

**ORDINARY MEETING**  
**4. REPORTS FOR DETERMINATION**  
**Meeting Date: 14 February 2023**

**4.1.3. CP - Planning Proposal - LEP002/23 - 1905 and 1913 Bells Line of Road, Kurrajong Heights Reclassification of Land - (95498, 124414)**

**Directorate:** City Planning

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**PLANNING PROPOSAL INFORMATION**

<b>File Number:</b>	LEP002/23
<b>Property Address:</b>	1905 and 1913 Bells Line of Road
<b>Applicant:</b>	Hawkesbury City Council
<b>Owner:</b>	Hawkesbury City Council
<b>Current Minimum Lot Size:</b>	40 ha
<b>Current Zone:</b>	RU2 Rural Landscape SP2 Infrastructure
<b>Site Area:</b>	5441 m2

<b>Key Issues:</b>	Reclassification of land
	Operational History and Regularisation of Tutti Fruitti Café
	Expiration of Clause 6.14 of the Hawkesbury Local Environmental Plan

**PURPOSE OF THE REPORT**

The purpose of this report is to present this Planning Proposal to Council for a determination on whether to submit the proposal to the department of Planning and Environment for a Gateway Determination. The proposal is Council initiated planning proposal for 1905 and 1913 Bells Line of Road seeking to amend the Hawkesbury Local Environmental Plan 2012 by reclassifying the subject site under Schedule 4 Classification and Reclassification of Public Land.

**EXECUTIVE SUMMARY**

Council is seeking to amend the Hawkesbury Local Environmental Plan 2012 by reclassifying Lot 2 and 3 DP 582878, 1905 and 1913 Bells Line of Road, Kurrajong Heights from 'Community Land' to 'Operational Land'. The report demonstrates that the planning proposal is consistent with relevant legislation, strategies and contains site-specific merit.

**RECOMMENDATION**

That:

1. Based on assessment of the Planning Proposal for 1905 and 1913 Bells Line of Road, Kurrajong Heights, and the advice of the Hawkesbury Local Planning Panel, Council supports this Planning Proposal.
2. Council forward the Planning Proposal to the Department of Planning and Environment for a Gateway Determination.

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## **BACKGROUND**

### **Site History**

Lots 2 and 3 DP 582878 were created in 1976 with the intention to be used for future road purposes under the Main Roads Act Section 27E (6) Registered dealing L758309. These lots were transferred to Council in 1983. In 2010 verbal advice was received from the then Roads and Traffic Authority that there were no immediate intentions to acquire the land for road widening. As result, the owners of the adjacent property 1917 Bells Line of Road, which the Tutti Fruitti Café is situated on, expressed interest in purchasing the subject site.

In 2008, a development application was received for the Tutti Fruitti Café, seeking to regularise the use. This Development Application was unable to proceed due to unresolved access rights of the Council owned land, the subject site of the Planning Proposal, and finally withdrawn in 2021 due to relying upon structures destroyed in the summer bushfires of 2019-2020. In response to the property being severely impacted by the bushfires, 1917 Bells Line of Road now benefits from Clause 6.14 of the Hawkesbury Local Environmental Plan 2012 Temporary use of structures for "Tutti Fruitti Café" on certain land at Kurrajong Heights. The clause permits the installation of temporary structures as exempt development to be used for the café, on condition that these structures are removed 2 years after installation. These structures were installed on the 2 December 2020 and were due to be removed by the 2 December 2022.

A Pre-lodgement meeting was held in July of 2021 whereby owners of the Tutti Fruitti Café intend to construct a permanent structure for use as the Café. The advice from this meeting was that the development will be required to be located entirely within the Lot 1 DP 582878 and the owner's intention to use Lot 2 DP 582878 for parking and access will be dependent on the reclassification of the land to 'Operational Land'.

Despite the classification of the subject site as 'Community Land', Council has no intention to use the subject site for public or community purposes.

