

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

**4.1.2. CP - Planning Proposal - LEP003/23 - 7 and 9 Fitzgerald Street, Windsor -
Rezone from SP2 Infrastructure to E2 Commercial Centre - (95498, 124414)**

Directorate: City Planning

PLANNING PROPOSAL INFORMATION

File Number:	LEP003/23
Property Address:	7 and 9 Fitzgerald Street, Windsor
Applicant:	Hawkesbury City Council
Owner:	Mrs AC Hayes, Mr JS Hayes, Mr MJ Hayes and Mrs M King
Current Minimum Lot Size:	No Minimum Lot Size
Current Zone:	SP2 Infrastructure
Proposed Zone:	E2 Commercial Centre
Site Area:	1,764 m2

Key Issues:	Anomaly occurring in the adoption of the Hawkesbury Local Environmental Plan 2012
	Previously zoned MU Multi Unit Housing under the Hawkesbury Local Environmental Plan 1989
	Proposed E2 Commercial Centre to align zoning with present use.

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 purpose of the Planning Proposal is to correct an anomaly that occurred as a result of the adoption of the Hawkesbury Local Environmental Plan 2012. To correct this anomaly, the Planning Proposal is seeking to rezone 7 and 9 Fitzgerald Street, Windsor (Lot C DP 331895, Lot D DP 360127, Lot 1 DP 1087936) from SP2 Infrastructure to E2 Commercial Centre, and introduce the associated planning control of a 10m Height of Building.

EXECUTIVE SUMMARY

Council is seeking to amend the Hawkesbury Local Environmental Plan 2012 by rezoning 7 and 9 Fitzgerald Street, Windsor to E2 Commercial Centre, and introduce the associated planning control of a 10m Height of Buildings. This is to resolve an anomaly that occurred during the transition from the previous *Hawkesbury Local Environmental Plan 1989* to the current *Hawkesbury Local Environmental Plan 2012*. The report demonstrates that the Planning Proposal contains site specific merit, and is consistent with relevant strategies and legislation.

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

RECOMMENDATION

That:

1. Based on assessment of the Planning Proposal for 7 and 9 Fitzgerald Street, Windsor, 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.

BACKGROUND

Under the Hawkesbury Local Environmental Plan 1989, the subject sites, 7 and 9 Fitzgerald Street, were zoned MU – Multi Unit Housing. On 21 September 2012, Hawkesbury City Council adopted the Hawkesbury Local Environmental Plan 2012, replacing the Hawkesbury Local Environmental Plan 1989. This adoption of the new LEP 2012 was instructed by the Standard instrument 2006 and involved the conversion to standardised zoning system and updating and replacing of associated LEP maps. In this process an anomaly occurred whereby the subject sites, 7 and 9 Fitzgerald Street, Windsor, were incorrectly zoned SP2- Infrastructure. With both sites previously being zoned Multi Unit Housing, the standard conversion into present zoning is R3 Medium Density.

Given that the subject site is currently being used for a commercial use, discussions with the owners of the property resulted in the agreement that the subject site should be rezoned to E2 Commercial Centre as the R3 Medium Density zone would create a spot zone in the Windsor Town Centre which is mostly zoned E2 Commercial Centre. Council's Strategic Planning officers are also supportive of the E2 zone in order to maintain the zone consistency in the town centre. Figure 1 show the zoning under the Hawkesbury Local Environmental Plan 1989, whilst Figure 2 shows the zoning under Hawkesbury Local Environmental Plan 2012.

