



IRF23/1849

Gateway determination report – PP-2023-545

1905 and 1913 Bells Line of Road, Kurrajong Heights

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Council Report and Minutes (14 February 2023)
Title Searches for Lot 2 DP 582878 and Lot 3 DP 582878
Information Checklist for proposals to reclassify public land

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Hawkesbury
PPA	Hawkesbury City Council
NAME	Reclassification of 1905 and 1913 Bells Line of Road, Kurrajong Heights, from 'community' land to 'operational' land
NUMBER	PP-2023-545
LEP TO BE AMENDED	Hawkesbury Local Environmental Plan 2012
ADDRESS	1913 Bells Line of Road, Kurrajong Heights 1905 Bells Line of Road, Kurrajong Heights
DESCRIPTION	Lot 2 in DP 582878 Lot 3 in DP 582878
RECEIVED	20/03/2023
FILE NO.	IRF23/1849
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (**Attachment A**) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to reclassify the subject site from community to operational land to:

- provide flexibility to the management of the land;
- resolve access rights and land use issues to adjoining properties; and
- facilitate the process of regularising the existing use of site.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Hawkesbury LEP 2012 to reclassify the land from 'community' to 'operational'. The reclassification would occur by amending Schedule 4

Classification and reclassification of public land of the LEP to include the subject site in Part 1 as shown in Table 3 below.

Table 3 Proposed insertion in Part 1 of Schedule 4 of the Hawkesbury LEP 2012

Column 1	Column 2
Locality	Description
Kurrajong Heights, 1913 Bells Line of Road	Lot 2, DP 582878
Kurrajong Heights, 1905 Bells Line of Road	Lot 3, DP 582878

The proposal states it will not require any interests on the land to be discharged as the land is zoned SP2 Infrastructure and reserved for road widening purposes, which will be retained.

The site is zoned RU2 Rural Landscape and SP2 Infrastructure under the Hawkesbury LEP 2012. The planning proposal does not seek to amend the land use zones or any other provisions applying to the site. There are existing restrictions on the title (**Attachment D**) for future road widening purposes.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The planning proposal applies to 1913 Bells Line of Road, Kurrajong Heights (Lot 2 DP 582878), and 1905 Bells Line of Road, Kurrajong Heights (Lot 3 DP 582878) (the site). The lots are triangular and have an area of 2,731.5m² and 2,709.6 m² respectively.

The lots were created in 1976 for the purpose of future road widening under the *Main Roads Act 1924* Section 27E(6) Registered dealing L758309.

The subject site is located on the southern side of Bells Line of Road and is currently used for vehicular access and parking for the adjoining Tutti Fruitti Café at 1917 Bells Line of Road, Kurrajong Heights (**Figure 1**). The site is in close proximity to the Fruit Bowl Agri-Tourism Farm Gate Trail in Bilpin as one of the Hawkesbury Tourist Destinations identified in the Hawkesbury Local Strategic Planning Statement 2040 (LSPS) (**Figure 2**).

The surrounding area comprises rural uses and is primarily zoned RU2 Rural Landscape and C1 National Parks and Nature Reserves (**Figure 3**).



Figure 1 Subject site (source: Nearmap 2023)

