

Item: CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong - (95498, 124414)

Previous Item: 255, Ordinary (29 November 2016)

REPORT:

File Number: LEP003/14
Property Address: Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong
Applicant: Montgomery Planning Solutions
Owner(s): Mr MW Bull and Mrs JL Bull
Date Received: 9 September 2014
Public exhibition: 11 September 2015 to 6 October 2015
Community Submissions: Nil
Government Agency Responses: Six

Recommendation: Council proceed with the making of the LEP amendment and publically exhibit an associated draft Voluntary Planning Agreement

REPORT:

Executive Summary

On 9 December 2014, Council considered a report regarding a planning proposal, submitted by Montgomery Planning Solutions (the applicant), seeking an amendment to Hawkesbury Local Environmental Plan 2012 (LEP 2012) in order to allow development of Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong primarily for large lot residential purposes.

The purpose of this current report is to advise Council of the outcome of consultation with public authorities and the community regarding the planning proposal.

This report also includes advice to Council of an offer by the developer to enter into a Voluntary Planning Agreement (VPA) with Council that would result in the developer paying a cash contribution of \$30,000 per housing lot to Council.

This matter was reported to Council's Ordinary Meeting on 29 November 2016 where Council resolved to defer the matter to the next Ordinary Meeting of Council, hence this further report.

It should also be noted that following consideration of a report on the Kurmond and Kurrajong Investigation Area Survey Results to the Ordinary Meeting of 29 November 2016, Council resolved:

"That:

- 1. Council receive the results of the Kurmond and Kurrajong Investigation Area Survey.*
- 2. Council Staff identify a number of specific areas (based upon Constraints Mapping, survey results and the preferred approach as outlined in this report) for possible, but not certain, development of additional large lot residential/rural-residential development throughout the Investigation Area and some residential development up to, but not within, the existing villages of Kurmond and Kurrajong.*

3. *The identified areas be further consulted with the community regarding future development.*
4. *The results of that further consultation be reported to Council.*
5. *Council not accept any further planning proposal applications within the Kurmond and Kurrajong investigation area until such time as the structure planning as outlined in this report is completed. Council receive a progress report on the structure planning prior to July 2017.*
6. *Council continue processing the planning proposals within the investigation area that have received support via a Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016."*

In respect of the matter at hand, point 6 of the above resolution is the most relevant in that this particular matter deals with a planning proposal that had been supported by Council at its Meeting on 9 December 2014, and had received a Gateway determination advising to proceed in April 2015. The public authority consultation and public exhibition has been completed during which time it is also particularly relevant to note that no submissions were received from the community.

There has been ongoing discussions with the applicant in regard to the planning proposal, the outcome of which has seen the proposal revised to satisfy the fundamental development constraints established through the Kurmond Kurrajong Investigation Area Structure Planning process as they relate to the subject site. Based upon this, it is recommended that Council proceed with the making of an LEP that gives effect to the revised planning proposal described in this report, and to place the draft VPA on public exhibition.

Background

On 9 December 2014, Council considered a report regarding a planning proposal seeking an amendment to LEP 2012 in order to allow development of Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong into approximately nine lots with a minimum lot size of not less than 4,000m². The subject site is shown in Figure 1 below, whilst the adjoining Figure 2 shows the concept plan of subdivision (not adopted by Council) as presented to the Council Meeting on 9 December 2014.



Figure 1: Subject Site

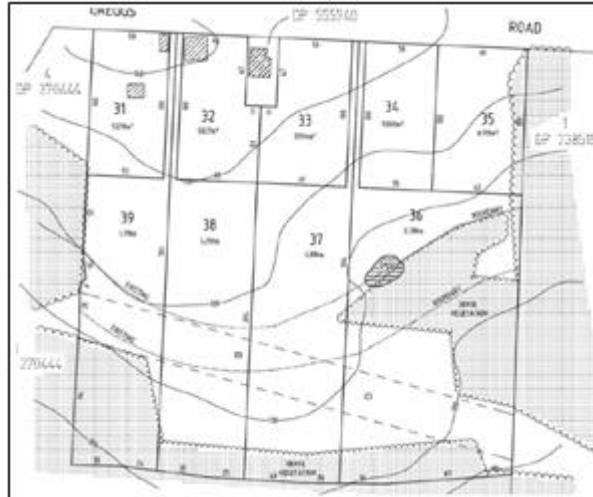


Figure 2: Original concept plan of subdivision

The recommendation of the report to Council was that the planning proposal not be supported in its submitted form as it was considered that it did not demonstrate adequate consistency with the relevant criteria of the Hawkesbury Residential Land Strategy.

Having considered the matter, Council resolved on 9 December 2014:

"That:

1. *Council support the preparation of a planning proposal for Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong to allow development of the land for large lot residential/rural residential development.*
2. *The planning proposal be forwarded to the Department of Planning and Infrastructure for a "Gateway" determination.*
3. *The Department of Planning and Infrastructure be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.*
4. *The Department of Planning and Infrastructure 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.*
5. *Council does not endorse the subdivision concept plan submitted with the planning proposal as this will need to be subject to a future development application if the plan was made."*

A Rescission Motion relating to this decision was subsequently lodged, but at Council's Meeting of 3 February 2015 the motion to rescind Council's resolution of 9 December 2014 was lost.

Below is a timeline of key events relating to this planning proposal.

Timeline of key events

9 September 2014	Planning proposal received
9 December 2014	Planning proposal reported to Council and resolved to support
3 February 2015	Rescission motion considered by Council and lost
11 February 2015	Applicant requested to provide an amended planning proposal

24 February 2015	Amended planning proposal received
27 February 2015	Planning proposal referred to DP&E for a Gateway determination
30 April 2015	DP&E Gateway determination received advising to proceed
1 July 2015	DP&E clarification of Gateway determination received
21 July - 17 August 2015	Public authority consultation
27 August 2015	Public authority responses provided to applicant
11 September - 6 October 2015	Public exhibition of planning proposal
15 October 2015	Applicant advised that no submissions were received and requested to prepare a draft Voluntary Planning Agreement (VPA)
23 February 2016	Amended planning proposal and draft VPA received
5 April 2016	Applicant requested to review number of potential lots given slope, bushfire and vegetation constraints of the land
14 April 2016	Response from applicant received
22 April 2016	Applicant requested to provide further information to support concept lot layout
14 June 2016	Onsite meeting with Council staff, applicant and land owners
19 July - 10 October 2016	Various additional information received from applicant, with amendments submitted to reflect extensive ongoing discussions with Council officers.
29 November 2016	Council considers report on planning proposal and resolves to defer the matter until the next Ordinary Meeting.

