

Item: 69

CP - LEP006/14 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 631 Bells Line of Road, Kurrajong - (95498, 124414)

REPORT:

Executive Summary

This report discusses a planning proposal (LEP006/14) from Glenn Falson, Urban and Rural Planning Consultant, (the applicant) which seeks to amend *Hawkesbury Local Environmental Plan 2012* (the LEP) to enable subdivision of Lot 1 DP 120436, 631 Bells Line of Road, Kurrajong (the subject site) into 10 large residential community title lots with minimum lot sizes of 4,000m² and 1ha and one road lot.

It should be noted that this application was submitted before the Council resolution of 3 February 2015 to suspend new planning proposals. The site is part of the Kurrajong Investigation Area.

This planning proposal proposes an amendment to the Lot Size Map of the LEP only and does not seek to change the existing RU1 Primary Production zoning of the site.

It is recommended that Council support the preparation of a planning proposal to allow development of the subject site primarily for large lot residential development.

Consultation

The planning proposal has not yet been exhibited. If the planning proposal is to proceed it will be exhibited in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* (the Act) and associated Regulations and as specified in the Gateway determination.

Background

On 3 February 2015 Council considered a Mayoral Minute regarding implementation planning for the Hawkesbury Residential Land Strategy (HRLS). Specifically the Mayoral Minute highlighted the need to undertake structure planning and development contribution planning for development areas.

In response to the Mayoral Minute Council resolved, in part, as follows:

"That:

1. *Council suspend acceptance of new planning proposals under the Hawkesbury Residential Land Strategy (RLS) until the key implementation actions of the RLS, in particular, structure planning and development contribution planning has been completed for the Kurrajong/Kurmond investigation areas or 31 July 2015.*
2. *Planning proposals (for which the application fee payment has already been received) currently lodged with Council are to continue to be processed. These applications, in accordance with previous resolutions of Council, are not to proceed to gazettal until the relevant structure plan and/or S94 Plan is in place."*

Council received this planning proposal in December 2014, hence this report considers the planning proposal against the current state and local strategic planning framework and other relevant criteria in accordance with Part 2 of the above resolution.

On 31 March 2015 Council considered a report on the proposed large lot residential/rural-residential development investigation area for Kurmond and Kurrajong and resolved to adopt an investigation area to enable structure planning and development contributions planning for the purposes of large lot residential / rural-residential within Kurmond and Kurrajong. The Kurrajong Investigation Area referred to in this report includes the subject site (see Figure 1 below).

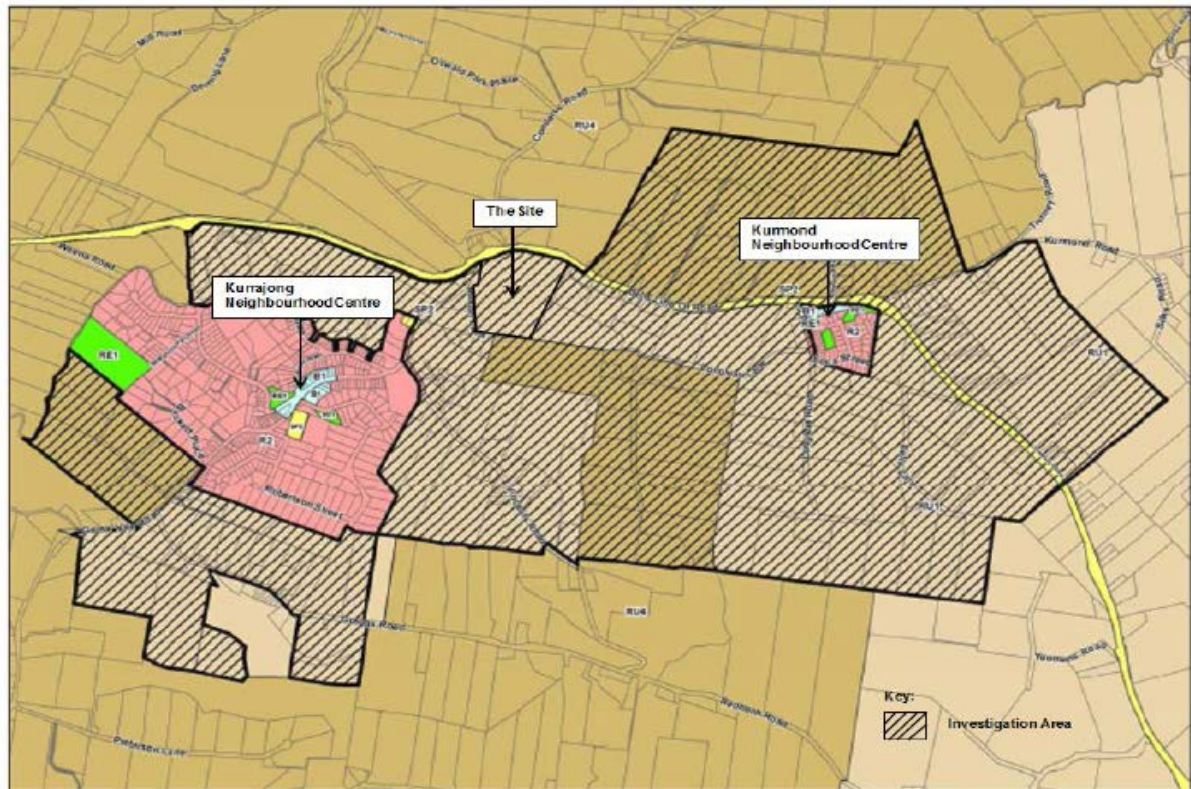


Figure 1: Kurrajong and Kurmond Investigation Area

Planning Proposal

The planning proposal seeks an amendment to the LEP in order to permit the subdivision of the site into 11 lots with new Lot 1 being the future access road that provides access to the proposed 10 large residential lots (Lot 2 - Lot 11) with two different minimum lot sizes of 4,000m² and 1ha. The applicant intends to achieve this proposed outcome by amending the Minimum Lot Size Map (Map Identification No. 3800_COM_LSZ_008A_040_20140131) of the LEP.

