



IRF23/954

Gateway determination report – PP-2023-546

Rezoning of 7 and 9 Fitzgerald Street Windsor

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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.

Contents

1	Planning Proposal	1
1.1	Overview and objectives of planning proposal	1
1.2	Explanation of provisions	1
1.3	Site description and surrounding area.....	2
1.4	Mapping.....	5
2	Need for the planning proposal	5
3	Strategic assessment	6
3.1	Regional Plan	6
3.2	District Plan	6
3.3	Local.....	7
3.4	Local planning panel (LPP) recommendation.....	7
3.5	Section 9.1 Ministerial Directions	8
3.6	State environmental planning policies (SEPPs)	8
4	Site-specific assessment	9
4.1	Environmental.....	9
4.2	Social and economic.....	9
4.3	Infrastructure	9
5	Consultation.....	10
5.1	Community	10
5.2	Agencies.....	10
6	Timeframe	10
7	Local plan-making authority	11
8	Assessment Summary.....	11
9	Recommendation.....	11

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal document
Council Report and Determination dated 14 February 2023

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Hawkesbury City Council
PPA	Hawkesbury City Council
NAME	7 and 9 Fitzgerald Street Windsor (0 homes, 0 jobs)
NUMBER	PP-2023-546
LEP TO BE AMENDED	Hawkesbury LEP 2012
ADDRESS	7 and 9 Fitzgerald Street Windsor
DESCRIPTION	Lot C DP 331895, Lot D DP 360127 and Lot 1 DP 1087936
RECEIVED	20/03/2023
FILE NO.	IRF23/954
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 contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- Ensure and improve the accuracy of Council's planning instruments;
- Strengthen the commercial centres of Hawkesbury; and
- Support local business.

The objectives of this planning proposal are clear and adequate.

1.2 Explanation of provisions

The planning proposal seeks to amend the Hawkesbury LEP 2012 to rezone 7 and 9 Fitzgerald Street Windsor (Lot C DP 331895, Lot D DP 360127 and Lot 1 DP 1087936) from SP2 Infrastructure Water Supply to E2 Commercial Centre and apply a 10m height of buildings control.

The proposed changes are also shown in Table 3 below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	SP2 Infrastructure – Water Supply	E2 Commercial Centre
Maximum height of the building	N/A	10m
Number of jobs	N/A	N/A

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

Council states that the purpose of the planning proposal is to correct a zoning anomaly (error) that occurred during the rollover of the former 1989 LEP to the new LEP in 2012. Council maintains the site was zoned Multi-unit Housing under the former 1989 LEP and should have been zoned R3 Medium Density Housing, but the SP2 zoning was applied in error in the 2012 LEP as per adjoining sites. Council further advises that discovery of the error led to further discussions with the property owner, and it has been agreed to rezone the site to E2 to reflect the current commercial uses of the site and for consistency with the zoning of the surrounding area. It is noted that a spot rezoning of R3 would be inconsistent with the surrounding area as the adjacent residential area is R2 low density.

Although not the stated intent of the amendment, it is noted that the proposed E2 zoning of the site would introduce potential for residential land uses with development consent. The site size and characteristics would limit the scale of residential development; nonetheless this potential is of some concern given the flood affectation of the site. See Section 4.4 for further discussion of this issue.

The proposal is considered minor and categorised as a Standard Amendment as per the LEP Making Guidelines.

1.3 Site description and surrounding area

The subject site is within the Windsor town centre commercial area, northwest of George Street near Howe Park. The site fronts Fitzgerald Street and extends through to Johnston Street to the southwest. It is occupied by a single-storey commercial building including a lawn mower sales and service centre at 9 Fitzgerald Street and a second-hand furniture shop at 7 Fitzgerald Street.

Surrounding development comprises commercial development zoned E2, with additional residential and recreation zoned land and the adjacent lot to the southeast at 15 Fitzgerald Street which shares the current SP2 Infrastructure zoning is Sydney Water land comprising a steel water reservoir. Beyond that is the former Windsor Fire Station building, currently used for offices and a boarding house.

Figure 1 shows the site location and the current zoning and **Figure 2** is a photo showing current land use on the site.

