

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-2
DA Number	DA0508/18
LGA	Hawkesbury City Council
Proposed Development	Extractive Industries: Sand Extraction and Processing Facility, Road Works, Site Works, Ancillary Office, Fencing, Landscaping and Site Rehabilitation
Street Address	374, 395 & 415 Freemans Reach Road Freemans Reach NSW 2756 (Lot 2 in DP 85885 (No. 415), Lot 4 in DP 718505 (No. 395) and Lot 2 in DP 77951 (No. 374))
Applicant/Owner	Greener Valley Sands Pty Ltd Mr Anthony Muscat (395 Freemans Reach Road)
Date of DA lodgement	22 November 2018
Total number of Submissions Number of Unique Objections	84 submissions (first round of public exhibition) and additional 40 submissions (second round of public exhibition).
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	7 Particular designated development Development for the purposes of— (a) extractive industries, which meet the requirements for designated development under Clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000
List of all relevant s4.15(1)(a) matters	<p>Relevant environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Extractive Industries SEPP); State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP); State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP); State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55); State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP No. 30); State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP No. 44); State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP No. 64); Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (SREP No. 20); Sydney Regional Environmental Plan No. 9 – Extractive Industry (SREP No. 9); Hawkesbury Local Environmental Plan 2012 (HLEP). <p>Proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii)</p> <ul style="list-style-type: none"> Draft State Environmental Planning Policy (Remediation of Land); Draft State Environmental Planning Policy (Environment). <p>Relevant development control plan: s4.15(1)(a)(iii)</p> <ul style="list-style-type: none"> Hawkesbury Development Control Plan 2002 (DCP). <p>Relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iiia)</p> <ul style="list-style-type: none"> Not applicable. <p>Relevant regulations: s4.15(1)(a)(iv)</p>

	– Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).	
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Preliminary Civil Design Plans • Attachment 2 – General Terms of Approval • Attachment 3 – Submissions 	
Clause 4.6 requests	Clause 4.6 Exceptions to Development Standards is not applicable.	
Summary of key submissions	<ul style="list-style-type: none"> • Permissibility within the RU2 zoning. • Inappropriate use of rural lands and loss of agricultural land. • Concerns the proposal will set a precedent for further sand mining in the Richmond Lowlands. • Suitability of rehabilitation including fill material for existing and future agricultural land uses. • Potential impacts on flora and fauna at the site and along the Hawkesbury River including riparian vegetation and habitat as well as key fish habitat. • Concerns related to the management of acid sulfate soils. • Concerns related to the generation of dust and fine sand particulates. • Potential impacts on Aboriginal and non-Aboriginal heritage. • Potential contamination of receiving groundwater, wetlands, watercourses and drinking water. • Potential for environmental damage during a flood event. • Potential increase in traffic to the local area and deterioration of local roads. • Potential visual impacts to neighbouring properties and Hawkesbury River users. • Potential operational noise impacts to surrounding receivers including neighbouring properties. 	
Report prepared by	Alex Pappas Town Planner	Claire Jones Senior Town Planner
Report date	23 April 2021	

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Not applicable

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

No

	<ul style="list-style-type: none"> • List any relevant planning agreement that has been entered into or any draft planning agreement that a developer has offered to enter into under Section 7.4 (Section 4.15(1)(a)(iia)): <ul style="list-style-type: none"> – Not applicable. • Relevant regulations (Section 4.15(1)(a)(iv)) <ul style="list-style-type: none"> – Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). 	
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Preliminary Civil Design Plans • Attachment 2 – General Terms of Approval • Attachment 3 – Submissions 	
Report prepared by	Alex Pappas Town Planner	Claire Jones Senior Town Planner
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Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to Development Standards

If a written request for a contravention to a development standard (clause 4.6 of the HLEP) has been received, has it been attached to the assessment report?

**Not
Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (Section 7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

**Not
Applicable**

Report

Executive Summary

Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act) (as amended) this application seeks approval for a sand extraction and processing facility at 374, 395 and 415 Freemans Reach Road, Freemans Reach.

The application involves three phases; construction (site establishment), operation and rehabilitation. The proposal involves the extraction and processing of up to 700,000 tonnes of sand over a 10-year operation.

An assessment of the proposal has revealed that the development is unable to satisfactorily address matters in relation to Clauses 2.3 and 6.3 of the Hawkesbury Local Environmental Plan 2012 (HLEP) and Clause 12 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Extractive Industries SEPP).

Furthermore, the proposal is considered to be unacceptable having regard to the overall objectives of the zone and potential impacts in terms of flooding, character and amenity of the surrounding locality, and land use compatibility.

The application has been notified in accordance with Hawkesbury Development Control Plan 2002 (DCP). The Environmental Impact Statement (EIS) prepared for the proposal has been on two rounds of public exhibition and Council received a total of 124 public submissions raising objection to the development.

Having undertaken an assessment of the application, and given due regard to the submissions received in response to notification of the application, it is considered that support of the proposal would be contrary to the public interest.

It is recommended that the application not be supported as the proposal is inconsistent with the relevant planning controls applying to the development and would have an adverse impact on the surrounding locality.

Description of the Proposal

This application No. DA0508/18 seeks approval for the construction and operation of a sand extraction and processing facility located at 374, 395 and 415 Freemans Reach Road, Freemans Reach.

The DA which includes an area of about 6.5 hectares (ha) is to be located within the southernmost portion of the site, on the northern side of the Hawkesbury River with a minimum 40 metre (m) setback from the top of the riverbank. The site is currently used for turf farming.

The proposal involves the extraction and processing of up to 700,000 tonnes of sand over a 10-year operation. The sand would be processed on-site and sold directly from the site. The proposal would be carried out in three phases; construction (site establishment), operation and rehabilitation. The rehabilitation phase, including the backfilling and revegetation of four nominated extraction areas, would be progressively carried out from east to west to ensure no more than 1.53 ha (or one nominated area) is an open pit at any time during operation.

In addition, prior to operation, two existing anthropogenic inlets along the Hawkesbury River are to be filled to provide the minimum 40m setback from the riverbank.

Administration and processing facilities would be built as part of site establishment including temporary internal roads, stormwater and drainage, ancillary office and associated electricity infrastructure and effluent system, fencing, signage and sediment and erosion controls.

The general specifics of the proposal are as follows:

Staging

Construction (site establishment): site preparation works and establishment of the processing area.

Operation: removal of existing vegetation, sand extraction at nominated areas and sand processing.

Rehabilitation: progressive rehabilitation of nominated areas to be consistent with existing land uses.

Staff numbers

Total of about 4 staff.

Hours of operation

Monday to Friday: 7am – 7pm.

Saturday: 7am – 3:30pm.

Sunday and public holidays: no work.

Sand production

Annual: 70,000 tonnes (annual yield estimate).

Total: 700,000 tonnes over a 10-year operation.

Staff parking

Four on-site carparking spaces would be provided for staff at the sand processing area.

Treatment

Water and material would be managed on-site at the sand processing area during operation via sediment basin (minimum 70m³), water storage pond (minimum 650m³) and treatment basin (minimum 675m³).

Dwellings

Existing dwellings and sheds are located within the northern portion of the site, adjacent to Freemans Reach Road. There are no dwellings proposed to be demolished during the course of the works.

The DA is accompanied by a development cost estimate report prepared by Property & Building Assessments Pty Ltd, dated March 2019 and estimates the total development costs at \$4,910,800.00 million excluding GST.

The application is supported by:

- Environmental Impact Statement, prepared by Martens & Associates Pty Ltd, dated November 2018

- Bush Fire Hazard Assessment, prepared by Blackash Bushfire Consulting, dated May 2018
- Air Quality Assessment, prepared by Todoroski Air Sciences, dated November 2018
- Flora and Fauna Assessment, prepared by Narla Environmental Pty Ltd, dated November 2018
- Onsite Wastewater Management Assessment, prepared by Martens & Associates Pty Ltd, dated November 2018
- Statement of Heritage Impact, prepared by Coast History & Heritage, dated November 2018
- Aboriginal Cultural Heritage Assessment Report, Coast History & Heritage, dated November 2018
- Vegetation Management Plan, prepared by Narla Environmental Pty Ltd, dated November 2018
- Hydrogeological Assessment, prepared by Martens & Associates Pty Ltd, dated November 2018
- Waste Management Plan, prepared by Martens & Associates Pty Ltd, dated November 2018
- Watercourse Impact Assessment, prepared by Martens & Associates Pty Ltd, dated November 2018
- Traffic Study, prepared by Martens & Associates Pty Ltd, dated November 2018
- Land Resource Assessment, prepared by Martens & Associates Pty Ltd, dated November 2018
- Preliminary Site Investigation, prepared by Martens & Associates Pty Ltd, dated November 2018
- Amended Acoustic Assessment, prepared by Acoustic Logic, dated April 2019
- Amended Flood Risk Management Plan, prepared by Martens & Associates Pty Ltd, dated April 2019
- Amended Operational Management Plan, prepared by Martens & Associated Pty Ltd, dated May 2019
- Amended Surface Water Assessment, prepared by Martens & Associates Pty Ltd, dated May 2019
- Amended Inlet Reclamation Plan, prepared by Martens & Associates Pty Ltd, dated May 2020
- Amended Aquatic Ecology Assessment, prepared by Narla Environmental Pty Ltd, dated April 2019
- Amended Preliminary Civil Design Plans, prepared by Martens & Associates Pty Ltd, dated 2018 – 2020.
- Greenhouse Gas Assessment, prepared by Todoroski Air Sciences, dated December 2019
- Threatened Species Targeted Surveys, prepared by Narla Environmental, dated December 2019
- Acid Sulfate Soils Management Plan, prepared by Martens & Associates Pty Ltd, dated April 2019
- Geomorphological Assessment, prepared by Martens & Associates Pty Ltd, dated April 2019

The Sydney Western City Planning Panel (SWCPP) reference number for the DA is PPSSWC-79 whilst Council's reference number is DA0508/18.

Permissibility

The site is zoned RU2 Rural Landscape under the HLEP. Agriculture is permitted with consent.

The proposed development is not permitted in the RU2 zoning. However, the permissibility of the proposed development is pursuant to Clause 7(3) of the Extractive Industries SEPP which provides that extractive industries may be carried out with consent on land on which agriculture may be carried out.