In respect of the last point in the above timeline, it should also be noted that following consideration of a report on the Kurmond and Kurrajong Investigation Area Survey Results to the Ordinary Meeting of 29 November 2016, Council resolved

"That:

1. *Council receive the results of the Kurmond and Kurrajong Investigation Area Survey.*
2. *Council Staff identify a number of specific areas (based upon Constraints Mapping, survey results and the preferred approach as outlined in this report) for possible, but not certain, development of additional large lot residential/rural-residential development throughout the Investigation Area and some residential development up to, but not within, the existing villages of Kurmond and Kurrajong.*
3. *The identified areas be further consulted with the community regarding future development.*
4. *The results of that further consultation be reported to Council.*
5. *Council not accept any further planning proposal applications within the Kurmond and Kurrajong investigation area until such time as the structure planning as outlined in this report is completed. Council receive a progress report on the structure planning prior to July 2017.*
6. *Council continue processing the planning proposals within the investigation area that have received support via a Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016."*

In respect of the matter at hand, point 6 of the above resolution is the most relevant in that this particular matter deals with a planning proposal that had been supported by Council at its Meeting on 9 December 2014, and had received a Gateway determination advising to proceed in April 2015. The public authority consultation and public exhibition has been completed during which time it is also particularly relevant to note that no submissions were received from the community.

There has been ongoing discussions with the applicant in regard to the planning proposal, the outcome of which has seen the proposal revised to satisfy the fundamental development constraints

established through the Kurmond Kurrajong Investigation Area Structure Planning process as they relate to the subject site.

Authorisation for Council to Exercise Delegation

The "Gateway" determination included authorisation for Council to exercise delegation to make this plan. Should Council resolve to proceed with the making of the plan this authorisation will allow Council to make a direct request to the Parliamentary Counsel's Office (PCO) to prepare a draft Local Environmental Plan to give effect to the planning proposal. Following receipt of an opinion from the PCO that the plan can be legally made, Council may then make the plan. Council delegated this plan making function to the General Manager by resolution on 11 December 2012.

In finalising a "delegated" planning proposal, Council staff are required to prepare a "Section 59" planning report in accordance with DP&E requirements. As part of this report it is required to provide details of consultation with relevant public agencies and demonstrate how any objections or issues were resolved, and identify what amendments were made to the planning proposal to respond to the issues raised by agencies.

Consultation with Public Authorities

Consultation was undertaken with the following public authorities as prescribed by the Gateway determination:

- NSW Rural Fire Service (RFS)
- NSW Office of Environment and Heritage (OEH)
- Endeavour Energy
- Roads and Maritime Service (RMS)
- Transport for NSW (TfNSW)
- NSW Trade & Investment - Resource & Energy Division (T&I)
- Greater Sydney Local Land Services (GSLLS).

Council received responses from all of the abovementioned public authorities, except for the Greater Sydney Local Land Services. Following is a summary of agencies comments, where provided, and officer responses:

NSW Rural Fire Service

Comment *The NSW Rural Fire Service (RFS) raised no objection to the planning proposal subject to a requirement that the future subdivision of the land complies with Planning for Bushfire Protection 2006 (PBP 2006).*

Response A provision requiring that the future subdivision comply with PBP 2006 need not be included into the proposed LEP amendment as this is a mandatory matter for consideration at development application (DA) stage.

Office of Environment and Heritage

Comment *OEH expressed concern that the planning proposal provided no additional planning controls proposed for the protection of native vegetation on the site, and that future development would result in the fragmentation and incremental loss of vegetation through the erection of dwellings and associated provision of Asset Protection Zones, infrastructure, effluent disposal areas, fencing and ancillary development such as sheds.*

OEH stated that if there are areas with high biodiversity values, Council will need to consider how the protection of this vegetation can be achieved, and that Council should consider a split zoning for the site using the E2 Environmental Conservation zone for land with biodiversity values.

Response Further discussions have been held with the applicant and owner regarding the protection of significant vegetation on the site. As a result, the applicant has provided an amended planning proposal effectively reducing the number of proposed lots from nine to eight, and providing for one larger lot that will contain the significant vegetation. In lieu of a multi zone response, various minimum lot sizes are proposed for the subject site in order to minimise potential development impacts on and fragmentation of significant vegetation. This approach is explained in greater detail later in this report.

Endeavour Energy

Comment *Endeavour Energy raised no objections to the planning proposal subject to the following comments and recommendations:*

- *an application will be required for connection of the subdivision to carry out a load assessment and determine the method of supply, which may include additional infrastructure and easements*
- *services and structures are not to be installed within Endeavour Energy's electrical easements, nor is the surface level of the easement site to be altered*
- *access to the easement site is not to be restricted at any time*
- *a policy of prudent avoidance should be adopted by siting sensitive uses away from any electricity infrastructure to minimise exposure to Electric and Magnetic Fields, such as orientating habitable rooms away from any electricity infrastructure*
- *where development is proposed in the vicinity of overhead power lines, Endeavour Energy is not responsible for any acoustic/noise amelioration measures for such noise that may impact on nearby proposed development*
- *public safety guidelines are available from Endeavour Energy's website for those working in the vicinity of electricity infrastructure.*

Response Consideration of future dwelling house locations, design and orientation, and noise impacts from overhead power lines are matters that can be addressed in future DAs.

Roads and Maritime Service

Comment *RMS raised no objection to the proposed amendments to the Lot Size Map of LEP 2012 subject to the inclusion of the subject site on the Restricted Lot Yield Map to place a maximum subdivision lot yield of nine lots.*

The RMS also advised:

"The proposal is a major variation to the existing controls and in isolation does not raise any concerns from an RMS perspective. Council are (sic) advised, however that in the absence of any Strategic Integrated Traffic/Transport Study to justify the same, RMS would be concerned with the cumulative impacts of other similar proposals within the area and the potential adverse impacts to the existing and future regional road network."