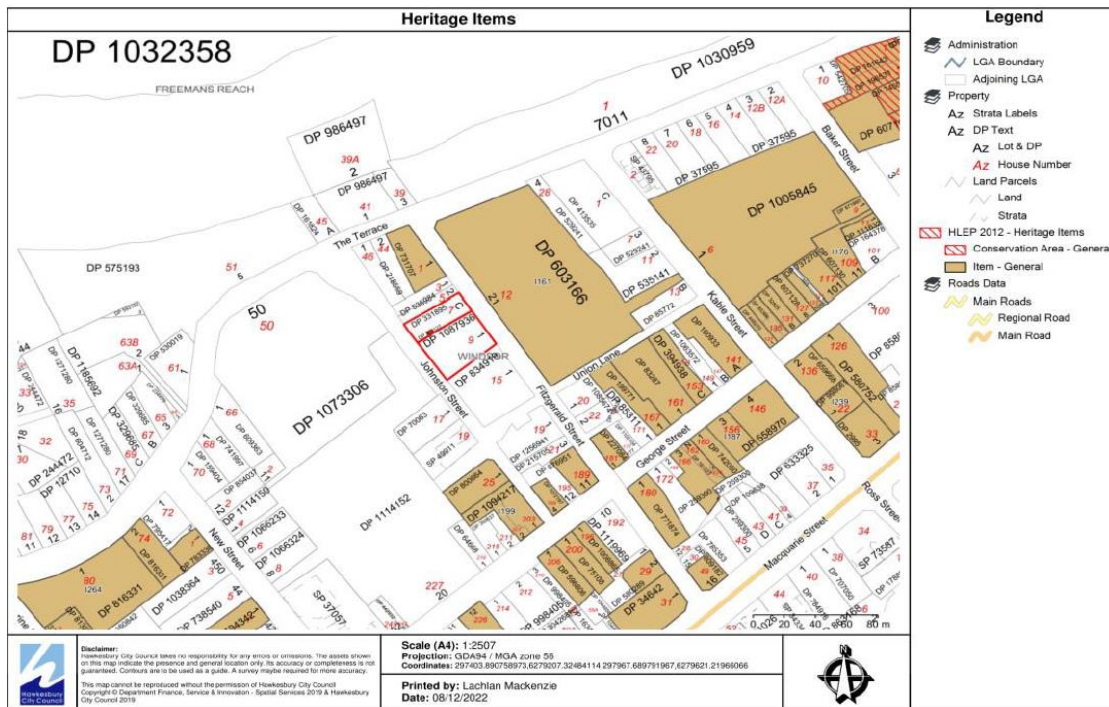


Figure 3 Local Heritage Places

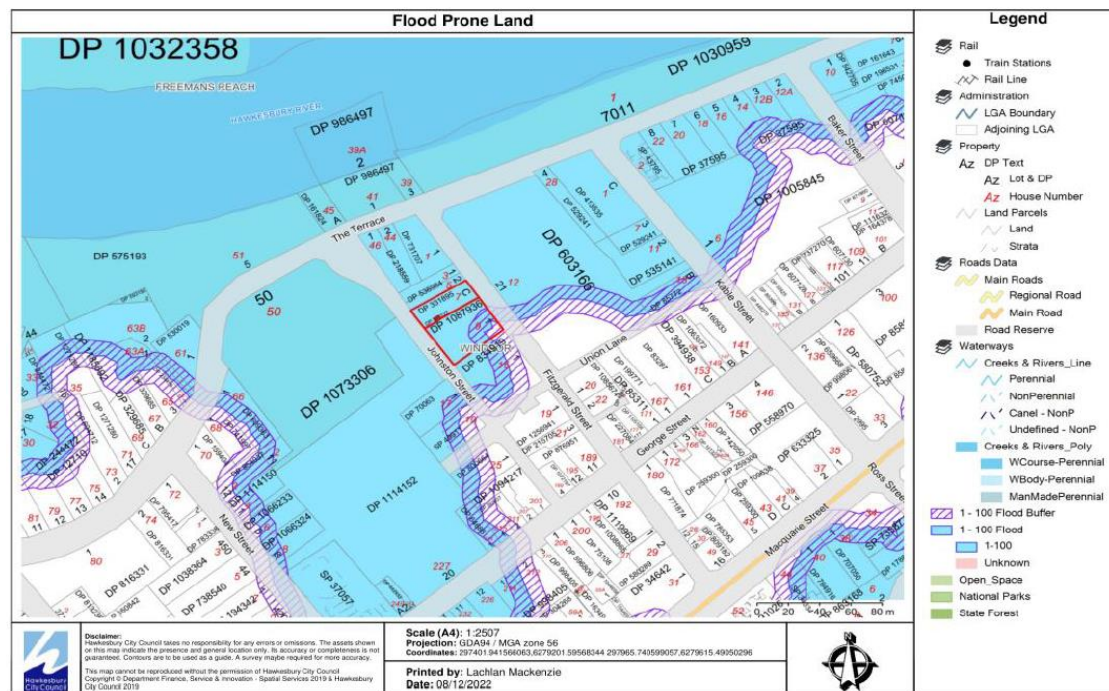


Figure 4 Flood Prone Land 1:100

1.4 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning and Height of Buildings maps (map tiles LZN_008DB and HOB_008DB respectively), which are suitable for community consultation.