The timeline for this history is as follows:

- On 18 March 1970 plans of acquisition were registered under the Main Roads Act Section 27E (6), Registered dealing L758309.
- DP 582878 was registered on 19 March 1976 with a notation that 'Lots 2 and 3 are intended to be used for future road purposes and there is no objection to their being shown as a road after acquisition by Department Main Roads'.
- On 23 March 1983, the properties (Lots 2 and 3 in DP 582878) were transferred to Hawkesbury City Council through dealing T387144.
- In 2008, retrospective development application (DA0660/08) was lodged for 1917 Bells Line of Road seeking to regularise the use of the Cafe. This was unable to proceed due to unresolved access rights of the subject site due to being Council owned and classified as 'Community Land'
- In 2010, verbal advice was received from the then Roads and Traffic Authority that they had no immediate intention to acquire the land for road widening purposes. The owner of the land adjoining Lots 2 and 3 has expressed an interest in purchasing these lots. As Council has no future intention to utilise the land for community purposes, reclassifying the land and selling it would be a viable option as it will also relieve Council of any ongoing maintenance issues of these properties.

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- In the summer of 2019 – 2020, the structure of Tutti Fruitti Café was severely destroyed in a bushfire
- On 22 October 2020, the Hawkesbury Local Environmental Plan 2012 was amended to include Clause 6.14 Temporary use of structures for “Tutti Fruitti Café” on certain land at Kurrajong Heights
- On 2 December 2020, temporary structures were installed on 1917 Bells Line of Road to be used for the Tutti Fruitti Café
- On 22 June 2021 a request to withdraw DA0660/08 was received.

#### **Objectives and Provisions of the Planning Proposal**

The objective of the Planning Proposal is to amend the Hawkesbury Local Environmental Plan 2012, Schedule 4 Classifications and Reclassifications of Public Lands to include the subject site, 1913 and 1905 Bells Line of Road, Kurrajong Heights.

The intended outcomes of this proposal are as follows:

- Resolve issues regarding access rights and use of land with Tutti Fruitti Café
- To facilitate the process of regularising the existing use of the site.

#### **Reclassification of Land**

The Local Government Act 1993 requires that all Council-owned land be classified as either ‘Community’ or ‘Operational’ land. Under the provisions of the Local Government Act 1993, Community Land cannot be sold, exchanged or otherwise disposed. Once the land is reclassified to Operational, it will no longer be protected under the Local Government Act 1993 from potential future sale or development. The change in classification from Community to Operational land will remove this restriction and allow Council to deal in the land on a commercial basis. This may include development, leasing or disposal. The reclassification does not commit Council to the sale or development of the land, nor does it remove the land from Council’s ownership or prevent the current use of the land from continuing.

The reclassification of Council land must be undertaken in accordance with the Local Government Act 1993, Environmental Planning and Assessment Act 1979. The mechanism to reclassify land by way of a planning proposal is to amend Schedule 4 of the Hawkesbury Local Environmental Plan 2012. An independently facilitated public hearing is required to be held as part of the community consultation process for any planning proposal seeking to reclassify land from ‘Community’ to ‘Operational’.

The decision to sell or lease the land will be subject to further negotiations and future resolutions of Council. In both situation the funds from this dealing will go to either General Revenue for rental or Council’s Property Reserve for sale proceeds.