Response Council is undertaking a broader investigation of the impacts of large lot residential development in the Kurmond and Kurrajong area (see separate report on this agenda) and it is anticipated this investigation will include a Traffic Study to investigate the impacts to the surrounding road network and individual intersections that are likely to be adversely impacted by increased traffic. Council staff have had ongoing discussions with RMS in respect to the road network, and continue to undertake the broader assessment of the Kurmond and Kurrajong Investigation Area.

As will be discussed later in this report the maximum number of lots achievable by the proposed amendment to the LEP is proposed to be restricted to eight lots, and hence RMS's request that the maximum number of lots be restricted to nine can be satisfied.

Transport for NSW

Comment *Transport for NSW (TfNSW) advised that they are currently investigating a suitable corridor for the Bells Line of Road - Castlereagh Connection and notes that the site is within their broad investigation area. TfNSW also advised that they are consulting with stakeholders and the wider community to identify potential corridors for further investigation and hopes to have a recommended corridor for preservation by late 2016. Despite this, TfNSW "would not object to development within the study area."*

TfNSW also requested that the planning proposal consider Section 117 Ministerial Direction 3.4 Integrating Land Use and Transport. This Direction indicates that 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 (DUPA 2001). A key objective of this document is for every household to be within 400m walking distance of a bus route served at least every 30 minutes.

In addition TfNSW has noted that it has received several planning proposal referrals from Hawkesbury for similar large lot residential subdivisions in the surrounding area and therefore recommends that a Strategic Planning Study be undertaken to determine the potential scale of residential lot increases in the surrounding area and assess the cumulative impacts on the local and regional traffic and transport infrastructure, and identify mitigating measures if required.

Response To date TfNSW have not published a recommended corridor for the Bells Line of Road - Castlereagh Connection.

Section 117 Direction 3.4 primarily relates to the rezoning of land for urban purposes and is not readily applicable to a large lot residential / rural residential planning proposal. In response to this Direction the planning proposal states:

"The draft LEP will provide housing opportunities in a locality which is adequately serviced by public transport (in rural village terms). The draft LEP is consistent with the relevant guidelines and policy."

The DP&E in their "Gateway" determination of the planning proposal stated:

"I have also agreed that any inconsistencies with Section 117 Directions . . . 3.4 Integrating Land Use and Transport . . . are of minor significance. No further approval is required in relation to these Directions."

Council is undertaking a broader investigation of the impacts of large lot residential development in the Kurmond and Kurrajong area (see separate report on this agenda) and it is anticipated this investigation will include a Traffic Study to investigate and assess the cumulative impacts of increased residential lots on local and regional traffic and transport infrastructure, and to identify works which may be required to mitigate any adverse impacts.

NSW Trade & Investment - Resource & Energy Division

Comment *NSW Trade and Investment raised no objection to the proposal.*

Community Consultation

The planning proposal was publically exhibited for the period 11 September 2015 to 6 October 2015. A notice was placed in the 'Hawkesbury Courier' local newspaper and letters were sent to adjoining and nearby landowners and occupiers advising of the public exhibition of the planning proposal. During the public exhibition period the planning proposal and supporting documentation were made available on Council's website, Council's Community Engagement Portal: *Your Hawkesbury - Your Say* and at Council's Main Administration Building. No public submissions were received.

Proposed Amendment to Lot Size Map of LEP 2012

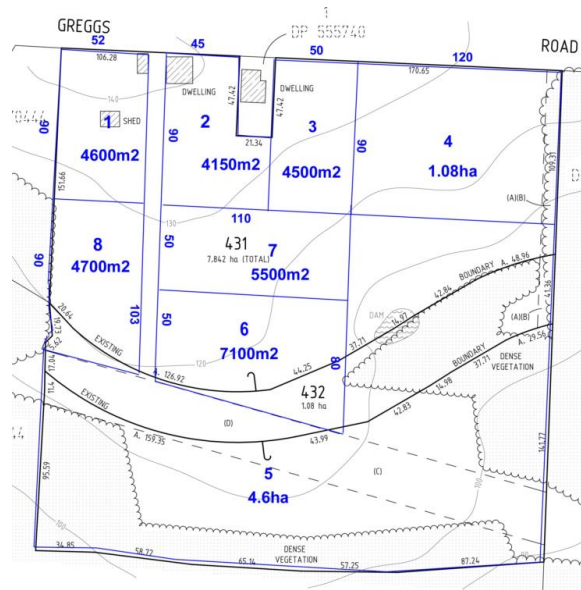
Since this planning proposal was reported to Council on 9 December 2014, a number of reports have been presented to Council regarding the Kurmond and Kurrajong Investigation Area. Of primary relevance are the reports to Council on 28 July 2015 and 24 November 2015 which included an analysis of land and environmental constraints within the Investigation Area.

The result of these reports was that Council adopted the following development principles as an Interim Policy for planning within the Kurmond and Kurrajong Investigation Area:

- building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%
- removal of significant vegetation is avoided
- fragmentation of significant vegetation is minimised
- building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourse) are located outside of riparian corridors
- road and other crossings of water courses is minimised
- fragmentation of riparian areas is minimised
- removal of dams containing significant aquatic habitat is avoided.

In response to these principles and comments received from OEH, extensive discussions were held with the applicant and owner regarding the identification of significant vegetation on the site, the proposed amendment to the Lot Size Map and overall lot yield.

In response the applicant has provided a revised concept subdivision plan (Figure 3) that avoids the removal and fragmentation of these significant vegetation communities and avoids excessive development of steep sloping land for future dwellings.



**Figure 3: Proposed Amendment to Lot Size Map
(Not adopted for subdivision layout)**

The amendment proposed by Figure 3 would result in an improved environmental outcome given it would result in a single lot being created at the rear of the site which includes Shale Sandstone Transition Forest, and sufficient area for a dwelling and associated waste water irrigation area and Asset Protection Zone outside of the Shale Sandstone Transition Forest area. In addition the electricity easement will also be wholly contained within this lot.

It should be noted that the lot layout shown in Figure 3 is for indicative purposes only and is not proposed to be incorporated into the LEP amendment. The actual plan of subdivision is to be determined at DA stage, and may be different to that shown in Figure 3, but the approach to lot sizes ensures that significant vegetation will be retained within a single lot.

As a result it is recommended that the relevant Lot Size Map and Restricted Lot Yield Map of the LEP be amended as shown in Figures 4 and 5 respectively.