Key Issues

The following matters have been identified as key issues relating to the DA:

- Conflict with existing and future agricultural land uses in the locality, adjoining land uses, zoning objectives and scenic qualities of the Hawkesbury River.
- Compatibility with the existing, approved and likely preferred uses of land in the vicinity of the proposed extractive industry, under Clause 12 of the Extractive Industries SEPP.
- Inconsistency with Council's resolution (at the Ordinary meeting of 12 February 2019) on sand and gravel mining across the Hawkesbury River Floodplain.
- Inconsistency with Council's Flood Policy (2020).
- Inconsistency with Council's Hawkesbury Rural Lands Strategy (2021).
- Potential impacts of a flood event on the receiving environment – a flood risk management plan has been submitted with the application.
- Suitability of proposed rehabilitation to support existing and future agricultural land uses.
- Noise impacts to neighbouring properties – an acoustic assessment has been submitted with the application.
- Visual impacts to neighbouring properties and Hawkesbury River users – a vegetation management plan has been submitted with the application.
- Traffic and road safety impacts from heavy vehicle movements to and from the site.
- The potential for Aboriginal archaeology on the site and statutory Aboriginal Heritage Impact Permit (AHIP) system.

Site and Locality Description

The site is legally described as Lot 2 in DP 85885 (No. 415), Lot 4 in DP 718505 (No. 395) and Lot 2 in DP 77951 (No. 374) with a street address on Freemans Reach Road, Freemans Reach.

The proposed development which includes an area of about 6.5 ha is to be located within the southernmost portion of the site, on the northern side of the Hawkesbury River (**Figure 1**).

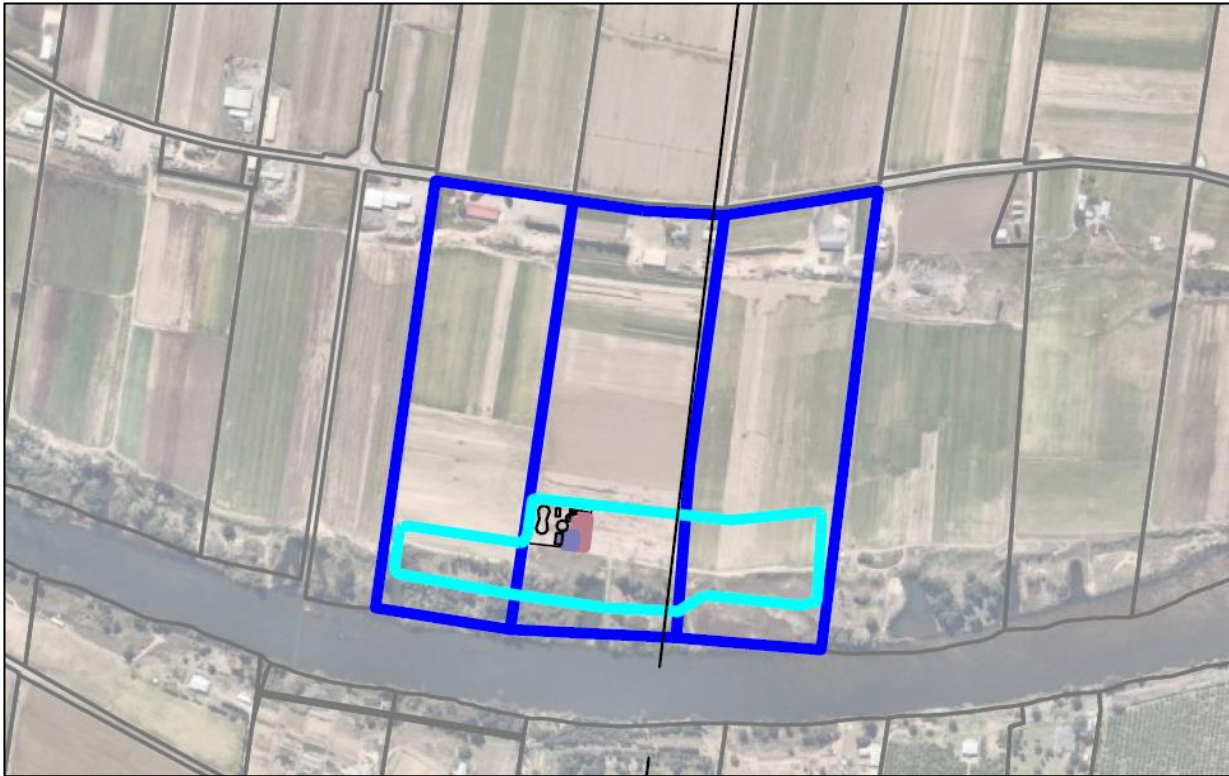


Figure 1 Aerial overlay of the site (dark blue) with sand extraction area (light blue) including sand processing area (Source: Martens & Associates, 2019).

Site and locality photographs are provided in **Figure 2 – Figure 9** below.



Figure 2 View looking south from the proposed sand extraction area to existing vegetation and inlet at the Hawkesbury River (Source: Advisian, 2019).



Figure 3 View looking east from the proposed sand extraction area near existing inlet at the Hawkesbury River (Source: Advisian, 2019).



Figure 4 View looking west from the proposed sand extraction area to existing vegetation at the Hawkesbury River (Source: Advisian, 2019).



Figure 5 View looking east along the Hawkesbury River near the existing inlet (Source: Advisian, 2019).



Figure 6 View looking south from the proposed sand extraction area to the Hawkesbury River (Source: Advisian, 2019).



Figure 7 View looking north from the proposed sand extraction area to existing turf farm and buildings along Freemans Reach Road (Source: Advisian, 2019).



Figure 8 View looking east from the site along Freemans Reach Road (Source: Advisian, 2019).



Figure 9 View looking west from the site along Freemans Reach Road (Source: Advisian, 2019).

The land slopes down from Freemans Reach Road to the south with levels ranging from 13.0m above Australian Height Datum (AHD) on Freemans Reach Road to 0.5m AHD adjacent to the Hawkesbury River. The highest part of the site is at Freemans Reach Road and is relatively flat.

The 1-in-100 year annual exceedance probability (AEP) flood level at the site is about 17.35m AHD and the probable maximum flood (PMF) level is about 26.7m AHD. Local flood characteristics attribute flooding at the site to the breaching of the banks of the Hawkesbury River immediately south of the site which inundate low-lying areas in Freemans Reach.

Under the HLEP, the southernmost portion of the site is mapped as 'significant vegetation' and 'connectivity between significant vegetation'. However, this area is covered by weeds and exotic vegetation.

The site is surrounded by land generally used for rural (agricultural) and rural-residential purposes. The Hawkesbury River to the south is used for agricultural (water irrigation) and recreational purposes. The primary access point to the site is via Freemans Reach Road which is a paved local road.

Development History

It is understood that the site has been predominantly used as a turf farm since at least 1947.

It is also understood that sand mining was undertaken in the southern portion of the site from about 1984 to 1990 based on observations of historic aerial photographs and from discussions with the land owner. A 1987 report¹ stated that at the time, three basic types of extractive industry were prevalent in the Hawkesbury River as follows:

- floodplain extraction.
- bank regrading – bank material removed from the riverbank and the steep riverbank battered back.
- dredging of the riverbed – to provide sand and gravel for sale. It may have extended into bank extraction if dredging of the beds cut into the sandy bank, extending the active width of the river.

The report also stated that parts of Freemans Reach have been dredged. It was also reported that sand quarrying in the floodplain at Freemans Reach had or was being undertaken.

A general development history relevant to the site is listed in **Table 1**.

Table 1 General development history.

Lot	Year	Record No.	Description
Lot 1-2 DP 77951	1999	MA1167/99	Landfill
Lot 3-4 DP 718505	2000	MA0862/00	Landfill
Lot 3-4 DP 718505	2003	DA0476/03	Farm shed
Lot 3-4 DP 718505	2006	DA0848/06	Farm gate sales outlet to be used in conjunction with existing turf farm
Lot 3-4 DP 718505	2009	DA0722/09	Enclosure of ground floor and use of ground floor as ancillary turf farm sales office
Lot 1-2 DP 77951	2008	DA0344/08	Demolition of two existing slab barns
Lot 1-2 DP 77951	2014	DA0041/14	Farm building – retrospective application
Lot 1-2 DP 77951	2014	DA0806/14	Rural workers dwelling – conversion of part of an existing shed to a rural workers dwelling

History of the Application

The DA was lodged with Hawkesbury City Council on 22 November 2018.

The EIS was on public exhibition between 14 December 2018 and 27 January 2019 and Council received 84 submissions. In addition, a second round of public exhibition was carried out between 27 June 2019 and 29 July 2019 due to amendments to the DA and Council subsequently received an additional 40 submissions.

¹ Clarke, M & Geary, M (1987), 'Hawkesbury river hydraulic and sediment transport processes report no. 10 channel geometry, morphological changes and bank erosion'.

Hawkesbury City Council internal departments and external agencies provided responses in relation to the DA. The Applicant has subsequently provided additional and/or amended supporting information to address the matters raised.

The status of external agency responses is provided in **Table 2**.

Table 2 Status of agency responses.

Agency	Status
NSW Department of Fisheries (DPI Fisheries)	DPI Fisheries no longer objects to the proposal to modify the riverbank (letter dated 15 January 2020), provided that: <ul style="list-style-type: none"> Local Land Services (LLS) must be consulted to review the inlet reclamation design, construction methodology and the revegetation plan. Any recommendations from LLS must be adopted. The rehabilitated riverbank must not be rock lined.
NSW Environment Protection Authority (NSW EPA)	General Terms of Approval (GTAs) issued (letter dated 27 July 2020).
Natural Resources Access Regulator (NRAR)	GTAs issued (letter dated 1 August 2019).
WaterNSW	GTAs issued (letter dated 18 February 2021).
Roads and Maritime Services	Raised no objection to the application (letter dated 17 January 2019).
NSW Department of Planning & Environment – Division of Resources & Geoscience, Geological Survey of New South Wales (GSNSW)	No concerns raised in relation to the proposal (letter dated 19 December 2018).
NSW Department of Primary Industries (NSW DPI) Agriculture	DPI Agriculture does not support the proposal (letter dated 9 January 2019) for the following reasons: <ul style="list-style-type: none"> The development is not in keeping with the objectives of the RU2 (Rural Landscape) Zone; and The development is to occur on Biophysical Strategic Agricultural Lands, which should be protected from inappropriate development that will reduce their productive capacity.
Office of Environment & Heritage (OEH)	GTAs issued (letter dated 14 December 2018).

A summary of the history of the assessment of the application is provided in **Table 3** below.

Table 3 History of the assessment of the application.

