

**Sydney Western City Panel Meeting
1 October 2019**

Panel Reference	PPSSWC-8
DA Number	DA0235/18
LGA	Hawkesbury City Council
Proposed Development	Motel - Demolition of Existing Structures, Construction of a Two Storey Motel Building Containing 94 Rooms, Basement Car Parking and Landscaped Areas
Street Address	189 Windsor Road VINEYARD NSW 2765 (Lot 2 DP 1164124)
Applicant	Homeplan Architects
Owner	Swankin Pty Limited
Date of DA Lodgement	30/05/2018
Number of Submissions	14 submissions with original notification and 4 submissions with second notification
Regional Development Criteria (Schedule 7 of the State and Regional Development SEPP)	The development application has not been determined within 120 days and the application was referred to the Sydney Western City Panel under Clause 9 of Schedule 3 to State Environmental Planning Policy (State and Regional Development) 2011
List of all relevant Section 4.15 matters	<ul style="list-style-type: none"> • List of the relevant environmental planning instruments under Section 4.15(1)(a)(i): <ul style="list-style-type: none"> - State Environmental Planning Policy (Infrastructure) 2007 - State Environmental Planning Policy (State and Regional Development) 2011 - State Environmental Planning Policy No. 55 – Remediation of Land - State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP No. 64) - State Regional Environmental Plan No. 20 – Hawkesbury-Nepean River - Hawkesbury Local Environmental Plan 2012. • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority under Section 4.15(1)(a)(ii): <ul style="list-style-type: none"> – Draft State Environmental Planning Policy (Remediation of Land) – Draft State Environmental Planning Policy (Environment) • List any relevant development control plan under Section 4.15(1)(a)(iii): <ul style="list-style-type: none"> – Hawkesbury Development Control Plan 2002 • 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)(iv)): <ul style="list-style-type: none"> – Not Applicable
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Plans of the Proposal • Attachment 2 – NSW Rural Fire Service – General Terms of Approval • Attachment 3 – Submissions
Report prepared by	William Pillon – Senior Town Planner
Report date	17 September 2019



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? <i>e.g. Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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 (Section 7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable

Report

Executive Summary

Pursuant to Section 4.15(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks approval for a motel at 189 Windsor Road Vineyard.

The application involves the demolition of all existing structures on site, removal of vegetation and construction of a two storey 94 bedroom motel with basement parking.

An assessment of the proposal has revealed that the development is unable to satisfactorily address matters in relation to Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land and Clauses 6.2, 6.3, 6.4 and 6.7 of Hawkesbury Local Environmental Plan (HLEP) 2012.

Furthermore insufficient information has been submitted in order to determine that the land is suitable for the proposed development. The proposal is considered to be unacceptable having regard to the overall objectives of the zone and potential impacts in terms of flooding, character on the surrounding locality and the proposal does not provide for a high level of amenity for guests of the motel.

The application has been notified in accordance with Hawkesbury Development Control Plan (DCP) 2002 and Council received a total of 14 submissions raising objection to the development.

Having undertaken an assessment of the application, and given due regard to the submissions received in response to the 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.

The application meets the criteria for determination by the Sydney West Planning Panel as the development application has not been determined within 120 days, the application was referred to the Sydney Western City Panel under Clause 9 of Schedule 3 to *State Environmental Planning Policy (State and Regional Development)* 2011 and the chairperson determined that the delay in determining the application was not the fault of the applicant.

Description of the Proposal

This Development Application seeks consent for the construction of a 94 room motel at No. 189 Windsor Road Vineyard NSW 2765. The proposal specifically involves:

- demolition of existing dwelling and structures onsite,
- removal of 12 trees located in the centre of the site,
- construction of an underground basement with a two storey motel building containing 94 bedrooms.

The application states that *'the proposed motel will provide low cost affordable accommodation to travellers and business people servicing the nearby industrial/commercial and on the city fringe and approach to the Sydney metropolitan area. It also provides accommodation for tourists and visitors to the many events and functions held in the Hawkesbury Area.'*

The motel will be setback 10 meters from Windsor Road and between 7.8m and 15.83 metres from McGrath Road. Access to the motel will be limited to McGrath Road and existing driveways along Windsor Road will be made redundant.

The application is accompanied by a development cost estimate report prepared by M & T Cost engineering dated September 2018 and estimates the development at \$10,763,790.00 including GST.

The application is supported by:

- Statement of Environmental Effects, prepared by Homeplan project design resources, dated September 2018
- Bushfire Assessment report, prepared by Homeplan project design resources, dated September 2018
- Preliminary contamination assessment report, prepared by Geo Enviro Consulting Pty Ltd dated March 2010
- Sewer investigation report, prepared by Barker Ryan Stewart, dated May 2018
- Amended parking and traffic impact assessment, prepared by Stanbury traffic planning, dated September 2018
- Onsite wastewater management report, prepared by Envirotech, dated 18 July 2019
- DA acoustic report – traffic noise assessment, dated 12 September 2018
- Acoustic report, prepared by PKA Acoustic consulting, 12 September 2018
- Flood management plan prepared by Homeplan project design resources, dated April 2018
- Flora and Fauna assessment, prepared by Dr Trevor Hawkeswood, dated 30 March 2018

The Sydney Western City Planning Panel's reference number for the application is PPSSWC-8 whilst Council's reference number is DA0235/18.

Permissibility

The site is zoned RU4 Primary Production Small Lots under HLEP 2012. The proposed development is permitted with consent being defied as tourist and visitor accommodation.

