



Hawkesbury City Council

hawkesbury  
independent  
hearing and  
assessment  
panel  
business  
paper

date of meeting: 28 March 2018  
location: council chambers  
time: 11:30a.m.



**HAWKESBURY INDEPENDENT HEARING AND ASSESSMENT PANEL**

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**PROCEDURAL MATTERS**

**Welcome**

The Chair will address the meeting, mentioning:

- Acknowledgement of Indigenous Heritage
- Emergency Procedures
- Recording of the Panel Meeting
- Statement regarding people addressing the Meeting
- Mobile phones.

**Attendance**

Attending Panel members will be noted for the purposes of the Minutes.

**Declaration of Interest**

The Chair will ask for any Declaration of Interests from the attending Panel members. These will then be addressed at the relevant item.

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section 1

reports  
for determination





**SECTION 1 – Reports for Determination**

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**SECTION 3 – Reports for Determination**

**Item: 001**                      **CP - DA0332/16 - 396 Bells Line of Road, Kurmond - Lot 2 DP 607906 - Subdivision to create Thirty Seven (37) residential lots within a community title scheme (95498, 137333, 76639)**

**Directorate:**                City Planning

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**DEVELOPMENT INFORMATION**

**File Number:**                DA0332/16  
**Property Address:**        396 Bells Line of Road, Kurmond  
**Applicant:**                    North Western Surveys Pty Ltd  
**Owner:**                        101 Group Pty Limited  
**Proposal Details:**        Subdivision involving earthworks, the filling of dams, the construction of roads including a creek crossing, the installation of a sewer main and the revegetation of riparian area, to create thirty seven (37) residential lots within a community title scheme  
**Estimated Cost:**            \$2,000,000  
**Zone:**                            RU1 Primary Production under Hawkesbury Local Environmental Plan 2012  
**Date Received:**            23 May 2016  
**Advertising:**                3 to 17 June 2016 and 11 to 25 May 2017  
  
**Key Issues:**                   ♦ Site planning history  
                                     ♦ Attainment of zone objectives  
                                     ♦ Context of surrounding land and future development  
  
**Recommendation:**        Refusal

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**REPORT:**

**Executive Summary**

This development application seeks Council's approval for a Community Title subdivision of land at 396 Bells Line of Road.

The proposed subdivision involves earthworks, the filling of dams, the construction of roads, including one creek crossing, the installation of a sewer main and restoration works to an endangered ecological community in order to support the creation of a Community Title subdivision that will create 37 residential lots.

The land is located within the Kurmond Kurrajong Investigation Area and 396 Bells Line of Road has been subject to a site-specific Planning Proposal, being Planning Proposal No. LEP001/12, that amended the Hawkesbury Local Environmental Plan (HLEP 2012) to allow minimum lots sizes of 2,000m<sup>2</sup>, 1Ha and 1.5Ha. Importantly, this Planning Proposal did not change the underlying zoning of the land from its RU1 Primary Production zone under the Hawkesbury Local Environmental Plan 2012.

At the time of the lodgement of the development application the prevailing provisions of the HLEP2012 required a minimum lot size of 10 hectares and the development proposal was non compliant and could not be approved.

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The Planning Proposal and subsequent Amendment to HLEP 2012 was gazetted on 27 January 2017 and amended the relevant Minimum Lot Size Maps for the subject land. As a consequence, it became possible for the submitted Development Application to be determined as it proposes lots that are compliant with the newly established minimum lot sizes.

The critical issues in the assessment of the Development Application are:

- Site planning history
- Whether or not the proposed development adequately addresses and satisfies the objectives of the underlying RU1 Primary Production zone
- Whether or not there exists sufficient planning context to enable a properly informed decision on the potential impacts of the proposed development within this locality

The conclusion of this assessment report is that the Development Application not be supported in its current form at this time.

**Description of Proposal**

Pursuant to Section 4.12 of the *Environmental Planning and Assessment Act 1979*, (previously Section 78A(1)), this application seeks Council's approval for a Community Title subdivision at 396 Bells Line of Road, Kurmond, being Lot 2 in DP 607906.

A second property, being Lot 2 DP600414, 2 Inverary Drive, Kurmond is included in the proposal for the purpose of constructing temporary road turning areas at the termination of two internal roads. Future subdivision of this land may proceed in which case these temporary turning areas could be incorporated into formal extensions of the road pattern. The construction of a sewer pump station and creation of a community allotment for the pump station is also included on this second property.

