

Item: CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 74 Longleat Lane, Kurmond - (95498, 124414, 136641)

File Number: LEP0010/16
Property Address: 74 Longleat Lane, Kurmond
Applicant: Glenn Falson Urban and Rural Planning Consultant
Owner: R Goody
Date Received: 12 April 2016
Current Minimum Lot Size: 4 Hectares
Proposed Minimum Lot Size: 4,000m² and 2ha
Current Zone: RU4 Primary Production - Small Lots
Site Area: 3.097ha

Recommendation: Council support the preparation of a planning proposal to enable the subdivision of the subject site into two lots with minimum lot sizes of 4,000m² and 2ha.

REPORT:

Executive Summary

Council has received a planning proposal from Glenn Falson Urban and Rural Planning Consultant (the Applicant) which seeks to amend the Hawkesbury Local Environmental Plan 2012 (LEP 2012) to enable the subdivision of Lot 3 DP 747089, 74 Longleat Lane, Kurmond into two lots. The proposal essentially reflects the locations of two existing dwellings on the subject site.

This report provides Council with an overview of the planning proposal, and recommends that the preparation of a planning proposal be supported and submitted to the Department of Planning and Environment (DP&E) for a 'Gateway' determination.

Consultation

The planning proposal has not yet been exhibited as Council has not resolved to prepare the proposal. 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* (EP&A Act) and associated Regulations, and as specified in the 'Gateway' determination.

Planning Proposal

The planning proposal seeks to amend LEP 2012 in order to permit the subdivision of the site into two lots.

The planning proposal aims to achieve this by amending the relevant Lot Size Map of LEP 2012 in order to provide minimum lot sizes of 4,000m² and 2ha. The Applicant also suggests that an appropriate provision be included in LEP 2012 to limit the maximum number of lots created by future subdivision of the land to two lots.

A concept plan for the proposed two lot subdivision is shown in Figure 1 below. This plan has been provided for discussion purposes only in relation to the potential yield of the site and the proposed minimum lot sizes, and does not form part of the planning proposal. This concept plan shows two lots having sizes of 5,150m² and 2.58ha.

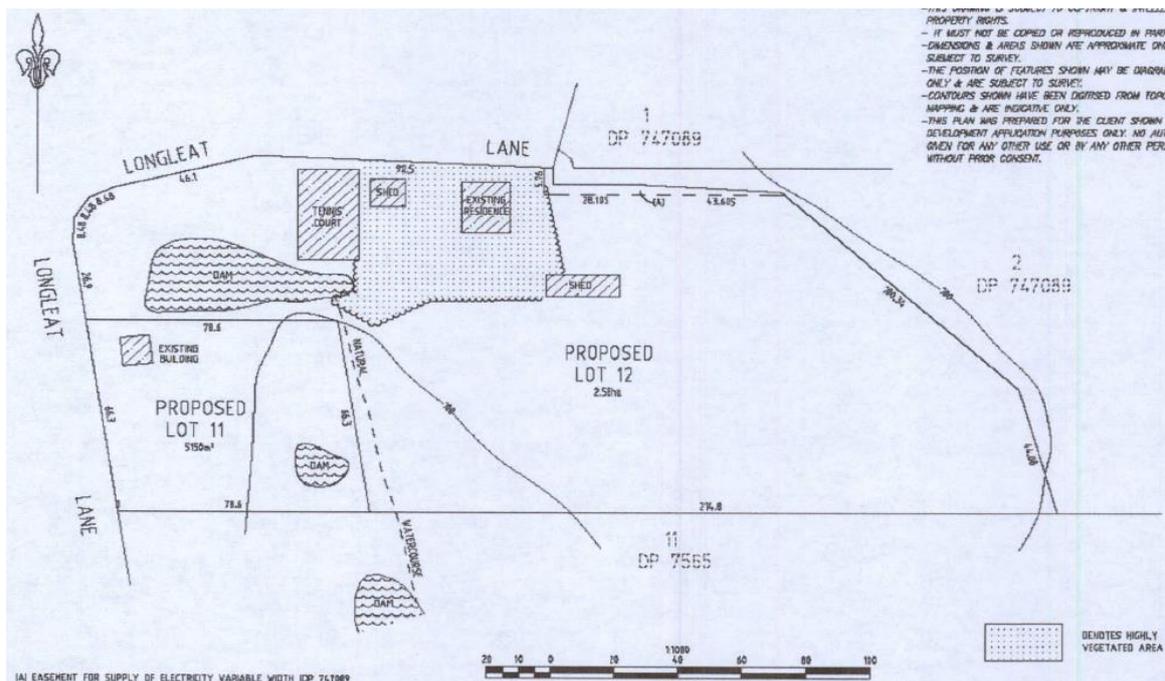


Figure 1 - Concept Subdivision Plan (not for determination)