Key Issues

The key issues relating to the development application is in relation to essential services, acceptability having regard to the zone objectives, site contamination and impacts of flooding.

Site and Locality Description

The site is legally described as Lot 2 DP 1164124, with a street address of 189 Windsor Road Vineyard.

The site is a corner allotment that is irregular in shape and has a total area of approximately 6216sqm.

The site has road frontage of approximately 79 metres along Windsor Road and 99.7metres along McGrath Road. Access to the site is gained via McGrath Road.

The site has been historically used as a retail plant nursery (Miller's garden centre) and contains a dwelling, nursery office, associated storage/shedding buildings and scattered vegetation.

The site is between approximately 17.48 metres and 15.28 metres above the Australian Height Datum (AHD) and gradually falls from north to south.

The site is located within the Hawkesbury floodplain and the majority of the land is below the predicted 1:100 ARI (average recurrent interval) flood event of 17.3 metres AHD.

A sewer junction is located in the south eastern corner of the site which was created to support the existing uses on the land.

The site is classified as bush fire prone land and an aerial photograph highlighting the site in red is provided below.

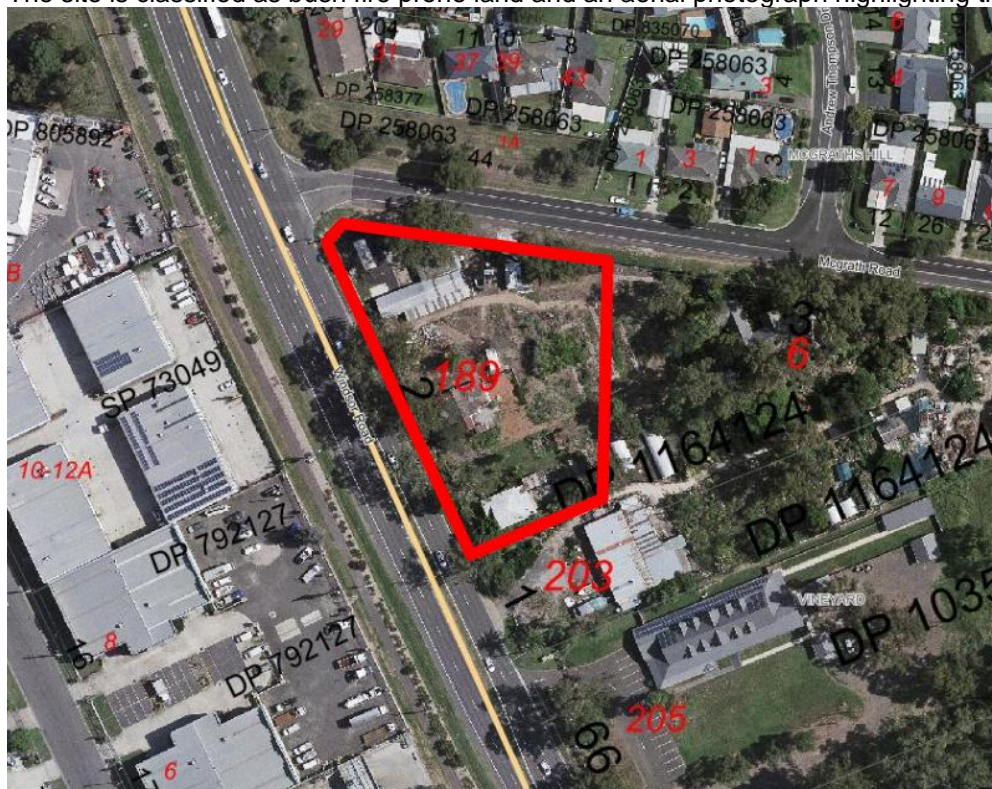


Image 1: Aerial photograph of site

The site is located on the eastern side of Windsor Road which is characterised by recreational and residential land uses to the north, residential land use to the east and commercial development to the south. Development to the west of Windsor Road is made up of commercial land uses.

Development History

This subject property was previously used as a nursery. The existing lot was created under Development Consent No. DA0292/10 which approved a three lot boundary adjustment between the subject lot and the two adjoining lots to the eastern and southern property boundary.

History of the application

Prior to the lodgement of the application the applicant arranged a pre-lodgement meeting with Council officers on 28 February 2018 to discuss the potential development of the land for a three storey 130 bedroom motel, conference centre, restaurant and three level basement.

The applicant was advised that the McGraths Hill Sewerage Treatment Plant did not have capacity to accommodate the additional loads anticipated in conjunction with the proposed development.

the applicant was also advised that there were concerns in relation to flooding, scale of the development, traffic, bushfire, flora and fauna, contamination, character, deep excavation, waste management and acoustic impacts.

The subject application was lodged on 30 May 2018 proposing for a three storey motel with 66 rooms, three level basement car park and restaurant on the subject property. The application estimated a cost of 6.5 million, however this was reviewed at the request of Council and a more accurate cost estimate of \$16, 820, 000.00 was provided.

A summary of the history of the assessment of the application is provided in the table below.

