Council's current practice is not to allow Council collection trucks or Council contractor collection trucks to traverse private roads or Rights of Carriageways. This is primarily to avoid potential maintenance claims against Council due to possible damage caused by the weight and turning movements of the trucks. These private roads are also generally unsuitably designed (turning paths, height clearance, construction standards, etc.) for sustainable use by these vehicles. The possibility of storing a significant number of future garbage, recycle and green waste bins within Chapel Street for collection is considered unacceptable due to the available space, the unsightly nature of the likely number of bins within a confined area of Chapel Street and the inconvenience caused for existing residents of the Chapel Street and future residents of the development. Hence, collection of garbage, recyclables and green waste from the proposed development would need to be undertaken by private contractor under agreement with future owners. This would most likely require future owners to form a collective (perhaps through a community title) in order to secure such private collection. This, however, would not stop the potential for future land owners to seek collection services from Council in the event that the contractual arrangements could not be maintained or became cost prohibitive for land owners.

The proponent's claim that the proposed 5.5m wide road carriageway can be accommodated within the existing Right of Carriage way without requiring the removal of existing trees is disputed. Inspection by Council staff revealed that due to the proximity of the proposed road to existing vegetation, approximately 4 - 6 trees would require removal and 3 of these trees are large and significant trees within the surrounding landscape. Removal of these trees would require permission of the owners of Hobartville Stud and Heritage Council of NSW approval. A site inspection revealed that many of these trees might be retained if the road was re-aligned to the south; however, this would require the road to be constructed outside of the right of carriageway and hence would require permission of the owners of Hobartville Stud and Heritage Council of NSW approval.

Also, due to the broader concerns regarding the proposed access and impact of additional vehicular traffic on the Chapel Street and Kurrajong Road - March Street intersection (to be discussed later in this report) the proponent has not been requested to seek such permission from the owners of Hobartville Stud. It is however noted that when the previous rezoning proposal was reported to Council in October 2007 the then Manager of Hobartville Stud spoke against the proposal.

Notwithstanding the provisions of AMCORD, the narrow width of the proposed road carriageway is considered unacceptable on this site in terms of the potential conflicts between vehicles and pedestrians. The AMCORD guidelines are not mandatory, rather they are suggestions that a council may choose to adopt or adapt based on their individual circumstances. Further the provisions of AMCORD are best considered in light of an integrated planning framework/assessment for an area or region rather than on an ad-hoc site by site basis. Finally, even if the provisions of AMCORD were applied to this proposal the proposed access does not comply with AMCORD standard as no verge or parking is provided on the southern side of the proposed access.

Traffic Generation and Impact on Chapel Street and March Street - Kurrajong Road Intersection

The proponent has submitted advice from McLaren Traffic Engineering (MTE) that considers the current operation of the Chapel Street and Kurrajong Road - March Street intersection and the likely impact of additional vehicular traffic caused by the proposed development.

The MTE report found that in the AM and PM peak periods the intersection performed poorly for the purposes of a right hand turning movement from Chapel Street into March Street under both existing and forecast future conditions based on retaining the two lane flow arrangement along Kurrajong Road.

In response, MTE advise that:

"Whilst this appears to be an issue at first glance . . . it is evident that the current delay and queue lengths associated with these right turns increase only marginally. The . . . analysis does not include the benefits that can occur with gaps created between platoons of traffic generated by the traffic signal control at Bosworth Street further east of Chapel Street.

The provision of 4 through lanes along Kurrajong Road assists in improving the overall level of service of the intersection of Kurrajong / Chapel, and the delays to the right turns out of Chapel Street will significantly improve. The volume of additional right turning traffic from the development site is very low in the context of existing traffic flow demand being some 5 additional vehicles or 1 additional vehicle per 12 minutes during the weekday PM peak hour. That volume of additional traffic would not be sound justification for upgrading the intersection."

In considering this further, MTE considered the following traffic management options:

- Option 1 - Do nothing
- Option 2 - No Right Turn onto March Street from Chapel Street in the morning between 7-10am
- Option 3 - No Right Turn into Chapel Street from Kurrajong Road in the morning and afternoon
- Option 4 - No Right Turn onto March Street from Chapel Street in the morning and No Right turn from Kurrajong Road in the morning

MTE favoured Option 4 and stated that *traffic delay for the critical eastbound flow along the main road of Kurrajong Road during the 7-10AM weekday morning commuter peak is not exacerbated [by the proposed development] and accordingly is supportable in terms of external road network impact.*

Comment:

Whilst MTE claim that the traffic delay for eastbound flow along Kurrajong Road/March Street is not exacerbated no improvement to the intersection is provided and for existing residents of Chapel Street, any easterly paths of travel would be extended and delayed by the No Right Turn restriction. This restriction would require existing residents seeking to travel easterly to turn left on Kurrajong Road and then double back via Old Kurrajong Road, Yarramundi Land and Inalls Lane. This proposed change is considered unsatisfactory and unacceptable.