The planning proposal has identified, in particular, the environmental matters which may have consequences for the future subdivision and development of the land, including bushfire protection, wastewater disposal and heritage. However, detailed reports have not been provided to demonstrate that these matters are not prohibitive to future development.

The Department of Planning and Environment's document "A Guide to Preparing Planning Proposals", October 2012 advises:

"The planning proposal should contain enough information to demonstrate that relevant environmental, social, economic, and other site specific matters have been identified and if necessary that any issues can be addressed with additional information and/or through consultation with agencies and the community." and

"To prevent unnecessary work prior to the Gateway stage, specific information nominated as being necessary would not be expected to be completed prior to the submission of the planning proposal. In such circumstances, it would be sufficient to identify what information may be required to demonstrate the proposal."

Where it is determined that more detailed information is required, a recommendation can be made to the DP & E that detailed specialist reports be provided prior to notification of the proposal. The 'Gateway' determination will confirm the information (which may include studies) and consultation required before the LEP can be finalised.

Subject Site and Surrounds

The subject site is legally described as Lot 3 DP 747089 and is known as 74 Longleat Lane, Kurmond. It has an area of 3.097ha and is mostly regular in shape with an approximate length of 260m and approximate depth of 120m.

The site is located within the Kurmond and Kurrajong Investigation Area as shown in Figure 2 below.



Figure 2 - Site Location within Kurmond Kurrajong Investigation Area

The subject site is currently zoned RU4 Primary Production Small Lots under the LEP. The current minimum lot size for subdivision of this land is 4ha.

The subject site is used for rural residential purposes and contains an existing dwelling, outbuildings, tennis court and pool to the north, and a second dwelling located to the west. During a site inspection of the property, it was noted that the two dwellings were of an age that would pre-date the introduction of the first planning instrument in the locality; being *Interim Development Order No. 1 – Shire of Colo* which was gazetted on 13 March 1964. It is therefore considered that both dwellings are lawful.

The subject site is identified as a heritage item of local significance under Schedule 5 of the LEP. The significance of this item is mainly attributed to the dwelling known as 'Longleat' located in the northern section of the property.

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

The whole site is shown as being within Class 5 Acid Sulfate Soils on the Acid Sulphate Soils Planning Maps contained within the LEP. Acid Sulfate Soil Classification 5 represents a relatively low chance of acid sulphate soils being present on the site.

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

The site contains 'Significant Vegetation' and 'Connectivity between Significant Vegetation' as identified on the Terrestrial Biodiversity Map. Vegetation on the site is generally located around the existing dwellings and along the Longleat Lane road frontage.

The site falls within the *Middle Nepean and Hawkesbury River Catchment Area of Sydney Regional Environmental Plan No.20 Hawkesbury - Nepean River (No.2 - 1997)*.

The land varies in height from approximately 96m AHD at the rear (southern boundary) to 110m AHD along the northern frontage (Longleat Lane) of the land. Based on Council's slope mapping, the subject site contains land having slopes in excess of 15% on the eastern portion of the site surrounding the existing tennis court and dam, and to the south of these structures.

Properties immediately to the north, south, east and west of the subject site are all similarly zoned RU4 Primary Production Small Lots. Further to the north, west and east land is zoned RU1 Primary Production. The current minimum lot size applicable for the subdivision of the immediate surrounding properties is 4ha.

Land surrounding the subject site consists of lots having sizes that predominantly range between 650m² and 4ha. The immediate surrounding area of the site is predominantly characterised by rural residential uses.

Applicant's Justification of Proposal

The Applicant has provided the following justification for the planning proposal:

- *The proposed subdivision is consistent with the Hawkesbury Residential Land Strategy (HRLS).*
- *The subject site is located within the Kurmond/Kurrajong Investigation Area and is included in an investigation area map prepared by Council.*
- *The preliminary site investigations reveal that the site is capable of subdivision into at least two lots.*
- *The proposed subdivision would result in the two existing houses being located on separate allotments.*
- *The proposed lot sizes are capable of containing on-site wastewater disposal systems and are appropriate in terms of bushfire control and vegetation management.*
- *Electricity, telephone, garbage and recycling facilities are currently available to the site.*

'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 Kurmond. 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.