The applicant presumes that the draft LEP will include a suitable provision to limit the maximum lot yield of the subdivision consistent with the planning proposal. The Department of Planning and Environment (DP & E) will ultimately decide on the type of amendment to the LEP. However it is understood that at present the DP & E's preferred option is to amend the Lot Size Map of the LEP and not include a clause or a provision in the LEP to limit the number of lots of subdivision of the land.

A concept plan for the proposed community title subdivision (Figure 3 of this report) for discussion purposes only in relation to the potential yield of the site and does not form part of the planning proposal. This concept plan shows ten large lots with minimum lot sizes of 4,000m² and 1ha.

Subject Site and Surrounds

The subject site is located approximately north-east of the Kurrajong Neighbourhood Centre and is in very close proximity to the intersection of Bells Line of Road, Old Bells Line of Road and Mason Lane. The site has an area of 12.55ha and has an irregular shape with an approximate 400m frontage to Bells Line of Road. The site can also be accessed via Mason Lane (see Figure 2).

The site is zoned RU1 Primary Production under the LEP. The current minimum lot size for subdivision of this land is 10ha.

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The site contains a dwelling house, associated out buildings and two dams. The existing dwelling house is located on the north-eastern corner of the site adjacent to Bells Line of Road. The site is currently being used for residential purposes and has been previously used for grazing and fruit orcharding.

The site is partly cleared and areas of dense native vegetation occupy the northern and north-western slopes and along the central natural watercourse.

The site is shown as being bushfire prone (bushfire vegetation category 1) on the NSW Rural Fire Service's Bushfire Prone Land Map.

The site is shown as being within Acid Sulfate Soil Classification 5. This represents a relatively low chance of acid sulfate soils being present on the site.

The site is shown as being Agriculture Land Classification 3 and 4 on maps prepared by the former NSW Department of Agriculture.

The land generally falls from Bells Line of Road with an elevation of approximately 154 AHD towards the existing dam which is located near the middle of the site at a level of approximately 114 AHD. A natural watercourse originates from the north-western slopes of the site and flows through the middle of the site and the dam. Another smaller watercourse runs parallel to this central watercourse and through a smaller dam located closer to the southern boundary. Both these watercourses flow south-east direction to join into the Redbank Creek network, which enters the Hawkesbury River north of Richmond.

According to Council's slope mapping land along northern and north-western boundaries and central watercourse has a slope greater than 25% and the remaining open grass land area with some scattered trees is generally less than 20% in slope.

The site is situated above 1 in 100 year ARI flood level.

The properties immediately to the north are zoned RU4 Primary Production Small Lots, properties immediately to the east and west are zoned RU1 Primary Production and properties immediately to the south are zoned RU4 and RU1. The immediate locality is predominantly zoned RU1 Primary Production. The current minimum lot sizes apply for the subdivision of the immediate surrounding properties are generally in the range of 4ha to 10ha in size.

Applicant's Justification of Proposal

The applicant has provided the following justification for the planning proposal.

- *Council's Residential Land Strategy has identified specific areas/localities that are considered by the Council as suitable for further investigation for urban expansion and in a range of lot sizes from denser urban areas to the rural surrounding areas. The site is considered to be within an area identified by broad description within Council's strategy for investigation and consideration for further urban development.*
- *The premise of the proposal is that it recognises that the subject land is, prima facie, suitable for large lot residential use and would be an appropriate transitional development between the existing Kurrajong Village and the larger rural and rural/residential holdings as they radiate from the village.*
- *Preliminary site investigations have been carried out which has demonstrated that the land is capable of being subdivided into a number of lots that would not be inconsistent with other lands in the vicinity and would form an appropriate component of village expansion at Kurrajong.*
- *Water, electricity, telephone and transport services are currently available to the site boundaries.*

- *The site is capable of containing on-site wastewater disposal and matters relating to vegetation management and bushfire control can be satisfied.*

‘A Plan for Growing Sydney’ (the Sydney Metropolitan Strategy), Draft North West Subregional Strategy and Hawkesbury Residential Land Strategy

The NSW Government’s ‘A Plan for Growing Sydney’ December 2014 (the Sydney Metropolitan Strategy) and Draft North West Subregional Strategy establish the broad planning directions for the Sydney metropolitan area and north-western sector of Sydney respectively. These documents identify a number of strategies, objectives and actions relating to the economy and employment, centres and corridors, housing, transport, environment and resources, parks and public places, implementation and governance.

These two documents have a high level metropolitan and regional focus and for the most part are not readily applicable to a singular rural residential planning proposal at Kurrajong. Notwithstanding this the applicant has provided an assessment of the planning proposal against these two documents and concludes that the proposal is consistent with these strategies. Taking into consideration the location of the proposed development, being on the fringe of Kurrajong Neighbourhood Centre, it is considered that the proposal for large lot residential development demonstrates satisfactory compliance with these strategies.

The HRLS is, in part, a response to the above mentioned State strategies and seeks to identify residential investigation areas and sustainable development criteria which are consistent with the NSW Government’s strategies.

The HRLS contained the following commentary and criteria regarding large lot residential / rural residential development.

“2.10 Strategy for Rural Village Development

The Hawkesbury Residential Development Model focuses on future residential development in urban areas and key centres. However, the importance of maintaining the viability of existing rural villages is recognised. As such, the Hawkesbury Residential Strategy has developed a strategy for rural residential development.

Future development in rural villages should be of low density and large lot dwellings, which focus on proximity to centres and services and facilities. Rural village development should also minimise impacts on agricultural land, protect scenic landscape and natural areas, and occur within servicing limits or constraints.”

The proposal can be described as a rural residential development on the fringe of the Kurrajong village.

The HRLS states that the future role of rural residential development is as follows:

"Rural residential developments have historically been a popular lifestyle choice within Hawkesbury LGA. However, rural residential development has a number of issues associated with it including:

- *Impacts on road networks;*
- *Servicing and infrastructure;*
- *Access to facilities and services;*
- *Access to transport and services;*
- *Maintaining the rural landscape and*
- *Impacts on existing agricultural operations.*

Whilst this Strategy acknowledges rural residential dwellings are a part of the Hawkesbury residential fabric, rural residential dwellings will play a lesser role in accommodating the future population. As such, future rural development should be low density and large lot residential dwellings."