The Development Application was lodged on 23 May 2016. This followed a lengthy process involving the land owners and the Council relating to the future development potential of the land and of the broader Kurmond Kurrajong Investigation Area, resulting in the Council's approval of Planning Proposal No. LEP001/12 and the gazettal of site-specific lot size controls for 396 Bells Line of Road. It is noted that the Planning Proposal was not gazetted until 27 January 2017. To a large extent the development application now being assessed relies upon this decision as its justification.

For correctness the application at the time of lodgement, should have been made pursuant to the provisions of Section 3.39 of the Act (previously Section 72J), as a development proposal contingent upon an amendment to the planning instrument.

The alternative of supporting the application with a formal variation request under Clause 4.6 of HLEP2012 to the minimum subdivision lot size that was still prevailing at the time of lodgement would not of been possible in this case. This is because the provisions of Clause 4.6 as they relate to subdivision within the RU1 Primary Production zone would not have allowed the extent of the necessary lot size variation. Council could not have dealt with the application.

The proposal specifically involves:

- The removal of vegetation to accommodate earthworks and road construction;
- Bulk earthworks associated with road construction, drainage and lot levelling;
- The de-watering, de-silting and removal of three dams;
- The construction of a new intersection off Bells Line of Road, as the primary point of vehicular access to the site the design of which provides for a dedicated right turn lane and a left turn in deceleration lane into the site off Bells Line or Road and dedicated left turn out and right turn out lanes from the site onto Bells Line of Road
- an internal road network to service the residential allotments including a creek crossing that effectively links the north eastern portion of the site with the south western portion of the site;
- The installation of a septic holding tank and pump station within 2 Inverary Drive;

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- The installation of a sewer main within Bells Line of Road from the development to Sydney Water's North Richmond Sewerage Treatment Plant;
- Weed removal and revegetation works within the riparian corridors that will be accommodated within the two larger residential lots; and
- A community title subdivision to create 37 residential lots, two residue lots and one community lot.

Plans of the Proposal are included as Attachment 1.

Two larger residential lots are proposed centrally within 396 Bells Line of Road to accommodate identified watercourses and riparian corridors. These allotments, which are identified as Lots 110 and 126, are to have areas of 1.3Ha and 2.25Ha respectively. The remaining residential lots, which are identified as Lots 101 to 109, 111 to 125 and 127 to 138, are to have areas ranging from 2,000m<sup>2</sup> to 4,000m<sup>2</sup>.

The majority of 2 Inverary Drive is to be created as proposed Lot 39 and is to have an area of 10.94Ha. This allotment contains a dwelling house and would essentially function as a residue lot pending the determination of Planning Proposal No. LEP001/12 which is currently being considered by the Sydney Western City Planning Panel to determine if it should proceed to Gateway.

The proposed residue lots, Lots 40 and 41, will not have a building entitlement. The creation of Lot 40 has been nominated to allow its consolidation with 1 Inverary Drive, whilst Lot 41 is to be used for landscaping and to cater for the intersection works.

A series of restrictions and measures are proposed by the Applicant to retain vegetation and maintain a more rural character for the estate. The proposed Section 88B restrictions and landscaping measures are nominated as follows:

- The implementation of a Vegetation Management Plan over the central native vegetation riparian corridors. This Vegetation Management Plan would be registered over the properties accommodating the riparian corridor;
- The provision of street trees within the local road network;
- The provision of vegetation buffers along property boundaries;
- The provision of building envelopes on the titles of Lots 110 and 126 to minimise the impact on the riparian corridor with the future development of these allotments;
- A restriction on the residential lots to require a minimum housing setback of 18m, with a side setback for corner blocks of 5m;
- A restriction on the residential lots requiring detached main garages to follow the design of the dwelling and to be constructed in the same materials;
- A restriction on the residential lots requiring garages to be constructed at the same time as the main dwelling and to have a minimum footprint of 64m<sup>2</sup>;
- Restrictions on the residential lots outlining that sheds and barns are to be limited to a maximum size of 150m<sup>2</sup> and shall be used for purposes ancillary to the dwelling only;
- A restriction on the residential lots requiring building design, materials and front fences to be approved by the developer's representative prior to the lodgement of an application; and
- The construction of rural-style fencing to the rear and side boundaries of each residential lot;

Each of the residential allotments are to be connected to a proposed private sewer reticulation system which will drain effluent to a septic holding tank and pump station located within Lot 1 which is the community lot. The effluent will then be pumped to the proposed sewer main that will gravity feed all sewerage to Sydney Water's Sewerage Treatment Plan at North Richmond.