Date	History
14 June 2018	Applicant was advised that the proposal to connect the motel to Councils sewer would not be supported as Councils sewer it at capacity. Applicant also advised that the proposal was considered to be contrary to the objectives of the RU4 Primary Production Small Lot zone and insufficient information was provided in relation to cost of works, acoustic impacts and geotechnical details.
18 June 2018	Council notified the application between 18 June 2018 and 2 July 2018. 14 submissions raising objection to the proposal were received raising issues in terms of traffic, potential site contamination, noise and sewer.
8 August 2018	Council recommended that the applicant withdraw the application as the proposal has not adequately addressed matters such as sewerage service, tree removal, flooding, zone objectives, traffic impacts, waste management, acoustic impacts and geotechnical information.
August - September 2018	Applicant met with Council officers and provided correspondence to address matters in relation to bulk of the development and retention of trees, however still proposed to connect to Councils sewer.
22 September 2018	A complete revised set of plans were sent to Council seeking to modify the proposal by removing the restaurant, reducing the bulk of the building, retention of a group of trees and increase in motel rooms to 94.
15 October 2019	Revised plans re-notified between 15 October 2019 and 29 October 2019.
April and May 2019	Applicant advised that due to the submissions received the proposal would have to be determined by the Local Planning Panel and that responses provided in relation to the additional information requested would not result in a favourable determination. Applicant given until 22 May 2019 to provide additional information to resolve matters concerning sewer, flooding and zone objectives as the next available Local Planning Panel Meeting was in August.
18 July 2019	The applicant submitted a request to have the application sent to the Regional Planning Panel for consideration under Schedule 7 Clause 9 of <i>State Environmental Planning Policy (State Regional Development) 2011</i>
19 July 2019	Applicant submitted an on-site wastewater management report proposing a sewer pump-out system. No plans or details were provided in relation to the proposed system.

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

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 4.15 of the EP&A Act 1979:

Environmental Planning Instruments

State Environmental Planning Policy (Infrastructure) 2007

The application was referred to the NSW Roads and Maritime Services (RMS) in accordance with Clause 101 and Clause 104 of this policy as the development fronts Windsor Road which is a classified road and the proposal has been identified as traffic generating development being development that provides 50 or more parking spaces and access is within 90m connection of a classified road.

On 13 August 2018 the RMS confirmed that they had previously resumed and dedicated a strip of land along the Windsor Road frontage and there are no objections to the proposal provided that all buildings and structures, together with improvements are wholly within the site.

Furthermore the NSW RMS raised no objection to the development as it was determined that the proposal is unlikely to have a significant impact on the classified road network.

An assessment against the requirement of this SEPP has been undertaken and it is considered that the proposal is generally acceptable as Council has notified the RMS, the development is unlikely to interfere with the operation of Windsor Road and the application has appropriately considered acoustic intrusion into the building as part of the acoustic assessment submitted with the application.

State Environmental Planning Policy (State and Regional Development) 2011

Development Application No. DA0235/18 is referred to the Sydney Western City Panel for consideration and determination as the applicant has requested the matter be sent to the panel for determination in accordance with Clause 9 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*. Which is included below;

Schedule 7 Regionally significant development

9 Development subject to delays in determination

Development that has a capital investment value of more than \$10 million but less than \$30 million—

- (a) for which a development application to the relevant council has been lodged but not determined within 120 days after the application was lodged, and*
- (b) that is the subject of a written request to that council by the applicant for the application to be dealt with by a regional panel,*

unless the chairperson of the regional panel concerned determines that the delay in determining the development application was caused by the applicant.

On 2 September 2019 the chairperson determined that the delay in determining the application was not the fault of the applicant.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of SEPP No. 55 outlines 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 contamination assessment report prepared in March 2010 in relation to a previous subdivision application relating to the land.

The contamination report considers the historic use of the land as a nursery since 1982, identifies potential areas of contamination and recommends that areas of the site subject to contamination be remediated.

Neither the contamination assessment report nor statement of environmental effects accompanying the application considers the proposed change in use of the land, the construction of the motel complex or need to excavate material onsite to create the proposed basement car park.

Furthermore the reporting provided does not cover more recent guidelines required to be considered, including but not limited to the National Environment Protection (Assessment of Site Contamination) Measure, amended in April 2013.

Given the above it is considered that the consent authority is unable to be satisfied that the application has adequately addressed the requirements of SEPP 55 as the application is not accompanied by a site contamination assessment report that considers if the land is suitable in its contaminated state or if the land requires remediation works in order to make the land suitable for the proposed use.

State Environmental Planning Policy No. 64 – Advertising and Signage

The application and supporting documentation does not provide any details about signage associated with the motel and an assessment of the proposal against the requirements of the SEPP is unable to be undertaken. Given

the scale and nature of the development it would be expected that any signage for the motel be specified at the application stage and be designed to be integrated into the overall building design.

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

The subject land falls within the boundary of SREP No. 20. This Policy 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 development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

The subject site is not located within a scenic corridor of regional significance and the land does not contain any identified watercourses.

Information submitted with the application is able to demonstrate that the proposal is acceptable having regard to the Clause 6 Specific planning policies in relation to subclauses (1) Total catchment management, (3) Water quality, (4) Water quantity and (6) Flora and fauna. In this regard the application is not supported by sufficient documentation in relation to sewer, stormwater and tree protection in order to carry out a proper assessment of the proposal against this plan.

Consequently the proposal is considered to be unacceptable having regard to the general and specific aims, planning considerations, planning policies and recommended strategies of this plan.

Hawkesbury Local Environmental Plan 2012

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

Clause 2.2 Zoning of land to which Plan applies

The subject site is zoned Zone RU4 Primary Production Small Lots.