The Hawkesbury Residential Land Strategy (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 contains 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 planning proposal can be considered as a rural residential development on the fringe of the Kurmond 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.

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 Kurmond Village, and is within the one kilometre radius specified in the HRLS. The Kurmond Kurrajong Investigation Area (Figure 2) is the graphical representation of the above criteria. This mapping was undertaken in accordance with previous resolutions of Council.

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 previously in this report. It is considered that the planning proposal is consistent with Council's Community Strategic Plan (CSP) as discussed later in this Report.

Council Policy - Our City Our Future Rural Rezoning Policy

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

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&E's 'Gateway' system for dealing with planning proposals.

The Policy is repeated below with responses provided by the Applicant, and officer comments provided where relevant.

- a) Fragmentation of the land is to be minimised

Applicant's Response

"The land is within an area identified within Council's subsequent Residential Land Strategy as having urban potential. Fragmentation of this 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's 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's Response

"The site does not front a main road."

- d) No subdivision along ridgelines or escapements.

Applicant's Response

"The site is not on a ridgeline or in an escapement area."

- 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's Response

"The lots will vary in size down to a minimum of 5,150m². This is larger than the size of allotment that is indicated by Council as being the minimum to contain on-site effluent disposal in later studies (eg Kurrajong Heights, Wilberforce and within LEP 2012 generally)."

Comments

Council's records show that there is only one existing system on the subject site, which services the main heritage dwelling located on proposed Lot 12.

The planning proposal is not accompanied by a wastewater feasibility assessment report providing details of any on-site sewerage management systems on the subject site, their performance or whether the proposed new lots (in particular proposed Lot 11) are capable of supporting the onsite disposal of effluent.

It is therefore recommended that an onsite effluent disposal report be provided following a 'Gateway' determination.

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

Applicant's Response

"The subdivision does not propose removal of vegetation. Existing houses are established on site. No removal of vegetation is required"

Comments

In this case, given that existing dwelling houses will be located on each resultant lot it is considered that matters of flora and fauna will be subject to the usual investigations to be carried out with the lodgement of a development application for any future development.

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

Applicant's Response

"The rezoning process has altered since this policy of Council. The Gateway process will dictate whether further studies are required. It is noted that Council has embarked on preparing a S94 Plan which will apply to this Planning Proposal if finalised by the time of completion of the proposal. Otherwise a Voluntary Planning Agreement can be entered into so that an amount approximating what might be levied under S94 can be provided for roads and other community infrastructure."

Comments

As per the Department's Guidelines for planning proposals, the application has identified the relevant environmental considerations for the proposal, including onsite effluent disposal, heritage and bushfire. Whilst specialist reports addressing these matters have not been provided, the need for further information/consideration will be a matter for the DP&E to determine as part of the 'Gateway' process. In this regard, it is recommended that a bushfire assessment, onsite effluent disposal report and heritage impact assessment be requested following a 'Gateway' determination.

The need for a Section 94 Contribution Plan or a Voluntary Planning Agreement can be determined and 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's Response

"The proposal is for a Torrens Title which is appropriate given that the subdivision merely recognises the two houses on site."

Comments

The form of title for a subdivision is a matter for consideration with a development application for any subdivision, where the most appropriate form of titling can be determined dependant on the need for the preservation of particular environmental features, and whether appropriate access arrangements to future allotments are provided.

Section 117 Directions

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

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.

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&E is satisfied that the proposal is:

- a) justified by a strategy which:
- gives consideration to the objectives of the Direction
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites)
 - is approved by the Director-General of the DP&E, or

- b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of the Direction, or
- c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of the Direction, or
- d) is of minor significance.

The HRLS has been prepared with consideration given to the various policies and strategies of the NSW State 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.

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 LEP 2012 and does not propose any changes to the current RU4 Primary Production Small Lots zoning. As a consequence, the planning proposal will result in an increase in the density of land. The Applicant states:

"The proposal is considered to be of minor significance only in terms of impact on the available rural zones and rural/agricultural lands. The site has not been used for any form of meaningful rural/agricultural use for many years and is currently required to be mechanically slashed to keep grass and weed infestation at bay.