Date	History
22 November 2018	The application was lodged with Council.
13 December 2018	Council issued an initial review letter to the Applicant.
14 December 2018 and 27 January 2019	The application was notified and Council received 84 submissions raising objection to the development.
5 February 2019	Council issued a letter to the Applicant highlighting matters required to be addressed in order to further consider the proposal.
1 May 2019	The Applicant provided amended plans and documentation seeking to address concerns raised following Council's initial review and receipt of comments from external agencies.
27 June 2019 and 29 July 2019	The amended plans and documentation were renotified and Council received an additional 40 submissions in response to the proposal.

Date	History
28 May 2020	Council received a response from the Applicant in relation to the Council's request for additional information.
June 2020	Application uploaded to the NSW Planning Portal and referred back to external agencies for comment.
5 September 2020	WaterNSW requested additional information.
7 September 2020	The SWCPP was briefed on the DA.
18 February 2021	WaterNSW issued GTAs.

Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979

The following is an assessment of the DA with regard to the heads of consideration under the provisions of Section 4.15 of the EP&A Act:

Section 4.15 (1)(a)(i) any environmental planning instrument

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

The Extractive Industries SEPP includes provisions for the permissibility and assessment requirements for extractive industries. The application has considered matters for consideration under Part 3 of the Extractive Industries SEPP. An assessment in accordance with Part 3 is provided below.

Clause 12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses

Clause 12 is as follows:

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must—

- (a) consider—*
 - (i) the existing uses and approved uses of land in the vicinity of the development, and*
 - (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and*
 - (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and*
- (b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and*
- (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).*

The site is surrounded by land generally used for rural (agricultural) and rural-residential purposes. The Hawkesbury River to the south is used for agricultural (water irrigation) and recreational purposes. The application has identified and assessed potential impacts on existing land uses in terms of air quality, noise and traffic impacts. In terms of noise impacts, minor exceedances were identified for construction noise to surrounding receivers and no exceedances during the operation phase, although the predicted noise level dB(A)_{Leq(15 minutes)} during the operation phase was reported to match the criteria dB(A)_{Leq(15 minutes)} at the receiver located across the Hawkesbury River.

The planning, development and management of rural lands and agriculture for the present and future is of key importance in the Hawkesbury Local Government Area (LGA). Rural lands contain agricultural activities, scenic rural landscapes, native vegetation, biodiversity corridors and areas for rural living. The Hawkesbury River provides a wide floodplain of rich alluvial soils which grow vast amounts of vegetables and turf. The main land uses within the rural parts of the LGA are agriculture and rural-residential. Rural land use conflicts from various other uses including extractive industries is an important issue to consider in planning for rural lands. Land use conflicts across rural

industries, namely agriculture and resources, with rural-residential development are also recognised in the 'Greater Sydney Region Plan A Metropolis of Three Cities'.

It is proposed that the public benefit of the development would be the provision of sand material for the construction industry and an increase in local employment. However, it is considered that the long-term public benefit from rural lands and agriculture as an important part of the economy for the Hawkesbury LGA and the wider Sydney region would exceed that of the development. These existing and likely preferred land uses provide for a significant base of agricultural land for agricultural produce, scenic rural landscapes and associated tourism opportunities. It is understood that the top five commodities in the Hawkesbury LGA are vegetables, turf, poultry meat, eggs and nurseries which highlights the significance of the rural economy.

Hawkesbury City Council's position in relation to development in the floodplain and preferred uses are also clearly outlined in the Council resolutions and adopted policies listed below.

- At the Ordinary meeting of 12 February 2019, Council resolved;

That Council takes a policy position on sand and gravel mining, that:

1. *Reaffirms Resolution 259 of 2013 which states that Council:-*
 - (i) *Is completely opposed to sand or gravel mining on the Richmond Lowlands, and*
 - (ii) *Calls on the State Government to remove Item 2 of Schedule 5 of the Sydney Regional Environmental Plan No. 9 Extractive Industries, and any other references to Richmond Lowlands;*
2. *Opposes sand and gravel mining across the Hawkesbury River Floodplain, particularly on agricultural and environmentally sensitive lands, land close to residential development and land with high heritage and tourism significance, and that*
 - (i) *Council staff ensure this position is included when undertaking strategic planning and any review of strategic and statutory planning instruments, including the DCP and LEP.*
 - (ii) *Council's position on sand and gravel mining is presented when such a matter is being considered by the relevant planning panel.*

(iii) Council develop a policy on sand and gravel mining across the Hawkesbury Local Government Area;

- At the Ordinary meeting of 27 October 2020, Council resolved to adopt a new Flood Policy (2020) which provides up-to-date, relevant and best practice development controls to meet the requirements of Clause 6.3 Flood planning of the HLEP.

The policy includes development controls to determine whether it is compatible or not based on the flood affectation and hazard category of the site. The Hawkesbury-Nepean Valley Regional Flood Study identifies the site as being within a Primary and Secondary Floodway (Volume 3: Map Book – Part D, Pages 8 & 22 of 30). In addition, Council's Flood Policy (2020) identifies that:

Extractive industries, mining and open cut mining are unsuitable within Floodways as development involving earthworks/excavation, cut, fill, changes to topography, and removal of vegetation can significantly alter flood behaviour over the broader floodplain.

- At the Ordinary meeting of 30 March 2021, Council resolved to adopt the Hawkesbury Rural Lands Strategy (2021) which was prepared in order to respond to the Greater Sydney Region Plan and Western City District Plan, and inform the Local Strategic Planning Statement and subsequent review of the Local Environmental Plan and Development Control Plan.

One of the objectives of the Strategy is to inform robust decision-making and outcomes for planning proposals and development applications as well as a review of broader strategic plans such as the HLEP. Chapter 4 identifies the environmental and development-related issues impacting rural lands. In addition, the Strategy (Page 133) identifies that:

Council currently has an application for a sand extraction on one property in the Freemans Reach area. This has the potential to have a significant impact on the agriculture sector – both turf farming

and market gardens. The application is to take sand from a small area of an existing turf farm and if it is established, it may then seek extensions of the area to encompass more of the agricultural land. This as well as impact on the Hawkesbury River and its environmental values would have to be addressed by the Council. For this reason, it is considered that no sand extraction should be considered in this area.

Therefore, having regard to local land use trends, existing rural land uses and agriculture are considered to be the likely preferred uses of land in the vicinity of the development. The development is considered to be incompatible with existing and likely preferred land uses as it is not permitted in the RU2 zoning, is not compatible with the rural landscape character of the land, and is generally unacceptable having regard to the objectives of the RU2 zoning.

Clause 12 provides for the compatibility of the land use with adjoining land uses. It is noted that in the case of Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7, the NSW Land and Environment Court rejected an appeal on an application for an open cut mine in the Gloucester Valley due to concerns on the impacts of the development on existing uses in the vicinity of the mine, as well as climate change-related impacts.

Numerous contentions were raised on appeal as to why the development ought to be refused including²:

- *“the incompatibility of the proposed mine with the existing, approved and likely preferred uses of land in the vicinity of the proposed mine, under clause 12 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2009;*
- *the adverse visual impacts of the mine;*
- *the adverse social impacts of the mine, including social impacts caused by the noise, dust and visual impacts of the mine;*
- *the economic and public benefits of the mine are uncertain and overstated and not shown to be greater than the public cost of the mine; and*
- *the project is not in the public interest, for the above reasons, and because it is contrary to the principles of ecologically sustainable development due to the direct and indirect greenhouse gas emissions of the mine will contribute to climate change.”*

Ultimately, the Court found that³:

“...the negative impacts of the Project, including the planning impacts on the existing, approved and likely preferred land uses, the visual impacts, the amenity impacts of noise and dust that cause social impacts, other social impacts, and climate change impacts, outweigh the economic and other public benefits of the Project.”

In addition, DPI Agriculture does not support the proposal (letter dated 9 January 2019) for the following reasons:

- The development is not in keeping with the objectives of the RU2 (Rural Landscape) Zone; and
- The development is to occur on Biophysical Strategic Agricultural Lands, which should be protected from inappropriate development that will reduce their productive capacity.

Furthermore, the Department of Primary Industry has published a factsheet⁴ which sets out the relevant agricultural issues for consent authorities to consider when assessing a proposal to develop rural land for extractive industries. These issues in relation to the proposal are outlined below.

In terms of agricultural resource impacts, the application provides rehabilitation and quarry closure criteria which are to be fulfilled to demonstrate achievement of rehabilitation objectives and performance standards for key factors including landform, soil, groundwater, stormwater and vegetation and biodiversity.

In terms of water resources, the application proposes that the site water balance regime provides a zero net balance of surface water, meaning that all site demands would not require additional water extraction from the Hawkesbury River. A closed cycle system is proposed where excess flows from the sand processing area are discharged to the open pit and recycled. It is described that there would be no direct discharge of water from the

² Norquay, M (2019), 'Court upholds concerns over climate change impacts in refusing consent to open cut coal mine', available online at: <https://planningenvironmentnsw.com/2019/02/18/court-upholds-concerns-over-climate-change-impacts-in-refusing-consent-to-open-cut-coal-mine/>

³ Sparke Helmore Lawyers (2019), 'Court rejects NSW coal mine appeal on community impact and climate change grounds', available online at: <https://www.sparke.com.au/custom/files/docs//2019213930208/court-rejects-nsw-coal-mine-appeal-on-community-impact-and-climate-change-grounds.pdf>

⁴ Resources Planning & Development Unit, NSW DPI (2012), 'Agriculture issues for extractive industry development', available online at: https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0005/367763/Agriculture-issues-for-extractive-industry-development.pdf

site to the Hawkesbury River during the operation phase and there would be enough storage onsite to accommodate all site water.

In terms of transport and access changes, the application describes the construction of temporary roads at the site and new vehicular driveway and crossing onto Freemans Reach Road. It concludes that the proposal would not cause unacceptable impacts to local road performance at any phase of the development.

In terms of rehabilitation plans, the application proposes progressive rehabilitation of the extraction areas and the creation of a suitable landform which is consistent with surrounding land uses and the intention for future land uses at the site. The topsoil is to be temporarily stockpiled and soil fertility maintained such as through revegetation with endemic grasses until it is reused as part of rehabilitation. It is also proposed that rehabilitated areas would be inspected by the site owners at least annually to assess soil conditions and site drainage, revegetation success, plant health and weed infestation. The application provides examples of other comparable and approved sand quarries in NSW in proximity to river systems. All examples are located within flood prone land and agricultural land, and details of rehabilitation are provided for comparison with the proposal. These examples relate to areas on the Nepean River and Murrumbidgee River which are different contexts to the Hawkesbury River, however all areas are either mapped as Biophysical Strategic Agricultural Land or surrounded by agricultural land.