Clause 2.3 Zone objectives and Land Use Table

The proposal is permitted with consent in the Zone RU4 Primary Production Small Lots zone being defined as hotel or motel accommodation which is a form of tourist and visitor accommodation. The following definitions have been provided in this regard.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) **hotel or motel accommodation,**
- (e) serviced apartments,

but does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

hotel or motel accommodation means a building or place (whether or not licensed premises under the [Liquor Act 2007](#)) that provides temporary or short-term accommodation on a commercial basis and that:

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

The objectives of the zone are:

- To enable sustainable primary industry and other compatible land uses.
- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- To minimise conflict between land uses within this zone and land uses within 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.

The site has been previously used for low scale commercial and residential land uses and currently fits in with the context of the surrounding locality and streetscape which is made up of low scale commercial and residential buildings with generous setbacks and landscaping from Windsor Road and McGrath Road.

The proposed development is considered to be incompatible with the adjacent land uses and will have an impact on the overall appearance of immediate properties to the north, east and south of the site.

The proposed building footprint is significantly more bulky than adjoining buildings; would consist of a 70 metre long two storey high building fronting both roads and cast a shadow over immediate properties to the east and south of the site. The following image is an extract from the architectural plans.



Image 2 – Elevations of the proposal (Elevation from Winsor Road (top) and elevation form McGrath Road (bottom))

Support of the proposal will result in a significantly large building footprint and bulk in an area dominated by low scale development and is not considered to be in harmony with other buildings along the eastern side of Windsor Road.

Information submitted with the application has been unable to demonstrate that the proposal is acceptable having regard to the overall objectives of the zone which are to enable sustainable primary industry and other compatible land uses, encourage employment in relation to primary industry and minimise conflict between land uses within the zone and adjoining zones.

The application proposes significant hardstand areas and a concept stormwater plan has not been submitted with the amended design to demonstrate that the motel can be designed so that it does not have any significant adverse effect on water catchments, flows and waterways.

Consequently it is considered that the proposal is unacceptable having regard to the objectives of the RU4 Primary Production Small Lots zone.

Clause 4.3 Height of Buildings

The building height map specifies a maximum building height of 10 metres for the subject land. The proposed building complies with this requirement with a maximum building height of 8.9 metres however it is considered that the bulk of the development does not meet the objectives of this clause which are listed as follows:

- (a) to protect privacy and the use of private open space in new development and on adjoining land,*
- (b) to ensure that the bulk of development is not excessive and relates well to the local context,*
- (c) to nominate heights that will provide a transition in built form and land use intensity,*
- (d) to ensure an appropriate height transition between new buildings and heritage items.*

In this regard:

- the proposal is unable to meet objective (b) as the bulk of the development is considered to be excessive and does not relate well to the local context surrounding the development, and
- the proposal is unable to meet objective (c) as the overall building height and size does not provide an appropriate transition in built form and land use intensity in an area that is dominated by low scale residential and commercial land uses.

Clause 6.1 Acid Sulfate Soils

The land is identified as containing Class 5 Acid Sulfate Soils on the Acid Sulfate Soils Planning Map. The proposal is not likely to lower the watertable and considered acceptable having regards to the requirements of this clause.

Clause 6.2 Earthworks

The application excavation works in order to create the proposed basement car park for the motel. It is considered that insufficient information has been provided in order to determine whether the proposed earthworks are acceptable under 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 application does not make any detailed assessment in relation to potential for onsite contamination or the quantities of material that would be required to be excavated as a result of the proposed basement.

Clause 6.3 Flood planning

This clause applies to development as the land is below the flood planning level of 17.3 metres AHD.

The application proposes a basement floor level of 14.4 metres AHD, ground floor level of 17.4m AHD and first floor level of 20.4 metres AHD.

The following image is an extract from Councils flood map highlighting the extent of the predicted 1 in 100 year flood event for the locality.

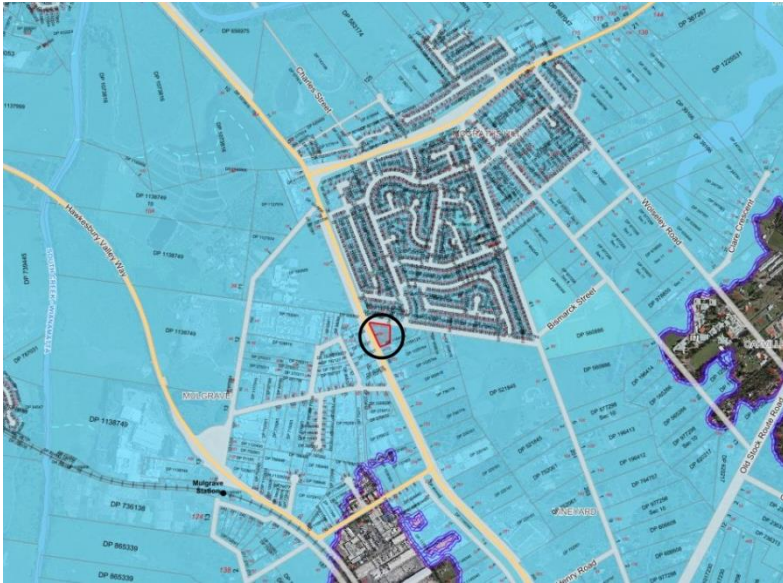


Image 3 - Extract form flood extent map. (Blue area showing land below the 1 in 100 year flood event)

- (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 management plan has been submitted which proposes that the motel would be evacuated once a flood warning is issued by the State Emergency Services.

The statement of environmental effects considers this clause and Councils development of flood liable land policy and justifies that the proposal as being acceptable given that the habitable areas will be located above the 1 in 100 year flood level; materials below the flood level would be capable of withstanding inundation of water and that evacuation from the site is acceptable as the land is located on the Windsor Road Regional Flood Evacuation Route.