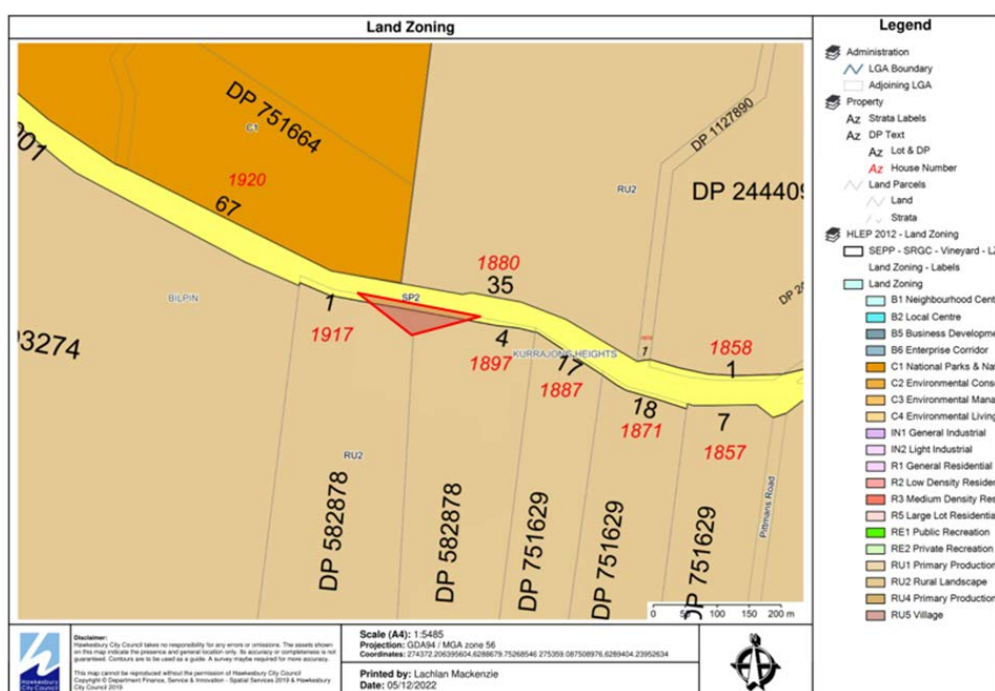
#### **Planning Controls**

<b>Existing Planning Controls</b>	
Zone	SP2 Infrastructure RU2 Rural Landscape
Minimum Lot Size	40 ha
Height of Buildings	10m

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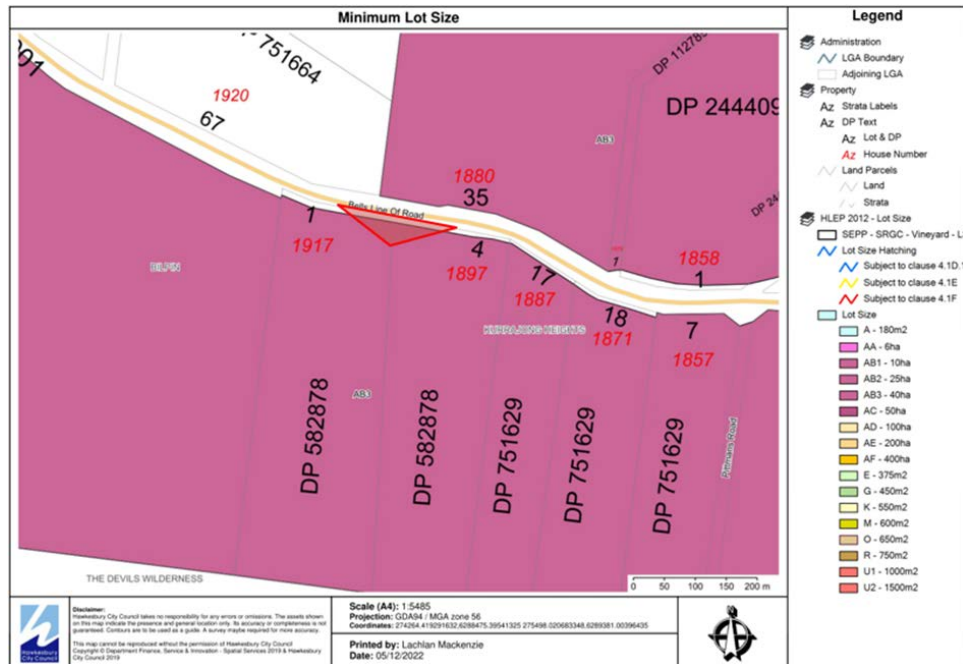
Existing Planning Controls	
Acid Sulfate Soils	Class 5 – Acid Sulfate Soil
Flood	The subject site is above the 1 in 100 ARI flood level and above the Probable Maximum Flood level
Biodiversity	The site contains vegetation classified as 'connectivity between remnant vegetation'
Bushfire Prone Land	The subject site is entirely bushfire prone, containing vegetation buffer of Vegetation Category 1 and 3 Bushfire Prone Land
Sewer Scheme	The subject site is not connected to any sewer scheme
Sydney Water	The subject site is not within the Sydney Water – Water Supply Area.
Heritage	The subject site does not contain or is adjacent to any items of local or state heritage listing
Temporary use of structures for 'Tutti Fruitti Café' on certain land at Kurrajong Heights	<p>While applicable to the adjacent site 1917 Bells Line of Road, the temporary structures that the clause permits encroach upon the boundary of the subject site and is relevant to the consideration of the planning proposal.</p> <p>The clause is in effect for two years from the erection of the structures which were erected on the 02/12/2020, consequently the clause expired on the 02/12/2022</p>

