



Hawkesbury Local Planning Panel Meeting

Date of meeting: 21 July 2022
Location: By Audio-Visual Link
Time: 10:00 a.m.

BUSINESS PAPER

HAWKESBURY LOCAL PLANNING PANEL MEETING

Table of Contents

Meeting Date: 21 July 2022

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE
SECTION 1 – Reports for Determination		5
Item: 006	CP - DA0196/20 - Lot 3 DP 270515, 88B Bulgamatta Road, Berambing - (83531, 14283, 95498)	5
SECTION 2 – Reports for Advice		11
Item: 007	CP - Proposed Heritage Listing of 3 New Street, Windsor - (124414, 95498)	11

HAWKESBURY LOCAL PLANNING PANEL MEETING

Table of Contents

Meeting Date: 21 July 2022

Hawkesbury
Local Planning
Panel

Section **1**

Reports
for determination

HAWKESBURY LOCAL PLANNING PANEL MEETING

SECTION 1 – Reports for Determination

Meeting Date: 21 July 2022

HAWKESBURY LOCAL PLANNING PANEL MEETING

SECTION 1 – Reports for Determination

Meeting Date: 21 July 2022

SECTION 1 – Reports for Determination

Item: 006 CP - DA0196/20 - Lot 3 DP 270515, 88B Bulgamatta Road, Berambing - (83531, 14283, 95498)

Previous Item: 003, 17 March 2022 (HLPP)
005, 21 April 2022 (HLPP)

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: DA0196/20
Legal Description: Lot 3 DP 270515
Property Address: 88B Bulgamatta Road BERAMBING NSW 2758
Applicant: David Jones Building & Landscape Design
Owner: Berambing Sustainable Developments Pty Limited
Proposal Details: Tourist Facility – Use of two buildings as tourist facilities
Estimated Cost: \$288,000.00
Area: 20.4800Ha
Zone: RU2 Rural Landscape
Date Received: 22 June 2020
Advertising: 29 July to 12 August 2020
Submissions: Nil

Key Issues:

- ◆ Categorisation and Permissibility – Existing Use Rights
- ◆ Development History
- ◆ Bushfire

RECOMMENDATION:

Refusal.

EXECUTIVE SUMMARY:

Reason for Consideration by Local Planning Panel

Conflict of Interest – The subject property is owned by a relative of a Councillor.

Background and Application Status

Development Application No. DA0196/20 for the use of two buildings at 88B Bulgamatta Road, Berambing, as part of a tourist facility was previously considered by the Hawkesbury Local Planning Panel on 17 March and 21 April 2022. A copy of the report dated 21 April 2022 is provided as Attachment 1 to this report.

Upon the consideration of the prior reports and representations on behalf of the Applicant, the Hawkesbury Local Planning Panel issued the following resolution on 21 April 2022:

The Hawkesbury Local Planning Panel as the consent authority defers determination of this matter for a period of three months (21 July 2022), being Development Application No. DA0196/20 for the use of two buildings identified as the Enchanted Cave and Treehouse as

HAWKESBURY LOCAL PLANNING PANEL MEETING

SECTION 1 – Reports for Determination

Meeting Date: 21 July 2022

tourist facilities on Lot 3 in DP 270515, known as 88B Bulgamatta Road, Berambing, for the following reasons:

Reasons for Deferment

- 1. The applicant has requested that the matter be deferred to give him an opportunity to submit a development application for an eco-tourist facility on the subject land that includes use of the buildings subject to DA0196/20.*
- 2. The panel anticipates that council will prepare a report for the panel on the status of any new development application for the subject land.*
- 3. Deferral of the Development Application ensures procedural fairness to the applicant.*

Since this resolution the Applicant lodged Development Application No. DA0200/22 for the use of five cabins as an eco-tourist facility on 20 June 2022. These cabins are identified as the 'Treehouse', 'Enchanted Cave', 'Love Studio', 'Dream Cabin' and 'Love Tee Pee'. The documentation prepared in support of the application indicates that the proposed development and the remaining cabins under Development Consent No. MA1308/21 would result in a total of nine cabins for the property.

'Eco-tourist facilities' are a permissible form of development within the RU2 Rural Landscape zone under the Hawkesbury Local Environmental Plan (LEP) 2012.