It is considered that the justification provided in relation to proposed motel does not demonstrate that the development is acceptable having regard to the objectives of Clause 6.3 of the LEP which seek to minimise the flood risk to life and property associated with the use of land; allow development on land that is compatible with the land's flood hazard and avoid significant adverse impacts on flood behaviour and the environment.

The application is not supported by any site specific flood assessment and support of the proposal based on the justification would result in setting an undesirable precedent for increasing the development of flood prone land. Clause 6.3 (3) prevents the consent authority from granting consent to development 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 is unable to demonstrate that the proposal is acceptable having regard to the above as:

- the application proposes a substantial intensification of development on flood liable land without considering the flood hazard of the land in terms of floodwater depth and floodwater velocities affecting the proposed building,
- the application is not supported by details or assessment in relation to how floodwaters would be kept outside of the proposed basement, how floodwaters will change as a consequence of the proposed building, how floodwaters would impact the proposed onsite effluent disposal system or how the proposed building could be designed to withstand the forces of floodwater, debris, and buoyancy up to the 1:100 ARI event,
- the application does not consider how the evacuation of the property would affect the evacuation of the surrounding residential area during a flood event,
- support of the proposal would result in cumulative impacts on flood prone land in terms of evacuation and construction of major buildings that would be subject to the impacts of flooding, and
- the application does not consider the social or economic impacts associated with allowing the proposed land use on a floodplain, both prior to or after a flood event. In this regard, it is expected that a 1:100 ARI event would result in a significant economic and social impact on property and employees associated with the proposed land use.

Increasing the number of buildings and people that would be subject to the impacts of flooding is more than likely going to have an adverse impact on flood risk to life and property, both on the subject site and on the surrounding locality.

Overall, the development is considered to be unacceptable having regard to the objectives and controls contained under Clause 6.3 of HLEP 2012.

Clause 6.4 Terrestrial biodiversity

The land is mapped as "Significant vegetation" on the Terrestrial Biodiversity Map. The objective of this clause is to maintain terrestrial biodiversity by protecting native fauna and flora.

Before determining a development 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. An assessment of the proposal reveals that the motel building will encroach on to the drip line of the large mature native trees located on the site. No arborist assessment has been submitted with the application that considers whether the proposal is likely to adversely impact the condition, ecological value and significance of the trees proposed to be retained.

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.*

The consent authority can be satisfied that the arrangements can made in terms of water, electricity and road access given that the proposal would not require any significant extension or modifications to connect to these existing services.

The application as lodged proposed to connect the motel to Councils reticulated sewer which currently services the existing buildings onsite.

Council has consistently advised the applicant, including prior to the lodgement of an application that the McGraths Hill sewerage treatment plant is operating at its design capacity and that it would not be able to take on the additional sewerage load envisaged as part of the proposed motel.

Connecting the proposed motel to Councils reticulated sewer system will risk breaching the operation licence of the sewerage treatment plant which is controlled by the NSW Environmental Protection Agency and this is not considered to be acceptable.

The sewer investigation report submitted with the application suggests that wastewater can be detained onsite and fed into the network during off-peak hours, however this would not resolve issues in terms of operational capacity of the existing McGraths Hill sewerage treatment plant and the pollutant loads that are currently being managed with existing development.

Support of the proposal to connect to Councils sewer will set an undesirable precedent in allowing for development where it is known that it would have an adverse impact on the operation of the existing sewerage treatment plant and would require significant extension or modifications to Councils infrastructure.

Recently the applicant has proposed that the motel be connected to an onsite sewerage pump-out system, however no technical details have been provided in this regard and the proposal is not considered to be an acceptable solution to address the serviceability of the development. This is discussed further in the report.

In addition to the above it is noted that the amended motel design is not supported by a concept stormwater and on-site detention plan.

Based on the above the consent authority is prevented from granting consent as the applicant has not been able to demonstrate that adequate arrangements are available or can be made available in order to address the requirements of Clause 6.7 (c) and (d).

Draft Environmental Planning Instruments

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 55 requirements and add new classes of remediation works that require development consent.

The proposed development has been considered under the current SEPP and concerns raised in respect to the level of contamination assessment undertaken for the proposed land use. Accordingly the proposal is unacceptable having regard to the draft SEPP.

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.

Development Control Plans

Hawkesbury Development Control Plan 2002

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

Part A Chapter 3 – Notification

The application was originally notified between 18 June 2018 and 2 July 2018. 14 submissions raising objection to the proposal were received.

Following an assessment of the original proposal the applicant chose to amend the proposed motel and amended plans were re-notified between 15 October 2018 and 29 October 2018. An additional 4 submissions raising objection to the proposal were received. The issues raised in the submission received have been considered under the public submission section of this report below.

On 19 July 2019 the applicant submitted an on-site wastewater management report proposing a sewer pump-out system for the motel and that the proposal to have the motel connected to a sewerage pump-out system may result in additional impacts on the surrounding locality in terms of odour, traffic and noise and Part 3.2.1 of the DCP specifies the following:

Where an application is amended before it is determined, the application may be re-notified and/or re-advertised at cost to the applicant, if Council is of the opinion that the amended proposal may be likely to have an additional impact on the environment or the locality.

Part C Chapter 1 – Landscaping

The land is highly visible from both road frontages and adjoining rural properties.

A landscape concept plan has been submitted which shows the retention of the large mature trees along the property boundaries and additional tree/shrub planting along property boundaries in order to screen the motel from adjoining properties.