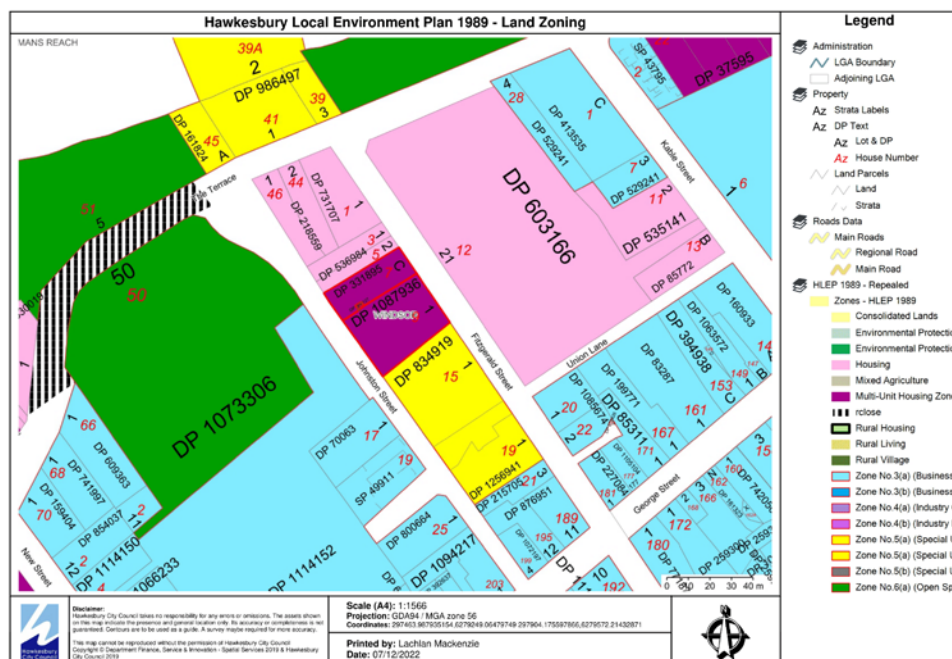


Figure 1: HLEP 1989 Land Zoning Source: Hawkesbury IntraMaps

ORDINARY MEETING

4. REPORTS FOR DETERMINATION

Meeting Date: 14 February 2023

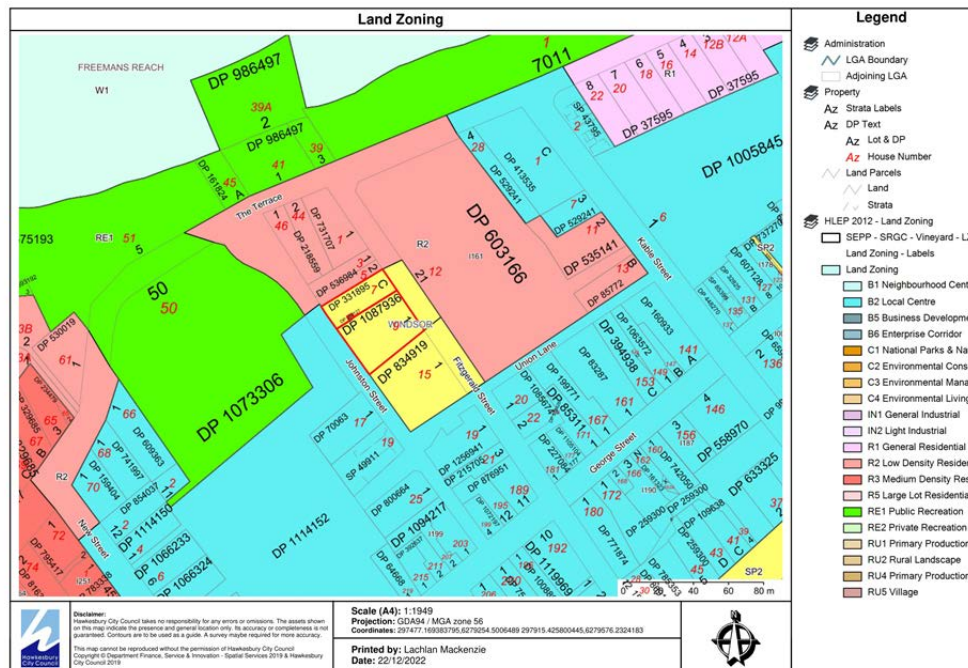


Figure 2: HLEP 2012 Land Zoning Source: Hawkesbury IntraMaps

Employment Zones Reform

The proposed E2 Commercial Centre zoning is a zone not currently adopted by Council, as it is a part of the employment zone reform that will commence in April 2023. The reform consolidates existing business and industrial zones into 5 new employment zones. The proposed E2 Commercial Centre is the converted zone for B2 Local Centre zoned land in the Windsor Town Centre.

Objectives and provisions of the Planning Proposal

The objective of the planning proposal is to amend the Hawkesbury Local Environmental Plan 2012 to correct an anomaly resulting from the conversion to this plan, by rezoning 7 and 9 Fitzgerald Street to E2 as shown in Figure 3. The planning proposal seeks to achieve the objectives and intended outcomes through amending the following maps of the Hawkesbury Local Environmental Plan 2012.

Map Name	Map Number	Current Control	Proposed Control
Land Zoning Map	LZN_008DB	SP2 Infrastructure	E2 Commercial Centre
Height of Building	HOB_008DB	Nil	10m

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

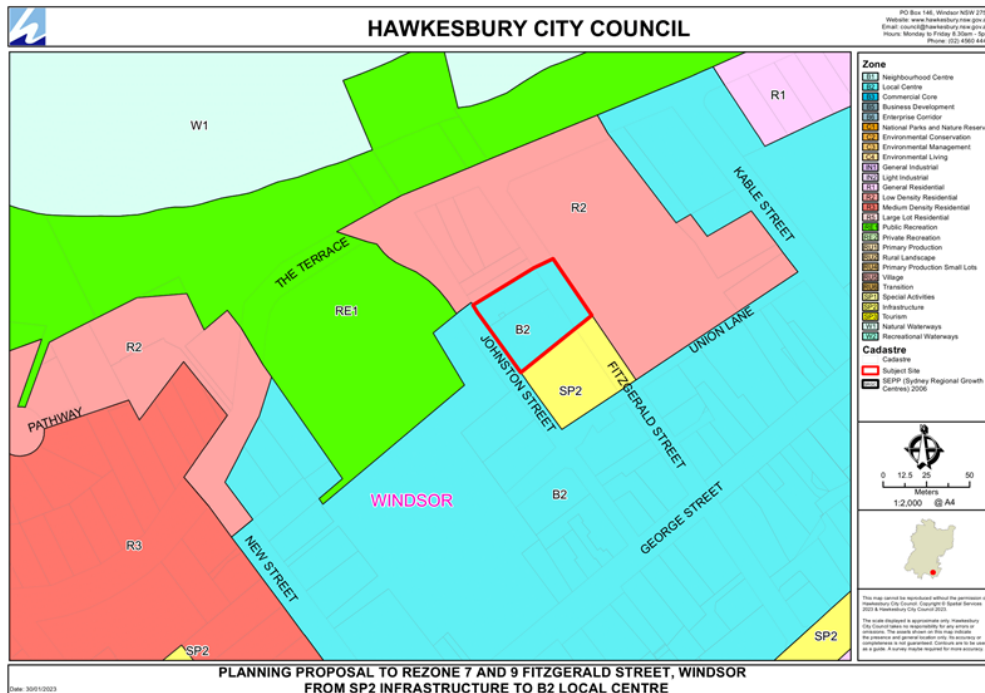


Figure 3: Proposed Zone of 7 and 9 Fitzgerald Street

Due to Spatial Information constraints, the proposed map identifies the site as B2 Local Centre, which will be converted to E2 Commercial Centre in April 2023 as per the employment zone reform. Figure 4 shows the proposed height of the building control.