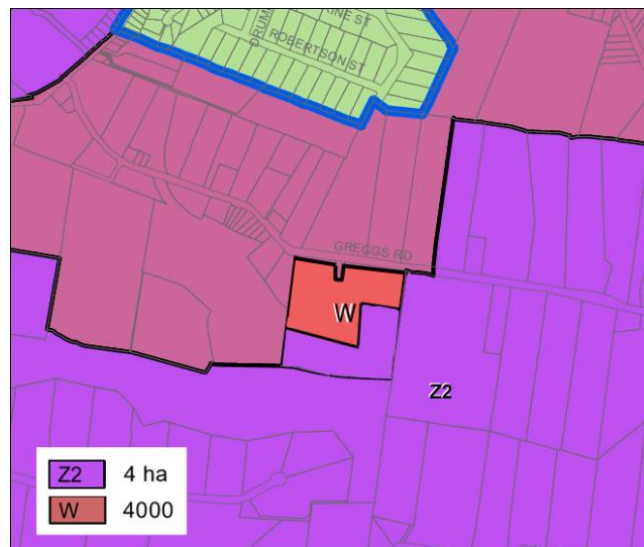


Figure 4: Proposed Amendment to Restricted Lot Yield Map

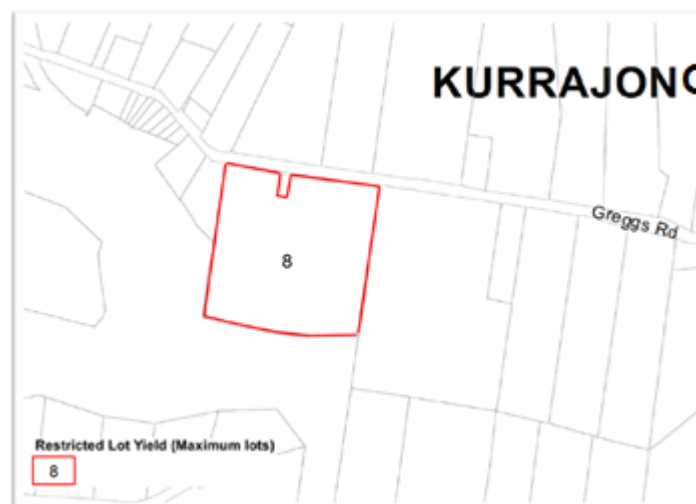


Figure 5: Proposed Amendment to Restricted Lot Yield Map

Council Resolution 28 July 2015 regarding Fundamental Constraints to Development

On 28 July 2015, Council resolved that current planning proposals within the Kurmond and Kurrajong Investigation Area only proceed to Gateway if the 'fundamental' development constraints have been

addressed. A Gateway determination to proceed with this planning proposal was received on 30 April 2015, prior to this resolution being made.

Fundamental constraints and associated recommendations that are relevant to this planning proposal are shown below in Tables 1 and 2. These tables also provide comments regarding the proposal's compliance with the 'fundamental' development constraints.

Table 1: Physical Environment

Factor	Degree of Constraint to Development	Recommendation
Terrestrial Biodiversity		
<i>Impact of development on threatened or endangered flora and fauna</i>	<i>Fundamental - Major</i>	<p><i>Legislation applies to threatened and endangered species. OEH concurrence may be required.</i></p> <p><i>Removal of significant vegetation is to be avoided.</i></p> <p><i>Fragmentation of significant vegetation is to be minimised.</i></p>
<p>Comment: The significant vegetation is contained mostly within the southern part of the subject site. The proposed 4ha minimum lot size in this area will minimise removal and fragmentation of this vegetation. If required, this vegetation can be further protected during the subdivision DA process by a requirement for a positive covenant to be registered on the title(s).</p>		
Watercourses and Riparian Areas		
<i>Impact of development on watercourses and riparian areas</i>	<i>Fundamental - Major</i>	<p><i>Legislation applies to threatened and endangered species. OEH concurrence may be required.</i></p> <p><i>Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourses) are to be located outside of riparian corridors.</i></p> <p><i>Road crossings of watercourses are to be minimised.</i></p> <p><i>Fragmentation of riparian areas is to be minimised.</i></p>
<p>Comment: The land contains no watercourses or riparian areas.</p>		
Dams		
<i>Impact of development on aquatic habitat. Proximity of dams to effluent disposal systems</i>	<i>Fundamental - Minor</i>	<p><i>Legislation applies to threatened and endangered species. OEH concurrence may be required.</i></p> <p><i>Removal of dams containing significant aquatic habitat is to be avoided. Minimum required buffer distances for effluent disposal systems are to be adhered to.</i></p>
<p>Comment: A small ephemeral dam is located within an area of the land which is proposed to have a 4 ha minimum lot size. The on-site wastewater disposal for the relevant lot as shown on the concept subdivision plan will be located below the dam. Therefore, it is considered that the proposal will have no impact.</p>		
Bushfire threat		

Factor	Degree of Constraint to Development	Recommendation
<i>Impact of the location and management of APZs and perimeter roads</i>	<i>Fundamental - Major</i>	<i>RFS concurrence may be required. Building construction and water supply is to comply with NSW Rural Fire Service's Planning for Bushfire Protection 2006, e.g. APZs and roads.</i>
Comment: The planning proposal has demonstrated that asset protection zones can be provided within each lot without the need for clearing of significant vegetation. Compliance of future development with <i>Planning for Bushfire Protection 2006</i> can be satisfactorily dealt with at DA stage by way of referral to the RFS and appropriate conditions of consent.		
Aboriginal Heritage		
<i>Impact of development on Aboriginal heritage items</i>	<i>Fundamental - Moderate</i>	<i>National Parks and Wildlife Act 1974 applies Council and developers are also to consider relevant provisions of the Heritage Act 1977 when preparing and considering development applications.</i>
Comment: No known aboriginal relics are located on the site. Further consideration will be given to this at DA stage.		
Land Contamination		
<i>Suitability of land to be developed given potential for land to be contaminated</i>	<i>Fundamental - Minor</i>	<i>Remediation action plans and validation may be required. Council and developers are to consider relevant provisions of State Environmental Planning Policy No 55 - Remediation of Land when preparing and considering development applications.</i>
Comment: The applicant advises that the land has not been used for agriculture in the form of animal grazing for many years and that there is no evidence to suggest that any activities have occurred on the land which would give rise to contamination. Further consideration will be given to this at DA stage.		
Acid Sulfate Soils		
<i>Impact of disturbance of acid sulfate soils on the environment and development</i>	<i>Fundamental to Minor</i>	<i>Development proposals and land class are to be assessed with respect to Clause 6.1 Acid Sulfate Soils of LEP 2012. Acid sulfate soils management plans may be required.</i>
Comment: The subject site is within the Acid Sulfate Soils Class 5 categorisation which is the least restrictive of the five classifications. Further consideration will be given to this at DA stage.		