The proposed building and associated excavation works will be within the drip line of trees proposed to be retained and no arborist assessment has been undertaken to determine if the trees could be retained or protected as a result of the proposal. Furthermore the landscape plan does not address the proposed vegetation screen planting would be able to comply with the bush fire asset protection zone requirements of the NSW Rural Fire Service or whether the planting would impact the bush fire affectation of adjoining development.

Accordingly the landscape plans is considered unacceptable having regard to the requirements of this chapter.

Part C Chapter 2 – Car parking and Access

This chapter specifies motel parking to be provided at the following rate:

- 1 space per unit, plus
- 1 space per employee, plus
- where a restaurant/function room is included 1 space per 10sqm of service area, or 1 space per 3 seats, whichever is greater.

The proposal provides sufficient parking numbers in accordance with this chapter based on the proposal to provide 94 units, 2 staff members and no restaurant/function room.

It is noted that the applicant has recently proposed to provide an onsite pump-out sewer system, however no details in respect to how this would occur has been provided in order to determine whether appropriate access and manoeuvring is available for a sewerage pump-out tanker.

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.

Whilst no signage has been identified as part of the application it is expected that signage be identified at the development application stage for a development of this scale.

Part C Chapter 7: Effluent disposal

Whilst the site is connected to sewer the connection provided is limited to servicing the existing development on the land and Councils reticulated sewer system would not be able to take on the additional wastewater loads envisaged by the proposed 94 bedroom motel.

The onsite wastewater management report submitted with the application undertakes an initial investigation in relation to the expected wastewater flow rate for the motel. The report estimates a wastewater flow rate of 41,500L/day (290,500L/week) and recommends the motel be connected to a primary quality effluent treatment system that is pumped out via a sewerage tanker service.

Neither the wastewater management report nor the supporting documentation accompanying the application identifies where the effluent disposal system would be located, how the system would be designed or how the system would be serviced.

Council's sewerage management officers have recommended that a development of this scale should not be serviced by a pump-out system as the proposal would result in an adverse impact on surrounding residential and commercial properties in terms of odour. It was further recommended that any onsite pump-out system should be supported to by an overflow tank should the sewerage system not be able to be serviced.

Septic pump-out tankers release air and odour into the surrounding locality when wastewater is being pumped into the tanker and the figures provided suggest that approximately two trucks would be required to service the site per day based on a flow rate of 41,500L/day and a standard tanker capacity of 20,000L. Pump-out tankers of this capacity would also take between 30 and 40 min to empty.

No assessment in relation to the financial viability or feasibility of the proposal has been undertaken having up to 14 trucks service the site per week.

It is noted that Councils 2018/19 sullage charges for businesses is calculated based on a rate of \$25.71 per 1000 litres and a development of this scale would cost approximately \$7468.75 per week to remove sewerage generated by the motel in addition to any licencing, installation, operation, or servicing costs.

Furthermore the application is not supported by any assessment in respect to the potential issues that would be associated with having tankers park onsite and pump sewer into the tankers for approximately 7.2 hours per week.

Section 7.4 of this 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.

Support of the proposal based on the scale of the development would set an undesirable precedent in allowing for septic pump-out systems to be installed contrary to Councils requirements and result in adverse impacts on adjoining properties in terms of odour.

Consequently the proposal to have the motel serviced by a pump-out tanker is not considered to be acceptable having regard to the requirements of this Development Control Plan.

Part C Chapter 8: Management of Construction and Demolition waste

A waste management plan accompanies the application and considers construction waste and operational waste for the motel. It is proposed that demolition waste will be removed by contractors and sent to landfill sites, vegetation waste will be mulched and reused onsite and the operational waste from the motel will be removed by a contractor.

The waste management plan does not consider the removal of excavation material or potential contaminated material from the site.

Accordingly the waste management plan submitted with the application is unacceptable having regard to the requirements of this plan.

Planning Agreement

There are no planning agreements applicable to the proposed development.

Matters Prescribed by the Regulations

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 94A Contributions Plan 2015.

Likely Impacts of the Development, Including Environmental Impacts on Both the Natural and Built Environments and the Social and Economic Impacts in the Locality

These matters have been considered in the assessment of this application.

No detailed assessment in respect of the compatibility of the development with existing land uses on nearby or adjacent development has been undertaken as part of the overall design of the proposal.

The unsatisfactory impacts envisaged with the proposal relate to the intensification of development within a rural area that is made up of low scale development which does not put a significant demand on services or infrastructure.

It is considered that the proposal has the potential to conflict with surrounding competing land uses and should not be supported. The land would be more suitable to being used for low scale development that fits in with the surrounding area and does not put a strain on public infrastructure or rely on the need to provide a sewer pump-out system that will negatively impact adjoining development.

Furthermore it is considered that motel layout does not provide an appropriate level of amenity for the number occupants expected to stay on the site. In this regard no common recreation areas or space has been provided for guests.

Support of the proposal has the potential to set an undesirable social and economic impact in the locality by locating development in areas that are not considered to be suitable in terms of serviceability and flooding.

Suitability of the Site for the Development

These matters have been considered as part of the assessment of the development application. The land is considered unsuitable for increased development given that the land is subject to impacts from flooding and the application is unable to demonstrate that suitable services would be provided in relation to sewer.

Public Notification and Submissions

A total of 14 submissions have been received in relation to the proposal raising objection to development.