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For the purposes of this proposal, the relevant criteria for rural residential development, as stated in Section 6.5 of the HRLS, are that it be large lot residential dwellings and:

- *Be able to have onsite sewerage disposal;*
- *Cluster around or on the periphery of villages;*
- *Cluster around villages with services that meet existing neighbourhood criteria services as a Minimum (within a 1km radius);*
- *Address environmental constraints and have minimal impact on the environment;*
- *Occur only within the capacity of the rural village*

The ability to dispose of effluent on site is discussed in later sections of this report.

The site is on the fringe of the Kurrajong Neighbourhood Centre and is within the one kilometre radius specified in the HRLS.

Relevant environmental constraints are discussed in later sections of this report.

Council Policy - Rezoning of Land for Residential Purposes - Infrastructure Issues

On 30 August 2011, Council adopted the following Policy:

"That as a matter of policy, Council indicates that it will consider applications to rezone land for residential purposes in the Hawkesbury LGA only if the application is consistent with the directions and strategies contained in Council's adopted Community Strategic Plan, has adequately considered the existing infrastructure issues in the locality of the development (and the impacts of the proposed development on that infrastructure) and has made appropriate provision for the required infrastructure for the proposed development in accordance with the sustainability criteria contained in Council's adopted Hawkesbury Residential Land Strategy.

Note 1:

In relation to the term "adequately considered the existing infrastructure" above, this will be determined ultimately by Council resolution following full merit assessments, Council resolution to go to public exhibition and Council resolution to finally adopt the proposal, with or without amendment.

Note 2:

The requirements of the term "appropriate provision for the required infrastructure" are set out in the sustainability matrix and criteria for development/settlement types in chapter six and other relevant sections of the Hawkesbury Residential Land Strategy 2011."

Compliance with the HRLS has been discussed above. Compliance with CSP will be discussed later in this report.

Council Policy - Our City Our Future Rural Rezonings Policy

This Policy was adopted by Council on 16 May 1998 and had its origin in the Our City Our Future study of the early 1990s.

Since the time of adoption this Policy has essentially been superseded by subsequent amendments to *Hawkesbury Local Environmental Plan 1989*, *NSW Draft North West Subregional Strategy*, the *Hawkesbury Residential Land Strategy*, the *Hawkesbury Community Strategic Plan*, the commencement of *LEP 2012*, and the DP&Es "Gateway" system for dealing with planning proposals.

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The Policy is repeated below with responses provided by the applicant.

- a) Fragmentation of the land is to be minimised

Applicant response

The land is within an area identified within the HRLS as having urban potential. Fragmentation of the land is envisaged by this subsequent strategy.

- b) Consolidation within and on land contiguous with existing towns and villages be preferred over smaller lot subdivision away from existing towns and villages.

Applicant response

The proposal is consistent with this principle.

- c) No subdivision along main roads and any subdivision to be effectively screened from minor roads.

Applicant response

Whilst the site fronts a main road all access will be via Mason Lane. Existing vegetation will screen the subdivision from view from Bells Line of Road.

- d) No subdivision along ridgelines or escapements.

Applicant response

The site is not on a ridgeline or escapements.

- e) Where on site effluent disposal is proposed, lots are to have an area of at least one hectare unless the effectiveness of a smaller area can be demonstrated by geotechnical investigation.

Applicant response

Each lot is greater than one hectare. There has been an effluent disposal assessment which concludes that the site of lots proposed and other criteria is met such that lots are suitable for effluent disposal.

Staff response

The proposed lots 2, 5, 6, 7 and 8 are less than one hectare. However a preliminary effluent disposal report prepared by Barker Ryan Stewart (BRS) and attached to the planning proposal concludes that each lot is considered suitable for the effective disposal of effluent using an aerated wastewater treatment system with surface irrigation. This issue is considered in detail in the latter part of this report.

- f) The existing proportion of tree coverage on any site is to be retained on enhanced.

Applicant response

The subdivision does not propose removal of vegetation. Bushfire asset protection zones and effluent disposal can take place without the need for clearing of vegetation.

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Staff response

A flora and fauna survey and assessment report prepared by UBM Ecological Consultants (UBM) and submitted in support of the planning proposal states that less than 10% area of regrowth Moist Shale Woodland (MSW) at the head of the central vegetated watercourse would need to be cleared or modified to create Asset Protection Zone (APZ) between the proposed building footprints and the hazard (i.e. the bushland). However the likely impacts of the planning proposal would be minimal in terms of the local occurrence of the MSW ecological community. This issue is considered in detail under the heading of 'flora and fauna' in the latter part of this report.

- g) Any rezoning proposals are to require the preparation of environmental studies and Section 94 Contributions Plans at the applicant's expense.

Applicant response

The rezoning process has altered since this policy of Council. The Gateway process will dictate whether further studies are required.

Staff response

Taking into consideration the scale of the development it is considered that an environmental study is not required. However, this will be a matter for the DP&E to advise Council on as a result of their "Gateway" process.

The need for a Section 94 Contribution Plan or a Voluntary Planning Agreement can be further discussed with the applicant if this planning proposal is to proceed.

- h) Community title be encouraged for rural subdivision as a means of conserving environmental features, maintaining agricultural land and arranging for the maintenance of access roads and other capital improvements.

Applicant response

The planning proposal is put to Council on the basis of a community title subdivision.