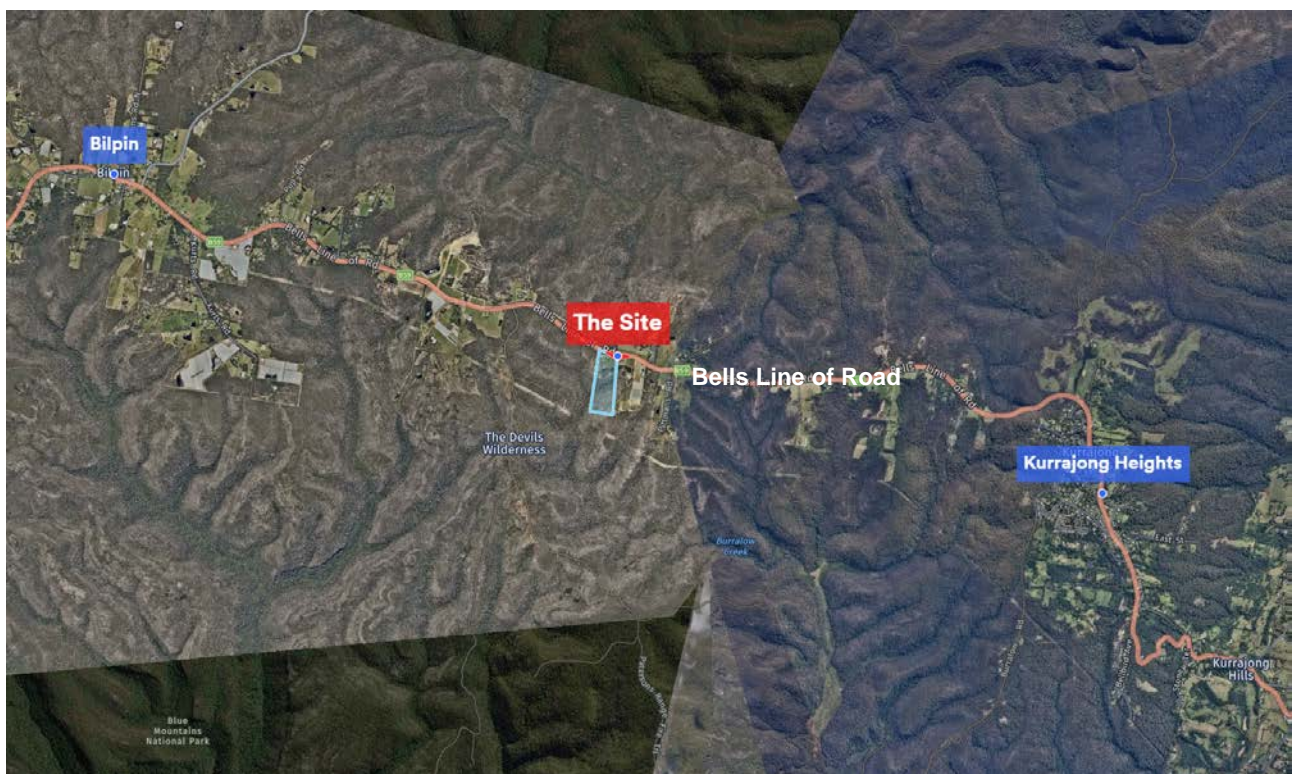


Figure 2 Site context (source: Nearmap 2023)