The issues raised in the submissions have been summarised below:

- Insufficient sewer capacity,
- Increase in traffic noise along the local roads,
- Impacts on the amenity of adjoining residential and commercial properties, in terms of noise, privacy, character, bulk, scale and traffic conflict.
- Disturbance with the animals being kept at the veterinary hospital.
- Potential discharge of stormwater onto adjoining properties.
- Lack of information accompanying the application in relation to proposed quality of finishes, potential site contamination, traffic, noise impacts, construction impacts.
- Interference with the evacuation of the surrounding locality in the event of a flood.
- Need for additional accommodation in the locality.
- Impact on existing vegetation.

An assessment in relation to the issues raised above has been undertaken and it is considered that the concerns raised in the public submissions in relation to the development of the land are warranted.

The information submitted with the application is unable to demonstrate that the proposal is acceptable having regard to the matters raised as a result of the notification of the application.

It is noted that the recent proposal to provide sewer pump-out service for the motel has not been publically notified. However the issues associated with such a system have been considered and discussed elsewhere in this report.

Integrated Approvals

Tourist accommodation is defined as a 'special fire protection purpose' under the Rural Fires Act 1997 and therefore the proposal constitutes an Integrated Development. The application was referred to the Rural Fire Service (RFS) for assessment. On 27 July 2019 a Bushfire Safety Authority was issued subject to conditions which have been attached to this report.

The Public Interest

The proposed development is considered to be contrary to the general public interest in that the development is inconsistent with the requirements, aims and objectives of SEPP 55, SREP No. 20, HLEP 2012 and Hawkesbury DCP 2002. The information provided with the application is unable to 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 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015)

The proposed development has an estimated value-of-works of \$10,763,790.00. Council's Section 94A Contributions Plan 2015 applies and based on the supplied value-of-works the payment of a Section 7.12 (formerly known as a Section 94A) Contribution of \$100,763,790.00 would be payable should the application be approved.

Section 64 Contributions - Sewer and Drainage

The payment of a section 64 contributions would be associated with the requirement for a Section 306 Approval under the Water Management Act 2000 should the proposal to connect to Councils sewer be approved.

Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act 1979 with all matters specified under Section 4.15(1) having been taken into consideration. The application has been unable to demonstrate that the land is suitable for the proposed development having regard to the planning controls applicable to the development. In particular Clause 7 of SEPP No. 55 and Clauses 6.2, 6.3, 6.4 and 6.7 of HLEP 2012.

Given the potential impacts anticipated with the proposal and lack of information submitted in support of the proposal 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)(a) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. DA0235/18 for Motel - Demolition of Existing Structures, Construction of a Two Storey Motel Building Containing 94 Rooms, Basement Car Parking and Landscaped Areas on Lot 2 DP 1164124, known as 189 Windsor Road Vineyard, be refused on the following grounds:

Disposal and management of sewage

1. The development application has not demonstrated that the site can be adequately serviced in terms of sewer.

Particulars

- (a) Council's sewerage treatment plant is at its operation capacity and the additional sewerage load generated by the proposed motel would not be able to be serviced.
- (b) The application is not supported by sufficient details demonstrating that onsite storage and collection of wastewater would be able to be catered for onsite.
- (c) The proposal to service the motel via a pump-out tanker will have an adverse impact on the surrounding locality in terms of odour.
- (d) Clause 7.4(a) of Chapter 7 of Part C of the Hawkesbury Development Control Plan 2002 ("HDCP 2002") requires a waste water feasibility statement (or similar) to accompany an application that proposes an on-site sewerage management facility. The information required to be provided has not been submitted.
- (e) The development application has not been able to demonstrate that the proposal is satisfactory having regard to Clause 6.7 of Hawkesbury Local Environmental Plan (HLEP) 2012 which states:

"6.7 Essential services

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:

...

(c) the disposal and management of sewage, ..."

- (f) Support of a 94 bedroom motel connected to an onsite sewerage pump-out system will set an undesirable precedent in allowing for the intensification of development in areas that do not have appropriate access to reticulated sewer.

Site Contamination

- 2. The development application has not demonstrated that the land is suitable for the proposed use having regard to the requirements of State Environmental Planning Policy No 55—Remediation of Land (SEPP 55).

Particulars

- (a) The land has historically been used as a nursery.
- (b) The contamination assessment report submitted with the application does not relate to the proposed development and land use.
- (c) The application is not accompanied by any site contamination assessment report that considers if the land is contaminated, if the land is suitable in its contaminated state or if the land requires remediation works in order to make the land suitable for the proposed use. Having regard to the requirements of clause 7 of SEPP 55, insufficient information has been submitted in support of the proposal and the consent authority cannot approve the development application.

Unacceptable having regard to Hawkesbury Local Environmental Plan 2012

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

Particulars

- (a) Insufficient information has been submitted with the application in relation to the earthworks associated with the proposed motel in order to determine that the proposal is acceptable having regard to the objectives and matters contained under Clause 6.2 Earthworks of HLEP 2012.
- (b) 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 HLEP 2012.
- (c) The proposal would not minimise the flood risk to life and property associated with the use of land, allow development that is compatible with the flood hazard of the land, or avoid adverse impacts on flood behaviour.
- (d) Insufficient information has been provided in relation to how the building would be impacted in the event of a flood or whether the proposal will affect adjoining developments during a flood.
- (e) Support of the proposal will put pressure on the existing flood evacuation of the surrounding locality.
- (f) The application proposes to retain existing mature trees located on land mapped as containing “Significant vegetation” on the Terrestrial Biodiversity Map of HLEP 2012.