Section 117 Directions

The Minister for Planning, under section 117(2) of *the Environmental Planning and Assessment Act 1979* (EP&A Act), issues directions that relevant planning authorities including councils must comply when preparing planning proposals. The directions cover the following broad range categories:

- Employment and resources
- Environment and heritage
- Housing, infrastructure and urban development
- Hazard and risk
- Regional planning
- Local plan making
- Implementation of a Plan for Growing Sydney

Section 117 Directions are issued by the Minister for Planning and Infrastructure and apply to planning proposals. Typically, the Section 117 Directions will require certain matters to be complied with and/or require consultation with government authorities during the preparation of the planning proposal. However all these Directions permit variations subject to meeting certain criteria (see the last part of this section of the report). The principal criterion for variation to a 117 Direction is consistency with an adopted Local or Regional Strategy. A summary of the key Section 117 Directions follows:

Direction 1.2 Rural Zones

Planning proposals must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone and must not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).

The planning proposal seeks an amendment to the Lot Size Map of the LEP and it does not propose any zoning changes or contain provisions to increase the permissible density of land. It is therefore considered that the planning proposal is consistent with this Direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

Should Council resolve to proceed with the planning proposal and receive a Gateway determination advising to proceed with the planning proposal from DP&E, the NSW Trade & Investment (NSW T&I) would be consulted in accordance with the Direction 1.3(4).

Direction 3.4 Integrating Land Use and Transport

Planning proposals must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of Improving Transport Choice - Guidelines for planning and development (DUAP 2001)

In summary this document seeks to provide guidance on how future development may reduce growth in the number and length of private car journeys and make walking, cycling and public transport more attractive. It contains 10 "Accessible Development" principles which promote concentration within centres, mixed uses in centres, aligning centres with corridors, linking public transport with land use strategies, street connections, pedestrian access, cycle access, management of parking supply, road management, and good urban design.

The document is very much centres based and not readily applicable to consideration of a rural residential planning proposal. The document also provides guidance regarding consultation to be undertaken as part of the planning proposal process and various investigations/plans to be undertaken. It is recommended that if this planning proposal is to proceed Council seek guidance from the DP&I via the "Gateway" process, regarding the applicability of this document.

Direction 4.1 Acid Sulfate Soils

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. This Direction requires consideration of the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of DP&E. The subject site is identified as containing "Class 5 acid sulfate soils on the Acid Sulphate Soils Planning Maps, and as such any future development on the land will be subject to Clause 6.1 Acid Sulfate Soils of the LEP which has been prepared in accordance with the Acid Sulfate Soils Model Local Environmental Plan provisions within the Acid Sulfate Soils Planning Guidelines adopted by the Director General.

This Direction requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soil study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act. An acid sulfate soil study has not been included in the planning proposal. The DP&E will consider this as part of their "Gateway" determination and if required can request further information/consideration of this matter.

Direction 4.4 Planning for Bushfire Protection

The land is identified as bushfire prone, containing Vegetation Category 1. This Direction requires consultation with the NSW Rural Fire Service following receipt of a Gateway determination, compliance with Planning for Bushfire Protection 2006, and compliance with various Asset Protection Zones, vehicular access, water supply, layout, and building material provisions.

Direction 6.1 Approval and Referral Requirements

The objective of this Direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. This Direction requires that a planning proposal must:

- “(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and*
- (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:*
 - (i) the appropriate Minister or public authority, and*
 - (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act, and*
- (c) not identify development as designated development unless the relevant planning authority:*
 - (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and*
 - (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.”*

It is considered that the planning proposal is consistent with this Direction as it does not contain provisions requiring the concurrence, consultation or referral of development applications to a Minister or public authority, and does not identify development as designated development.

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessary restrictive site specific planning controls. The planning proposal proposes an amendment to the Lot Size Map of the LEP only. It is therefore considered that the proposed amendment is consistent with this Direction.

Direction 7.1 Implementation of ‘A Plan for Growing Sydney’

This Direction requires planning proposals to be consistent with ‘A Plan for Growing Sydney’ (the Sydney Metropolitan Strategy) released in December 2014. ‘A Plan for Growing Sydney’ is the NSW Government’s 20-year plan for the Sydney Metropolitan Area. It provides directions for Sydney’s productivity, environmental management, and liveability; and for the location of housing, employment, infrastructure and open space.

‘A Plan for Growing Sydney’, which is one of the issues taken into consideration in the early part of the assessment of the planning proposal, establishes that the planning proposal is consistent with this Plan.

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The Section 117 Directions do allow for planning proposals to be inconsistent with the Directions. In general terms a planning proposal may be inconsistent with a Direction only if the DP&I is satisfied that the proposal is:

- a) justified by a strategy which:
 - gives consideration to the objectives of the Direction, and
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - is approved by the Director-General of the DP&I, or
- b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this Direction, or
- c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this Direction, or
- d) is of minor significance.

The HRLS has been prepared with consideration given to the various policies and strategies of the NSW Government and Section 117 Directions of the Minister. In this regard, a planning proposal that is consistent with the Hawkesbury Residential Land Strategy is more likely to be able to justify compliance or support for any such inconsistency.

State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are *State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land*, *Sydney Regional Environmental Plan (SREP) No. 9 - Extractive Industry (No 2- 1995)* and *(SREP) No. 20 - Hawkesbury - Nepean River (No.2 - 1997)*.

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)

SEPP 55 requires consideration as to whether or not land is contaminated and, if so, is it suitable for future permitted uses in its current state or does it require remediation. The SEPP may require Council to obtain, and have regard to, a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

The applicant states that:

"The land has not been used for an agricultural use for many years. Previous uses were for limited grazing activities of cattle and horses. There is no obvious evidence of surface or groundwater pollution as a result of past uses. It is not believed that any geotechnical investigations need to be carried out for the planning proposal to proceed."

The site also has been used as a hobby farm for cattle.

Council's Regulatory Services - Compliance and Enforcement Section has carried out a site investigation in August 2013 and observed several earth mound motorbike jumps (less than 600mm in height above the natural ground level) constructed as part of a motorbike track within the site. The occupier of the site at the time of inspection advised the Council's compliance and enforcement officers that no fill material was imported to the site.

If the planning proposal is to proceed further consideration of potential contamination can be dealt with after DP&E "Gateway" determination.

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Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995) - (SREP 9)

The primary aims of SREP 9 are to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance and to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential. The site is not within the vicinity of land described in Schedule 1, 2 and 5 of the SREP nor will the proposal development restrict the obtaining of deposits of extractive material from such land.