Due to the location of the site adjacent to dwellings on small lots and the relatively small size of the lot, the land is not conducive to productive agricultural use.

As the proposal is only for two housing lots to contain existing houses, provides a community benefit and is considered to be of minor significance the proposal does not warrant the preparation of a specific rural study particularly. This is particularly the case noting Council's Residential Strategy that identified sites such as this for village expansion."

This inconsistency will be considered by the DP&E as part of their 'Gateway' determination.

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.

In accordance with the provisions of this Direction, it is proposed that the Department of Industry be consulted following a 'Gateway' determination.

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&E 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 contained within the LEP. As such any future development on the land will be subject to Clause 6.1 Acid Sulfate Soils of LEP 2012 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 but 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 subject site is shown as being bushfire prone, containing Vegetation Category 1 on the NSW Rural Fire Service's Bushfire Prone Land Map. 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 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls. The planning proposal proposes an amendment to the Lot Size Map of LEP 2012 and, in addition, a provision in the LEP to restrict the lot yield from subdivision of the subject site. The DP&E have previously allowed similar restrictions on subdivision lot yields with the inclusion of *Clause 4.1G - Restriction on the number of lots created by subdivision of certain land* in LEP 2012. However, as discussed later in this report, it is considered that the additional provision proposed by the Applicant is not warranted.

Direction 5.10 Regional Plans

This Direction requires planning proposals to be consistent with a Regional Plan that has been released by the Minister for Planning. Under the *Greater Sydney Commission Act 2015, A Plan for Growing Sydney* is deemed to be the Regional Plan for the Greater Sydney Region. The planning proposal is consistent with this Regional Plan as discussed previously within this report.

State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are *State Environmental Planning Policy (SEPP) No. 44 – Koala Habitat Protection*, *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. 44 – Koala Habitat Protection (SEPP 44)

The Applicant advises:

"State Environmental Planning Policy 44 – Koala Habitat Assessment is applicable. A formal assessment of the site against this Policy has not been done however would be included in any subsequent flora/fauna report required. However there is no evidence of koalas on site and the site is not core habitat as defined by SEPP44."

In this case, given that existing dwellings will be located on each resultant lot it is considered that matters of flora and fauna, including the requirements of SEPP 44 will be subject to the usual investigations to be carried out with the lodgement of a development application for any future development.

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 whether it requires 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 any intensive agricultural use or any other use that would suggest that remediation is required. There is no obvious evidence of surface or groundwater pollution. It is not believed that any geotechnical investigations need to be carried out for the planning proposal to proceed."

However, the Applicant also states that the site *"has been maintained by limited grazing activities and mechanical slashing for many years."* According to Table 1 - *Some Activities that may cause contamination* of the Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land, agricultural activities may cause contamination.

Given that this planning proposal seeks to subdivide the subject site to enable the two existing dwellings to be located on separate lots, and the use of the proposed lots for rural residential purposes will not change as a result, it is considered that further investigations are not warranted for the planning proposal to proceed. Consideration of potential contamination will be subject to the usual investigations to be carried out with the lodgement of a development application for any future development.

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 and 2 of the SREP, nor will the proposed development restrict the obtaining of deposits of extractive material from such land.

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

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
- 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 and Hawkesbury River Catchment Area of Sydney Regional Environmental Plan No.20 Hawkesbury - Nepean River (No.2 - 1997).

It is considered that the future use of the planned additional lot for residential purposes will be able to comply with the relevant provisions of SREP No 20 or be able to appropriately minimise any impacts.

Proposed Amendment to LEP 2012

The planning proposal seeks to amend LEP 2012 in order to permit the subdivision of the site into two lots having minimum lot sizes of 4,000m² and 2ha generally as shown in Figure 1.

The Applicant also suggests an appropriate provision be inserted into LEP 2012 to limit the maximum lot yield of the subdivision of the site consistent with the planning proposal of allowing two allotments. It is considered that such a provision is not necessary given the area of 5,150m² corresponding to proposed Lot 11 has been nominated with a 4,000m² minimum lot size and the 2.5ha area corresponding to proposed Lot 12 has been nominated with a 2ha minimum lot size. (Refer to Attachment 1 - *Proposed Minimum Lot Size Map*). Once subdivision in accordance with these minimum lot sizes has been carried out, no further subdivision will be possible.