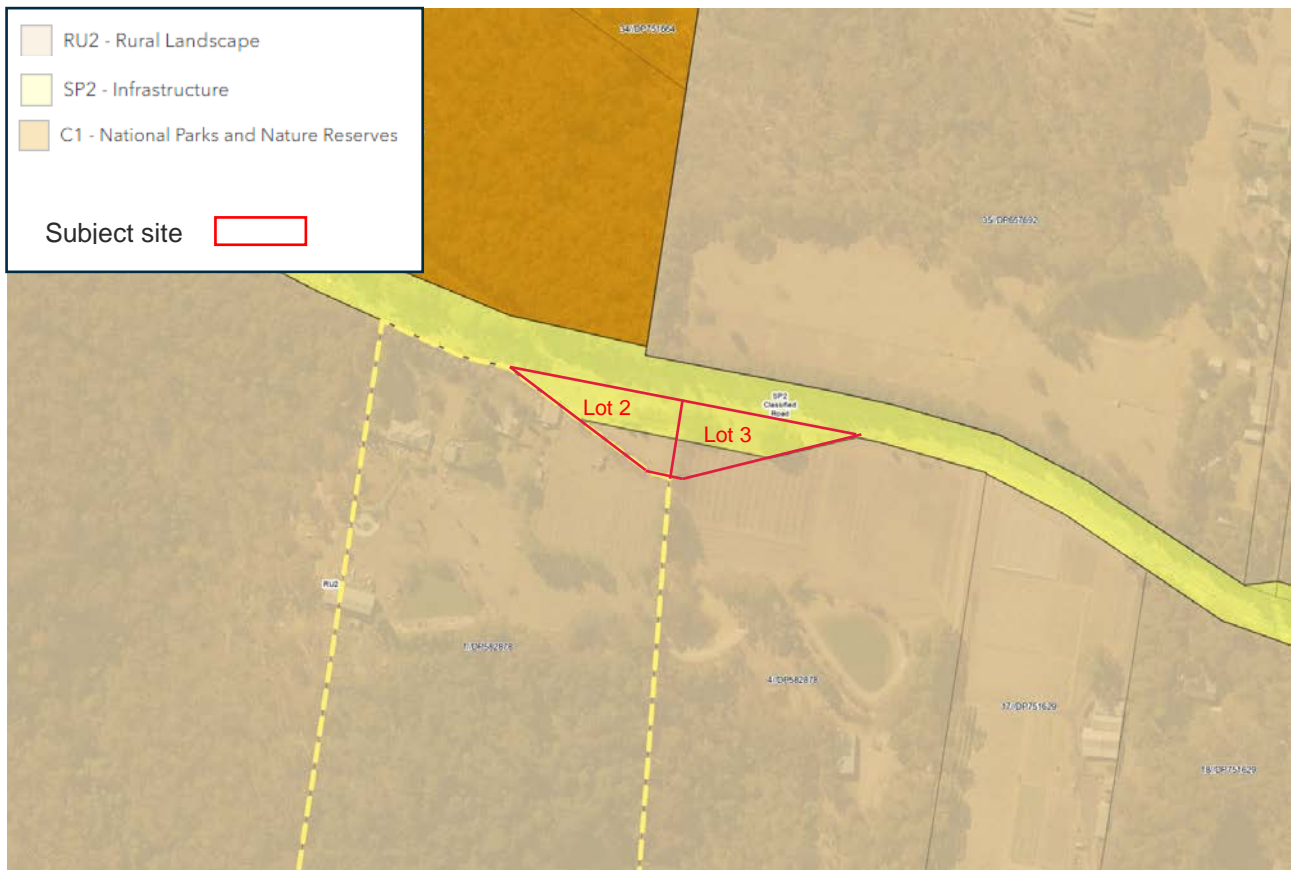


Figure 3 Surrounding Land Use Zones (source: Planning Proposal 2023)

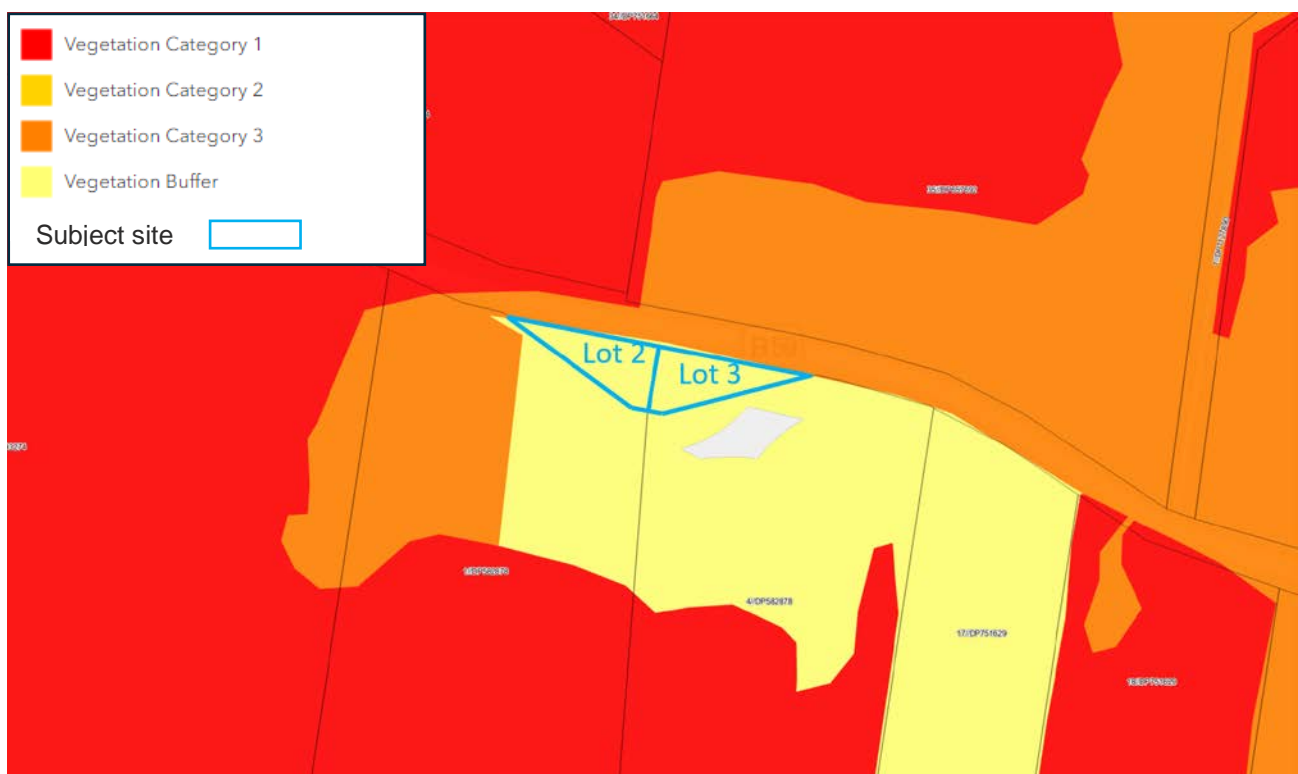


Figure 4 Bushfire prone land on site and in the surrounding area (source: ePlanning Spatial Viewer 2023)

1.5 Mapping

The planning proposal does not seek to introduce or amend the Hawkesbury LEP 2012 maps. As the proposed reclassification applies to the entirety of the site, a Land Reclassification Map – Part Lots is not required.