Insufficient information has been submitted in order to demonstrate that whether or not the development is likely to impact the condition, ecological value and significance of the flora proposed to be retained which is required to be considered under Clause 6.4 of HLEP 2012.

- (g) The consent authority is prevented from granting consent as the application has not been able to demonstrate that adequate arrangements are available or can be made available in order to service the development in terms of sewer and stormwater as required under of Clause 6.7 Essential Services of HLEP 2012.

Character and Zone Objectives

4. The proposed development is not compatible with the character of the locality, is inconsistent with the objectives of the RU4 Primary Production Small Lots zone contained in the Land Use Table of HLEP 2012 and the bulk of the development is considered to be excessive having regard to the proposed building height.

Particulars

- (a) The land is highly visible from the road and adjoining properties.
- (b) The intensity of the proposed land use is inconsistent with the character of adjoining residential and commercial land uses, which are low scale in terms of use, hours of operation, noise, reliance on public infrastructure, traffic and built form.
- (c) The development application is inconsistent with the objectives of the RU4 Primary Production Small Lots zone read as follows:
- *To enable sustainable primary industry and other compatible land uses.*
 - *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
 - *To minimise conflict between land uses within this zone and land uses within 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.*
- (d) The proposed building footprint and hardstand areas do not promote sustainable primary industry and other compatible land uses as envisaged under the zone.
- (e) It has not been demonstrated that the proposal would minimise conflicts in terms of amenity, noise or odour between land uses within the zone, including the adjoining residential and commercial land uses.
- (f) Insufficient details have been provided in relation to stormwater drainage, earthworks or effluent disposal in order to enable a proper consideration of whether the development could occur in a way that does not have significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.
- (g) The height of the development does not meet the objectives of Clause 4.3 Height of Buildings of HLEP 2012 given that:
- i. the bulk of the development is considered to be excessive and does not relate well to the local context surrounding the development; and
 - ii. the overall building height and size does not provide an appropriate transition in built form and land use intensity in an area that is dominated by low scale residential and commercial land uses.

Unacceptable Amenity

5. The proposed development does not provide for an appropriate level of amenity for the guests of the motel.

Particulars

- (a) The motel does not provide any indoor or outdoor recreational areas or activity space for guests or people staying at the motel.

Insufficient Information

6. Insufficient information has been provided to enable a proper assessment of the development application.

Particulars

- (a) No assessment in relation to the suitability of the land for the development has been made having regard to the requirements of State Environmental Planning Policy No. 55 – Remediation of Land.
- (b) No details in relation to signage have been provided in order to assess the proposal against State Environmental Planning Policy 65 – Advertising and Signage and Hawkesbury Councils Development Control Plan 2002.
- (c) Insufficient details have been provided in relation to sewer, stormwater and tree protection in order to carry out a proper assessment of the proposal against Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River. In particular the Clause 6 Specific planning policies in relation to subclauses (1) Total catchment management, (3) Water quality, (4) Water quantity and (6) Flora and fauna.
- (d) An Arborist Report has not been provided which identifies trees to be removed, pruned or protected as part of the development.
- (e) Chapter 1 of Part C of the HDCP 2002 specifies that a landscape concept plan is to be prepared by a suitability qualified person and submitted in support of a development application. The landscape plan does not demonstrate that that the visual impact of buildings can be reduced while maintaining the bush fire asset protection zones for the development and for adjoining properties. An acceptable landscape concept plan has not been submitted in this regard.
- (f) Insufficient details in relation to management of sewerage and stormwater drainage have been provided with the application.
- (g) No assessment of impacts caused by servicing the site via an effluent disposal pump-out system has been provided in relation to frequency of trucks and impacts in terms of odour, and is required to enable a proper assessment.
- (h) Overall the information submitted in support of the application is conceptual at best and does not provide an adequate consideration of the impacts associated with the development or the suitability of the site for the proposed land use.

Precedent

7. 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 not be able to provide appropriate access to services.

Public Interest

8. The development application should be refused because the proposed development is not in the public interest and having regard to the submissions received by the Council which oppose the application.

Particulars

- (a) The submissions received following the notification of the application confirm that there is a significant public interest in how the land is developed. The submissions claim that the current proposal does not adequately address the following concerns:
- i. impact the proposal would have on the amenity and appearance of locality,
 - ii. impacts the proposal would have in terms of noise and traffic,
 - iii. impacts the proposal would have on the existing sewerage network,
 - iv. level of information submitted with the application in relation to flora and fauna protection, potential site contamination, noise impact and construction impacts,
 - v. impact the proposal would have on the evacuation of the surrounding residents during a flood event, and
 - vi. need to provide additional tourist accommodation in the locality.
- (b) Matters raised in the submissions have been assessed as part of the proposal and the concerns raised warranted.
- (c) Approval of the proposal, having regard to the anticipated impacts, is not in the public interest.

Reasons for Decision

It is recommended that the Sydney Western City Planning Panel refused the proposal on 1 October 2019 based on the following grounds:

- The proposal is unacceptable having regard to the statutory requirements apply to the development.
- The proposed is unacceptable having regard to the objectives the zone and Hawkesbury Local Environmental Plan 2012.
- The application has been unable to demonstrate that suitable sewerage services would be made available to the development.
- The site is considered unsuitable for the proposed land use due to the sites location and distances to adjacent residential and commercial properties.
- The proposal would not fit in with the context of the locality and have a negative impact on adjoining development in terms of built form and amenity.

Attachments

Attachment 1 – Plans of the Proposal

Attachment 2 – NSW Rural Fire Service – General Terms of Approval