Assessment of the Merits of the Planning Proposal

On 28 July 2015 Council adopted the following development principles to be considered in the assessment of planning proposals within the Kurmond and Kurrajong Investigation Area:

1. *Essential services under LEP 2012 and fundamental development constraints are resolved.*
2. *Building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%.*
3. *Removal of significant vegetation is avoided.*
4. *Fragmentation of significant vegetation is minimised.*
5. *Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourse) are located outside of riparian corridors.*
6. *Road and other crossings of water courses is minimised.*

7. *Fragmentation of riparian areas is minimised.*
8. *Removal of dams containing significant aquatic habitat is avoided.*

In response to these development principles the following matters are of particular relevance:

Topography

The land varies in height from approximately 96m AHD at the rear (southern boundary) to 110m AHD along the northern frontage (Longleat Lane) of the subject site.

Based on Council's slope mapping, the subject site contains land having slopes in excess of 15% on the eastern portion of the site surrounding the existing tennis court and dam, and to the south of these structures. Figure 3 illustrates the proposed lots in relation to the slopes of the subject site.

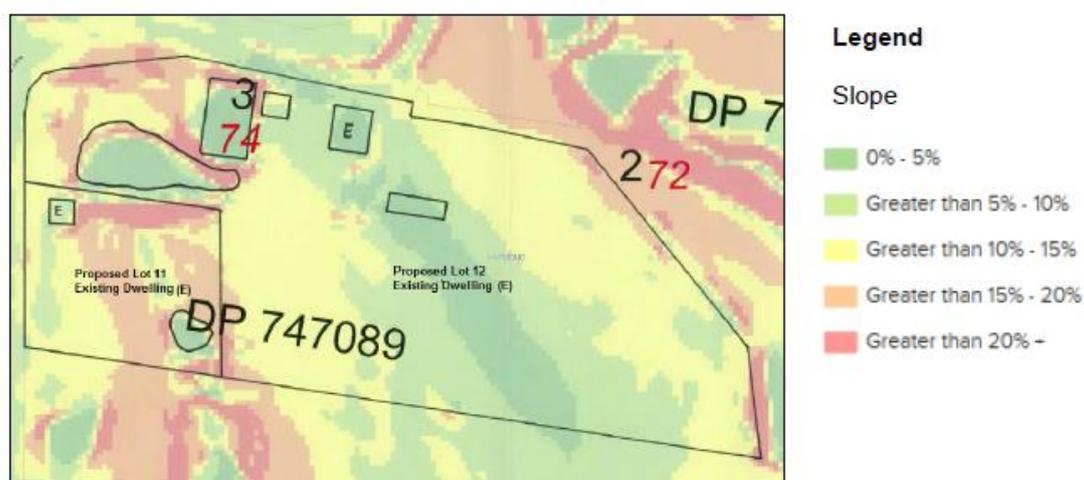


Figure 3 - Slope Analysis

The adopted development principles require building envelopes, asset protection zones (APZs), driveways and roads to be located on land with a slope less than 15%.

This slope analysis highlights that the existing dwelling houses and access to these are located on land less than 15%.

Ecology

The planning proposal is not accompanied by a flora and fauna survey and assessment report, and the Applicant provides the following information on flora and fauna on the site.

"The site is included in the Terrestrial Biodiversity Map within Council's LEP2012. The map indicates that approximately 30% of the site is classified as "significant vegetation" and the remainder "connectivity between significant vegetation". However an inspection of the aerial photo of the site reveals that not all of the "significant vegetation" has a continuous canopy and comprises areas of scattered shade trees and that the "connectivity between significant vegetation" is predominantly cleared pasture land.

It is not considered that a formal report on flora/fauna of the site is required as the subdivision merely recognises an existing situation of two dwellings on the land. However if further assessment is required it would be more appropriate if identified through the Gateway process of the Department of Planning and Infrastructure."

Council's vegetation mapping records the site as containing Shale Sandstone Transition Forest, which is a critically endangered ecological community (CEEC) under the *Threatened Species Conservation Act, 1995*. This vegetation community is located as shown in Figure 4.

The adopted development principles require planning proposals to avoid the removal, and minimise the fragmentation of significant vegetation. In addition it requires that impacts on watercourses, riparian areas and aquatic habitat are minimised and/or avoided, including the retention of dams containing significant aquatic habitat.