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No 2- 1997)

The aim of SREP No 20 (No. 2 - 1997) is 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. This requires consideration of the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, impacts of the development on the environment, the feasibility of alternatives and consideration of specific matters such as total catchment management, water quality, water quantity, flora and fauna, agriculture, rural residential development and the metropolitan strategy.

Specifically the SREP encourages Council to consider the following:

- rural residential areas should not reduce agricultural viability, contribute to urban sprawl or have adverse environmental impact (particularly on the water cycle and flora and fauna)
- develop in accordance with the land capability of the site and do not cause land degradation
- the impact of the development and the cumulative environmental impact of other development proposals on the catchment
- quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters
- consider the need to ensure that water quality goals for aquatic ecosystem protection are achieved and monitored
- consider the ability of the land to accommodate on-site effluent disposal in the long term and do not carry out development involving on-site disposal of sewage effluent if it will adversely affect the water quality of the river or groundwater. Have due regard to the nature and size of the site
- minimise or eliminate point source and diffuse source pollution by the use of best management practices
- site and orientate development appropriately to ensure bank stability
- protect the habitat of native aquatic plants
- locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land
- consider the range of flora and fauna inhabiting the site of the development concerned and the surrounding land, including threatened species and migratory species, and the impact of the proposal on the survival of threatened species, populations and ecological communities, both in the short and longer terms
- conserve and, where appropriate, enhance flora and fauna communities, particularly threatened species, populations and ecological communities and existing or potential fauna corridors
- minimise adverse environmental impacts, protect existing habitat and, where appropriate, restore habitat values by the use of management practices

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- consider the impact on ecological processes, such as waste assimilation and nutrient cycling
- consider the need to provide and manage buffers, adequate fire radiation zones and building setbacks from significant flora and fauna habitat areas
- consider the need to control access to flora and fauna habitat areas
- give priority to agricultural production in rural zones
- protect agricultural sustainability from the adverse impacts of other forms of proposed development
- consider the ability of the site to sustain over the long term the development concerned
- maintain or introduce appropriate separation between rural residential use and agricultural use on the land that is proposed for development;
- consider any adverse environmental impacts of infrastructure associated with the development concerned.

The site falls within the Middle Nepean & Hawkesbury River Catchment Area of SREP 20.

It is considered that future dwellings on the planned additional lots have the potential to either satisfy the relevant provisions SREP No 20 or be able to appropriately minimise its impacts.

Topography

The land generally falls from Bells Line of Road with an elevation of approximately 154 AHD in south-easterly direction towards the existing dam which is located at a level of approximately 114 AHD and approximately 90m away from the north-eastern boundary of the site. A natural watercourse originates from the north-western slopes of the site and runs through the middle of the site and the dam. Also a small watercourse runs parallel to this watercourse and through a small dam located closer to the southern boundary. Both these watercourses flow further down in a south-easterly direction to join into the Redbank Creek.

According to Council's slope mapping, there are areas of land covered with dense vegetation along northern and western boundaries and two watercourses that have a slope greater than 25%. As shown in Figure 2 below approximately 45% is open grass land area with some scattered trees shown in red and cross-hatched and is generally less than 15% in slope. As the HRLS recognises slopes greater than 15% act as a constraint to development, future development of the site for residential purposes would need to be limited only to the land area with slopes less than 15%.

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According to Council's slope mapping, proposed Lots 2 and 5 on the 10 large lot concept plan contain more than 80% of land with a slope greater than 15%. Also proposed lots 3 and 9 contains significant portions of land with a slope greater than 15%. The steeper sloping part of the land will, to varying degrees, act as a constraint for the location and type of dwelling, effluent disposal system, and driveways.

The Strategy slope constraint combined with the impacts these slopes have on effluent disposal, potential impacts on the existing native vegetation and the proposed dwelling houses and site access, it is considered that the proposed 10 lots yield on the site as shown on the above concept plan may not be achievable. Given these circumstances it is considered appropriate to limit the proposed 4,000m² lot size only to the north-eastern corner of the site and the remainder of the site area for large lots with minimum lot size of 1ha as shown in Attachment 1 - Proposed Lot Size Map to this report. This would be likely to result in a lesser number of lots on the site than proposed. However this is not a determining factor for this assessment and it could be addressed at the development application stage.

Ecology

The Terrestrial Biodiversity Map of the LEP identifies the whole site area (other than a very narrow strip of land area near the southern boundary) as 'connectivity between remnant vegetation' and records the site as containing Shale Sandstone Transition Forest (Low sandstone influence) with conservation significance.

The planning proposal is accompanied by a flora and fauna survey and assessment report prepared by UBM Ecological Consultants. The report provides the following information on flora and fauna within and adjacent to the site.

Flora

There is no presence of Shale Sandstone Transition Forest or any other sandstone species on the site and the dominant extant community as Moist Shale Woodland (MSW) which is listed separately as an Endangered Ecological Community under the *Threatened Species Conservation Act 1995* (TSC Act).

Less than 10% area of regrowth MSW at the head of the central vegetated watercourse would need to be cleared or modified to create Asset Protection Zone (APZ) between the proposed building footprints and the hazard (i.e. the bushland). It is anticipated that the remainder of the bushland on the steep slopes and along the central watercourse will be retained and managed to preserve and protect its natural conservation values through a site-specific vegetation management plan.

An assessment of the impacts of the planning proposal, and specifically the need to create an APZ on the endangered MSW undertaken under Section 5A of the Act has determined that the likely impacts would be minimal in terms of the local occurrence of the MSW ecological community. As a result a Species Impact Statement has not been recommended for flora issues. However, if the Concept Plan of Community Title Subdivision is amended to remove or relocate the subject lots of concern to the bushfire ecologist, i.e. to move them closer to the vegetated central drainage line, it is likely that a Species Impact Statement will be required.

The report further indicates that there is no presence of threatened flora species or populations listed under the TSC Act on the site.