Table 2: Infrastructure and Services

Factor	Degree of Constraint to Development	Recommendation
Road network		

Factor	Degree of Constraint to Development	Recommendation
<i>Capacity and safety of existing road network</i>	<i>Fundamental - Major</i>	<i>RMS concurrence may be required. Development contributions are to be levied for road improvements. Council and developers are to consider relevant provisions of State Environmental Planning Policy (Infrastructure) 2007 when preparing and considering development applications.</i>
Comment: RMS have not requested a development contribution for road works. Council officers are continuing discussions with RMS regarding the road network. A VPA is proposed as part of this proposal.		
Wastewater		
<i>Capacity of land to cater for on-site effluent disposal</i>	<i>Fundamental</i>	<i>Sydney Water concurrence may be required. Developers are to demonstrate that waste water can be disposed of on site in an environmentally sensitive manner. Alternatively developers may provide reticulated sewer service to new lots in accordance with relevant licences and/or authority requirements. Clause 6.7 - Essential Services under LEP 2012 applies.</i>
Comment: The applicant has provided suitable advice demonstrating that waste water can be disposed of on-site in an environmentally sensitive manner for each of the indicative lots.		
Public Transport Services		
<i>Provision of bus service to cater for the needs of incoming population</i>	<i>Fundamental - Moderate</i>	<i>Transport NSW and RMS concurrence may be required. Possible levying of development contributions for bus services. Clause 6.7 - Essential Services under LEP 2012 applies.</i>
Comment: RMS have not requested a development contribution for a bus service. Council officers are continuing discussions with RMS and Transport for NSW regarding public transport services.		
Stormwater drainage		
<i>Quantity and quality of stormwater run-off entering watercourses</i>	<i>Fundamental - Moderate</i>	<i>Developers are to demonstrate that stormwater can be captured, treated and released in an environmentally sensitive manner. Possible levying of development contributions for stormwater purposes. Clause 6.7 - Essential Services under LEP 2012 applies.</i>
Comment: It is considered this can be satisfactorily dealt with at DA stage by way of the assessment of drainage designs and conditions of consent.		
Water supply		

Factor	Degree of Constraint to Development	Recommendation
<i>Provision of reticulated water supply to new lots</i>	<i>Fundamental - Moderate</i>	Sydney Water concurrence may be required. A reticulated water service is to be provided to new lots by developers in accordance with relevant authority requirements. Clause 6.7 - Essential Services under LEP 2012 applies.
Comment: The subject site is located within Sydney Water's Water Supply Area. Connection to the reticulated water supply is feasible, and can be satisfactorily dealt with at DA stage by way of conditions of consent.		
Electricity		
<i>Provision of electricity service to new lots</i>	<i>Fundamental</i>	Electricity provider concurrence may be required. Electricity services are to be provided to new lots by developers in accordance with relevant authority requirements. Clause 6.7 - Essential Services under LEP 2012 applies.
Comment: Endeavour Energy has confirmed that connection of future lots to the electricity service is feasible. Therefore, the provision of electricity to any new lots can be satisfactorily dealt with at DA stage by way of conditions of consent.		

Offer of a Voluntary Planning Agreement (VPA)

Council considered a report on VPAs for the Kurmond and Kurrajong Investigation Area at its Meeting of 10 November 2015. The resolution at that Meeting was as follows:

"That:

1. Council agree to offers to enter into negotiations for Voluntary Planning Agreements in the Kurrajong/Kurmond Investigation Area in the absence of an adopted Section 94 developer contributions plan.
2. Any Voluntary Planning Agreement for this locality to be based on CPI adjusted cash contributions on a per lot release basis consistent with the offers discussed in this report.
3. Negotiations for draft VPAs should include consideration of a Clause to terminate the VPA once the Section 94 Plan is adopted with no retrospective provisions should the amended contributions be different to the VPA contribution amount.
4. To reinforce Council's previous resolutions planning proposals that have completed public exhibition are not to be reported to Council for finalisation until a Section 94 Plan is adopted or the report is accompanied by a draft Voluntary Planning Agreement that is proposed to be placed on public exhibition."

In response to this resolution the developer has offered to enter into a VPA with Council that would result in the developer paying a cash contribution to Council to the value of \$30,000 per additional housing lot. The draft VPA is attached to this report and, if the recommendation is adopted by Council, the draft VPA will require public exhibition.

Variation to Planning Proposals

The Environmental Planning and Assessment Act 1979 permits Council, at any time, to vary a planning proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason.

If Council does vary the planning proposal it is to forward the revised planning proposal to the Minister of Planning.

As discussed above, post "Gateway" determination variations to the planning proposal are proposed. These variations include:

- the provision of a minimum lot size of 4ha to enable the creation of a single lot capable of containing the Shale Sandstone Transition Forest, thereby preventing the fragmentation and removal of this significant vegetation.
- a reduction in the number of lots to be created from the subject site from nine to eight allotments. This reduction enables the potential for the larger lot, as well as improved lot design of the 4,000m² lots to ensure that future development avoids steep sloping land.

Hence, if Council agrees with these variations, prior to finalising the planning proposal under delegated authority from DP&E, it will be necessary to forward these variations to DP&E for consideration.

Conclusion

In response to recent resolutions of Council and comments from OEH it is recommended that the planning proposal proceed on the basis of the abovementioned proposed amendments to the Lot Size Map and the Restricted Lot Yield Map of LEP 2012. These amendments are proposed in order to provide greater protection of the significant vegetation on the subject site.

In accordance with previous resolutions of Council, the developer has offered to enter into a Voluntary Planning Agreement with Council that would result in the cash payment of \$30,000 per additional housing lot.

It is therefore recommended that Council proceed with the making of an LEP that will give effect to the proposed amendment described in this report, and that the draft VPA be publically exhibited for a minimum of 28 days.

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.