1.6 Background

Lots 2 and 3 in DP 582878 were created in 1976 with the intention to be used for future road purposes under the *Main Roads Act 1924* Section 27E(6) Registered dealing L758309.

These lots were transferred to Council in 1983. Despite the current classification as 'Community Land', Council has no intention to use the subject site for public or community purposes.

Council states that in 2010, verbal advice from the former Roads and Traffic Authority was that there were no immediate intentions to acquire the land for road widening. The Department has consulted with TfNSW during Gateway assessment. TfNSW have advised that the land is required for safety infrastructure upgrades along Bells Line of Road. The location of these upgrades is yet to be determined (**Attachment H**).

The owner of the adjoining property to the south at 1917 Bells Line of Road, Kurrajong Heights, has expressed an interest in purchasing Lot 2 in DP582878 to facilitate the existing use of the land for vehicular access and parking of Tutti Fruitti Café.

In 2008, a development application lodged on behalf of the Tutti Fruitti Café, at 1917 Bells Line of Road, Kurrajong Heights, sought to formalise the use of the restaurant and café but was unable to proceed due to the absence of access rights over the Council-owned subject site. The existing structures were destroyed in the summer bushfires of 2019.

In response to the severe bushfire damage, 1917 Bells Line of Road benefits from Clause 6.14 of the Hawkesbury LEP 2012 *Temporary use of structures for 'Tutti Fruitti Café' on certain land at Kurrajong Heights*, which permits the installation of temporary structures and the use of the cafe as exempt development for a temporary period, which lapsed on 2 December 2022.

2 Need for the planning proposal

The planning proposal is not a result of an endorsed Local Strategic Planning Statement, strategic study or report.

The proposal states that the reclassification would enable the consideration of future development applications for the adjoining site and the process of formalising the existing use of the café and resolving access and parking issues of the subject site.

Council has no intention to use the land for 'community' uses and seeks to correct this anomaly. The *Local Government Act 1993* stipulates that a planning proposal is the mechanism to reclassify land from 'operational' to 'community'.

3 Strategic assessment

3.1 District Plan

The site is within the Western City District and the Greater Sydney Commission released the Western City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 5 District Plan assessment

District Plan Priorities	Justification
Planning Priority W11 Growing investment, business opportunities and jobs in strategic centres	<p>Planning Priority W11 aims to manage the growth and change of the Western City District's centres by maintaining the established hierarchy of centres.</p> <p>The proposed reclassification makes administrative changes only and will not facilitate any redevelopment of the site. The planning proposal is consistent with this objective as it does not change the existing rural use pattern in the area and will not compromise centres and the values and character of nearby rural and bushland areas.</p>
Planning Priority W17 Better managing rural areas	<p>Planning Priority W17 aims to maintain and enhance the values of Metropolitan Rural Areas and limit urban development to within the Urban Area, except for the nominated investigation areas.</p> <p>The subject site is identified as Metropolitan Rural Area in Figure 49 of the Greater Sydney Region Plan.</p> <p>The proposal does not facilitate any redevelopment that would negatively impact the environmental, social and economic values of the Metropolitan Rural Area as discussed in Section 4 of this report.</p> <p>The proposal is not inconsistent with the objective.</p>
Planning Priority W18 Delivering high quality open space	<p>Planning Priority W18 seeks to optimise open space areas and establish physical links that support social networks and a sense of community.</p> <p>The planning proposal is not inconsistent with this objective because the proposed reclassification is administrative in nature and does not apply to public open space.</p>