In summary, having regard to the information discussed in the report above including Clause 12 of the Extractive Industries SEPP, it is considered that the development is not acceptable.

Clause 14 Natural resource management and environmental management

A surface water assessment, watercourse impact assessment and hydrogeological assessment have been prepared for the proposal to identify and manage potential impacts to significant water resources.

A flora and fauna assessment, aquatic ecology assessment and threatened species targeted surveys have been prepared for the proposal to identify and manage potential impacts to threatened species and biodiversity.

A greenhouse gas assessment has been prepared to compare estimated emissions from the proposal to the total greenhouse gas emissions generated at a state and national level. It was concluded that the annual contribution of greenhouse gas emissions from the development would be relatively minor.

It is considered that the development is acceptable having regard to Clause 14.

Clause 15 Resource recovery

A land resource assessment has been prepared for the proposal and provides information including the volume and quality of sand at the site, resource extraction and processing procedures, and potential product markets.

The primary sale material which is suitable for product markets is reported to constitute 96.3% of extracted material. The residual 3.7% of extracted material would be sold as cobbles or reused onsite for backfilling.

It is considered that the development is acceptable having regard to Clause 15.

Clause 16 Transport

The sand would be processed on-site and sold directly from the site.

A traffic study has been prepared for the proposal and identified the 'worst case' daily traffic generation of light and heavy vehicles as follows:

- 15 light vehicles and 13 heavy vehicles (i.e. 56 vehicle movements to / from the site) during the construction phase.
- 12 light vehicles and 16 heavy vehicles (i.e. 56 vehicle movements to / from the site) during the operation phase. This includes vehicles generated due to site operations and rehabilitation works.

A quantitative method was used to determine existing traffic volumes. Traffic modelling was also undertaken at eight locations in the local area and SIDRA network modelling was used to assess potential impacts of changed

traffic conditions at key intersections. The traffic study concluded that the proposal would not cause unacceptable impacts to local road performance at any phase of the development and the development would not materially affect the serviceability, performance or safety of local roads or key intersections. As no material impacts are expected, treatment, upgrade or maintenance works for local roads or key intersections were not recommended. Road user safety management has also been considered.

Furthermore, the operational management plan recommends the following measures to mitigate traffic impacts during construction and operation:

- Opportunities to stagger arrival and departure times should be investigated to reduce impacts on pedestrians and school children during times of busy local road use.
- Site workers are expected to access the site in accordance with site access measures, and to be able to park private vehicles onsite.

It is considered that the development is acceptable having regard to Clause 16.

Clause 17 Rehabilitation

Rehabilitation is the third and final phase of the proposal. The rehabilitation objective is to progressively re-establish and revegetate existing vegetation and habitat at the site, and create a suitable landform which is consistent with surrounding land uses and the intention for future land uses at the site. The landform would be regraded and finished similar to existing levels.

The vegetation management plan describes the revegetation of the riparian corridor at the Hawkesbury River.

The inlet reclamation plan describes the filling of existing inlets prior to construction to improve the stability of the riverbank and help to mitigate potential impacts on the water quality of the Hawkesbury River.

The operational management plan describes waste management, contaminated materials management and acid sulfate soils management.

It is considered that the development is acceptable having regard to Clause 17.

Clause 18 Receipt and disposal of waste

No waste is to be received on to the site. The DA includes the importation of Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM) for progressive rehabilitation of the extraction areas. A waste management plan has been prepared to identify the source/type, amount and management of generated waste.

It is considered that the development is acceptable having regard to Clause 18.

Part 4AA includes provisions for mining and petroleum developments on strategic agricultural land. Although the site is mapped as Biophysical Strategic Agricultural Land, Part 4AA does not apply to the proposal as the development does not involve 'mining or petroleum development' within the definitions of the Mining Act 1992 or Petroleum (Onshore) Act 1991.

State Environmental Planning Policy (State and Regional Development) 2011

The proposal has been nominated by the applicant as 'designated development' under Clause 19 of Schedule 3 of the EP&A Regulation. The proposal has been nominated by the applicant as 'regionally significant development' under Clause 7 of Schedule 7 of the SRD SEPP which is included below:

7 Particular designated development

Development for the purposes of—

(a) extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000...

As such, pursuant to Section 4.5 of the EP&A Act, the consent authority is the SWCPP. The DA is referred to the SWCPP for consideration and determination.

State Environmental Planning Policy (Coastal Management) 2018

The land on which the proposal is located is not mapped as 'coastal wetlands' or 'littoral rainforest area'. However, the southern portion of the site as well as the Hawkesbury River is mapped as 'Coastal Environment Area'. The southern portion of the site is also mapped as 'Coastal Use Area'.

The application has considered Clauses 11, 13 and 14 of the Coastal Management SEPP. An assessment in accordance with these clauses is provided below.

Clause 11 Development on land in proximity to coastal wetlands or littoral rainforest

The proposal site is outside the mapped proximity area.

Clause 13 Development on land within the coastal environment area

The application states that the development would not adversely impact upon the integrity and resilience of the biophysical, hydrological and ecological environment nor the water quality of the Hawkesbury River. In addition, an Aboriginal Cultural Heritage Assessment report has been prepared for the proposal.

It is considered that the development is acceptable having regard to Clause 13.

Clause 14 Development on land within the coastal use area

The application states that the visual amenity and scenic qualities of the Hawkesbury River would be improved as a result of rehabilitation and revegetation works. A vegetation management plan has been prepared for the proposal.

It is considered that the development is acceptable having regard to Clause 14.

State Environmental Planning Policy (Infrastructure) 2007

The proposal was referred to the then Roads and Maritime Services (RMS) as potential 'traffic generating development' under Schedule 3 of the Infrastructure SEPP as an industry with site area of at least 20,000m² accessed by local roads of any size of capacity. RMS raised no objection.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of SEPP No. 55 outlines that a consent authority "*must not consent to the carrying out of any development on land unless:*

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose".*

The application is supported by a preliminary site investigation, prepared by Martens & Associates Pty Ltd, dated November 2018, which identified asbestos containing materials (ACM) at the site. As a result, it is noted that a detailed site investigation assessment and remediation action plan is to be prepared prior to the commencement of works to ensure that land remediation is undertaken in accordance with the relevant provisions of SEPP No. 55.

It is considered that the consent authority is able to be satisfied that the application has adequately addressed the requirements of SEPP No. 55 as the application is accompanied by a preliminary site investigation that considers areas of environmental concern and associated contaminants of potential concern, and provides recommendations

for future development, additional investigations or remediation requirements in order to make the land suitable for the proposed use.

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

The application has not addressed the relevant provisions of SEPP No. 33.

The proposal may fall within the definitions of either ‘potentially hazardous industry’ or ‘potentially offensive industry’ as defined in SEPP No. 33, particularly in relation to potential impacts on the environment in the locality.

Section 13 sets out the matters that the consent authority must consider in determining an application, which are:

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) any likely future use of the land surrounding the development.*

The following measures are noted in the operational management plan:

- Chemicals and other materials which may contaminate the soil, stormwater, groundwater and/or air shall be stored in a secure, covered area away from through traffic, and in a manner that prevents or minimises the impact of accidental spills or releases.
- All hazardous materials to be kept contained within a bunded area on an impermeable surface.
- All hazardous substance spills occurring onsite are to be reported to the Site Manager and appropriate containment and clean up measures put in place to minimise environmental risk.

The application provides a brief consideration of alternatives to the development in terms of the site design, materials, extraction and handling process, and transport and access. The application does not include a preliminary hazard analysis. It is considered that the consent authority is not able to be satisfied that the application has adequately addressed the requirements of SEPP No. 33 as the application has not explicitly addressed the matters.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

SEPP No. 44 applies to land within the Hawkesbury LGA and to land which has an area of more than 1 ha. The proposed development would require the removal of native vegetation and therefore has the potential to disturb potential habitat areas within the site.

The Flora and Fauna Assessment, prepared by Narla Environmental Pty Ltd, dated November 2018 concluded that no feed tree species listed under Schedule 2 were identified at the site. Analysis of the vegetation at the site also concluded that the site did not constitute ‘core koala habitat’ as defined in Clause 4. As a result, no further assessment was required under the provisions of SEPP No. 44.

It is noted that SEPP No. 44 was repealed by State Environmental Planning Policy (Koala Habitat Protection) 2021 with effect from 17 March 2021.

State Environmental Planning Policy No. 64 – Advertising and Signage

The proposal would include a business identification sign within the site, along Freemans Reach Road. An indicative location of the proposed signage is provided on preliminary civil design plans however, the application does not include design drawings of the proposed signage.

The sign would be a freestanding advertisement with a maximum height of 3m above existing ground level. It is reported that the proposed signage is considered to satisfy the assessment criteria in Schedule 1 of SEPP No. 64 including character of the area and views and vistas. The proposed signage will not be illuminated.

The proposed sign is acceptable subject to design details being provided prior to operation.

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

The site falls within the boundary of the SREP No. 20, which aims “*to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context*”. SREP No. 20 requires an assessment of DAs with regard to the general and specific considerations, policies and strategies set out in the Policy. It applies to land in the Greater Metropolitan Region including the Hawkesbury LGA.

Part 2, Section 6 relevant specific planning policies and recommended strategies include those relating to total catchment management, environmentally sensitive areas, water quality, water quantity, cultural heritage, flora and fauna, and riverine scenic quality. Part 3, Section 11 relevant development controls in SREP No. 20 relate to remediation of contaminated land, extractive industries, land uses in or near the river, land uses in riverine scenic areas, and sewerage systems or works.

Information submitted with the application is generally able to demonstrate that the proposal is acceptable having regard to Part 2, Section 6 Specific planning policies and recommended strategies in relation to the relevant sub-sections. The development is also generally acceptable having regard to Part 3, Section 11. However, it does not explicitly address the potentially hazardous or offensive industries development control.

Sydney Regional Environmental Plan No. 9 – Extractive Industry

SREP No. 9 provides for the regulation of extractive resources in the Sydney region, including the Hawkesbury LGA. The site is not listed on Schedule 1 or 2. In addition, the proposed sand extraction area would be located with a minimum 40m setback from the top of the riverbank and therefore, Schedule 3 does not apply.

Hawkesbury Local Environmental Plan 2012

An assessment of the proposed development against the relevant provisions of the HLEP follows.

Clause 2.2 Zoning of land to which Plan applies

The site is zoned RU2 Rural Landscape.

