



Plan finalisation report – PP-2023-545

Reclassification of Community Land at 1905 and 1913
Bells Line of Road, Kurrajong Heights - Hawkesbury
City Council

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Hawkesbury Local Environmental Plan (HLEP) 2012 (Amendment No. 36).

1.1.2 Site description

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 lots have an area of 2731.5m² and 2709.6m² 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 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)

1.1.3 Purpose of plan

The objectives of the planning proposal (**Attachment A**) 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 the site.

Clause 5.2 of HLEP 2012 provides for the classification and reclassification of public land as community land or operational land in accordance with Part 2 of Chapter 6 of the *Local Government Act 1993*.

To reclassify land from community land to operational land (with or without changing interests that apply to the land's title), an amendment is required to insert the land descriptions into Schedule 4 of HLEP 2012. When this occurs, if the land is a public reserve, it will cease to be a public reserve. All interests affecting the land, or part of the land are discharged, unless otherwise specified in Column 3 of Part 2 of Schedule 4 of HLEP 2012.

The Amending LEP will amend HLEP 2012 to reclassify two (2) adjacent lots for disposal as Council has no intention to use the subject site for public or community purposes. The proposal doesn't require any interests on the land to be discharged as the land is zoned SP2 Infrastructure, with existing restrictions on the title for future road widening purposes, which will be retained. The planning proposal does not seek to amend the land use zones or any other provisions applying to the site. The land description for both lots will be inserted into Part 1 of Schedule 4 of HLEP 2012.

1.1.4 State electorate and local member

The site falls within the Hawkesbury state electorate. Robyn Preston MP is the State Member.

The site falls within the Macquarie federal electorate. Susan Templeman MP is the Federal Member.

To the Department's knowledge, neither Member of Parliament has made any written representations regarding the proposal.

There are no known gifts to disclose, and a political donation disclosure is not required.

There have been no known meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 18/07/2023 (**Attachment C**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered on 16/04/2024 (**Attachment D**) to extend the timeframe for completing the LEP until 30/08/2024, which is currently the due date for finalisation.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 4/10/2023 to 1/11/2023, as required by section 29 of the *Local Government Act 1993*. No submissions were received during the exhibition period.

3.1 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with Transport for NSW (TfNSW) and NSW Rural Fire Service (RFS).

TfNSW advised on 22 May 2023 (prior to Gateway determination) that it is in the process of determining the location of road widening upgrades. As such, the planning proposal and future development on Lots 2 and 3 DP 582878 should not impact the integrity of the existing road widening affectation for future road purposes. The Gateway determination required further consultation with TfNSW, and on 21 August 2023, it reiterated its previous advice (**Attachment F**). The reclassification of the subject site can progress with existing interests to be retained.

The planning proposal was updated prior to community consultation to clarify that the proposal will not impact the integrity of the existing road widening affectation for future road purposes.

A condition of the Gateway determination also required consultation with RFS as the subject land is bushfire prone (**Figure 4**). RFS advised on 22 August 2023 that it did not object to the planning proposal (**Attachment G**), satisfying section 9.1 direction 4.3 Planning for Bushfire Protection.