Fauna

In November 2013 during the field survey by the consultants, 28 native bird species were detected within, adjacent to, or flying over the site. One species of native reptile was observed, and two species of native frog were heard calling from dams in the site. Eight species of microbat were detected within the site. Two other native mammals were observed. Also foxes and Feral Red Deer were observed on the site.

Assessments of significance have been undertaken for those threatened species known to utilise the resources of the subject property/study area or considered likely to use these resources on occasion. These are the Powerful Owl, a suite of microbats and the Grey-Headed Flying Fox. The Assessments undertaken for the threatened species listed above have concluded that there will be no significant impact on these species, and that no further studies are required. However, if the concept plan is amended and additional areas of native vegetation are removed or modified, these assessments will have to be revisited.

Given the presence of these significant flora and fauna species within the site, any future development would require preparation of a flora and fauna report in accordance with Section 5A of the Act. This will enable Council to determine the likely impacts of the future development of the site on the existing flora and fauna species.

Public Transport, Accessibility and Traffic Generation

Public transport is limited to the Westbus Route 682 service along Bells Line of Road between Richmond and Kurrajong. The service operates every 30 minutes during peak period and every 120 minutes during off peak. The closest bus stop is located within the Kurrajong Neighbourhood Centre. Given the limited frequency of service and the location of the bus stop it is anticipated that the future residents of the proposed subdivision will most likely to rely upon private vehicles.

The site is currently accessed via Bells Line of Road which is classified as a 'main road' under the NSW *Roads Act 1993*.

The applicant states that the main access to the site will be from Mason lane and the proposed access way off Mason Lane will be a private road managed under a community title.

The planning proposal is not supported by a traffic impact statement and the cumulative impact of similar proposals that may occur in the future has not been taken into consideration by the planning proposal. It is considered that this is a matter for Council and Roads and Maritime Services (RMS) to address with the outcome being incorporated into affected planning proposals.

In recent reports to Council dealing with other planning proposals within the vicinity of Kurmond it has been noted that Council has received petitions from residents west of the Hawkesbury River concerned about rezoning of land for residential purposes in the absence of required infrastructure upgrades. To address this it has been recommended that Council commence the preparation of a Section 94 Contributions Plan for the land within the vicinity of Kurmond to ensure that all proposed developments in the locality contribute the required infrastructure, specially road upgrade and provision, in the locality. Alternatively applicants and Council can commence Voluntary Planning Agreement negotiations to address this issue. It is considered that it is a fundamental matter to be dealt with by Council prior to the finalisation of any planning proposals in the locality as the cumulative impact of these types of development will be unacceptable if no traffic improvements are made.

Bushfire Hazard

The site is shown as being bushfire prone (bushfire vegetation category 1) on the NSW Rural Fire Service's Bushfire Prone Land Map.

A bushfire risk assessment report prepared by Control Line Consulting in December 2013 in support of the planning proposal states that the site inspection and interpretation of aerial photo of the site confirms the Hawkesbury Bushfire Prone Land Map does not accurately represent the current extent of Category 1 Vegetation within the site and the area shown as Category 1 Vegetation is excessive. It further states that forest vegetation is limited to the north-west corner of the site and an occluded section within the south-eastern section of the site and Category 2 Vegetation occupies the vast majority of the site which represents grassland. The report concludes that future subdivision of the land as proposed in the subdivision concept plan could be able to comply with the provisions of bushfire regulatory requirements.

If the planning proposal is to proceed it will be referred to the NSW Rural Fire Service (RFS), being the responsible authority of bushfire protection, for comment.

Agricultural Land Classification

The site is shown as being Agriculture Land Classification 3 and 4 on maps prepared by the former NSW Department of Agriculture. These lands are described by the classification system as:

- "3. *Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production level is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown or other factors, including climate, may limit the capacity for cultivation and soil conservation or drainage works may be required.*
4. *Land suitable for grazing but not for cultivation. Agriculture is based on native pastures or improved pastures established using minimum tillage techniques. Production may be seasonally high but the overall production level is low as a result of major environmental constraints."*

Given the proximity of the site to surrounding rural residential properties and the size and slope of the site it is considered that it is unlikely the site could be used for a substantial or sustainable agricultural enterprise. However the land could still be used for light grazing.

Character

The predominant character of the immediate locality is rural residential (see Figure 4 below).



Figure 4: Aerial view of the site and surrounds

The area surrounding the site contains a mix of lot sizes and in particular there are a number of relatively small rural-residential lots with minimum lot sizes ranging from approximately 815m² - 3,000m² to the north-west and south-east fronting Bells Line of Road. The average size of lots immediately to south-west of the site fronting Mason Lane is 4,200m².

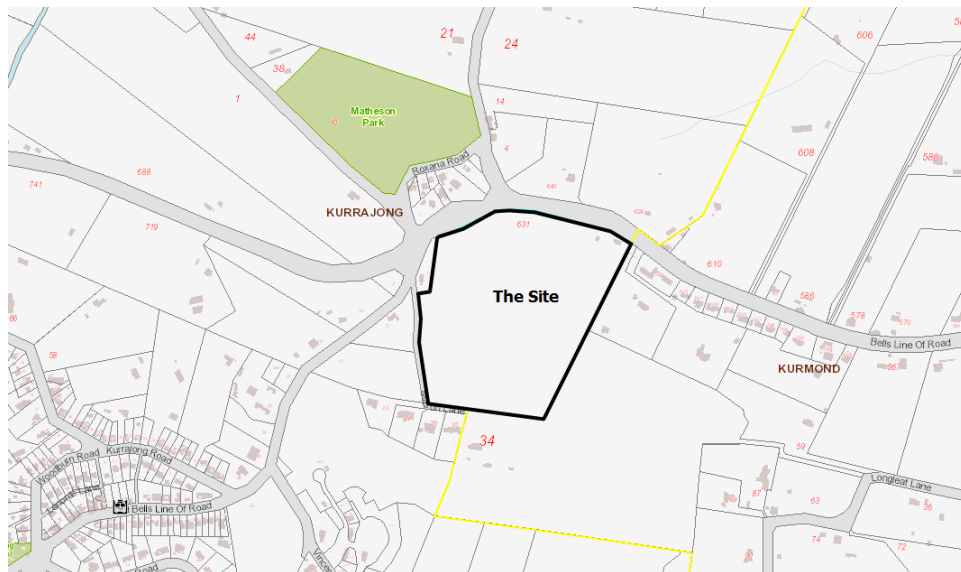


Figure 5: The Site and surrounding properties with a mix of lot sizes

Given the predominant rural residential character of the immediately vicinity and the abovementioned a mix of surrounding lot sizes, the intended outcome of the planning proposal to subdivide the land into large lot residential lots with minimum lot sizes of 4,000m² and 1ha is considered consistent with the existing character of the locality.