3.2 Local Plan

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement 2040	<p>The Hawkesbury LSPS plans for the Hawkesbury Community's economic, social and environmental land use needs over the next 20 years. It sets clear planning priorities about what will be needed in terms of jobs, homes, services and recreational needs.</p> <p>Council states that the planning proposal through supporting and enabling the formalisation of a local hospitality business, that is complimentary to the</p>

	surrounding land uses, is consistent with Planning Priority 7 Promote and support all sectors of industry and business to meet current and future demands and trends.
Hawkesbury Community Strategic Plan 2022-2042	<p>The Hawkesbury Community Strategic Plan outlines the key aspirations and sets the direction for future Council activities and decision making.</p> <p>By supporting and enabling a local hospitality business that is complimentary to the surrounding land uses, the planning proposal contributes to Community Outcome 3 Strong Economy and in achieving the following long term objectives:</p> <ul style="list-style-type: none"> • 3.2 Increase the range of local industry opportunities and provides effective support for continued growth. • 3.3 Promote our community as the place to visit, work and invest.
Hawkesbury Rural Lands Strategy	<p>The Strategy identifies café and restaurant uses as key contributors to the Kurrajong-Bilpin tourist and commercial industry, providing food and drinks to the tourists travelling through the LGA.</p> <p>Council states that the planning proposal is consistent with the Strategy as it promotes the important role of café and restaurant sector to support the local agritourism and agribusiness.</p> <p>The proposed reclassification of land is administrative only and enables Council's management of the land. The proposal is not considered inconsistent with the Strategy.</p>

3.3 Local planning panel (LPP) recommendation

The planning proposal was considered by the Hawkesbury Local Planning Panel on 19 January 2023. The Panel advised Council that it supported the planning proposal and recommended that Council forward the planning proposal to the Department for a Gateway determination.

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.3 Approval and Referral Requirements	Consistent	<p>The objective of Direction 1.3 is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>The planning proposal does not propose to introduce provisions that require the concurrence, consultation or referral of a Minister or public authority.</p> <p>The planning proposal is consistent with the Direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.4 Site Specific Provisions	Consistent	<p>The objective of Direction 1.4 is to discourage unnecessarily restrictive site-specific planning controls.</p> <p>The planning proposal seeks to reclassify the site from 'community' to 'operational' and does not contain unnecessarily restrictive site-specific planning controls.</p> <p>The planning proposal is consistent with the Direction.</p>
Direction 4.3 Planning for Bushfire Protection	Unresolved	<p>The objectives of Direction 4.3 are to protect life, property and the environment from bush fire hazards by discouraging incompatible land uses and to encourage sound management of bushfire prone areas.</p> <p>The subject site is mapped as bushfire prone land. The planning does not propose to change the existing land use zoning. However, formal consultation with NSW Rural Fire Service to ensure the proposal complies with the requirements of this Direction. Until this occurs, the consistency of this proposal with the Direction will remain unresolved.</p>
Direction 5.2 Reserving Land for Public Purposes	Consistent	<p>The objective of Direction 5.2 is to facilitate the reservation of land for public purposes and the removal of such reservations where they are no longer required.</p> <p>The RU2 zoned portion of the site has not been identified for community use in any strategic plan. However, the land is identified for future road widening purposes. The Department has consulted with TfNSW as part of its Gateway assessment.</p> <p>TfNSW have advised (Attachment H) that the land is required for safety infrastructure upgrades along Bells Line of Road. TfNSW are in the process of determining the location of these upgrades. The proposal and any future development on the subject sites must not impact the existing road widening affectation for future road purposes.</p> <p>The proposed reclassification is administrative in nature and can occur without adversely affecting future road widening purposes. Notwithstanding, it is recommended that conditions are included on the Gateway to update the planning proposal to be consistent with TfNSW's advice.</p>
Direction 9.1 Rural Zones	Consistent	<p>The objective of Direction 9.1 is to protect the agricultural production value of rural land.</p> <p>The planning proposal does not seek to rezone the land. The planning proposal is consistent with the Direction.</p>
Direction 9.2 Rural Lands	Consistent	<p>The objectives of Direction 9.2 are to protect the agricultural production value of rural land, to facilitate development of rural lands for related purposes, to assist in the management of rural lands to promote the welfare of the State, minimise land</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>fragmentation and conflict, encourage sustainable land use practices, and support the NSW Right to Farm Policy.</p> <p>The planning proposal does not seek to rezone the land or change development standards.</p> <p>The planning proposal is consistent with the Direction.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	Chapter 4 – Koala habitat protection 2021	Consistent	<p>This Chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.</p> <p>The Hawkesbury LGA is listed in Schedule 2 of the SEPP. Accordingly, Chapter 4 applies to the planning.</p> <p>The site does not have an approved koala plan of management applying to the land.</p> <p>The planning proposal does not seek to rezone the land and will not interfere the operation of the SEPP.</p>
	Chapter 6 – Water catchments	Consistent	<p>This Chapter applies to land in the Sydney Drinking Water Catchment, the Sydney Harbour Catchment, the Georges River Catchment and the Hawkesbury-Nepean Catchment.</p> <p>The planning proposal applies to land in the Hawkesbury-Nepean Sub-Catchments.</p> <p>Chapter 6 of the SEPP requires consent authorities to consider impacts on water quality and quantity, aquatic ecology, flooding, recreation and public access,</p>