Clause 2.3 Zone objectives and Land Use Table

The proposal is not permitted in the RU2 zone. The permissibility of the proposal is pursuant to Clause 7(3) of the Extractive Industries SEPP which provides that extractive industries may be carried out with consent on land on which agriculture may be carried out. Agriculture is permitted with consent in the RU2 zoning.

The objectives of the zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses in the zone and land uses in adjoining zones.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To preserve the river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other features of scenic quality.*
- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

It is understood that the site has been predominantly used as a turf farm since at least 1947. Turf farming is an agricultural use that is considered to be consistent with the context of the surrounding locality and streetscape which includes agricultural uses.

The proposal is not considered to be compatible with the rural landscape character of the land. A vegetated screen is proposed along the Hawkesbury River to provide a visual and acoustic buffer from the Hawkesbury River, and for neighbouring properties. It is noted that tree and shrub plantings are to be undertaken using hiko cells or tube stocks which would take time to establish an appropriate buffer.

Sand mining was historically undertaken at the site based on observations of historic aerial photographs and from discussions with the land owner. However, the proposal is not considered to be a compatible land use in the present context of the site and the surrounding locality. The proposal includes progressive rehabilitation of the extraction areas to enable the site to be used for future agricultural activities.

The proposal also involves the filling of two minor inlets on the riverbank which is noted would improve the stability of the riverbank and help to mitigate potential impacts on the water quality of the Hawkesbury River.

Information submitted with the DA has not entirely demonstrated that the proposal is acceptable having regard to the overall objectives of the zone which are to maintain the rural landscape character of the land, retain or enhance existing landscape values, and minimise conflict between land uses within the zone.

Consequently, it is considered that the proposal is generally unacceptable having regard to the objectives of the RU2 Rural Landscape zone.

Clause 4.3 Height of Buildings

The Height of Buildings Map specifies a maximum building height of 10 metres for the subject land. It is understood that all proposed structures and material stockpiles comply with this requirement. In addition, the bulk and scale of the proposal is generally considered to meet the objectives of this Clause, in particular:

(b) to ensure that the bulk of development is not excessive and relates well to the local context

In this regard, the proposal is considered to meet objective (b) as the development would be limited to the southernmost portion of the site which is furthest away from Freemans Reach Road and other existing structures within the local context surrounding the development on the northern side of the Hawkesbury River.

Clause 5.7 Development below mean high water mark

It is understood that the site survey plan indicates the mean high water mark of the Hawkesbury River adjacent to the site, which forms the property boundary. Therefore, no works are proposed beyond the property boundary and this Clause does not apply.

Clause 5.10 Heritage conservation

The proposal is located at the southernmost portion of the site. The Statement of Heritage Impact has concluded that there would be no direct impacts on local heritage items located on neighbouring properties. There would be negligible impacts on significant views to and from the properties and towards the Hawkesbury River during the operation phase.

The Aboriginal Cultural Heritage Assessment identified a number of artefacts at the site likely deposited during past flood events. Other similar artefacts likely located within the proposed sand extraction area would be managed in accordance with an AHIP under Section 90 of the National Parks and Wildlife Act 1974. The Deerubbin Local Aboriginal Land Council has been consulted on the proposal.

Clause 6.1 Acid Sulfate Soils

The land is identified as Class 1, Class 4 and Class 5 Acid Sulfate Soils on the Acid Sulfate Soils Planning Map. The majority of the site, including the proposed sand extraction area is located on land identified as Class 4.

The proposal would require excavation more than 2 metres below the natural ground surface. The proposal would likely lower the watertable and is considered acceptable having regards to the requirements of this clause.

An acid sulfate soils management plan has been prepared for the proposal and is considered to be adequate. Information is provided to demonstrate how acid sulphate soils would be neutralised for subsequent suitable reuse onsite as fill material or topsoil.

Clause 6.2 Earthworks

The proposal involves a sand extraction area in order to excavate the sand. The definition of earthworks is “excavation or filling”. It is considered that sufficient information has been provided in order to determine whether the proposed earthworks are acceptable having regard to Clause 6.2(3) which relevantly states:

- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters:*
- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
 - (b) *the effect of the development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or the soil to be excavated, or both,*
 - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material and the destination of any excavated material,*
 - (f) *the likelihood of disturbing relics,*
 - (g) *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area,*
 - (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposal would require three forms of earthworks within the above definition which are the excavation of the topsoil, progressive sand extraction, and backfilling of excavated areas using VENM or ENM such as crushed sandstone, shale and clay. The fill material would be capable of sustaining plant growth for future agricultural land uses. It is also reported that preparation of the final landform may take up to one to two years following cessation of extraction activities.

The application has generally provided assessment having regard to Clause 6.2(3) and is considered acceptable. However, it is unclear where the fill material will be sourced.

Clause 6.3 Flood planning

The land slopes down from Freemans Reach Road to the south with levels ranging from 13.0 m AHD on Freemans Reach Road to 9.0 m AHD on the northern edge of the proposed works, and down to 0.5m AHD adjacent to Hawkesbury River. Ground levels at the sand processing area are approximately between 9.0 m AHD and 6.5 m AHD with a six percent slope down towards the Hawkesbury River. This clause applies to the development as the land is located below the flood planning level of 17.3m AHD.

Flooding at the site is attributed to the breaching of banks of the Hawkesbury River immediately south of the site. These flood waters inundate the low-lying areas in Freemans Reach. Water level data at the Freemans Reach Station (#212410) located approximately 2.7 km upstream of the site, was obtained by the applicant to determine the site inundation frequency. It was reported that a level of 2.2 m AHD would limit the average likely inundation frequency to once every six months. The operational area would be inundated once every three years.

Figure 10 is an extract from the Hawkesbury-Nepean Valley Regional Flood Study highlighting the extent of the predicted 1-in-100 year AEP flood level for the locality. It clearly shows that the site would be inundated. At this level, the maximum flood hazard would be reached; being unsafe for vehicles and people, and all building types considered vulnerable to failure.

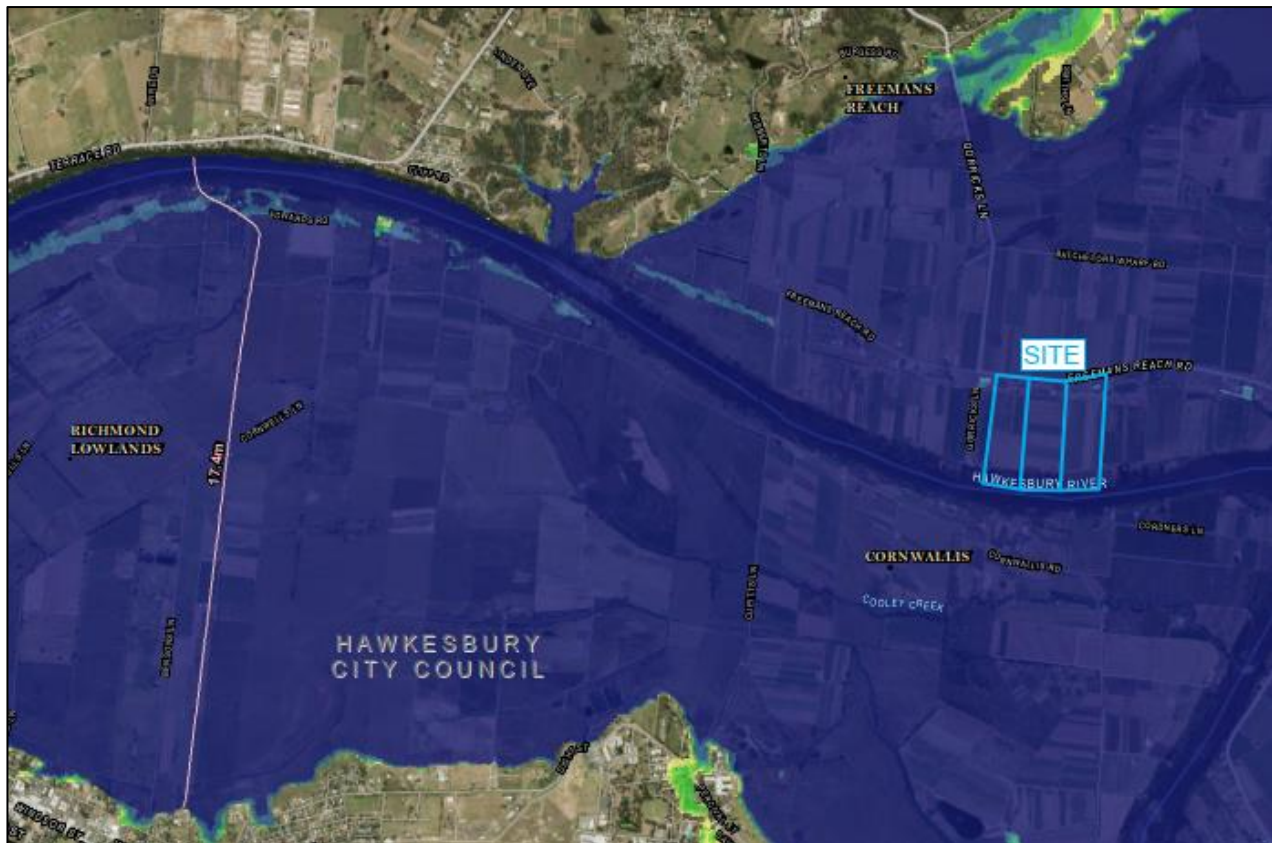


Figure 10 Extract from the Hawkesbury-Nepean Valley Regional Flood Study (blue area showing flood depths greater than 4 metres) (Source: WMAwater, 2019).

In addition, **Figure 11** is an extract showing an indicative site flood level section at various AEP flood events at the site. The flood levels are based on Hawkesbury-Nepean Valley Regional Flood Study model results (WMAwater, 2019).