Figure 4 shows the areas of the subject site which contain significant vegetation. Figure 5 shows the corresponding vegetation that is located in these areas.

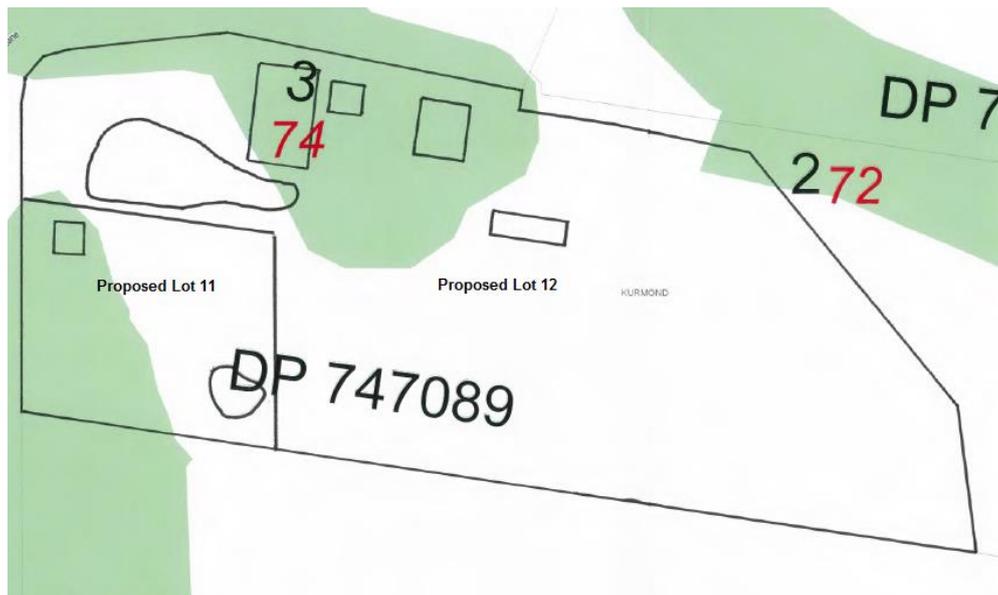


Figure 4 – Mapped Significant Vegetation on the Subject Site



Figure 5 – Aerial Photo of the Subject Site

The significant vegetation is located around the existing dwellings on the subject site. Whilst these dwellings have existed for a considerable period, it is unknown at this stage as to whether or not clearing of vegetation for bushfire protection purposes would be required by the NSW Rural Fire Services. Regardless, clearing for the protection of existing development is not considered unreasonable.

In addition, given that existing dwellings will be located on each resultant lot it is considered that matters of flora and fauna, including the requirements of SEPP 44 will be subject to the usual investigations to be carried out with the lodgement of a development application for any future development.

Access and Transport

The subject site is accessed via Longleat Lane which is connected to Bells Line of Road to the north-east. Public transport is limited to the Westbus Route 680 service between Richmond and Bowen Mountain and Route 682 service along Bells Line of Road between Richmond and Kurrajong. The Route 682 service operates every 30 minutes during peak periods. Given the limited frequency of services, future occupants of the proposed subdivision will most likely rely upon private vehicles for travel and transportation purposes.

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 relevant planning proposals.

In previous reports to Council dealing with other planning proposals within the vicinity of Kurmond and Kurrajong 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. It is considered this will be 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. In response to this issue the Applicant states:

"It is envisaged that if this Planning Proposal were to proceed a contribution would be levied on the subdivision for each additional lot created to assist in implementation of traffic infrastructure in the locality. Alternatively, the landowner could enter into a Voluntary Planning Agreement with Council. An amount approximating what might come from the S94 Plan can be levied on the resultant subdivision if the S94 Plan has not at that time been implemented."

Bushfire Hazard

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

The planning proposal is not accompanied by a bushfire assessment report. Given the site is identified as bushfire prone, the planning proposal will be referred to the NSW Rural Fire Service for comment following any 'Gateway' determination from DP&E in accordance with the s.117 Direction 4.4.

Agricultural Land Classification

The site is shown as being Agriculture Land Classification 3 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 factors 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."

Given the proximity of the site to surrounding rural residential properties, and the size and slope of the site and its proximity to Kurmond Village, it is considered that it is unlikely the site could be used for a commercially sustainable agricultural enterprise.