Services

The applicant states that:

"The proposal for 10 housing lots will not require the provision of additional public infrastructure. Electricity and telephone is available to the site. Reticulated water goes past the site's frontage. Whilst it is assumed that water would be available from Sydney Water if there was a supply difficulty then this would not be a bar to the subdivision occurring as the majority of nearby lots rely on water catchment rather than the reticulated supply."

The site does not have an access to a reticulated sewerage system and future development of the site would need to be depended on on-site sewerage management (OSSM) system. The existing dwelling house on proposed Lot 5 is served by an existing OSSM system. According to Council's records a five-year licence to operate the system issued by Council has expired in December 2014 and now the licence needs to be renewed to continue with the operation of the system. The location of this system relative to the boundaries of proposed Lot 5 is unknown, this can be further investigated at development application stage.

A preliminary effluent disposal report prepared by BRS has been submitted in support of the planning proposal. The report states that preliminary calculations carried out indicate an area of 994m² required for effluent disposal for each lot. Taking setbacks and other site constraints into consideration, areas in excess of 1,024m² for each proposed lot are available.

The report further states that based on a preliminary assessment and BRS's experience the site is considered to be suitable for on-site disposal of effluent generated by future dwellings within the recommended preliminary effluent disposal areas shown in Figure 6 below.

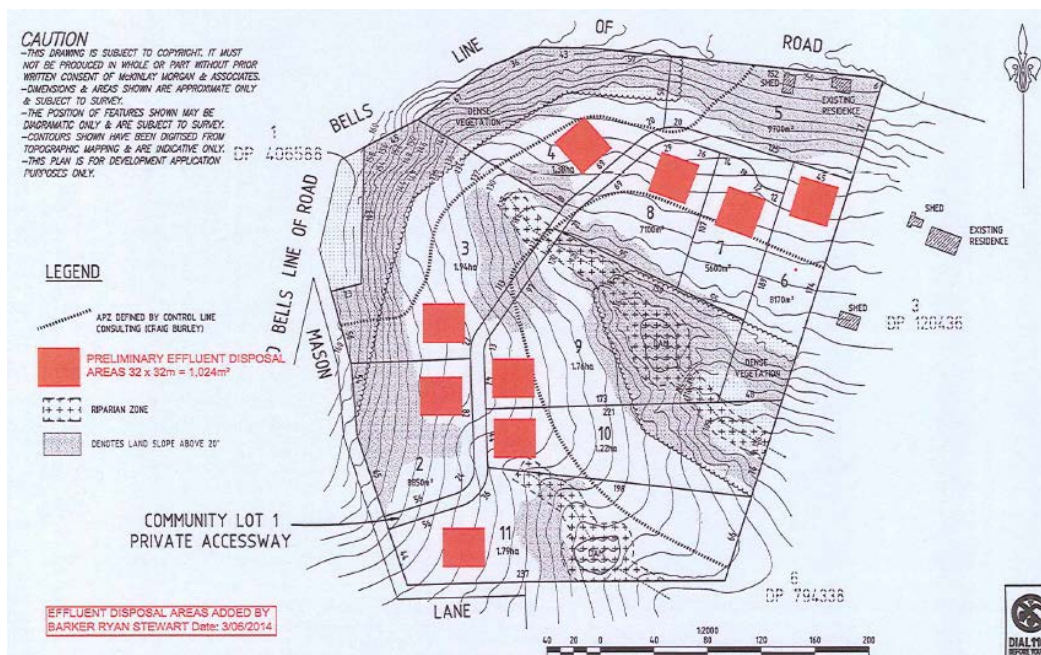


Figure 6: Proposed preliminary effluent disposal areas

The preliminary effluent disposal report concludes that:

"From the preliminary assessment of on-site effluent disposal for the proposed rezoning, each lot is considered suitable for the effective dispose of effluent using an aerated wastewater treatment system with surface irrigation serving a maximum number of 10 persons, without having detrimental impact on the environment provided:

- *The disposal area required for each proposed lot will be approximately 994m² while a provision of over 1,024 has been allowed for.*
- *A total wet weather storage of 3.1 cubic metres will be required to be provided within any proposed future system which will have a capacity of approximately 7,000m litres.*
- *The model of the system to be installed will be selected from the list of accredited units provided by the New South Wales Department of Health.*
- *Any system will need to be installed, operated and maintained in accordance with the manufacturer's instructions and the Council conditions of approval.*
- *Buffers and setbacks have been checked and maintained generally in accordance with the aforementioned on-site effluent disposal policies."*

However given the land area free of any slope/development constraints shown on the concept plan is inconsistent with the HRLS slope constraint criteria and possible reduction in number of lots on the site a detailed soil assessment will need to be undertaken at the subdivision application stage to determine the exact sizing and location of the effluent disposal areas. Verification/clarification of the distances of the effluent disposal areas from the two existing watercourses will also be required during further investigation and design of effluent disposal areas at the subdivision application stage.

Heritage

The site is not identified as a heritage item/property in Schedule 5 Environmental Heritage of the LEP or located within a conservation area.

Conformance to the Hawkesbury Community Strategic Plan

The proposal is consistent with the Looking after People and Place Directions statement.

- Offer residents a choice of housing options that meet their needs whilst being sympathetic to the qualities of the Hawkesbury.
- Population growth is matched with the provisions of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury.
- Have development on both sides of the river supported by appropriate physical and community infrastructure.