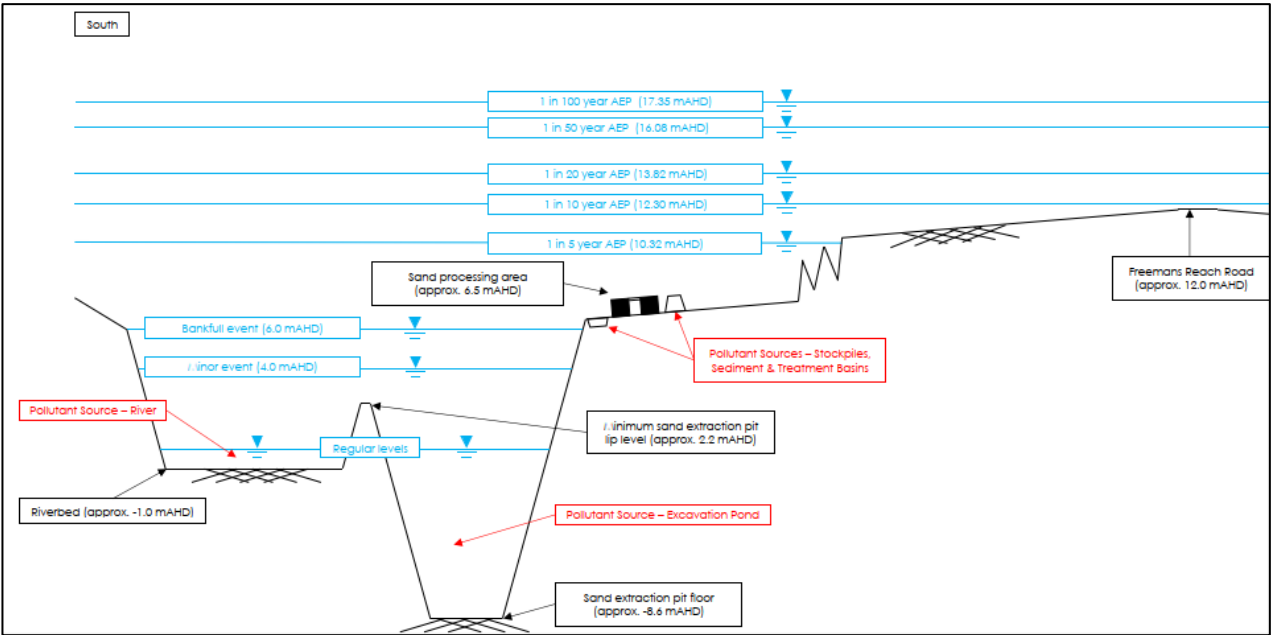


Figure 11 Extract from the indicative site flood level section (view looking upstream) (Source: Martens & Associates, 2020).

In February 2020, a significant rainfall event was experienced on the east coast of Australia. The Freemans Reach water level rose to a peak of 11.27 m AHD on 9 February 2020, which suggests that the event was equivalent to a 1-in-7.4 year AEP flood event.

This significant rainfall event was followed by a flood event in March 2021, where the water levels of the Hawkesbury River upstream at Freemans Reach were recorded at 13.3 m AHD on 24 March 2021. Downstream at Windsor, the Hawkesbury River peaked at 12.93 m AHD on 24 March 2021. The water levels from this event were at least 2 m higher than the February 2020 event, equivalent to approximately a 1-in-10 year AEP flood event.

As shown in **Figure 11**, the sand extraction area, sand processing area and identified pollutant sources would have been inundated. Pollutant sources would include topsoil stockpiles and waterbodies containing suspended sediments.

Some photographs of the site after the 2020 rainfall event are provided below in **Figure 12 – Figure 15**. **Figure 16** and **Figure 17** shows the extent of inundation during and after the 2021 flood event.



Figure 12 View looking south towards the Hawkesbury River at the existing inlet showing turbid water and eroded land (Source: Martens & Associates, 2020).



Figure 13 View looking south across existing turf farm and bare areas (Martens & Associates, 2020).



Figure 14 View looking south towards the Hawkesbury River showing debris caught in riparian corridor vegetation (Source: Martens & Associates, 2020).



Figure 15 View looking east along the Hawkesbury River showing bank erosion and scouring (Source: Martens & Associates, 2020).



Figure 16 Aerial view of the inundation of Freemans Reach and the site (blue) on 25 March 2021 (Source: Nearmap, 2021).



Figure 17 Aerial view of Freemans Reach and the site (blue) after the March 2021 flood event on 10 April 2021 (Source: Nearmap, 2021).

- (1) The objectives of this clause are as follows:
- (a) to minimise the flood risk to life and property associated with the use of land,
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.

A flood risk management plan including flood emergency response plan has been prepared for the proposal. The EIS considers this clause and considers the proposal as acceptable for the reasons described below.

It was reported that flood waters rose slowly and had low velocity across the existing turf farm with the site generally acting like a large pond, consistent with the 'bathtub effect'. It was also reported that negligible damage was observed on site and the February 2020 flood event is almost equivalent to the largest flood that would be expected to occur during the extractive operations. As a result, it was suggested that the site would not be susceptible to significant geomorphic changes during a flood event. However, based on an understanding of

historical flooding for the Hawkesbury River, it is considered that a more significant flood event(s) could still possibly occur during the operation phase.

It would appear that the exposure of sand would represent an erosion and scour risk in a flood event. However, it was reported that the development would have an immaterial effect on the mass and concentration of pollutants released to the Hawkesbury River during flood events in relation to flooding water quality impacts, compared to those already present during flood events.

It was also reported that the development would not materially affect local flood characteristics that have the potential to impact the environment or adjoining land owners as the scale of the operation is insignificant compared to the scale of flooding in the Hawkesbury River catchment and there are no material changes in floodplain storage or flood conveyance.

Mitigation measures are proposed to reduce flooding water quality impacts and hazards including stockpile protection, bund maintenance and flood warning mechanisms to alert site management of the likelihood of inundation.

The adopted emergency flood response in the flood emergency response plan is site evacuation. This is appropriate as the floor levels of the new ancillary office are below the PMF level. The evacuation details are considered to be acceptable having regard to minimising risk to site personnel.

In relation to climate change, it was reported that the lifespan of the development is expected to be approximately 10 years, and therefore the effects of climate change are unlikely to have a material effect on the flooding regime. Clause 6.3(3) prevents the consent authority from granting consent to development at or below the flood planning level unless the consent authority is satisfied that the development:

- (a) *is compatible with the flood hazard of the land, and*
- (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Information submitted in support of the proposal has generally provided assessment having regard to Clause 6.3(3). However, overall, the development is considered to be unacceptable having regard to the objectives and controls under Clause 6.3 of the HLEP, in particular development that is not compatible with the flood hazard of the land and would contribute to erosion and siltation in a flood event.

This is reinforced in Council's Flood Policy (2020) which identifies that:

Extractive industries, mining and open cut mining are unsuitable within Floodways as development involving earthworks/excavation, cut, fill, changes to topography, and removal of vegetation can significantly alter flood behaviour over the broader floodplain.

Furthermore, the updated NSW Flood Prone Land Package was placed on exhibition between 30 April 2020 and 25 June 2020. It intends to update the current NSW Flood Prone Land Package which provides advice to councils on considering flooding in land use planning. The update consists of a proposed amendment to schedule 4, section 7A of the EP&A Regulation, a revised planning circular, a revised local planning direction regarding flooding issued under section 9.1 of the EP&A Act, revised Local Environmental Plan (LEP) flood clauses, and a new guideline: Considering Flooding in Land Use Planning (2020). The intent of the revised LEP flood clauses relate to the development of three LEP clauses in terms of flood planning area, regional evacuation consideration area and special flood characteristics.

Clause 6.4 Terrestrial biodiversity

The southern portion of the site is mapped as "Significant vegetation" and "Connectivity between significant vegetation" on the Terrestrial Biodiversity Map.

- (1) *The objective of this clause is to maintain terrestrial biodiversity by—*

- (a) *protecting native fauna and flora, and*
- (b) *protecting the ecological processes necessary for their continued existence, and*
- (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

Before determining an application for development on land to which this clause applies, the consent authority must consider any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

The proposal involves the clearing of mapped vegetation on land at the riparian corridor. The clearing would remove approximately 1.07 ha of River-flat Eucalypt forest and 0.01 ha of Freshwater Wetlands on Coastal Floodplains and will not result in permanent isolation, fragmentation or extinction. The riparian corridor would be revegetated using native species in accordance with the vegetation management plan.

No threatened flora and two threatened fauna species (one individual Black Bittern and small numbers of Grey-headed Flying-fox) were identified during targeted surveys. The site is heavily degraded with large areas of weed infestations. The site also lacks native species diversity with only a very low number of native species detected.

It is considered that the application demonstrates that the development is acceptable having regard to the objectives of Clause 6.4.

Clause 6.7 Essential Services

This clause applies to the development and relevantly states that:

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable road access.*

Relevant arrangements can be made in terms of water, electricity, sewerage and stormwater. The proposal would require the construction of temporary roads at the site and new vehicular driveway and crossing onto Freemans Reach Road.

Administration and processing facilities would be built as part of site establishment including the following works:

- new intersection on Freemans Reach Road to facilitate site access.
- temporary internal roads.
- installation of stormwater trenching and drainage.
- relocation of existing waterpipes and irrigation pumps outside the sand extraction area.
- installation of electricity infrastructure and on-site effluent system for new ancillary office.

It was found that the nearest reticulated sewerage system to the site is located in Windsor, approximately 4km away. As a result, the proposal describes an on-site wastewater management system to service the new ancillary office involving a septic tank with minimum 3,000 litre (L) capacity.

The application is supported by preliminary civil design plans showing the location of the septic tank connected to a sewer main and absorption trench, on-site water treatment for stormwater, drainage and internal roads.

Based on the above, it is considered that the applicant has demonstrated that adequate arrangements are available or can be made available in order to address the requirements of Clause 6.7.

Section 4.15 (1)(a)(ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)*

Draft State Environmental Planning Policy (Remediation of Land)

The Explanation of Intended Effect for the above draft SEPP was placed on exhibition from 31 January 2018 to 13 April 2018.

The proposed new SEPP intends to update the current SEPP No. 55 requirements and add new classes of remediation works that require development consent.

The proposed development has been considered under the current SEPP and discussed in the report above.

Draft State Environmental Planning Policy (Environment)

The Explanation of Intended Effect for the Environment SEPP was placed on exhibition between 31 October 2017 and 31 January 2018.

The intent of the SEPP is to both simplify the planning rules and definitions for environmental areas and consolidate several existing planning policies including Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997) in to one new SEPP.

The Explanation of Intended Effect for the Draft SEPP does not propose to change matters required to be considered or permitted under the SREP No. 20 which will be repealed and replaced with the new Environment SEPP. The proposed development has been considered against the provisions of the existing SREP and discussed in the report above.

There are no other proposed instruments subject of public consultation that are applicable to the proposed development.

Section 4.15 (1)(a)(iii) *any development control plan*

Hawkesbury Development Control Plan 2002

An assessment of the proposal against the relevant chapters of this DCP follows.

Part A Chapter 3 – Notification

Surrounding land owners within 1km of the site were notified of the proposal, and comment sought.

The EIS was on public exhibition between 14 December 2018 and 27 January 2019. 84 submissions were received. Following an assessment of the original proposal, the applicant chose to amend the proposal and provide additional and/or amended supporting information to address the matters raised.