Note B2 becomes the E2 Commercial Centre zone as the Employment Zones Reforms took effect on 26 April 2023.

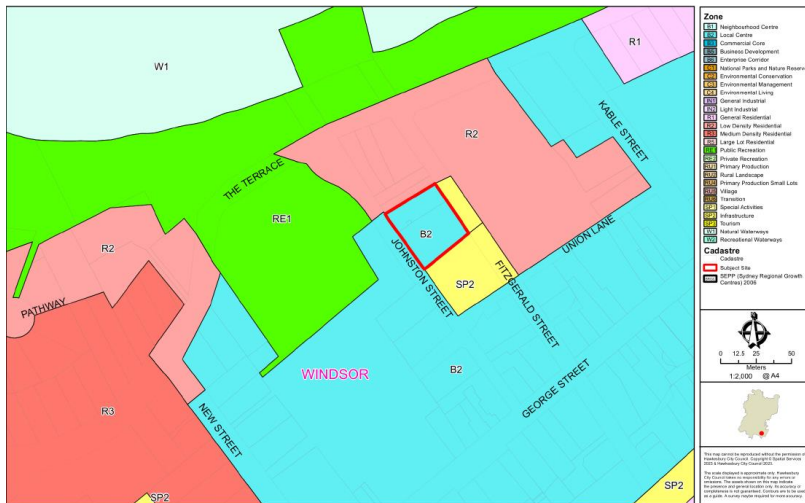


Figure 5 Proposed zoning map



Figure 6 Proposed height of building map

2 Need for the planning proposal

The planning proposal is not the result of an endorsed Local Strategic Planning Statement, strategic study or report. The planning proposal is the best and only means to rezone the site to accord with current land use and consistency with the surrounding zoning context.

A possible alternate approach to achieve the objectives of the planning proposal, to apply an Additional Permitted Use to permit specific additional uses on the site (e.g. retail or commercial uses) would be impractical in this instance given the SP2 base zoning, which requires correction.

3 Strategic assessment

3.1 Regional Plan

The proposal broadly accords with the regional plan. The following table provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Regional Plan.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
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 the commercial core of Windsor, an identified strategic centre in the 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 retain and protect industrial and urban services land in the region. 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 urban services land.
Objective 29: Environmental, social and economic values in rural areas are protected and enhanced	The Region Plan categorises all of Hawkesbury LGA except 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 existing commercial area of a metropolitan rural strategic centre.

3.2 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.

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

3.3 Local

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	The Hawkesbury LSPS 2040 provides a local strategic vision for the Western City District Plan objectives. The planning proposal is consistent with Planning Priority 7 Promote and support all sectors of business and industry in Hawkesbury to meet current and future demands and trends, through the retention and enhancement of existing employment lands.
Hawkesbury Community Strategic Plan 2022-2042	The Hawkesbury Community Strategic Plan 2022-2042 is the central strategic plan for Council, outlining the key aspirations and sets the direction for future Council activities and decision-making. The planning proposal is broadly consistent with objectives of the community strategic plan.
Hawkesbury Employment Lands Strategy	The Hawkesbury Employment Lands Strategy provides an outlook to managing Hawkesbury's business and industrial lands, identifying opportunities and directions 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. The planning proposal seeks to address a zoning anomaly through alignment of land use, subsequently expanding the employment zoned land, consistent with this strategy.

3.4 Local planning panel (LPP) recommendation

The Hawkesbury Local Planning Panel considered the planning proposal at its 19 January 2023 meeting and resolved to support it proceeding to Gateway for the following reasons:

- The planning proposal has site-specific and strategic merit for the reasons outlined in the Council officers report.
- It notes the proposal is the result of an anomaly translating the HLEP 1989 to the HLEP 2012.
- The site is proposed to be rezoned to E2 Commercial Centre as a result of the Employment Zones reforms, which is consistent with the existing use of the site and the zoning of the surrounding commercial centre.
- Consider review of the adjoining road reserve consistent with usual LEP making protocols.

- Ensure that the planning proposal documents compliance with all Ministerial Directions, in particular Directions 4.1 and 5.2.

3.5 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
4.1 Flooding	No	Inconsistency with clause 2 is acknowledged as the site is within the flood planning area 1:100 flood zone. However, in consideration of the site and historic context, this inconsistency is justified as it is to correct the anomaly in conversion to the HLEP 2012. Any inconsistency is justified in this instance.
5.2 Reserving land for Public Purposes	Yes	The planning proposal is consistent with this direction as it does not create, alter or reduce existing zonings or reservation of land for public purposes. While currently zoned SP2 Infrastructure – Water Supply due to an LEP rollover anomaly, the site has long term commercial use and is not used for public purposes.
7.1 Business and Industrial Zones	Yes	The planning proposal is consistent with this direction as the alignment of zoning and land use assists in protecting business and zones and supports the viability of business and industrial centres.