Conclusion

It is considered that some form of rural residential development on the site is appropriate and it is recommended that Council support the preparation of a planning proposal to amend the LEP to allow development of the land for rural residential development.

Whilst the site has potential for the development of rural residential allotments for the reasons of slope constraints, which may contribute to increased potential adverse impacts on the existing Endangered Ecological Community from on-site waste water disposal, asset protection zones, etc., it is recommended that 4,000m² minimum lot size be limited to the north-east corner of the site and 1ha minimum lot size be applied to the remainder of the site as shown in Attachment 1 to this report.

It is recommended that if the DP&E determines that the planning proposal is to proceed, this development, via a Section 94 Plan or Voluntary Planning Agreement, contribute to the required infrastructure, specially road upgrade and provision in the locality.

Financial Implications

The applicant has paid the fees required by Council's fees and charges for the preparation of local environmental plans.

Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the *Local Government Act 1993*, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

ORDINARY MEETING

Meeting Date: 12 May 2015

RECOMMENDATION:

That:

1. Council support the preparation of a planning proposal for Lot 1 DP 120436, 631 Bells Line of Road, Kurrajong to amend the Lot Size Map of Hawkesbury Local Environmental Plan 2012 to permit minimum lot sizes of not less than 4,000m² and 1ha on the land as shown in Attachment 1 to this report.
2. Council does not endorse any proposed subdivision layout/plan submitted with the planning proposal as this will need to be subject to a development application should the planning proposal result in making the plan.
3. The planning proposal be forwarded to the Department of Planning and Environment for a "Gateway" determination.
4. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
5. The Department of Planning and Environment and the applicant be advised that in addition to all other relevant planning considerations being addressed, final Council support for the proposal will only be given if Council is satisfied that satisfactory progress, either completion of the Section 94 Developer Contributions Plan or a Voluntary Planning Agreement, has been made towards resolving infrastructure provision for this planning proposal.

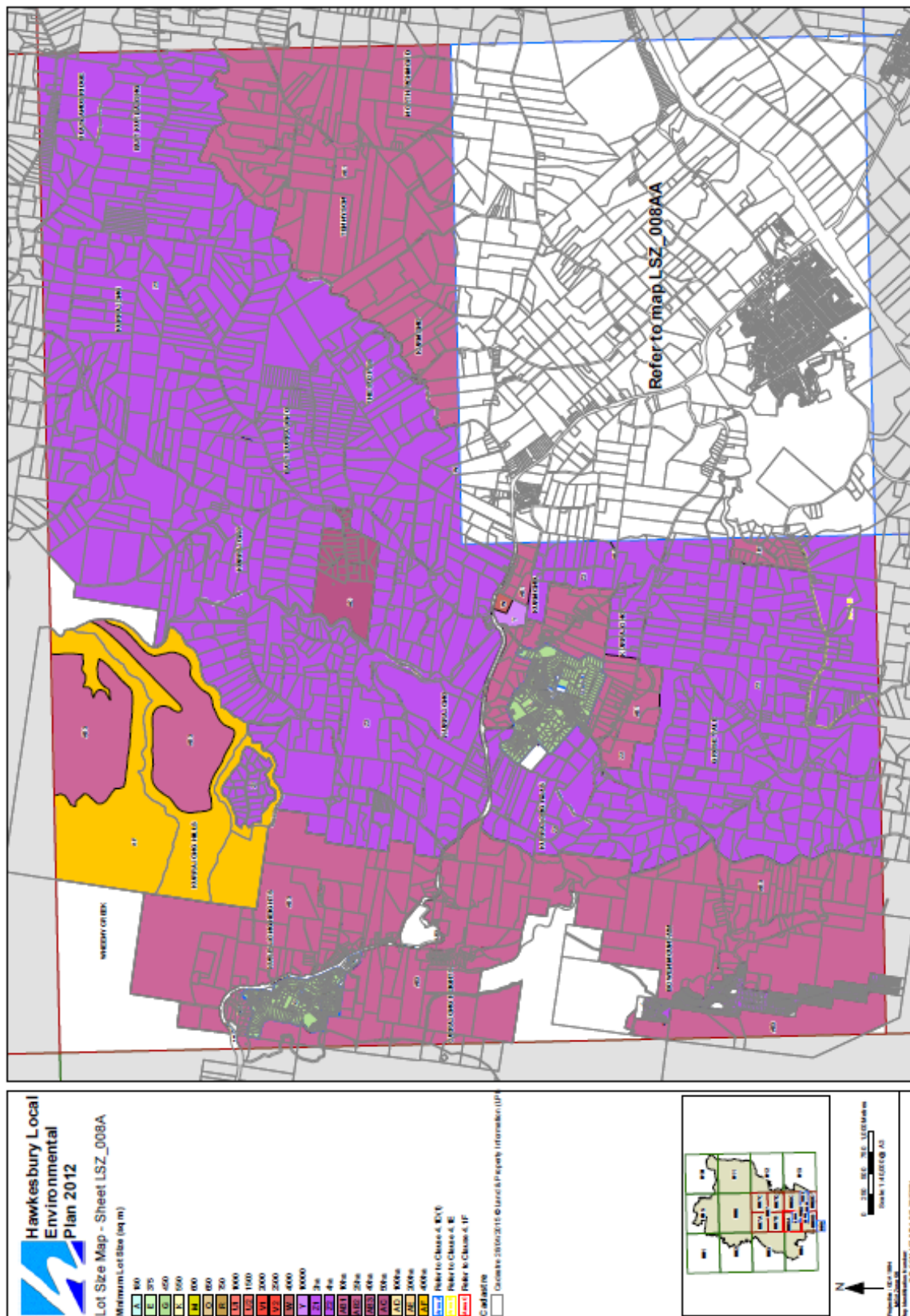
ATTACHMENTS:

AT - 1 Proposed Minimum Lot Size Map

ORDINARY MEETING

Meeting Date: 12 May 2015

AT - 1 Proposed Minimum Lot Size Map



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