The following figures highlights the subject site.

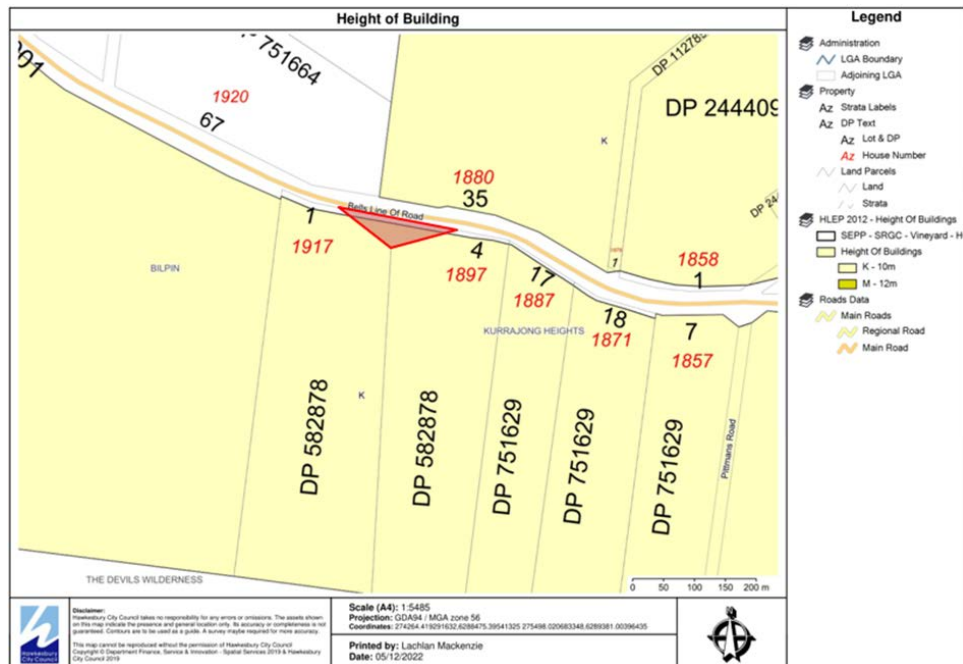


**Figure 1: HLEP 2012 Zoning Map, Source: Hawkesbury IntraMaps**

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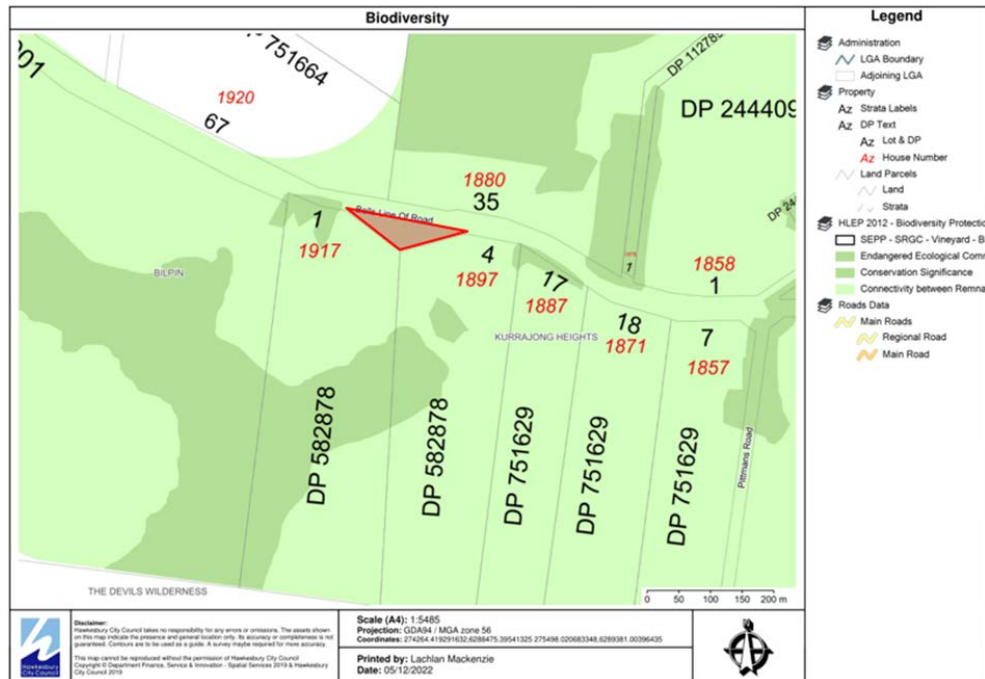