The supplied documentation indicates that the private sewer main will be an 80mm pipe constructed wholly within the road corridor of Bells Line of Road for a length of approximately 3km. The proposed method of construction for the sewer main will be by directional drilling and horizontal boring.

### **Site and Locality Description**

The subject land comprises two parcels being:

- 396 Bells Line of Road which is legally described as Lot 2 in DP 607906
- 2 Inverary Drive which is legally described as Lot 2 in DP 600414.

The land is located on the north eastern side of Bells Line of Road and is bound by Kurmond Road to the north, Silks Road to the northeast, Slopes Road to the east and Bells Lane to the west.

The allotments have a combined area of approximately 24.03Ha, with 396 Bells Line of Road having an area of approximately 13.07Ha and 2 Inverary Drive having an area of approximately 10.96Ha. The combined land is generally rectangular in shape, save for irregular frontages to Bells Line of Road. The topography of the properties range in height from approximately 95m AHD at their highest point along Bells Line of Road down to 52-60m AHD for the central gully and watercourses. From the central gully the rear portion of the land then rises again to a height of approximately 84m AHD at the northeastern corner of the site.

396 Bells Line of Road generally consists of cleared pasture and remnant vegetation around the intermittent watercourses. A single dwelling house previously existed on the property however this was demolished with a Complying Development Certificate. The presence of asbestos has been identified in the location of the former house. Access to this property is available from Bells Line of Road.

2 Inverary Road, like 396 Bells Line of Road, comprises of cleared pasture and remnant vegetation. A dwelling house exists to the raised frontal portion of the property. Access to the property is available from Inverary Drive, which is a slip road off Bells Line of Road.

The subject land is located within the broader Kurmond Kurrajong Investigation Area.

Surrounding development generally comprises of rural, rural residential and agricultural land. Land to the northwest fronting Bells Line of Road comprises of a number of large residential lots of approximately 4,000m<sup>2</sup>, whilst land to southeast fronting Bells Line of Road comprises of a number of residential lots of approximately 2,000m<sup>2</sup>. This pattern is common where residential dwellings address the road, more often than not along ridge lines, and provide a semi urban streetscape. This is in contrast to the larger rural properties, such as the subject site, that sit behind and provide the rural views and vistas that are common in the area. These larger sites also accommodate the environmental elements of the locality such as watercourses, areas of native vegetation and steeper topography.

An adjoining property at 406 Bells Line of Road operates as a restaurant known as Barrel 58 and also contains a dwelling house. This commercial property has recently undergone a major renovation. It is serviced by a on site car park to the buildings north with access directly off Bells Line of Road.

Land to the north, northeast and west fronting Kurmond Road, Silks Road and Slopes Road generally comprises of rural and rural residential land. These properties have areas ranging from approximately 4,000m<sup>2</sup> to 10Ha. Properties on the western side of Bells Line of Road generally comprise of rural residential land and have areas ranging from 2Ha to 4Ha.

### **Background and planning history relevant to the Development Application**

The Hawkesbury Residential Land Strategy aims to:

- Accommodate between 5,000 to 6,000 additional dwellings by 2031, primarily within existing urban areas;
- Preserve the unique and high quality natural environment of the municipality;

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- Accommodate a changing population, which presents new demands in terms of housing, services and access;
- Identify on-going development pressures to expand into natural and rural areas, as well as new development both in and around existing centres;
- Identify physical constraints of flood, native vegetation and bushfire risk;
- Ensure that the appropriate infrastructure is planned and provided to cater for future development.

The Strategy does not rezone land or approve the development of areas or localities. Instead the Strategy sets a planning framework to assist in the implementation of the above aims and is to be used to guide the preparation and assessment of Planning Proposals.

In response to the recommendations of the Hawkesbury Residential Land Strategy, Planning Proposal No. LEP001/12 was lodged with Council on 26 October 2012 for 396 Bells Line of Road. This Planning Proposal sought to alter the Lot Size Map to permit the subdivision of the land to a greater degree than the 10 hectare minimum lot size that was existing at that time.