The most recent application, Development Application No. DA0200/22, has been referred to the Rural Fire Service (RFS) as 'integrated development', and is currently under assessment.

Development Application No. DA0196/20 has been deferred in accordance with the Hawkesbury Local Planning Panel's resolution of 21 April 2022. With the lodgement of the new application, the Panel is now in a position to determine the deferred application.

Legal advice obtained by Council in relation to the deferred application outlines that whilst the original consent had been secured, the two cabins were unable to be considered under the 'existing use' right provisions as they were not built in accordance with the approved plans and their use had commenced unlawfully. It is therefore recommended that Development Application No. DA0196/20 is refused for the reasons detailed in the previously prepared report dated 21 April 2022.

Reasons for Decision

The Hawkesbury Local Planning Panel has determined that the application be refused on 21 July 2022 on the following grounds:

1. The development application fails to demonstrate the permissibility of the development.
2. The development fails to address the provisions of the Biodiversity Conservation Act 2016.
3. The approval of the development would be contrary to the public interest.

RECOMMENDATION:

That the Hawkesbury Local Planning Panel

1. Note the update with respect to the new Development Application (DA0200/22) for Eco-tourist facilities on the subject site.
2. As the consent authority pursuant to Clause 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. DA0196/20 for the use of two buildings identified as the Enchanted Cave and Treehouse as tourist facilities on Lot 3 in DP 270515, known as 88B Bulgamatta Road, Berambing, for the following reasons:

HAWKESBURY LOCAL PLANNING PANEL MEETING

SECTION 1 – Reports for Determination

Meeting Date: 21 July 2022

Reasons for Refusal

Prohibition of Development

1. The expansion of the tourist facility use is unable to be considered under the 'existing use' right provisions of the Environmental Planning and Assessment Act 1979 and is therefore prohibited under the Hawkesbury Local Environmental Plan 2012.

Particulars:

- (a) Tourist facilities, tourist and visitor accommodation and eco-tourist facilities are prohibited within the RU2 Rural Landscape zone under the Hawkesbury Local Environmental Plan 2012.
- (b) The tourist facility use has commenced in contravention of Development Consent No. MA1308/01 and the expansion of the development as an existing use right is unable to be considered under Section 4.69 of the Environmental Planning and Assessment Act 1979.

Insufficient Information

2. The Ecological Assessment Report fails to address the provisions of the Biodiversity Conservation Act 2016.

Particular:

- (a) The Ecological Assessment Report has been prepared having regard to the provisions of the Threatened Species Conservation Act 1995. The transitional requirements of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 ended on 24 November 2019 and provisions of the Biodiversity Conservation Act 2016 should have been considered at the time of lodgement.

ATTACHMENTS:

- AT - 1** DA0196/20 – Hawkesbury Local Planning Report – 21 April 2022 - (*Distributed under separate cover*).

oooO END OF REPORT Oooo

HAWKESBURY LOCAL PLANNING PANEL MEETING

SECTION 1 – Reports for Determination

Meeting Date: 21 July 2022

Hawkesbury
Local Planning
Panel

Section **2**

Reports
for advice

HAWKESBURY LOCAL PLANNING PANEL MEETING

SECTION 2 – Reports for Advice

Meeting Date: 21 July 2022

HAWKESBURY LOCAL PLANNING PANEL MEETING

SECTION 2 – Reports for Advice

Meeting Date: 21 July 2022

SECTION 2 – Reports for Advice

Item: 007 **CP - Proposed Heritage Listing of 3 New Street, Windsor - (124414, 95498)**

Directorate: City Planning

As this matter is a Planning Proposal, it is referred to the Hawkesbury Local Planning Panel for advice only.

The Panel will consider this matter in a closed session and formulate its advice in the form of a resolution.

The advice will be recorded in the Minutes of the Hawkesbury Local Planning Panel meeting and placed on Council's website.

The advice for the Planning Proposal will also form part of the subsequent report to Council on the matter.



Hawkesbury Local Planning Panel Meeting

End of Business Paper

This business paper has been produced electronically to reduce costs, improve efficiency and reduce the use of paper. Internal control systems ensure it is an accurate reproduction of Council's official copy of the business paper.