Financial Implications

The applicant has paid the fees required by Council's Fees and Charges for the preparation of a local environmental plan.

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.

RECOMMENDATION:

That Council:

1. Proceed with the making of a plan to amend the Hawkesbury Local Environmental Plan 2012 in order to permit the subdivision of Lots 431 and 432 DP 1189536, 431 and 431A Greggs Road, Kurrajong into not more than 8 lots with minimum lot sizes of 4,000m² and 4ha as described in this report.
2. Request that the Parliamentary Counsel's Office prepare a draft Local Environmental Plan to give effect to the planning proposal in accordance with Section 59(1) of the Environmental Planning and Assessment Act, 1979.
3. Adopt and make the draft local environmental plan, under the authorisation for Council to exercise delegation issued by the Gateway determination, upon receipt of an opinion from Parliamentary Counsel's Office that the plan can be legally made.
4. Following the making of the Plan, advise the Department of Planning and Environment that the Plan has been made and request to notify the Plan on the NSW Legislation website.
5. Publically exhibit the Draft Voluntary Planning Agreement attached to this report for a minimum of 28 days and the Draft Voluntary Planning Agreement be reported back to Council following public exhibition prior to finalisation.

ATTACHMENTS:

- AT - 1** Draft Voluntary Planning Agreement between Hawkesbury City Council and Mark Bull and Jenelle Bull

AT - 1 Draft Voluntary Planning Agreement

between

Hawkesbury City Council and Mark Bull and Jenelle Bull

VOLUNTARY
PLANNING
AGREEMENT

Section 93F of the Environmental Planning and Assessment Act 1979

429 & 431
GREGGS ROAD
KURRAJONG

September 2016

THIS PLANNING AGREEMENT is made on theday of2016

BETWEEN:

Parties

HAWKESBURY CITY COUNCIL ("the Council")

AND:

Mark and Jenelle Bull ("the Developer")

Introduction

- A. The Developer is the registered proprietor of the Development Land.
- B. On 18 March 2015 the Council lodged a planning proposal with the Department of Planning and Environment to amend the *Hawkesbury Local Environmental Plan 2012* Lot Size Map to facilitate subdivision of the Development Land to create eight (8) lots.
- C. The Developer proposes to make a Development Application to Council for Development Approval to carry out the Proposed Development if the Lot Size Map for the Development Land is altered generally in accordance with the planning proposal.
- D. The Developer has offered to provide the Developer's Contribution on the terms and conditions contained in this Agreement if Development Approval is granted to the Proposed Development.

And it is agreed as follows

1 Definitions and Interpretation

In this agreement the following words and letters have the meanings set out below.

- 1.1 "Act" means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended from time to time).
- 1.2 "Approval" means any approvals consents, modifications, certificates (of all types) permits, endorsements, licenses, conditions or requirements (and any variation to them) which may be required by Law for the Proposed Development.
- 1.3 "Authority" means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body, commission, department, agency, tribunal or other authority or body.
- 1.4 "Base CPI" means the CPI number for the quarter ending immediately before the commencement of this Agreement.
- 1.5 "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act and thing is to be performed or a payment is to be made.

- 1.6 "Cash Contribution" means, subject to clauses 3, 6, 7 and 8 an amount calculated on the basis of \$30,000 per vacant Housing Lot.
- 1.7 "Completion Certificate" means the release of the subdivision, either in whole or in stages, to enable the lodgement to and issue of Housing Lot titles by the LPI.
- 1.8 "CPI" means the Consumer Price Index released by the Australian Bureau of Statistics for "Sydney - All Groups" or such other consumer price index that might replace it.
- 1.9 "CPI Review Date" means each quarterly anniversary of the date of this agreement.
- 1.10 "Costs" include costs, charges, fees, disbursements and expenses, including those incurred in connection with advisers.
- 1.11 "Current CPI" means the CPI number for the quarter ending immediately before the relevant CPI Review Date.
- 1.12 "Developer's Contribution" has the meaning given in clause 6.
- 1.13 "Development Application" means an application under Part 4 of the Act for Development Approval.
- 1.14 "Development Approval" means a development consent issued under the Act with respect to all or part of the Proposed Development.
- 1.15 "Development Land" means the land comprising Lots 431 and 432 DP 1189536 (Nos. 431 & 431A) Greggs Road Kurrajong.
- 1.16 "Dispute" in connection with this agreement means an argument, a controversy, a difference, a dispute including of opinion or interpretation.
- 1.17 "Event of Insolvency" means anyone or more of the following occurrences:
- (i) the Developer becomes bankrupt, is served with a bankruptcy notice or a bankruptcy petition, has committed an act of bankruptcy or has entered into an arrangement within and under the meaning of the *Bankruptcy Act 1976* (Cth); or
 - (ii) the Developer becomes subject to any order or declaration under the *Mental Health Act 2007* (NSW) or is otherwise incapable of managing his or her own affairs.
 - (iii) if the Developer is a company, if:
 - (a) a resolution is passed for the winding up or liquidation of that company;
 - (b) a liquidator, provisional liquidator, receiver, receiver manager, controller, controlling manager, administrator, voluntary administrator or official manager is appointed to the Developer or a resolution is passed for the purposes of placing that party in the control of an external administrator;
 - (c) it suspends payment of its debts or is unable to pay its debts including of money payable under this agreement or is deemed insolvent;
 - (d) it fails to or is taken as having failed to comply with a statutory demand under the *Corporations Act 2001* (Cth);

- (e) if anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction with respect to the Developer.
- 1.18 "GST" has the same meaning as the GST Act and other words or expressions used in the GST Act which have a particular defined meaning (including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning.
- 1.19 "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- 1.20 "Housing Lot" means a lot approved by a Development Consent comprising part of the Development Land that is intended to be used for the purposes of a single dwelling house without being further subdivided.
- 1.21 "Housing Lot Contribution" means subject to Clauses 6, 7 and 8, cash to the value of \$30,000 per vacant Housing Lot arising from a Development Consent of the Development Land.
- 1.22 "Law" means:
- (i) the common law and principles of equity;
 - (ii) the requirements of legislation, regulations and by-laws; and
 - (iii) a binding order made by an Authority.
- 1.23 "LPI" means Land and Property Information or any other government agency replacing it.
- 1.24 "Lot Size Map" means the maps with a corresponding name and forming part of *Hawkesbury Local Environmental Plan 2012*.
- 1.25 "Party" means a party to this agreement, including their successors and assigns.
- 1.26 "Proposed Development" means the subdivision of the Development Land into not more than eight (8) Housing Lots.
- 1.27 "Subdivision Certificate" means a certificate issued under section 109C(d) of the Act with respect to the Proposed Development.
- 1.28 "Transfer" means to settle, assign, transfer, convey, alienate, otherwise dispose of or part with possession of.