3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs, with discussion of key SEPPs in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
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Biodiversity and Conservation SEPP	<p>Ch 4: Koala Habitat</p> <p>The chapter aims to optimise protection for native vegetation that supports a permanent free-living population over their range and to prevent habitat decline.</p> <p>Ch 6: Water Catchment</p> <p>The chapter aims to optimise protection of the Hawkesbury-Nepean catchment incl its aquatic ecology, fringing vegetation and flood affectation when considering development.</p>	Yes	<p>Ch 4: Koala Habitat</p> <p>The subject site is less than 1Ha, not within a koala plan of management area and is within an existing commercial area, accordingly the proposal is not subject of koala development controls.</p> <p>Ch 6: Water Catchment</p> <p>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.</p>
Resources and Energy SEPP	<p>Ch 3: Extractive Industries</p> <p>The policy aims to ensure extractive industries in Sydney can occur in appropriate locations and not in environmentally sensitive locations.</p>	Yes	<p>Ch 3: Extractive Industries</p> <p>The subject site of the planning proposal is in an existing commercial area and is not to facilitate urban expansion. As a result, the proposal is not impacted by or impedes extractive industries</p>

4 Site-specific assessment

4.1 Environmental

There are no anticipated environmental impacts of the planning proposal as it relates to continuation of long-established commercial land uses.

4.2 Social and economic

The planning proposal is not anticipated to result in any adverse social or economic impacts.

4.3 Infrastructure

As the subject site accommodates existing commercial uses, the site is deemed adequately serviced by urban roads and utility services infrastructure, nor does it require any additional infrastructure.

4.4 Flood Risk Management

The subject site is flood affected with most of the site being inundated in a 1:100 ARI flood event.

Whilst not the stated intent of the planning proposal it is noted that by rezoning the subject site to E2 Commercial Centre additional commercial and residential land uses, including single dwellings, dual occupancies, multi-dwelling housing, shop top housing (development format likely preferred

by council in the town centre) and residential flat buildings, would become permissible with development consent on the site. While the site size and characteristics would limit the scale of residential development, development of this nature has the potential to increase flood risks to life and property. It is therefore appropriate that Council undertake consultation with Infrastructure NSW and the NSW State Emergency Service.

If there is a requirement to limit future residential development on the site as a result of the agency advice, clause 6.13 of the HLEP 2012 (or modified version) could be applied – the clause is repeated below.

6.13 Development of land at 2A and 4–8 Hawkesbury Valley Way and 383–395 George Street, Windsor

(1) This clause applies to the following land—

- (a) 2A and 4–8 Hawkesbury Valley Way, Windsor, being Lot A, DP 108510 and Lots 11–13, DP 16626,*
- (b) 383–395 George Street, Windsor, being Lot 13, DP 1089172 and Lots 7–12, DP 1093.*

(2) Development consent must not be granted for the purpose of shop top housing on land to which this clause applies if the development would result in more than 10 dwellings on the land.

However, this should be considered further in response to the INSW and SES submissions. The Gateway determination is to be conditioned accordingly.

5 Consultation

5.1 Community

Council has not proposed a specific community consultation period for this proposal, however the LEP Making Guidelines specify a 28 day period (20 business days) for community consultation for a standard amendment.

This exhibition period proposed is considered appropriate , and forms the conditions of the Gateway determination.

5.2 Agencies

Consultation with the following agencies is considered necessary:

- Infrastructure NSW and the NSW State Emergency Service for the purposes of assessing potential increased flood risks
- Sydney Water to confirm removal of the SP2 Infrastructure – Water Supply zone.

6 Timeframe

Council proposes a 6 month time frame to complete the LEP post-Gateway.

The Department recommends a time frame of 7 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

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

7 Local plan-making authority

Council has requested delegation to be the Local Plan-Making authority.

As the purpose of the planning proposal is to give effect to current land uses, the Department recommends that Council 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:

- The proposal seeks to align current land uses with an appropriate zone.
- The proposal has site-specific and strategic merit and is consistent with the strategic planning framework.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 4.1 Flooding are minor or justified

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

1. The planning proposal should be made available for community consultation for a minimum of 20 business days.
2. Consultation with Infrastructure NSW, the NSW State Emergency Service and Sydney Water is required under section 3.34(2)(d) of the EP&A Act.
3. The timeframe for completing the LEP is to be 7 months from the date of the Gateway determination. Any relevant advice of the Agencies is to be incorporated in post-exhibition changes to the proposal as required.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



11 May 2023

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24 May 2023

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