A second round of public exhibition was carried out between 27 June 2019 and 29 July 2019 due to amendments to the application. An additional 40 submissions were received.

Part C Chapter 1 – Landscaping

The land is visible from Freemans Reach Road and adjoining rural properties.

Concept landscape plans have been submitted which shows existing trees to be retained and removed, and revegetation works using native species including the removal of weeds and exotic vegetation. Revegetation works are proposed along the Hawkesbury River in order to screen the development from neighbouring properties and stabilise the riverbank. The vegetation management plan describes revegetation works.

Accordingly, the concept landscape plans are generally considered to be acceptable having regard to the requirements of this chapter.

Part C Chapter 2 – Car parking and Access

Four on-site carparking spaces would be provided for staff at the sand processing area.

Section 2.4 of this chapter specifies access considerations. All vehicles will enter and exit the site in a forward direction. A smooth connection of driveway would be provided with the edge of the carriageway at Freemans Reach Road. The application does not provide for any dedicated turning lanes or standing areas on Freemans Reach Road for vehicles entering the site.

Part C Chapter 3: Signs

Section 3.4 of this chapter specifies the following requirements for signage in residential, rural and scenic protection zones to be restricted to:

- *one sign per property,*
- *a height of 2.5 metres above ground level, and*
- *a maximum area measuring 0.75m². Double sided or "V" signs may be permitted where considered appropriate, with each face being restricted to 0.75m².*

The proposal would include a business identification sign within the site, along Freemans Reach Road. The sign would be a freestanding advertisement with a maximum height of 3m above existing ground level which is higher than that permitted by the DCP. It is reported that the proposed signage is considered to satisfy the assessment criteria in Schedule 1 of SEPP No. 64 including character of the area and views and vistas. The proposed signage will not be illuminated.

Part C Chapter 4: Soil Erosion and Sediment Control

A sediment and erosion control plan has been prepared for the application and appropriate measures would be implemented as part of site establishment, prior to the removal of existing vegetation at the site. The topsoil is to be stockpiled until it is reused as part of rehabilitation. Sediment and erosion control measures would remain in place until completion of the rehabilitation phase.

It is considered that the proposal is generally consistent with the measures outlined in Section 4.3. Concept landscape plans have been submitted with the application.

Administration and processing facilities would be built as part of site establishment including temporary internal roads, stormwater and drainage, ancillary office and associated electricity infrastructure and effluent system, fencing, signage and sediment and erosion controls.

Part C Chapter 5: Bushfire Prone Land

This section states that:

development within bushfire prone land is to comply with the relevant provisions of the following:

- *Building Code of Australia;*
- *Australian Standard AS 3959 - Construction of Buildings in Bushfire Prone Areas;*
- *Planning for Bushfire Protection produced by the Rural Fire Service and Planning NSW;*
- *The Hawkesbury Bushfire Risk Management Plan, July 2000.*

Development must comply with the amendments to the Environmental Planning and Assessment Act and Rural Fire Act (as amended).

The site is not mapped as bushfire prone land. The adjacent lots located on the northern side of Freemans Reach Road are only partly located on bushfire prone land. The location of the proposed development is greater than 100m from the pocket of bushfire prone land.

A bushfire hazard assessment has been prepared for the application which provides an analysis of the hazard which is accepted as low bushfire risk, threat and subsequent risk to the development and provides advice in relation to compliance with the relevant provisions of the *Planning for Bushfire Protection 2006* (PBP 2006). Compliance was demonstrated with the aims and objectives of PBP 2006. The bushfire risk to the site is considered to be extremely low. The Building Code of Australia does not provide for any bushfire specific performance requirements for the proposed development and as such AS 3959 does not apply as a deemed to satisfy provision.

Part C Chapter 7: Effluent disposal

Section 7.4 of this chapter specifies rules.

An onsite wastewater management assessment submitted with the application has had consideration to this chapter. The peak daily wastewater generation will be 180 L per day assuming four staff on-site and truck driver usage of site amenities. The sewage management system involves an on-site standard septic tank with minimum 3,000 L capacity and an absorption trench 0.6m wide and 15m long. It is reported that existing dwellings on the site are currently serviced by existing septic tanks and adsorption trenches.

The application is also supported by preliminary civil design plans showing the location of the septic tank connected to a sewer main and absorption trench.

Section 7.4 of the DCP confirms that on 10 August 1999, Council resolved the following:

The only developments to be approved in respect of unsewered land that will rely on tanker removal of septic tank effluent are as follows:

- a) *single dwelling houses;*
- b) *light industry and single shops which do not require a water supply greater than that which can be delivered via normal domestic connection without on-site storage or which are not connected to a reticulated water supply.*

Subdivision of unsewered land that will rely on tanker removal of septic tank effluent will not be approved.

Contrary to the above, the development involves the installation of on-site wastewater management.

Part C Chapter 8: Management of Construction and Demolition Waste

Section 8.2 of this chapter specifies general principles.

A waste management plan has been submitted with the application and considers construction waste and operational waste for the development including amount of waste materials produced.

Construction: It is proposed that general construction waste, and putrescible and other general waste would be placed in skip bin(s) and periodically removed from site to an off-site waste recycling and processing facility. Noxious weed vegetation would be placed into skip bin(s) and removed to an off-site waste management facility. Topsoil waste generated from road works and site establishment would be re-used on-site in turfing works. Woody vegetation would be managed in consultation with an arborist or landscaper and generally be mulched and re-used on-site.

Operation: Stripped topsoil would be stockpiled on-site and used in the rehabilitation phase. Spoil and/or fine sediments generated by sand processing would be re-used for dredge pool or other rehabilitation purposes. Vegetation generated as part of topsoil stripping would be mulched and re-used on-site if woody or removed to an off-site waste management facility if containing noxious weeds. General waste would be placed in skip bin(s) and periodically removed from site to an off-site waste management facility.

Rehabilitation: construction waste would involve the removal of site materials. Putrescible and other general waste would be placed in skip bin(s) and periodically removed from site to an off-site waste recycling and processing facility.

Part C Chapter 9: Preservation of Trees and Vegetation

This chapter is in response to Clause 5.9 of the HLEP which provided that some works to “prescribed” trees or vegetation must not be undertaken without development consent or a permit being granted by Council. This chapter prescribes the trees and vegetation to which Clause 5.9 applies. However, it is noted that Clause 5.9 is repealed.

The development involves the removal of native trees or native vegetation on land zoned RU2 Rural Landscape which are “prescribed” for the purposes of Clause 5.9, and within 40m of a watercourse (the Hawkesbury River).

A vegetation management plan has been submitted with the application and describes the revegetation of the riparian corridor using native species.

A flora and fauna assessment has also been submitted with the application.

Part C Chapter 10: Heritage Conservation

Section 10.4.1 of this chapter specifies when development consent is required, in accordance with Clause 5.10 of the HLEP. The Statement of Heritage Impact has concluded that there would be no direct impacts on local heritage items located on neighbouring properties. There would be negligible impacts on significant views to and from the properties and towards the Hawksbury River during the operation phase.

The Aboriginal Cultural Heritage Assessment identified a number of artefacts at the site likely deposited during past flood events. Other similar artefacts likely located within the proposed sand extraction area would be managed in accordance with an AHIP under Section 90 of the National Parks and Wildlife Act 1974. The Deerubbin Local Aboriginal Land Council has been consulted on the proposal.

Part D Chapter 7: Landfill

This chapter specifies general principles, rules and requirements.

The extraction areas would be backfilled using VENM or ENM.

The top 300mm of the fill must be topsoil in order to ensure site revegetation. The proposal would reuse stripped and stockpiled topsoil spread over the filled areas to an average of 300-500mm. Prior to rehabilitation works, topsoil would be stockpiled onsite and soil fertility is to be maintained. A sediment and erosion control plan has been prepared for the application and appropriate measures would be implemented.

An inlet reclamation plan has been prepared for the proposal and provides information in relation to the filling of existing inlets and details on the characteristics of the fill such as particle size distribution and classification. Crushed rock VENM would be used to isolate the existing inlets from the Hawksbury River and would remain stable against tidal influences and minimise potential sedimentation impacts. However, DPI Fisheries have stated that the rehabilitated riverbank must not be rock lined.

The proposal describes that fill material would be capable of sustaining plant growth for future agricultural land uses.

Part D Chapter 8 Farm Buildings and Outbuildings

This chapter provides objectives and development controls for farm buildings and outbuildings.

The application states that the ancillary office would include an area of approximately 60 square metres with significant front, side and rear setbacks. The height of the ancillary office would not exceed 5.5m.

Section 4.15 (1)(a)(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements applicable to the proposed development.

Section 4.15 (1)(a)(iv) the regulations

The proposal has been nominated by the applicant as 'designated development' under Clause 19 of Schedule 3 of the EP&A Regulation which describes the nomination in relation to extractive industries as follows:

- (1) Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):*
 - (a) that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*
 - (b) that disturb or will disturb a total surface area of more than 2 hectares of land by:*
 - (i) clearing or excavating, or*
 - (ii) constructing dams, ponds, drains, roads or conveyors, or*
 - (iii) storing or depositing overburden, extractive material or tailings, or*
 - (c) that are located:*
 - (i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or*
 - (ii) within 200 metres of a coastline, or*
 - (iii) in an area of contaminated soil or acid sulphate soil, or*
 - (iv) on land that slopes at more than 18 degrees to the horizontal, or*

- (v) if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or
- (vi) within 500 metres of the site of another extractive industry that has operated during the last 5 years.

The application states that pursuant to Schedule 2 of the EP&A Regulation and Section 4.12(8) of the EP&A Act, an application for designated development is to be accompanied by an EIS. An EIS has been prepared and submitted with the application.

Should the proposal be supported, the development would be required to be completed in accordance with the requirements of the Building Code of Australia (BCA)/National Construction Code and be levied against Council's Section 94 Contributions Plan 2015.

Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

These matters have been considered as part of the assessment of this application.

The compatibility of the development with existing land uses adjacent or in the vicinity of the development has been considered as part of the application. However, it is considered that the proposal has the potential to conflict with surrounding agricultural land uses and should not be supported. It is also considered that the land is more suitable to being used for agricultural purposes that fits in with the surrounding area in accordance with the RU2 zoning and the rural landscape character of the land.

Furthermore, it is considered that the development would adversely impact the visual amenity and scenic qualities of the locality including the Hawkesbury River. The river is an important natural feature of the region and is highly regarded for its aesthetics and role in the local ecosystem.