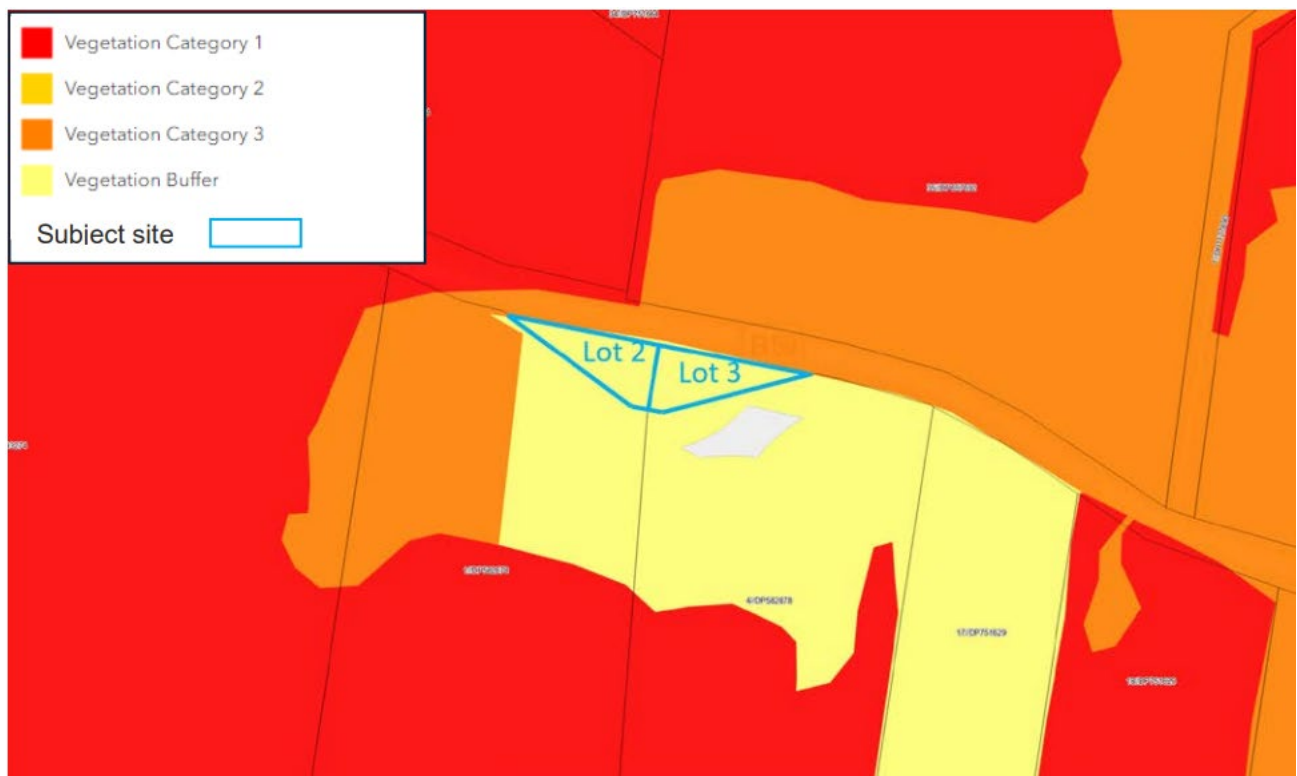


Figure 4 Bushfire prone land on site and in the surrounding area (source: ePlanning Spatial Viewer 2023)

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

4 Department's assessment

The planning proposal has been subject to detailed review and assessment through the Department's Gateway determination processes. It has also been subject to a public consultation and engagement process in accordance with the Gateway determination.

The planning proposal in its final form is consistent with the following matters considered in the Gateway determination assessment report (**Attachment B**):

- Western City District Plan
- Hawkesbury Local Strategic Planning Statement 2040
- Hawkesbury Community Strategic Plan 2022-2042

- Hawkesbury Rural Lands Strategy
- Section 9.1 Ministerial Directions
- State Environmental Planning Policies

Site specific assessments were undertaken at Gateway determination for the subject sites relating to social and economic impacts, environmental impacts, and infrastructure demand.

The Department is satisfied that the finalisation package provided by Council demonstrates that all conditions set out in the Gateway determination have been adequately addressed. Council resolved to finalise the plan at its meeting of 11 June 2024.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 1 Consultation following the Department’s assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Hawkesbury City Council	Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment H)</i> Council confirmed on 27/08/2024 that it approved the draft and that the plan should be made.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 9/08/2024 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister’s delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act as it satisfies the following:

- It is consistent with the planning proposal.
- All Gateway determination conditions have been satisfied, including community consultation and public hearing requirements under the *Local Government Act 1993*.
- There are no outstanding objections from relevant public authorities.
- To the Department’s knowledge, no meetings with registered lobbyists have occurred.
- The proposed reclassification of public land is consistent with the strategic planning framework.

- The Parliamentary Counsel Office has provided a certificate that the LEP may legally be made.



30/8/24

Terry Doran

Manager, Local Planning and Council Support

Noted:



02/09/24

Rukshan de Silva

Director, Local Planning and Council Support

Assessment officer

Tom Scoble

Planning Officer, Local Planning and Council Support

02 8275 1737

Attachments

Attachment	Document
A	Planning Proposal – 1905 and 1913 Bells Line of Road (June 2024) – PP-2023-545
B	Gateway determination report – PP-2023-545 (July 2023)
C	Gateway determination – PP-2023-545 (July 2023)
D	Gateway alteration – PP-2023-545 GA-2024-45 (April 2024)
E	Hawkesbury City Council Meeting and Public Hearing Report - 1905 and 1913 Bells Line of Road - Post-Public Consultation Report - 11 June 2024
F	Transport for NSW letter dated 21 August 2023
G	NSW Rural Fire Service letter dated 22 August 2023
H	Hawkesbury City Council's support to make the plan
I	Council resolution to finalise the plan (11 June 2024)
PC	Parliamentary Counsel Certificate
LEP	Hawkesbury Local Environmental Plan 2012 (Amendment No 36)