The Planning Proposal initially proposed minimum lot sizes of 4,000m<sup>2</sup> however this was later modified to propose minimum lot sizes of 2,000m<sup>2</sup>, 1Ha and 1.5Ha with the provision of reticulated sewer. The larger lot sizes were specifically to address the existing riparian corridor that bisects the site.

The amended Planning Proposal was forwarded to the Department of Planning and Environment for consideration on 17 March 2014 and Council received a revised Gateway Determination on 13 June 2014.

Council resolved on 31 March 2015 to commence structure planning and development contributions planning for the purposes of large lot residential and rural-residential development within the Kurmond Kurrajong Investigation Area. The subject site is within this investigation area.

At its meeting of 28 July 2015 Council adopted an Interim Policy comprising of a local planning approach and the establishment of development constraint principles to guide structure planning and Planning Proposals within the investigation area.

Council also resolved at this meeting that current planning proposals within the Kurmond Kurrajong Investigation Area would "*only proceed to Gateway if the 'fundamental' development constraints have been addressed*".

Part B of the Kurmond Kurrajong Investigation Area Interim Policy contained the following development constraint principles that are to be used in the assessment of Planning Proposals:

*Part B – Development Constraints*

*Planning proposals will not be supported by Council unless:*

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.*

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On 24 November 2015 Council considered a report on Planning Proposal No. LEP001/12, including the minimum lot size proposal of 2,000m<sup>2</sup> and a draft Voluntary Planning Agreement (VPA) for the development. In response this report, Council resolved to proceed with the Local Environmental Plan Amendment as follows:

*That:*

1. *Council, under the authorisation for Council to exercise delegation issued by the Department of Planning and Environment's Gateway determination, proceed with the making of an LEP that will give effect to the revised proposal described in this report.*
2. *Council publically exhibit the Draft Voluntary Planning Agreement attached to this report for a minimum of 28 days with the following amendment to Clause 9.3:*

*Clause 9.2 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.*

3. *The Voluntary Planning Agreement be reported back to Council following public exhibition prior to finalisation.*

The Local Environmental Plan Amendment to establish minimum lot size controls of 2,000m<sup>2</sup>, 1Ha and 1.5Ha for 396 Bells Line of Road was gazetted on 27 January 2017. The VPA for the land was executed on 20 April 2017.

Following consideration of a Mayoral Minute, Council at its Ordinary Meeting of 30 May 2017 resolved to undertake a review of the Hawkesbury Residential Land Strategy as follows:

*That:*

1. *Council staff initiate a review of the Hawkesbury Residential Land Strategy and in doing so draw on all available data such as Council's recently adopted Community Strategic Plan and additional data as it becomes available, for example, Council's Economic Development Strategy, Council's Comprehensive Hawkesbury Traffic Study, the Hawkesbury-Nepean Flood Risk Management Strategy, the Hawkesbury Tourism Strategy, the Greater Sydney Commission's District Plan, the Rural Land Strategy, the Western Sydney 'City Deal' and data from the recent Census.*
2. *Council consider the Commonwealth Governments 'City Deal' focus areas in relation to:*

- *infrastructure*
- *employment*
- *housing*
- *environment and liveability*
- *improving coordination and integration between infrastructure, land use,*
- *housing and environmental planning*

*as a further consideration in the ongoing assessment of the nine applications that have received Gateway Approval to progress to formal Community Consultation and assessment by Council Planning Officers.*

3. *Council reaffirm its previous resolution in relation to new Planning Proposals in relation to land, which read as follows:*

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*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.*

4. *Council be provided with regular updates regarding the progress of reviewing the Hawkesbury Residential Land Strategy and associated matters.*
5. *Councillors be invited to attend a Councillor Workshop to further develop and discuss the Hawkesbury Residential Land Strategy.*

Based on this and other resolutions, Council is currently undertaking a review of the Hawkesbury Residential Land Strategy and will not accept further Planning Proposals for subdivision in the Kurmond Kurrajong Investigation Area.

The work arising out of the investigation area is vital to ensuring the appropriate long term outcomes for the Kurmond Kurrajong area. It is anticipated that towards the end of May 2018 recommendations arising out of this work will be available for Council consideration.