Support of the proposal has the potential to set an undesirable social and economic impact, and precedent for similar development in the locality by locating such development in environmentally sensitive areas⁵ that are also not generally considered to be suitable in terms of land use compatibility and flooding.

Section 4.15 (1)(c) the suitability of the site for the development

This matter has been considered as part of the assessment of this application.

The land is considered unsuitable for the development given that the land is subject to impacts from flooding and the proposed use of the site is not a compatible land use.

Section 4.15 (1)(d) any submissions made in accordance with this Act or the regulations

84 submissions were received following the first round of public exhibition of the EIS.

40 additional submissions were received following a second round of public exhibition.

A total of 124 submissions have been received in relation to the proposal raising objection to the development.

The submissions received were generally from local property/land owners and residents. The issues raised in the submissions have been summarised below:

- Permissibility within the RU2 zoning.
- Inappropriate use of rural lands and loss of agricultural land.
- Concerns the proposal will set a precedent for further sand mining in the Richmond Lowlands.
- Suitability of rehabilitation including fill material for existing and future agricultural land uses.
- Potential impacts on flora and fauna at the site and along the Hawkesbury River including riparian vegetation and habitat as well as key fish habitat.
- Concerns related to the management of acid sulfate soils.
- Concerns related to the generation of dust and fine sand particulates.
- Potential impacts on Aboriginal and non-Aboriginal heritage.

⁵ As defined in SREP No. 20.

- Potential contamination of receiving groundwater, wetlands, watercourses and drinking water.
- Potential for environmental damage during a flood event.
- Potential increase in traffic to the local area and deterioration of local roads.
- Potential visual impacts to neighbouring properties and Hawkesbury River users.
- Potential operational noise impacts to surrounding receivers including neighbouring properties.

In consideration of the issues raised above, it is considered that the concerns raised in the public submissions in relation to the development of the land are warranted.

Overall, the information submitted with the application is generally unable to demonstrate that the proposal is acceptable having regard to the matters raised as a result of notification of the application, particularly in relation to use of rural lands and loss of agricultural land, the potential for environmental damage during a flood event and potential amenity impacts.

Integrated Approvals

The proposal has been nominated by the applicant as 'integrated development' under Section 4.46 of the EP&A Act. Approvals would be required under the Water Management Act 2000, Fisheries Management Act 1994, National Parks and Wildlife Act 1974, Roads Act 1993 and Protection of the Environment Operations Act 1997.

The licences and approvals required for the proposal include but are not limited to:

- water access licence.
- controlled activity approval.
- environmental protection licence.

Section 4.15 (1)(e) the public interest

The proposal is reported by the applicant to be in the public interest as it would provide sand material for the construction industry which is reported as experiencing shortage of construction sand materials.

However, the proposal is considered to be contrary to the general public interest in that the development is inconsistent with the objectives of the HLEP. The information provided with the application is unable to sufficiently demonstrate that the land is suitable for the proposed development and the development as proposed would have an adverse impact on the surrounding locality.

Financial Implications

Section 7.11 (previously S94) of the EP&A Act permits Councils to require persons developing land to pay monetary contributions and/or dedicate land to meet the increased demand for public services and amenities generated by development. The Section 94 Contributions Plan 2015 came into effect on 4 June 2015.

Council's Section 94 Contributions Plan 2015 applies to all land within the Hawkesbury LGA, insofar as the plan authorises contributions to be imposed on development for roads maintenance. Section 1.3.2 describes calculating a contribution under Council's Section 94 Contributions Plan 2015 for extractive industries and other heavy haulage development as follows:

- 1. Identify the length of local and regional roads (haul routes) that the development's laden heavy vehicles will utilise.*
- 2. Include both the haul length (in kilometres) and the plan's \$ rate per tonne per km in the development consent.*
- 3. The periodic contribution payment is calculated retrospectively by multiplying the \$ per tonne per km (in the consent) by the haul length (also in the consent) by the amount of material (in tonnes) hauled over the previous quarter.*

The contribution rate, from June 2015, for extractive industries and other heavy haulage development is \$0.05 per tonne per kilometre of hauled material.

Vehicles accessing the site will have to travel along approximately 4.2km of local road (Freemans Reach Road) to access Wilberforce Road which is the nearest classified road. This route is considered the most likely given that Wilberforce Road is the closest classified road which links the site to greater Sydney.

The tonnage of material being imported and exported will be required to be documented in order to account for both the sand to be removed from the site plus any material required to be imported to the site for bulk earthworks associated with the rehabilitation of the riverbank and the excavated sites.

Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act with all matters specified under Section 4.15(1) having been taken into consideration. The application has been unable to sufficiently demonstrate that the land is suitable for the proposed development having regard to the planning controls applicable to the development, in particular Clauses 2.3 and 6.3 of the HLEP and Clause 12 of the Extractive Industries SEPP.

Given the potential impacts anticipated with the proposal and land use compatibility, it is recommended that the application be refused based on the recommendation provided in the report.

Recommendation

That the Sydney Western City Planning Panel as the consent authority pursuant to Clause 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. DA0508/18 for Extractive Industries: Sand Extraction and Processing Facility, Road Works, Site Works, Ancillary Office, Fencing, Landscaping and Site Rehabilitation on Lot 2 in DP 85885 (No. 415), Lot 4 in DP 718505 (No. 395) and Lot 2 in DP 77951 (No. 374) Freemans Reach Road, Freemans Reach on the following grounds:

Unacceptable having regard to Hawkesbury Local Environmental Plan 2012

1. The proposal is considered unacceptable having regard to the matters required to be considered under Hawkesbury Local Environmental Plan 2012.

Particulars

- (a) The land is subject to flooding and the development is considered to be unacceptable having regard to the overall objectives and requirements of Clause 6.3 Flood planning of the HLEP.
- (b) The proposal would not allow development that is compatible with the flood hazard of the land and would contribute to erosion and siltation in a flood event.

Unacceptable having regard to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

2. The proposal is considered unacceptable having regard to the matters required to be considered under Clause 12 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

Particulars

- (a) The proposal is considered to be incompatible with existing and likely preferred land uses as it is not permitted in the RU2 zoning, is not compatible with the rural landscape character of the land, and is generally unacceptable having regard to the objectives of the RU2 zoning.

Character and Zone Objectives

3. The proposed development is not compatible with the character of the locality and is inconsistent with the objectives of the RU2 Rural Landscape zone contained in the Land Use Table of the HLEP.

Particulars

- (b) The land is visible from the road and adjoining properties.
- (c) The intensity of the proposed land use is inconsistent with the character of adjoining rural land uses, which are considered to be relatively low scale in terms of use, noise, visual amenity, reliance on public infrastructure and traffic.
- (d) The development application is inconsistent with the objectives of the RU2 Rural Landscape zone read as follows:
 - *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
 - *To maintain the rural landscape character of the land.*
 - *To provide for a range of compatible land uses, including extensive agriculture.*
 - *To minimise the fragmentation and alienation of resource lands.*
 - *To minimise conflict between land uses in the zone and land uses in adjoining zones.*
 - *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*

- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
 - *To preserve the river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other features of scenic quality.*
 - *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*
- (e) It has not been sufficiently demonstrated that the proposal would maintain the rural landscape character of the land, retain or enhance existing landscape values or minimise conflict between land uses within the zone, including the adjoining and surrounding land uses.

Amenity

4. The proposed development would adversely impact the visual amenity and scenic qualities of the locality including the Hawkesbury River. The river is an important natural feature of the region and is highly regarded for its aesthetics and role in the local ecosystem.

Particulars

- (a) A vegetated screen is proposed along the Hawkesbury River to provide a visual and acoustic buffer from the Hawkesbury River, and for neighbouring properties. However, tree and shrub plantings are to be undertaken using hiko cells or tube stocks which would take time to establish an appropriate buffer.

Precedent

5. Support of the proposal would set an undesirable precedent for similar development that is not compatible with the character of the locality, located on flood affected land and in environmentally sensitive areas, and would result in the loss of agricultural land.

Public Interest

6. Although the proposal would provide sand material for the construction industry which is reported as experiencing shortage of construction sand materials, the development application should be refused because the proposed development is considered to be contrary to the general public interest in that it is inconsistent with the objectives of the HLEP. The information provided with the application is unable to sufficiently demonstrate that the land is suitable for the proposed development and the development as proposed would have an adverse impact on the surrounding locality.
7. The proposed development is also not in the public interest having regard to the submissions received by the Council which raise objection to the application.

Particulars

- (a) The submissions received following notification of the application confirm that there is a significant public interest in how the land is developed. The submissions claimed that the current proposal does not adequately consider the following concerns:
- i. impact the proposal would have on the use of rural lands and loss of agricultural land,
 - ii. impact of the proposal in terms of the potential for environmental damage during a flood event, and potential increase in traffic to the local area and deterioration of local roads,
 - iii. impact of the proposal in terms of the potential for contamination of receiving waterbodies, and management of acid sulfate soils,
 - iv. level of information in relation to suitability of rehabilitation including proposed fill material for existing and future agricultural land uses.

- (b) Matters raised in the submissions have been considered as part of the proposal and the concerns raised warranted.
- (c) Approval of the proposal, having regard to submissions received, is not in the public interest.

Reasons for Decision

It is recommended that the Sydney Western City Planning Panel refuse the proposal based on the following grounds:

- The proposal is not compatible with the character of the locality and is inconsistent with the objectives of the RU2 Rural Landscape zone contained in the Land Use Table of the HLEP.
- The proposal is considered unacceptable having regard to the matters required to be considered under the HLEP and Clause 12 of the Extractive Industries SEPP.
- The site is considered unsuitable for the development and proposed land use due to the site's location on agricultural land and susceptibility to impacts from flooding, and it is not a compatible land use.
- The proposal would have an adverse impact on the amenity of adjoining and surrounding land uses.

Attachments

Attachment 1 – Preliminary Civil Design Plans (refer to NSW Planning Portal)

- Development Overview Plan
- Concept Layout Sand Processing Area
- Concept Landscape Plan Pre-Development
- Concept Landscape Plan Post-Development
- Quarry Progression Plan
- Sediment & Erosion Control Plan
- Earthworks Grading Plan Pre-Extraction
- Earthworks Resource Volume Plan
- Earthworks Volume Plan (Final Surface)
- Concept Design of Proposed Driveway and Vehicle Crossing
- Drainage Plan for Sand Processing Area
- Water Quality Catchment Plan, Model & Results

Attachment 2 – General Terms of Approval (refer to NSW Planning Portal)

Attachment 3 – Submissions (refer to NSW Planning Portal)