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
			and downstream impacts before granting development consent. The planning proposal does not seek to rezone the land and is unlikely to result in adverse impacts on the Hawkesbury-Nepean Catchment.
SEPP (Industry and Employment) 2021	Chapter 3 – Advertising and signage	Consistent	This Chapter regulates the design, location, and display of signage (including advertising), but not the content of signage. The planning proposal will not interfere the operation of the chapter.
SEPP (Primary Production) 2021	Chapter 2 – Primary production and rural development	Consistent	This Chapter aims to facilitate the orderly use and development of land, reduce land use conflict and sterilisation of rural land. The planning proposal does not seek to rezone the land and the proposed reclassification is administrative in nature. It does not interfere with the operation of the chapter.
SEPP (Transport and Infrastructure) 2021	Chapter 2 – Infrastructure	Consistent	Chapter 2 aims to facilitate the effective delivery of infrastructure across the State. The planning proposal seeks to reclassify land from 'community' to 'operational'. The planning proposal does not interfere with the operation of the chapter.

4 Site-specific assessment

4.1 Environmental

The site contains bushfire prone land as discussed under Section 3.4 of this report. The proposed reclassification is administrative in nature and will not impact bushfire risk on the site or in the local area. No adverse environmental impact is anticipated as a result of the proposal.

4.2 Social and economic

There are no social or economic impacts resulting from the proposed reclassification.

4.3 Infrastructure

The proposed reclassification is administrative in nature and can occur without adversely affecting future road widening purposes.

It is noted that TfNSW has indicated that the land may be required for future road widening purposes. The planning proposal should be updated prior to exhibition to clarify that it will not impact on the integrity of the existing road widening affectation for future road purposes. A Gateway condition has been recommended in this regard.

5 Consultation

5.1 Community

Council have not identified a proposed community consultation duration.

The planning proposal is classified as 'standard' in the Local Environmental Plan Making Guideline (September 2022). Accordingly, a 20 working day public exhibition period is recommended.

The planning proposal involves the reclassification of public land through a local environmental plan. A public hearing is required to be held in accordance with the terms of the *Local Government Act 1979* for the reclassification of land.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- Transport for NSW
- NSW Rural Fire Service.

The Gateway determination includes a condition to this effect.

6 Timeframe

Council proposes a 5 month time frame to complete the LEP.

The Department recommends the LEP is completed 9 months from the date of the Gateway determination to allow time for the public hearing and ensure the LEP is completed in line with its commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

As the planning proposal relates to the reclassification of Council owned land, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- There is regional, district and local strategic merit for the proposal.
- The proposed reclassification of public land through a LEP is the best means of achieving the objectives of the planning proposal.

Based on the assessment outlined in this report, the proposal is to be updated before consultation to:

- clarify that the proposal will not impact on the integrity of the existing road widening affectation for future road purposes;
- note that TfNSW has indicated that the land may be required for future road widening purposes; and
- reflect the timelines included in this determination in the Proposal Timeline.

9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions Direction 4.3 Planning for Bushfire Protection is unresolved until consultation with NSW Rural Fire Service is completed.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

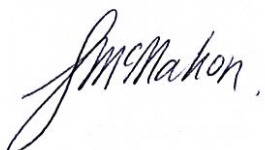
1. Prior to community consultation, the planning proposal is to be updated to:
 - clarify that the proposal will not impact on the integrity of the existing road widening affectation for future road purposes;
 - note that TfNSW has indicated that the land may be required for future road widening purposes; and
 - reflect the timelines included in this determination in the Proposal Timeline.
2. Consultation is required with the following public authorities:
 - Transport for NSW
 - NSW Rural Fire Service.
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. A public hearing is required to be held in accordance with Section 29 of the *Local Government Act 1993* and the Department's Practice Note PN 16-001.
5. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.

 (Signature)

14/07/2023 (Date)

Wayne Williamson

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18/07/2023 (Date)

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