2 Interpretation:

In this agreement unless the contrary intention appears:

- 2.1 One gender includes the opposite gender.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A party includes that party's executors, administrators, successors, permitted assigns, permitted legal representatives and substitutes.
- 2.4 Dollars or \$ means Australia dollars and all money payable under this agreement is payable in that currency.

- 2.5 "Including" and similar expressions are not words of limitation.
- 2.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.7 Headings, any table of contents or index are for convenience only and do not affect interpretation of this agreement.
- 2.8 An explanatory note which relates to this agreement does not affect the interpretation of this agreement.
- 2.9 A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible wholly or partly for the preparation of this agreement or the inclusion of a term or condition in this agreement.
- 2.10 If an act and thing must be done on a specific day which is not a business day, it must be done instead on the next business day.
- 2.11 A person means and includes a person, a body corporate, Authority, firm, body of persons, association, trust, joint venture or other legal commercial entity or undertaking recognized by law whether or not incorporated.
- 3 Planning Agreement**
- 3.1 This agreement
- 3.1.1 applies to the Development Land;
- 3.1.2 is a planning agreement within the meaning set out in section 93F of the Act;
- 3.1.3 is to be registered on the title of the Development Land under section 93H of the Act;
- 3.1.4 is not a confidential document and may be exhibited without restriction by either party.
- 3.2 Subject to clause 3.3, this agreement operates from the date it is executed.
- 3.3 Clause 6 of this agreement will only operate if and when Council grants Development Approval (or Development Approvals as the case may be) to the Proposed Development on the Development Land.
- 4 Application of s94 and s94A of the Act to the Development**
- 4.1 This agreement excludes the application of section 94A and section 94 of the Act to the Proposed Development.
- 4.2 Notwithstanding Clause 4.1, should a section 94 Plan which applies to the land come into force prior to the issue of any development consent for subdivision of the land, this Agreement shall be terminated immediately and the adopted contribution rate within such section 94 Plan shall be applied in place of the Developer's Contribution cited within this Agreement.
- 4.3 Clause 4.2 does not allow the Council or the Developer to retrospectively apply a section 94 contribution for allotments for which development contributions have been paid in accordance with this Agreement.

4.4 Subject to Clause 15 should this Agreement be terminated in accordance with clause 16, section 94A or section 94 of the Act, whichever is applicable, will apply to the Proposed Development.

5 Registration of this Agreement

5.1 Within 30 days from the commencement of this Agreement the Developer must take all reasonable steps to procure the registration of the Agreement, in accordance with Section 93H of the Act on the relevant folios of the register held by the LPI pertaining to the Development Land.

5.2 The Council agrees:

- (a) to provide a release and discharge of this Agreement with respect to the Development Land or any lot created on subdivision of the Development Land on satisfaction by the Developer of the obligation to provide the Developer's Contribution: and
- (b) to do all things reasonably necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land.

5.3 The Council acknowledges that the registration of this Agreement on the relevant folios of the register held by the LPI pertaining to the Development Land constitutes suitable means of enforcement of this Agreement for the purposes of s93F(3)(g) of the Act.

6 Developer's Contribution

6.1 Subject to the terms of this agreement, including clause 3.3, the Developer agrees to provide the Developer's Contribution, subject to clause 8, in the form of the Cash Contribution via a condition of Development Consent at the rate of \$30,000, subject to clause 8, for the creation of each vacant Housing Lot.

6.2 For the avoidance of doubt, the parties agree and acknowledge that the maximum Cash Contribution is calculated on the basis of \$30,000, subject to clause 8, per additional Housing Lot created by subdivision of the Development Land. The existing Development Land allotment does not attract a Cash Contribution through this Agreement by virtue of there being on the land prior to any additional subdivision one lawfully existing dwelling.

7 Calculation of Developer's Contributions

The Developer and Council acknowledge and agree that the Contribution will be calculated on the basis that not more than eight (8) Housing Lots can be achieved on the Development Land and the Developer will contribute cash to the value of the Cash Contribution for each of those vacant allotments.

8 CPI Adjustment of Developer's Contributions

On each CPI Review Date the Cash Contribution will be calculated as follows:

$$RAC_c = RAC_s \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where:

RAC_a = The Housing Lot contribution at the commencement of this Agreement (i.e. \$30,000)

RAC_c = Adjusted Housing Lot Contribution at CPI review date.

9 Payment of Cash Contribution

The Cash Contribution must be paid to Council, prior to the issue of the Subdivision Certificate, on a 'pro-rata' basis. The pro-rata payment calculation is to be based on the number of Housing Lots included in the Subdivision Certificate for the relevant stage.

10 G.S.T

10.1 Unless otherwise expressly stated all money or other sums payable or consideration to be provided under this agreement are exclusive of GST.

10.2 Despite Clause 6, to the extent that the Commissioner of Taxation, a Court or Tribunal determines that any supply made under or in connection with this agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided and a valid Tax invoice is to be delivered to the recipient of the taxable supply and this clause will not merge on completion or termination of the agreement.

11 Dispute Resolution

11.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then the Parties must resolve that dispute in accordance with this clause.

11.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other Party in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 15 Business Days of the written notice provided in accordance with clause 11.2 meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert determination in accordance with clause 11.5 or consideration is needed to effectively resolve the dispute (in which

event the Parties will, in good faith, agree to a timetable for resolution);
and

- (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 No party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 11.3; and
- (b) the Parties have been unable to reach an outcome identified in clause 11.3; and
- (c) any of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 11.3(b)(iii), then, that Party may, by 15 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

11.5 Expert Determination

- (a) If a Dispute arises between Parties to this Agreement, the Parties may agree to refer the Dispute to expert determination in Sydney, New South Wales administered by the Australian Commercial Dispute Centre (ACDC).
- (b) The expert determination will be conducted in accordance with the ACDC Rules for Expert Determination (Rules) in force at the date of this Agreement. The Rules set out the procedures to be adopted, the process of selection of the expert and the costs involved, including the Parties' respective responsibilities for the payment of the expert's costs and other costs of the expert determination.
- (c) The expert determination will be final and binding on the Parties.
- (d) This clause 11 survives termination of this Agreement.