As noted by MTE, the proposal does not generate sufficient traffic to be a catalyst for an intersection upgrade. Hence, this is inconsistent with Council's Residential Strategy and related resolutions about infrastructure upgrades for planning proposals and development contributions.

Suitability of Proposed R1 General Residential Zone

In support of the proposed R1 General Residential zone the proponent has provided the following commentary:

Some land in the vicinity of the subject site is zoned R2 - Low Density Residential. Land to the south east across Chapel Street is zoned Residential 1. Having regard to the zoning of the land immediately surrounding the subject site it is submitted that an R1 - General Residential is appropriate.

The R2 - Low Density Residential zone does not permit Attached Dwellings, Semi Detached Dwellings and Multi Dwelling Housing. The R2 - Low Density Residential zone is therefore not suitable for the site, being in very close proximity to other R1 - General Residential land and close to the Town Centre, transport, etc.

The R1- General Residential zone permits a variety of housing types to include Semi Detached and Attached Dwellings with the consent of Council. It is not the intention of the applicant to

provide Residential Flat Buildings as part of the development on the subject site and can be excluded as part of a special clause from the proposed Residential 1 - General zone should it be required by Council.

The proposal to provide for a variety of housing types as permitted in terms of the R1 - General Residential zone, will be in line with objectives to encourage a variety and choice of housing types to provide for existing and future housing needs and to make efficient use of existing infrastructure and services as stated in the:

- *Ministerial Direction 3.1 Residential Zones;*
- *Hawkesbury Residential Land Use Strategy 2011;*
- *Improving Transport Choice - Guidelines for planning; and*
- *North West region, Metropolitan Sub regional Strategy.*

The proposed R 1 - Residential General zone will provide for a mix of residential housing types that can respond to market demand and increase the supply of affordable housing in close proximity to public transport and Richmond Town Centre. This is the preferred option.

An R3 - Medium Density Residential zone permits Dwellings, Attached Dwellings, Dual Occupancies, Multi Dwelling Houses and Semi - detached dwellings with the consent of the Council. This zone could also be suitable for the intended development of the site. Whilst this is not the preferred option, the application of an R3 - Medium Density Residential zone would be an acceptable alternative outcome for the planning proposal.

Comment:

The R1 General Residential zone permits a wide range of residential development including residential flat buildings. It is considered that permitting such development on the land would be inconsistent with the type and character of surrounding residential development which is predominantly single storey detached dwelling. The suggestion by the proponent to exclude such development from the site by way of a separate clause is inconsistent with the DP&E's guidelines for LEPs which do not allow individual clauses to prohibit otherwise permissible development established by the respective zone.

Council's previous approach to the zoning of land for the purposes of medium density development has been to restrict such development to within 1km of a railway station or 500m of a commercial zone in the townships of Richmond, North Richmond, Windsor, South Windsor, and Hobartville. Most of the land subject to the planning proposal is greater than 1km (measured in a straight line) from the Richmond Railway Station and as can be seen by Figure 2 above the dominant residential zoning in the vicinity is R2 Low Density Residential.

The proponents desire to provide affordable housing is not disputed however it appears to be incongruent with the nature of the site limitations and the likely need for privately managed road, access and waste and recycling collection.

Conformance to the Hawkesbury Community Strategic Plan

The following provisions of the HCSP are of most relevance to this residential development planning proposal.

Looking After People and Place

Directions

- Be a place where we value, protect and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes
- Offer residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury

- Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury
- Have future residential and commercial development designed and planned to minimise impacts on local transport systems, allowing easy access to main metropolitan gateways

Strategy

- Upgrade the necessary physical infrastructure and human services to meet contemporary needs and expectations

Shaping Our Future Together

Direction

- 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 fees and charges for the preparation of an amendment to the local environmental plan.