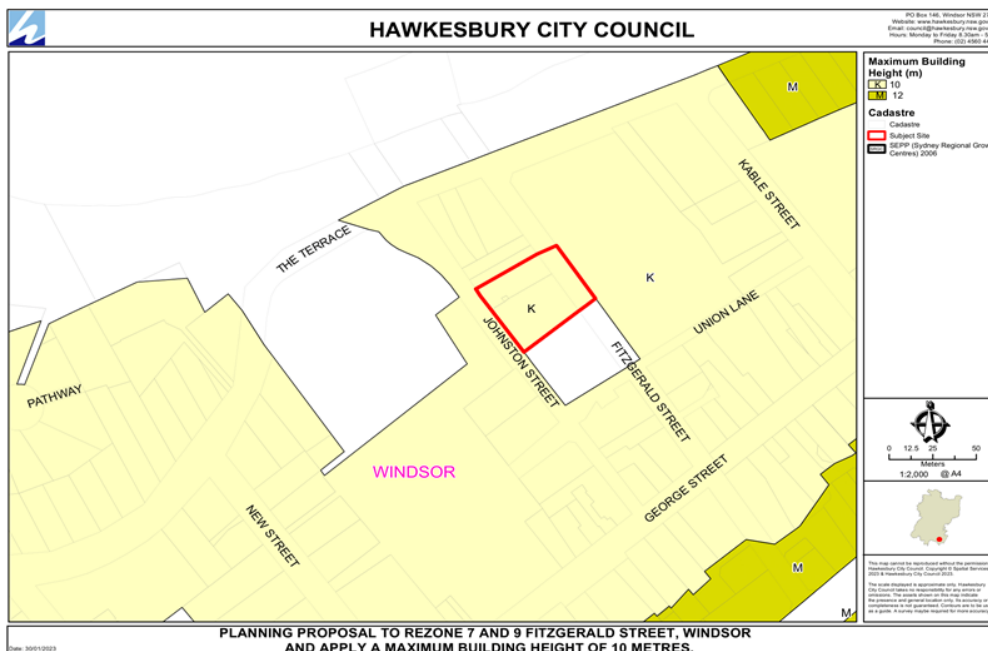


Figure 4: Proposed Height of Building control for 7 and 9 Fitzgerald Street

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

Planning Controls

Table 1 Existing Planning Controls for the Subject Site

Zone	SP2 Infrastructure
Minimum Lot Size	Nil
Height of Buildings	Nil
Acid Sulfate Soils	Class 5 – Acid Sulfate Soil.
Flood	The site is entirely inundated in the 1:100 ARI Flood Event.
Biodiversity	A small portion of the subject site is categorised a connectivity between remnant vegetation.
Bushfire Prone Land	The subject site contains no bush fire prone land.
Sewer Scheme	The subject site is serviced by the Council's reticulated sewer service.
Sydney Water	The subject site is serviced by Sydney Water supply.
Heritage	The subject site does not contain any items of environmental heritage.

The following figures highlight the subject site:

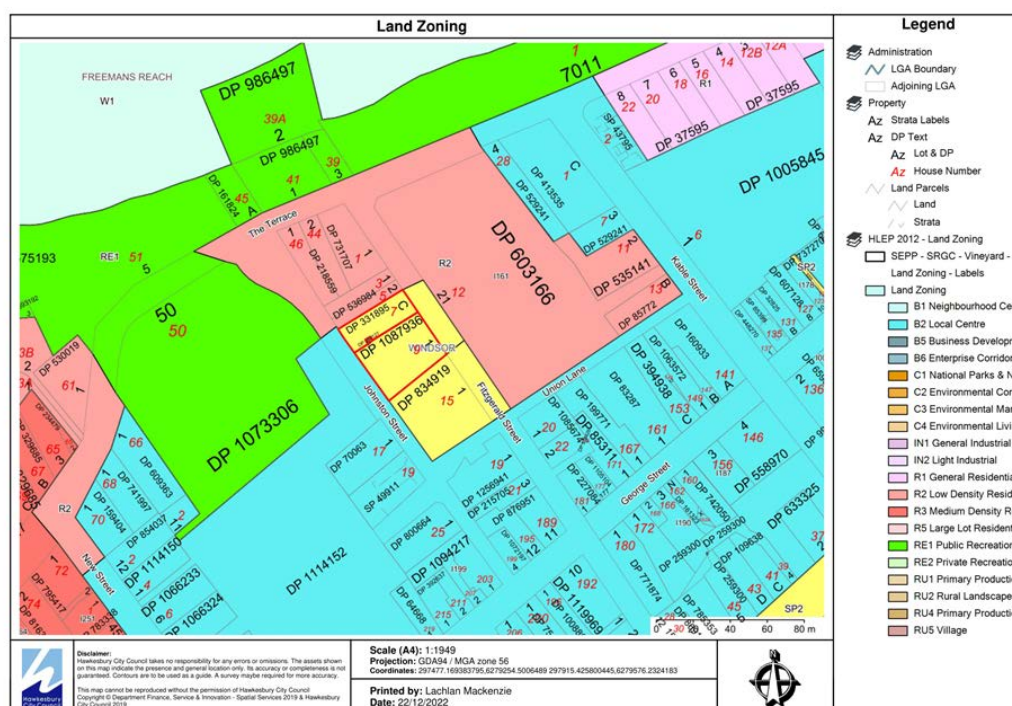


Figure 5: HLEP 2012 Land Zoning Source: Hawkesbury IntraMaps

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

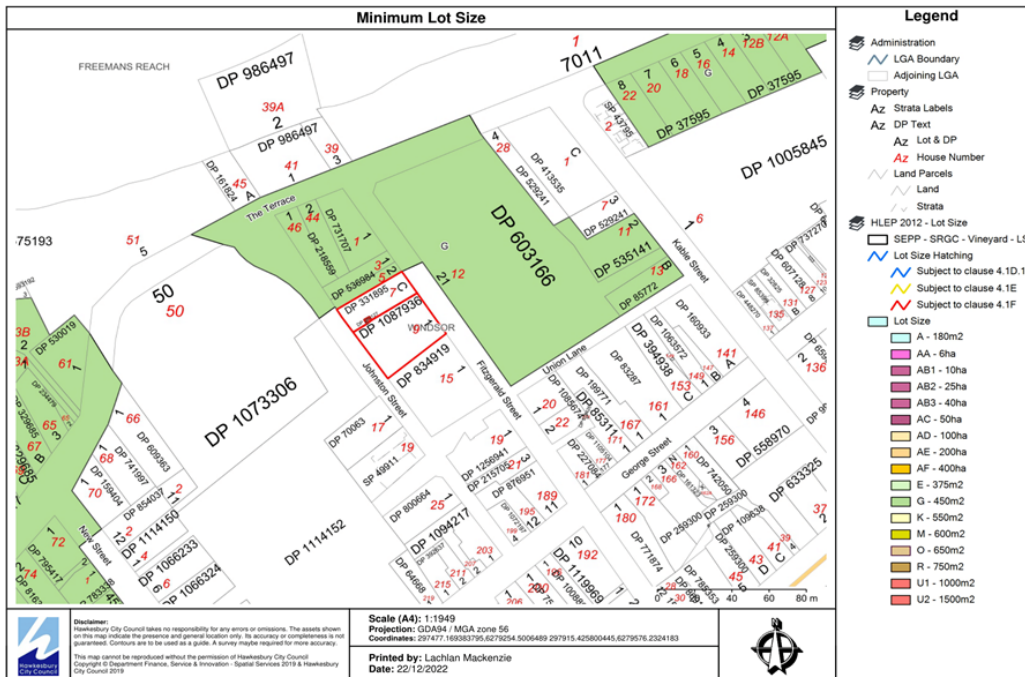


Figure 6: HLEP 2012 Minimum Lot Size Source: Hawkesbury IntraMaps

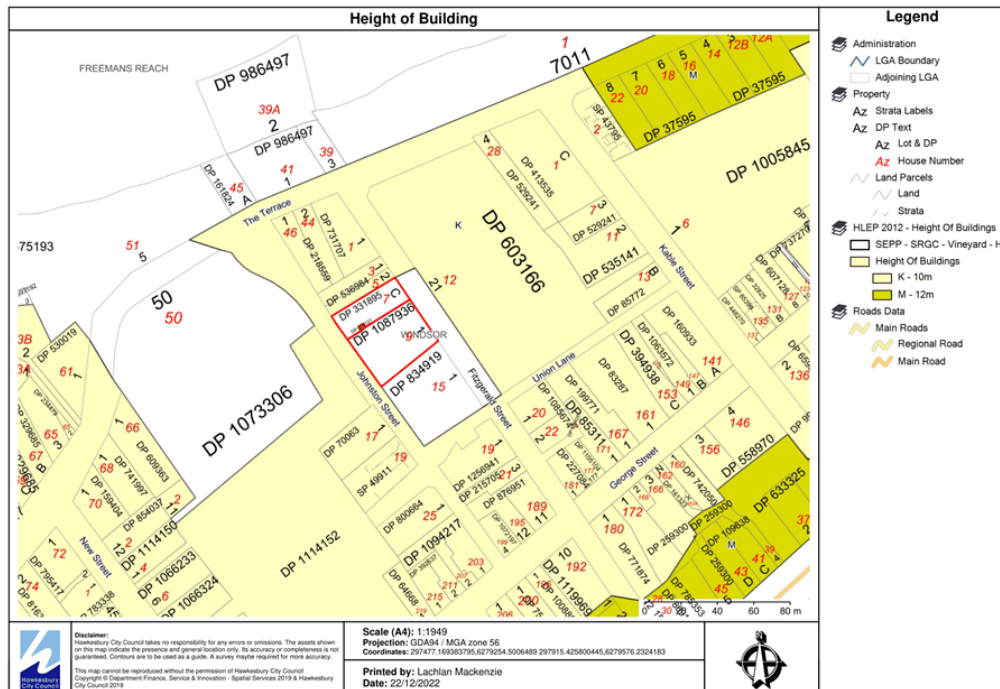


Figure 7: HLEP 2012 Height of Building Source: Hawkesbury IntraMaps

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

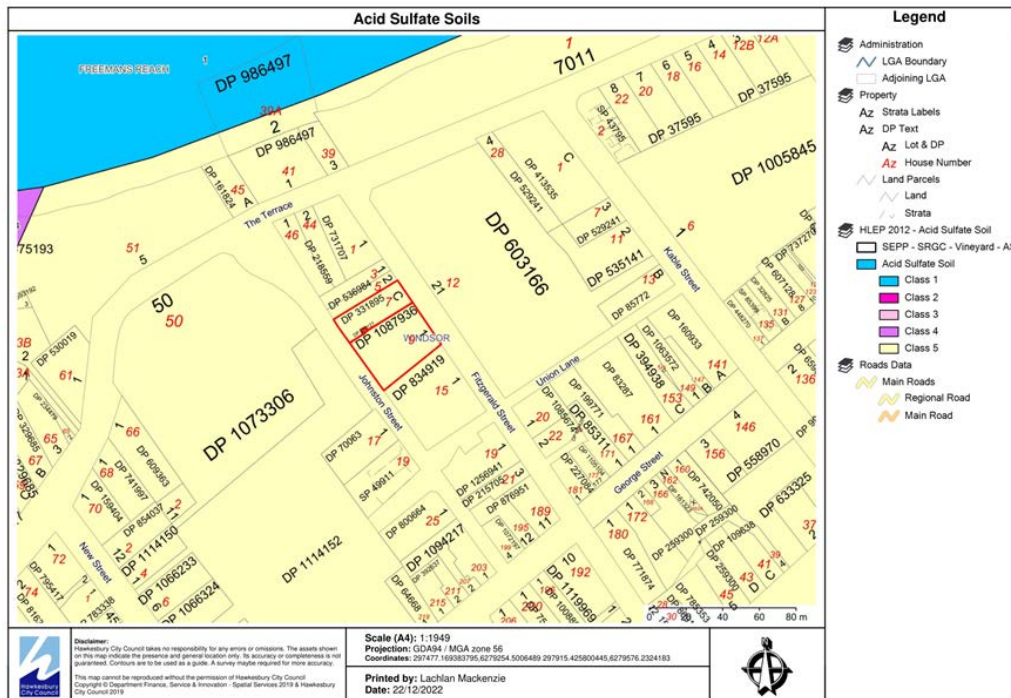


Figure 8: HLEP 2012 Acid Sulfate Soils Source: Hawkesbury IntraMaps

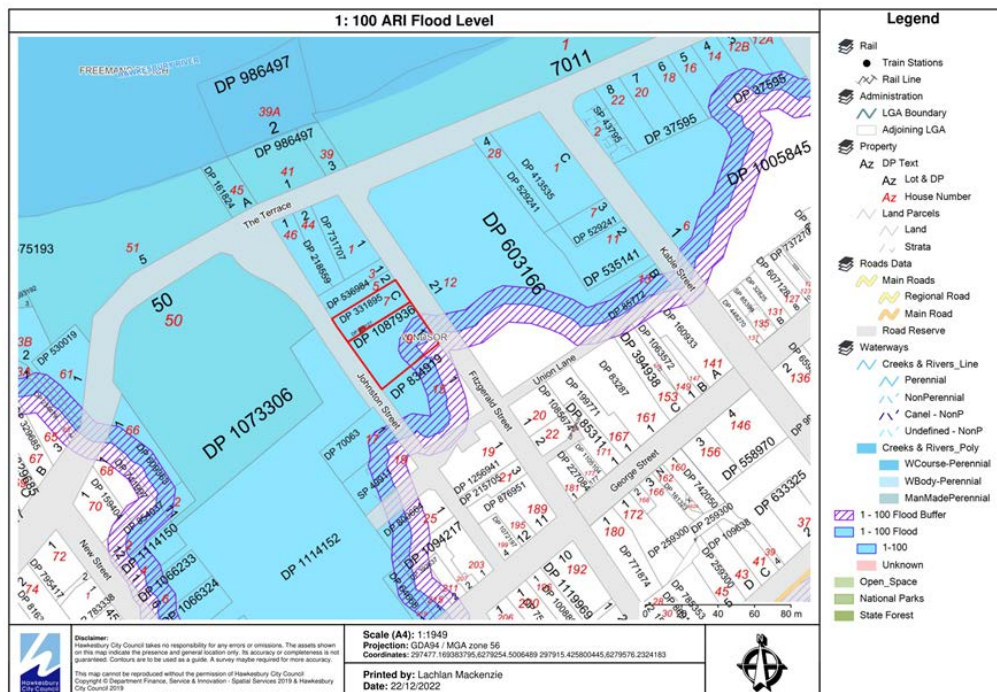


Figure 9: HLEP 2012 Flood Prone Land Source: Hawkesbury IntraMap

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

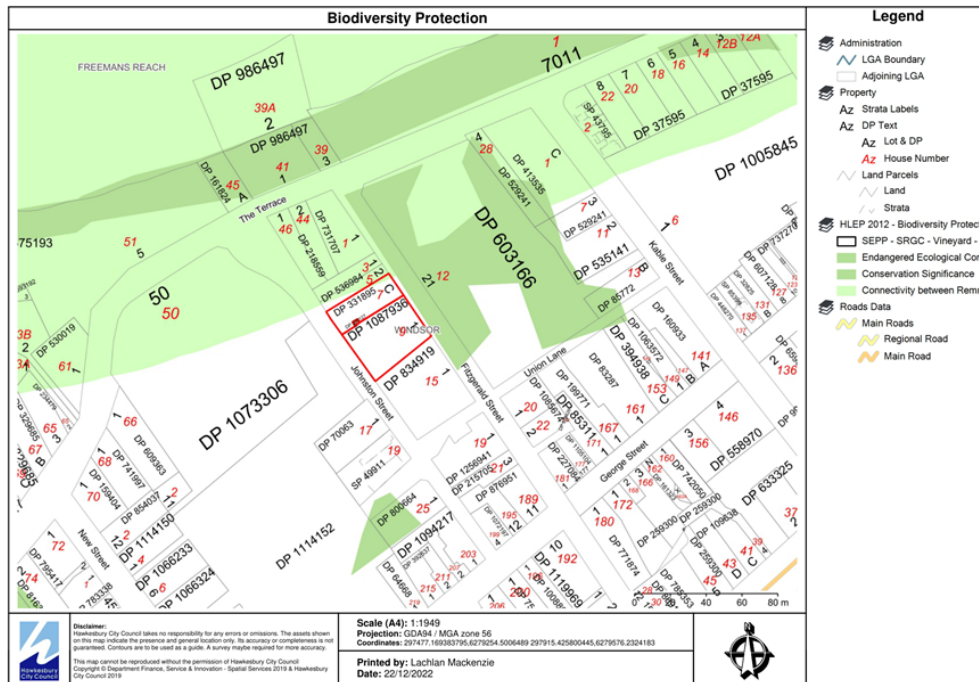


Figure 10: HLEP 2012 Biodiversity Protection Source: Hawkesbury IntraMaps

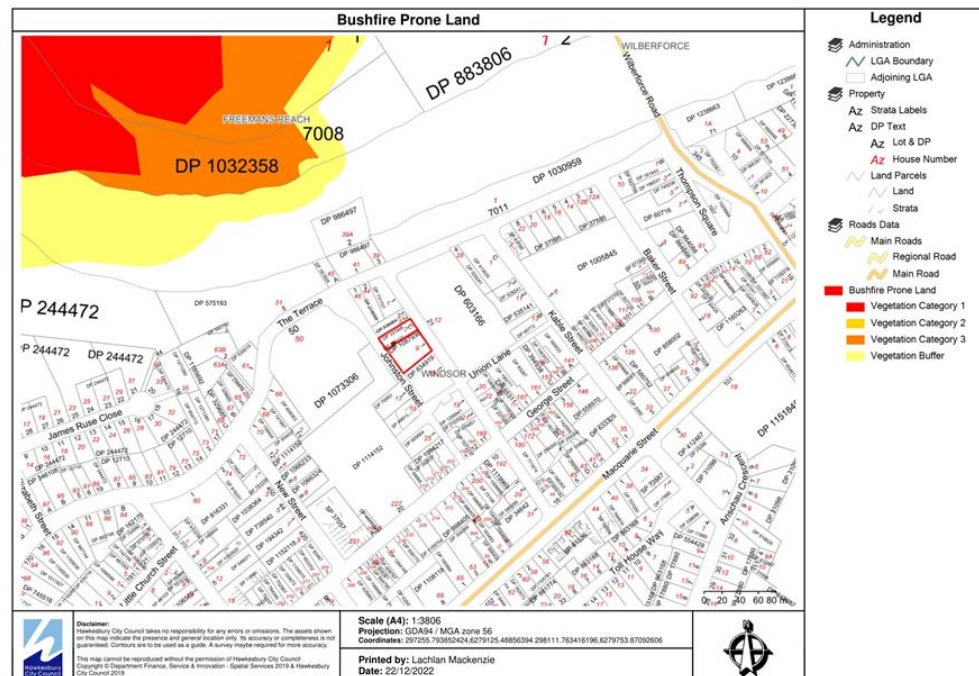