**Figure 2: HLEP 2012 Minimum lot Size, Source: Hawkesbury IntraMaps**

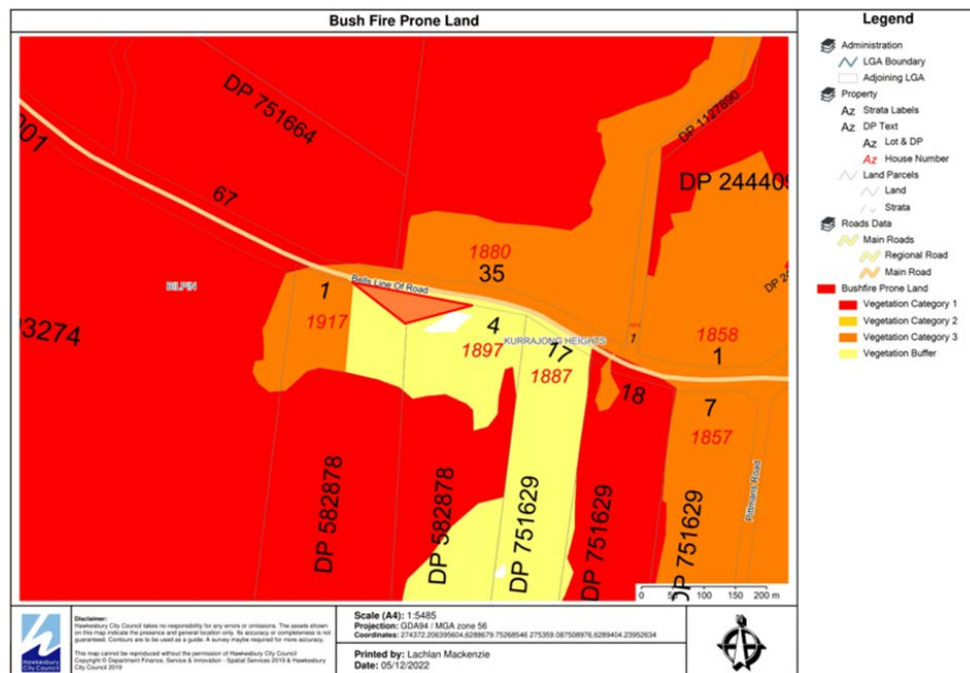


**Figure 3: HLEP Height of building Map, Source: Hawkesbury IntraMaps**

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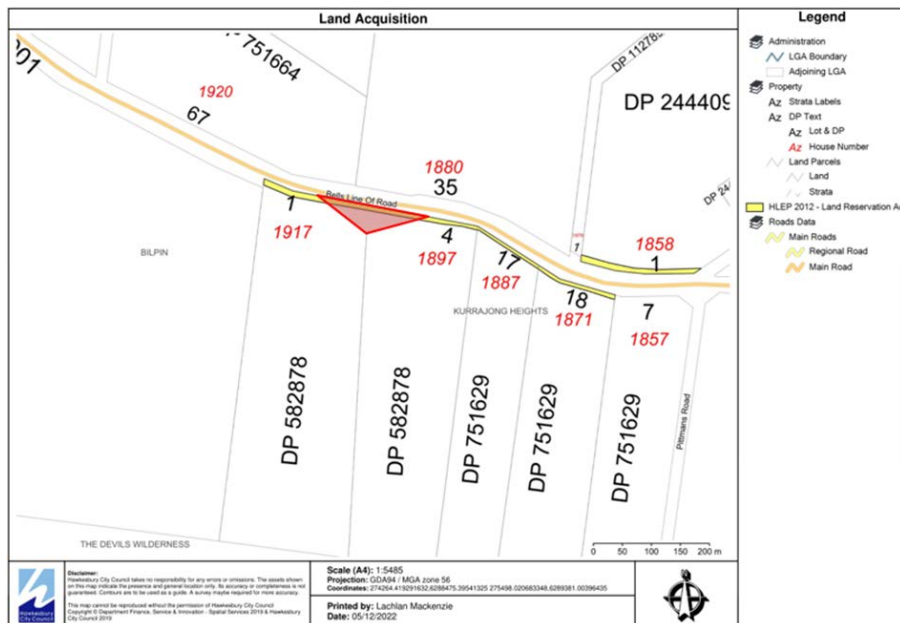


**Figure 4: HLEP Biodiversity Significance Map, Source: Hawkesbury IntraMaps**



**Figure 5: HLEP Bushfire Prone Land Map, Source: Hawkesbury IntraMaps**

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**Figure 6: Land Reserved for Acquisition Map, Source: Hawkesbury IntraMaps**

#### Site Location and Characteristics

The Planning Proposal applies to 1905 and 1913 Bells Line of Road (Lots 2 and 3 DP 582879). The current site is used for vehicular access and parking for the Tutti Fruitti Café, which is situated over the boundary of 1917 Bells Line of Road and the subject site, without formal development consent. The current café utilises temporary structures as permitted through Clause 6 of the Hawkesbury Local Environmental Plan 2012 until 2 December 2022.

The subject site is zoned RU2 Rural Landscape, and SP2 Infrastructure due to allocation of the front of the lot for road widening, with no immediate intention to engage in this road upgrade. The use of RU2 land for the purposes of restaurants and cafes is permissible under the Hawkesbury Local Environmental Plan 2012 Land Use Table.

The surrounding area features extensive rural uses including commercial orchids, small scale farming and complimentary agri-tourism businesses on RU2 zoned land. Immediate uses around the subject site include the Bilpin Blossom Farm an agri-tourist facility, Madison's Mountain Retreat, Pie in the Sky Roadhouse, and rural-residential dwellings.

#### DISCUSSION

##### Relationship to Strategic Framework

##### Greater Sydney Region Plan

The Greater Sydney Region Plan, established by the Greater Sydney Commission, is the key strategic plan governing the direction and objectives of the future of Sydney. The plan envisions a 'City of Three Cities', a multicentred future for Sydney that facilitates and co-ordinates the growth of Greater Sydney. The strategy outlines 10 directions, and 42 objectives guiding the future of Sydney

Relevant to this planning proposal is *Objective 24 – Economic sectors are targeted for success*. This objective emphasises the need to nurture and promote local industries, especially through supporting small business locally defining industries. The provisions of the planning proposal meet this objective

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as it enables the proceeding of the regularisation of the existing use of the site within the context of the local agri-tourism industry.