Services

The Applicant advises that the site has access to electricity, telecommunication, garbage and recycling services, but does not have access to a reticulated sewerage system or reticulated water.

The planning proposal is not accompanied by a wastewater feasibility assessment report or any other relevant statement or study in relation to the existing systems associated with the two existing dwellings. It is noted that Council records indicate that only the system attached to the main heritage dwelling is registered with Council. In this regard, a detailed assessment will need to be undertaken in relation to proposed Lot 11 to establish whether there is an existing system that is performing satisfactorily, or to demonstrate that this lot can support such a system. It is therefore recommended that a wastewater feasibility assessment report be requested in this regard. The DP&E will consider this as part of their 'Gateway' determination, and if required will request further information/consideration of this matter.

Heritage

The site is identified as a heritage item under Schedule 5 *Environmental Heritage* of LEP 2012. The Applicant has not provided a detailed assessment in respect to heritage, however advises:

"One of the houses on the site is a listed heritage item within Council's LEP (No 1458 "Longleat"). The visual curtilage around this house is wholly contained in the larger of the two proposed lots. Subdivision as proposed would have no impact on the heritage significance of the house although for the purposes of the LEP heritage map the entire site is contained within the heritage listing."

It is recommended that a heritage assessment identifying the significance of the site, and the house and its curtilage, and an assessment of the impacts a proposed subdivision may have on the significance of the item be requested following a 'Gateway' determination.

Section 94 Contributions or a Voluntary Planning Agreement

The planning proposal will be subject to either a Section 94 Developer Contributions Plan (S94 Plan) or a Voluntary Planning Agreement (VPA).

The Applicant has acknowledged that if the planning proposal is to proceed further, preparation of a Section 94 Developer Contributions Plan or a draft VPA to support the required infrastructure upgrade in the locality as a consequence of the development would be required.

Conformance to Community Strategic Plan

The proposal is considered to be consistent with the Looking after People and Place Directions theme statement, and specifically:

- 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

Based on the assessment within this report, it is considered that some form of subdivision to support the existing rural residential development on the subject site is appropriate and feasible. It is therefore recommended that Council support the preparation of a planning proposal to allow subdivision of the site into lots having a minimum size of 4,000m² and 2ha.

More specific details and requirements in support of the planning proposal discussed in this report can be addressed following the 'Gateway' determination.

It is also recommended that if the DP&E determines that the planning proposal is to proceed, a S94 Plan or a draft VPA to support the required infrastructure upgrade in the locality to support the development be prepared prior to the finalisation of the planning proposal.

Financial Implications

The Applicant has paid the fees required by Council's fees and charges for the preparation of a local environmental plan.

If the planning proposal is to proceed further, a draft VPA to support the required infrastructure upgrade in the locality to support the development would need to be prepared by the Applicant in consultation with Council.

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:

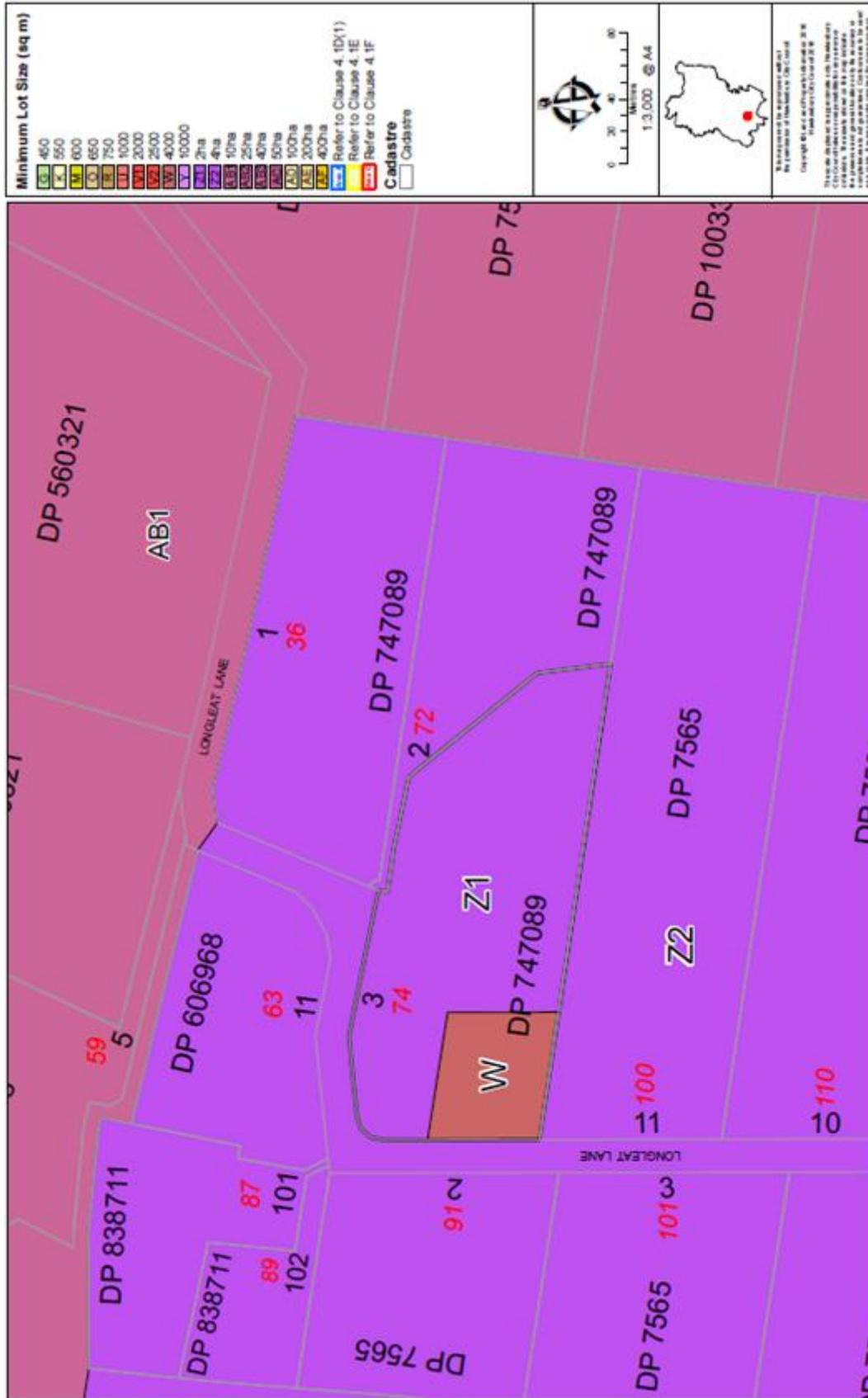
That:

1. Council support the preparation of a planning proposal for Lot 3 DP 747089, 74 Longleat Lane, Kurmond to allow development of the land for rural residential development with minimum lot sizes of 4,000m² and 2ha subject to the submission of further studies for consideration in relation to onsite effluent disposal, bushfire protection and heritage following a 'Gateway' determination.
2. The planning proposal be forwarded to the Department of Planning and Environment for a 'Gateway' determination.
3. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
4. 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

AT - 1 Proposed Minimum Lot Size Map



oooO END OF REPORT Oooo

ACTION ITEM

ADOPTED

At the ORDINARY Meeting held on *9 August 2016*

User Instructions

To view the original Agenda Item, refer to the Meeting tab using the above date.

Resolved Items Action Statement

Action is required for the following item as per the Council Decision or Resolution Under Delegated Authority.

Item: 169 **CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 74 Longleat Lane, Kurmond - (95498, 124414, 136641)**

Mr Glenn Falson addressed Council, speaking for the recommendation.

MOTION:

RESOLVED on the motion of Councillor Mackay, seconded by Councillor Conolly.

Refer to RESOLUTION

258 RESOLUTION:

RESOLVED on the motion of Councillor Mackay, seconded by Councillor Conolly.

That:

1. Council support the preparation of a planning proposal for Lot 3 DP 747089, 74 Longleat Lane, Kurmond to allow development of the land for rural residential development with minimum lot sizes of 4,000m² and 2ha subject to the submission of further studies for consideration in relation to onsite effluent disposal, bushfire protection and heritage following a 'Gateway' determination.
2. The planning proposal be forwarded to the Department of Planning and Environment for a 'Gateway' determination.
3. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
4. 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.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

For the Motion	Against the Motion
Councillor Conolly	Councillor Calvert
Councillor Creed	Councillor Rasmussen
Councillor Ford	
Councillor Lyons-Buckett	
Councillor Mackay	
Councillor Paine	
Councillor Reardon	
Councillor Tree	
Councillor Williams	

Councillor Porter was absent from the meeting.