Figure 11: HLEP 2012 Bushfire Prone Land Source: Hawkesbury IntraMaps

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

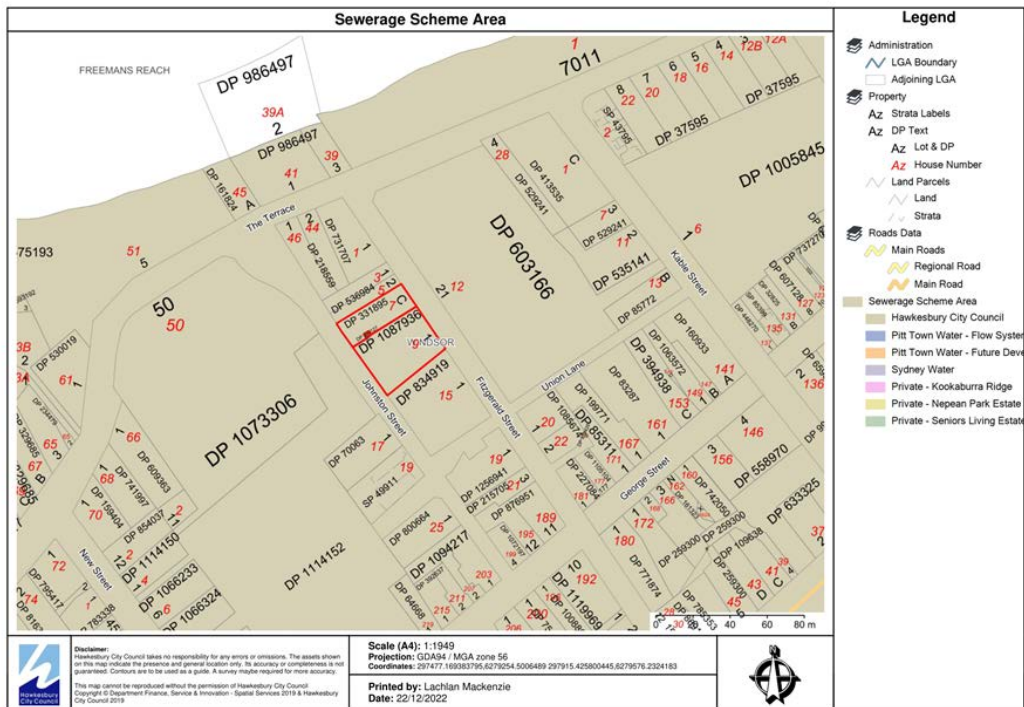


Figure 12: HLEP 2012 Sewer Scheme Area Source: Hawkesbury IntraMaps

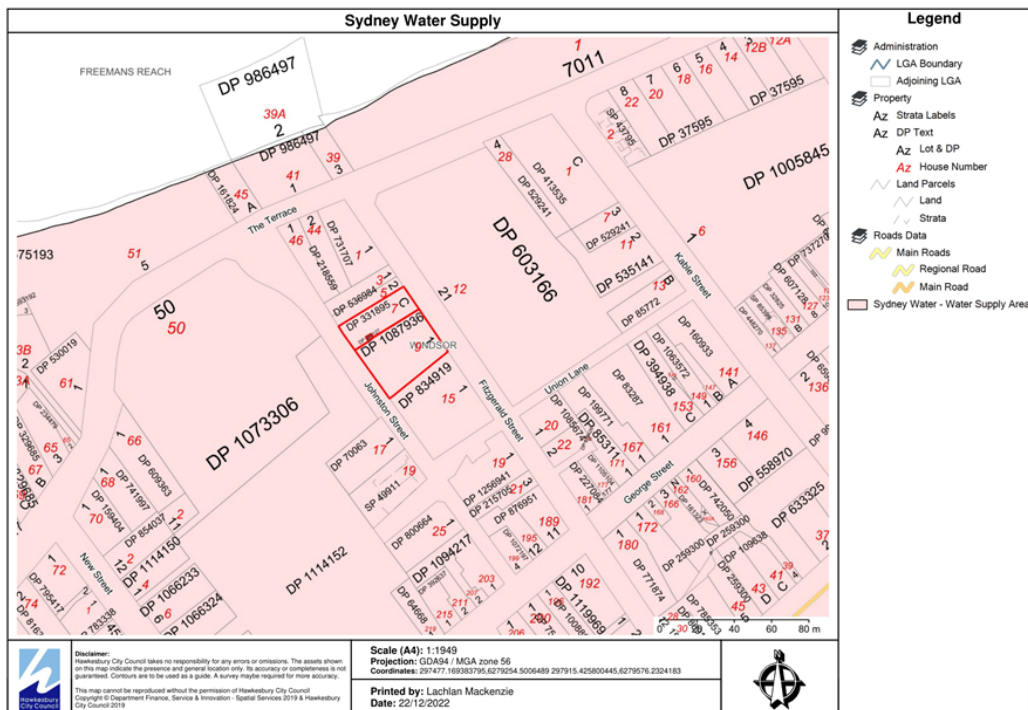


Figure 13: HLEP 2012 Sydney Water Supply Source: Hawkesbury IntraMaps

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

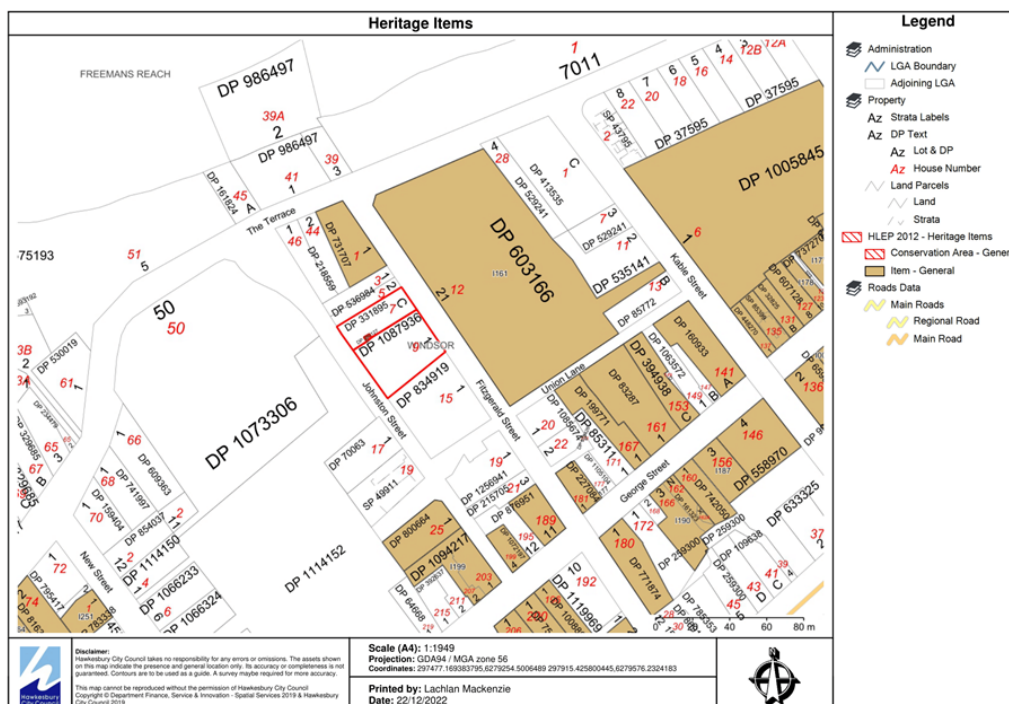


Figure 14: HLEP 2012 Environmental Heritage Items Source: Hawkesbury IntraMaps

Site Location and Characteristics

The subject site is located within the Windsor town centre, which features a diverse range of commercial uses including retail, hospitality, office space and other business activities. The present land uses of the subject site include Fitzgerald Motors on 9 Fitzgerald Street, a lawn mower retail and service store that has been in operation for over 50 years, and a second-hand furniture store on 7 Fitzgerald Street. Surrounding land uses include a Sydney Water owned water reservoir on the adjacent SP2 Infrastructure zoned land, and residential land uses to the north west. Due to the site's location within the Windsor town centre, several listed items of environmental heritage are located within the vicinity of the subject site including 'Sunny Brae' a Victorian era house and garden located opposite Fitzgerald Street. Significantly, the subject site is situated on flood prone land, affected in the event of a 1:100 ARI flood event.

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. The following objectives are considered of particular relevance to the planning proposal

Objective 22 – Investment and business activity in centres

This objective aims to foster and promote commercial activity consistent with the hierarchy of centres as established within the plan. The planning proposal is consistent with this objective as it strengthens

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

the commercial centre of Windsor, a key strategic centre within the region plan, and aligns present use with land use objectives.

Objective 23 – Industrial and urban service land is planned, retained and managed

This objective emphasises the need to protect and maintain industrial and urban services land in Greater Sydney. Considering the current land use which can be categorised as urban services, the Planning Proposal is consistent with this objective through the alignment of this use with appropriate zoning and planning controls to best manage the urban service land.