The planning proposal additionally is consistent with the *Objective 22 – Investment in business activity in centres*. This objective identifies the need to maintain the character of rural towns and villages as centres of rural industries, tourism and businesses. Accordingly, business activity that maintains this character is supported. As the planning proposal seeks to reclassify the public land as operational land to support the existing business, it is consistent with this objective.

Through Hawkesbury's classification as Metropolitan Rural Area within the Greater Sydney Region Plan, *Objective 29 – Environmental, Social and economic values in rural areas are protected and enhanced* is of relevance to the Planning Proposal. This objective ensures the preservation of the character and identity of the Metropolitan Rural Area. The Planning Proposal is consistent with this objective as it seeks to support existing local business that is congruent with the local character as an agribusiness due to being a restaurant that supports and serves local tourism, and also retails local produce. Additionally, the proposal does not support or enable any develop that will detract from the environmental, social and economic values in the area.

#### Western City District Plan

The Western Sydney District Plan provides planning priorities and objectives targeted and in consideration of the unique context of Western Sydney. The planning proposal is consistent with *Planning Priority W8 – Leveraging industry opportunities from the Western Sydney Airport and Badgerys Creek Aerotropolis*, whereby tourism industries in the Western City District are to be supported to maximise the benefits of the Western City Airport.

The planning proposal is consistent with *Planning Priority W17 - Better managing of rural areas*. This priority gives effect to Objective 29 of the Greater Sydney Region Plan. This priority emphasises the need of improved management of the character defining and productive rural areas of the Western City District. The Planning Proposal is consistent with this objective as it seeks to maintain the existing economic activity and character of the area through supporting local business.

#### Hawkesbury Local Strategic Planning Statement 2040

The Hawkesbury Local Strategic Planning Statement 2040 responds to objectives put forward in the Western City District Plan, to localise the strategic vision. Relevant to the planning proposal is *Planning Priority 7 Promote and support all sectors of industry and business to meet current and future demands and trends*. This planning proposal through supporting and enabling the regularisation of a local hospitality business complimentary to the surrounding land uses is consistent with this clause

#### Hawkesbury Rural Lands Strategy

The Hawkesbury Rural Lands strategy identifies the importance of tourist and commercial uses, specifically agri-tourism and agribusiness in the Hawkesbury area. The strategy acknowledges the importance of these uses, which are complimentary to the land use patterns and landscape of the area. Accordingly, this planning proposal is consistent with the strategy as it supports and regularises the use of the site which contributes to the Kurrajong – Bilpin tourist and commercial industry.

#### State Environmental Planning Policies

The Planning Proposal is assessed to be consistent with relevant State Environmental Planning Policies.



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*State Environmental Planning Policy (Biodiversity and Conservation) 2021.*

Chapter 4: Koala habitat Protection 2021

The site is less than 1 ha and not within an area with a koala plan of management, accordingly it is not subject to clause 4.2 development controls for koala habitats.

Chapter 6: Water Catchment (6.13 Hawkesbury-Nepean conservation area sub-catchments)

The planning proposal does not have any adverse impacts on the Hawkesbury-Nepean River or its sub catchments.

*State Environmental Planning policy (Resource and Energy).*

Chapter 3: Extractive Industries in Sydney

The planning proposal is for the reclassification of the land to enable the regularisation of the subject site. The proposal is not impacted by or impedes extractive industries

The following State Environmental Planning Policies are not relevant to the planning proposal at this stage, however, will be relevant to any ensuing development should the proposal proceed.

- *SEPP (Building Sustainability Index: BASIX) 2004.*
- *SEPP (Exempt and Complying Development Codes) 2008.*
- *SEPP (Sustainable Buildings) 2022 (in force from 01 October 2023).*

Local Planning Direction (Ministerial Directions)

The planning proposal is assessed to be consistent with relevant Ministerial Directions. The following are of particular relevance to the planning proposal.