11.6 Urgent Relief

At any time, a Party may, without inconsistency with anything in this clause 11, seek urgent interlocutory relief in respect of a dispute under this Agreement from any Court having jurisdiction.

12 Agreement of the Developer

12.1 The Developer warrants that it:

- 12.1.1 is the legal and beneficial owner of part of the Development Land;
- 12.1.2 will take all practicable steps and use best endeavours and do all acts and things required to procure:
 - 12.1.2.1 the execution of any documents necessary to effect registration of this agreement with LPI; and

- 12.1.2.2 the production of the relevant certificates of title for the Development Land and the registration of this agreement at LPI on the title of the Development Land within 30 days of the date of the commencement of this agreement.
- 12.2 Council shall not be required to seal any sub-division plan made pursuant to the Development Approval unless and until this agreement has been registered at LPI on the title of the Development Land.
- 13 Enforcement by any party**
- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
- (i) a Party from bringing proceedings in a court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates, subject to compliance with clause 14; and
- (ii) the Council from exercising any function under the Act or any other Act or law.
- 14 Assignment and dealings**
- 14.1 The Developer is not to:
- 14.1.1 sell, transfer, mortgage or charge the Land, or
- 14.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 14.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold, transferred, mortgaged or charged or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 14.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, mortgagee, charge, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 14.1.5 the Developer is not in breach of this Deed, and
- 14.1.6 the Council otherwise consents to the transfer, mortgage, charge, assignment or novation, such consent not to be unreasonably withheld.
- 14.2 Clause 14.1 does not apply in relation to any sale, transfer, mortgage or charge of the Land if this Deed is registered on the title to the Land at the time of the sale.
- 14.3.1 Upon the commencement of this Deed, the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the

Council has a sufficient interest in the Land to lodge and maintain with the Land and Property Management Authority a caveat notifying that interest.

- 14.3.2 The Developer consents to the Council lodging a caveat on the Land where this Deed is not registered on the title to the Land due to a breach by the Developer of its obligations.

15 Release

When the Developer has satisfied all of the obligations imposed on it under this agreement in respect of that part of the Development Land for which a Subdivision Certificate has been issued and for which the Developer's Contribution has been delivered then the Council must promptly at the request and at the reasonable expense of the Developer do all acts and things necessary to remove this agreement from the title of that part of the Development Land.

16 Termination

- 16.1 This agreement may be terminated by the Council by written notice to the Developer if:

16.1.1 the Developer commits a breach of any of the terms and conditions of this agreement and fails to remedy such a breach within fourteen (14) days of receipt of a written notice (which specifies the breach and requires the Developer to remedy the breach) whereupon the date of such termination will be effective on the 15th day from receipt of such written notice; or

16.1.2 an Event of Insolvency occurs.

17 Review Procedures

The parties may agree to review this agreement in circumstances and in a manner determined by the parties. Any amendment, modification, supplement or replacement document which results from a review must be in writing, signed by the parties and registered at LPI under Section 93H of the Act.

18 Notices

- 18.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

(a) Delivered or posted to that Party at its address set out below.

(b) Faxed to that Party at its fax number set out below.

- 18.2 For the purposes of this clause the parties' contact details for service are:

The Developer

Mr Mark and Mrs Jenelle Bull

Address:

431 Greggs Road Kurrajong

Email: Mark.Bull@jemena.com.au>

Telephone: 0402 060 438

Council**Address:**

Hawkesbury City Council
Attention: General Manager
366 George Street,
WINDSOR NSW 2576

Telephone: 4560 4444
Facsimile: 4587 7740

- 18.3 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 18.4 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 18.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

19 Proper Law and Jurisdiction

This agreement is made and will be construed and governed in accordance with the Law of the State of NSW South Wales. Each party submits to the exclusive jurisdiction of each and every Court or Tribunal of the said State having jurisdiction to hear the matter submitted to it.

20 Severance

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

21 Waiver

- 21.1 No failure on the part of a party to exercise and no delay in exercising and no cause of dealing with respect to, any condition and the rights, powers or remedies of that party under this agreement will impair any of those rights, powers or remedies, nor constitute a waiver of any of those rights, powers or remedies.

- 21.2 No single or partial exercise by a party of any condition and rights, powers or remedies under this agreement will preclude any other or further exercise of those or exercise of any other conditions rights or remedies.
- 21.3 Any condition and the rights, powers or remedies under or relating to this agreement are cumulative and will not exclude any other rights, powers or remedies under or relating to this agreement at Law.
- 21.4 No waiver of any of the conditions of this agreement will be effective unless in writing signed by the party against whom such waiver is sought to be enforced.
- 21.5 Any waiver of the conditions of this agreement will be effective only in the specific instance and for the specific purpose given and the waiver will not be deemed a waiver of such obligations or of any subsequent breach of the same or some other obligation.

22 Approvals and Consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

23 Entire Agreement

This agreement contains all the terms and conditions to which the parties have agreed on in relation to the matters which they have dealt with. No party can rely on an earlier document, anything said or done by another party, or omitted to be relied upon, said or done except as permitted by Law.

24 No Fetter

- 24.1 Nothing in the agreement is to be construed as requiring the Council to do anything
- 24.1.1 that would cause it to be in breach of any of its obligations at Law;
 - 24.1.2 limiting or fettering in any way the exercise of any statutory discretion or duty; at Law; or
 - 24.1.3 imposing any obligations to grant an Approval.

25 Representatives and Warranties

Each party agrees that it has the power and authority to enter into this Agreement and comply with its obligations and that entry into this agreement will not result in a breach of Law.

26 Costs

Each party must bear and pay its own costs of and incidental to the preparation and execution of this Agreement.

Executed as an agreement on

2016

Execution by Council

Signed by Hawkesbury City Council by its authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name of witness

Authorised Officer's Name:
Signing on behalf of: Hawkesbury City
Council
Power of Attorney Book:
No: _____

Address of witness

Execution by Mark and Jenelle Bull

Signed by :

Signature of Mark Bull

Signature of Jenelle Bull

Print name

Print name

oooO END OF REPORT Oooo