Objective 29 – Environmental, social and economic values in rural areas are protected and enhanced

The Greater Sydney Region Plan categorises all of the Hawkesbury Local Government Area except for Vineyard as Metropolitan Rural Area. The objective of this categorisation is to protect the environmental, social and economic values of rural areas, accordingly urban development is not consistent with the objectives of Sydney's Metropolitan Rural Areas. With this considered, the Planning Proposal is consistent with this objective as it is not to facilitate further development, and is located within an commercial area of a metropolitan rural strategic centre.

Western City District Plan

The Western City District Plan provides planning priorities and objectives targeted and in consideration of the unique context of Western Sydney. The following planning priorities are considered of particular relevance to the planning proposal.

Planning Priority W11 Growing investment, business opportunities and jobs in strategic centres

With Richmond-Windsor as a strategic centre, the planning proposal is consistent with this direction as it contributes to maintaining and supporting local employment lands. Facilitating the investment and business activity in an area with existing services and infrastructure.

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. The planning proposal is consistent with Planning Priority 7 Promote and support all sectors of industry and business in the Hawkesbury to meet current and future demands and trends, through ensuring the retention of existing employment lands.

Hawkesbury Employment Lands Strategy

The Hawkesbury Employment Land Strategy provides direction to managing Hawkesbury's business and industrial lands, identifying opportunities and direction to protect and maximise the productivity of these lands. The strategy identifies a frequent mismatch in current use and zoning in lots adjacent to business zones in Windsor, and expansion of business zones should be considered. Through the planning proposal seeking to correct an anomaly through the alignment of land use, subsequently expanding the employment zoned land, it is consistent with this strategy.

State Environmental Planning Policies

The planning proposal is assessed to be consistent with relevant State Environmental Planning Policies. The following State Environmental Planning Policies are of particular relevance to the planning proposal.

ORDINARY MEETING

4. REPORTS FOR DETERMINATION

Meeting Date: 14 February 2023

State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Chapter 4: Koala habitat Protection 2021

The subject site is less than 1 ha, not within an area with a koala plan of management and within an existing commercial area, accordingly the planning proposal is not subject to part 4.2 development controls for koala habitats.

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

The planning proposal is not anticipated to have any adverse impacts on the Hawkesbury-Nepean River or its sub catchments, as it seeks to correct a zoning anomaly and align the current land use.

Local Planning Direction (Ministerial Directions)

The planning proposal is assessed to be mostly consistent with relevant Ministerial Directions. An inconsistency with direction 4.1 Flooding is acknowledged however this inconsistency is justified. The following directions are of particular relevance to the planning proposal.

4.1 Flooding

An inconsistency with clause 2 of ministerial direction 4.1 is acknowledged. However, in consideration of the site and historical context, this inconsistency is justified as it is to correct the anomaly in the conversion to the Hawkesbury Local Environmental Plan 2012. Accordingly, the planning proposal is not to facilitate development as the site has long established existing commercial use, in which the planning proposal aims to align with an appropriate zone.

7.1 Business and Industrial Zones

The planning proposal is consistent with this direction as the alignment of land use and zoning assists in protecting business zones and supports the viability of business and industrial centres.

Site and Strategic Merit

The planning proposal contains site specific and strategic merit, in consideration of the correction of an anomaly within Hawkesbury Local Environmental Plan 2012 though the alignment to the current land use with an appropriate zoning. With the subject site having existing commercial uses, the rezoning to E2 Commercial Centre demonstrates strategic consistency across state and local planning strategies that identify the need to protect and manage employment areas to support local industry and productivity. The alignment of the of zoning with the current land use in the context of Windsor as a strategic centre contributes to this objective. The zoning of the subject site as E2 Commercial Centre rather than R3 Medium Density Residential prevents an isolated zone from occurring, while providing a broader range of land use permissibility that includes all permissible uses in R3 Medium Density Residential. While the subject site of the planning proposal is flood affected land, the planning proposal is not to facilitate development. However, flood planning will be considered in the event of a future development application.

Environmental, Social and Economic Impact

No adverse environmental, social, or economic impacts are anticipated as result of the planning proposal due to the existing commercial use of the site.

Recommendations of the Hawkesbury Local Planning Panel

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

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 proceeding to Gateway for the following reasons:

- 1. The Planning Proposal has strategic and site specific merit for the reasons outlined in the Council officers' report.*
- 2. It notes that this Planning Proposal is a result of an anomaly occurring through the translation of the LEP1989 to the LEP2012.*
- 3. The subject site is proposed to be rezoned to E2 Commercial Centre as a result of the Employment Zone reforms, which is consistent with the existing use of the site and the future zoning of surrounding sites.*
- 4. Council should also review the zoning of the adjacent Road, to be consistent with usual LEP mapping protocols.*
- 5. Council should ensure that the Planning Proposal documents compliance with all Ministerial Directions, and in particular, Directions 4.1 and 5.2."*

Conclusion

The planning proposal seeking to amend the Hawkesbury Local Environment Plan 2012 through the rezoning of the subject site to E2 Commercial Centre and introduces associated planning controls of a 10m building height limit, provides an appropriate method of correcting the anomaly occurring from the transition to the current LEP. With the existing commercial use of the site and in context of being adjacent to the existing B2 Local Centre zoned area of Windsor, the proposed E2 Commercial Centre zoning is site appropriate regarding the alignment of the current use with appropriate zoning. Additionally, the planning proposal demonstrates strategic consistency with local and state strategies that identify the need to maintain and support local employment land.

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.

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

- 5.8 Industry - Increase the range of local industry opportunities and provide effective support to continued growth.

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

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.

oooO END OF REPORT Oooo