4.3 Planning for Bushfire Protection

This direction aims to protect life, property, and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas and encourage sound management of bush fire prone area.

The planning proposal is consistent with this direction as it is only for the reclassification of land and will be consulted with relevant authorities will be completed as required in the Post-Gateway stage . Any future development is a separate matter to this planning proposal, which will be considered upon receiving a development application.

9.2 Rural Lands

This direction aims to protect the agricultural productivity and character of rural areas in New South Wales. Specifically, objective b of this direction is to 'facilitate the orderly and economic use and development of rural lands to promote for rural and related purposes'. The planning proposal is consistent with this direction as it does not impede the productivity of surrounding land uses and supports the local agri-tourism industry.

### **Site and Strategic Merit**

The site is located on a key arterial road and contains a high degree of site-specific merit in regard to providing a hospitality food and drink venue in the broader context of the areas land use and industry

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mix. The planning proposal contains a sound level of strategic merit as it seeks to facilitate the regularisation of an existing use which contributes to the local agribusiness and agri-tourist economy and does not permit development that will hinder the local character and productivity. With this consideration, the planning proposal is consistent with the Metropolitan Rural Area objectives of the Greater Sydney Region Plan and Western City District Plan and support local planning objectives and strategies that seek to promote and support local rural areas.

#### Environmental, Social and Economic Impact

No adverse environmental, social, or economic impacts are anticipated as a result of the planning proposal.

#### Recommendations of the Hawkesbury Local Planning Panel

This planning proposal was considered by the Hawkesbury Local Planning Panel at its meeting on 19 January 2023 for advice. The Hawkesbury Local Planning Panel unanimously supported the Planning Proposal, recommending that it should proceed.

The draft minutes are provided below:

The Panel unanimously provided the following advice:

*'The Planning Panel supports the Planning Proposal to initiate the process of reclassification of the subject site, for the following reasons:*

- 1. The Planning Proposal has strategic and site specific merit for the reasons outlined in the Council officers' report.*
- 2. The Panel notes the history relating to the site, which included previous attempts to obtain development approval that were prevented by land ownership issues and relied upon the presence of existing structures that were subsequently destroyed in the 2019/20 bush fires.*
- 3. Reclassification is the first step in the process to allow future dealings with the land that may assist in resolving these ongoing land management and development issues (noting however, that it is not within the remit of the Panel to make any comment on the nature or outcome of any such future dealings).*
- 4. The Planning Proposal process should be undertaken in accordance with the requirements of Planning Circular PN16-001 and the relevant Departmental Guidelines with respect to classification and reclassification.*
- 5. The Panel acknowledged the advice of Council officers at the meeting that Council was not seeking its advice on Clause 6.14 of the Hawkesbury LEP."*

#### Conclusion

The reclassification of the subject site from community to operational land provides for the regularisation of Tutti Fruitti Café, enabling lawful operation through resolving issues of parking and access rights on Council owned land. This reclassification will provide options in the dealing with the land and an avenue for the consideration of future development applications to seek formal consent for Tutti Fruitti Café.

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**COMMUNITY ENGAGEMENT**

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy at this stage. Should the Planning Proposal proceed after receiving Gateway Determination from the Department of Planning and Environment, the Planning Proposal will undertake a public exhibition period for a minimum of 28 days, unless otherwise stipulated in the Gateway Determination.

As the Planning Proposal seeks the reclassification of public land, an independently facilitated public hearing is required as part of the public exhibition process

**CONFORMANCE TO THE HAWKESBURY COMMUNITY STRATEGIC PLAN 2022-2042**

The proposal is consistent with the following Long-Term Community Objectives set out within the CSP.

Our Future

- 5.7 Tourism and Economic Development - Promote our community as the place to visit, work and invest.
- 5.8 Industry - Increase the range of local industry opportunities and provide effective support to continued growth.

**FINANCIAL IMPACT**

There are no financial implications applicable to this report.

**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.

**ATTACHMENTS**

There are no supporting documents for this report.

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