Conclusion

It is recommended that Council not support this planning proposal to allow development of the land for residential purposes due to the inappropriateness of the proposed zone, inadequate vehicular and pedestrian access to the site, and the determinant impacts of the proposed development on the Chapel Street and Kurrajong Road - March Street intersection.

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.

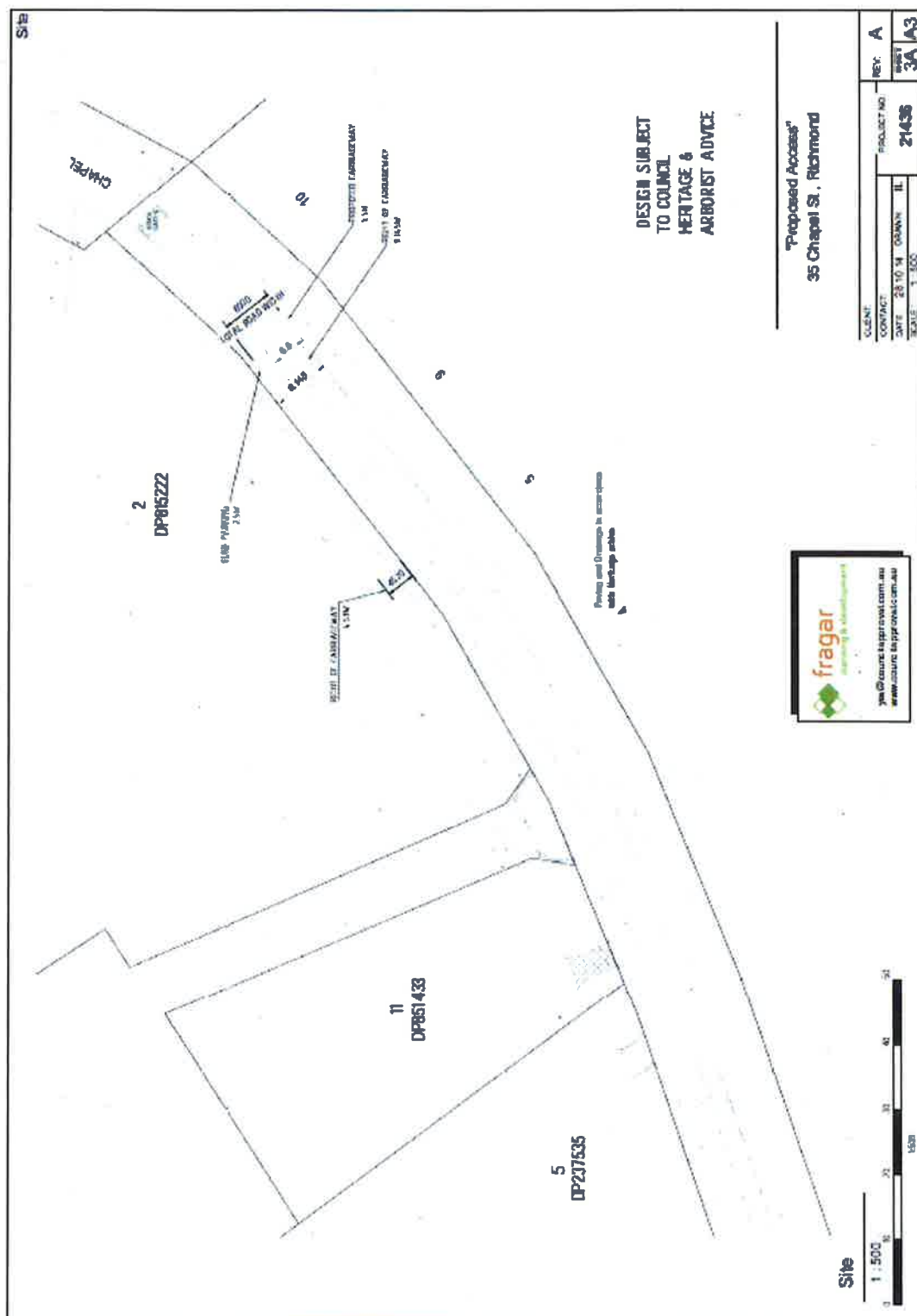
RECOMMENDATION:

That Council not support the planning proposal to seeking to rezone and permit the subdivision of part of Lot 5 DP 237575, 35 Chapel Street, Richmond for residential purposes.

ATTACHMENTS:

AT - 1 Proposed Access Plan

AT - 1 Proposed Access Plan



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