**State Legislation, Local Planning instruments, Council Policies, Procedures and Codes to which the matter relates**

State Environmental Planning Policy No 44—Koala Habitat Protection (SEPP No. 44)  
State Environmental Planning Policy No 55—Remediation of Land (SEPP No. 55)  
State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)  
Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) (SREP No. 20)  
Hawkesbury Local Environmental Plan 2012 (LEP 2012)  
Hawkesbury Development Control Plan 2002 (HDCP 2002)

**Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 (previously Section 79C)**

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

**a) The provisions (where applicable) of any:**

**i. Environmental Planning Instrument:**

**State Environmental Planning Policy (Infrastructure) 2007**

Bells Line of Road is a main road that is owned and controlled by Roads and Maritime Services (RMS).

As the subdivision involves the creation of a new intersection and access road off Bells Line of Road the development requires the concurrence of the RMS under the Roads Act 1993. The proposal is not however defined as 'traffic generating development' under Clause 104 and Schedule 3 of the Infrastructure SEPP.

Having reviewed the application and the most recent design of the intersection, the RMS have advised by letter dated 26 October 2017, that they raise no objection to the proposal on traffic grounds. As noted in the description of the development, the design of the intersection provides for a dedicated right turn lane and a left turn deceleration lane into the site off Bells Line of Road and dedicated left turn out and right turn out lanes from the site onto Bells Line of Road.

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The concurrence of the RMS has been provided subject to the imposition of conditions including the entering into a Works Authorisation Deed (WAD) that would enable the applicant to undertake works within the RMS road.

One of the conditions relates specifically to a portion of the site (Lot 2 DP607906) that is identified upon the HLEP2012 Land Reservation Acquisition Map Sheet LRA\_008AA and zoned Classified Road (SP2). This land is required by the RMS for road widening purposes. Pursuant to Clause 5.1 of HLEP2012, the RMS is the relevant authority for acquisition of such land. A suitable condition of consent can be imposed on any consent to ensure the land is acquired prior to the release of the Subdivision Certificate.

The final design of the intersection and road design will need to be approved by the RMS prior to the release of the Construction Certificate.

The installation of the sewer main to Sydney Water's Sewerage Treatment Plant is permissible under Clause 106(3C) of the Infrastructure SEPP.

The installation of a sewer main to Sydney Water's Sewerage Treatment Plant is proposed to service the estate with reticulated sewer. The connecting sewer main will be an 80mm pipe constructed wholly within the road corridor of Bells Line of Road for a length of approximately 3km. The proposed method of construction for the sewer main will be by directional drilling and horizontal boring.

Directional drilling is a trench-less method of underground pipe installation. Horizontal boring machines drill a pilot hole that can enter and exit at predetermined locations and change direction to avoid underground obstructions, pre-existing lines and services. The supplied documentation indicates that from this pilot hole, the new sewer pipe can be established without a pre-existing line; thus allowing for a complete underground installation without trenching.

The proposed installation should not interrupt traffic flow or impact existing public assets. However, as the work will be undertaken along the road verges there is the possibility of minor damage during under boring operations. In order to mitigate risk or damage, Council's Development Engineer recommends a bond of \$100,000 in the event that any damage to the road and road verges are not restored to Council standard.

Design and construction of the sewer main will be in accordance with relevant standards and the requirements of Sydney Water. Once the works have been completed, the new sewer main will be surveyed and registered with Dial Before You Dig to ensure the underground sewer main is protected from future excavation and disturbances.

**State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP No. 44 aims to "*encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas, to ensure permanent free-living populations over their present range and to reverse the current trend of population decline*". A series of Flora and Fauna Assessment Reports have been prepared in support of the subject application and the Planning Proposal to ascertain whether a Koala (*Phascolarctos cinereus*) population resides in the area and whether the proposal will impact upon Koala habitat.

The land subject to this application does contain Koala feed species, in particular Forest Red Gums (*Eucalyptus tereticornis*) and Grey Gums (*Eucalyptus punctata*), and accordingly the land does comprise 'potential Koala habitat'.

Whilst no Koalas were observed during ecological surveys, the more significant vegetation onsite along the riparian corridor is to be retained and revegetated which will assist in maintaining potential Koala habitat.



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Whilst it will also provide some connectivity between riparian areas on adjoining land, the subdivision layout does not achieve connectivity to the areas identified upon Council's terrestrial biodiversity mapping. See later comments in relation to Hawkesbury Local Environmental Plan 2012. This lack of connectivity is unlikely to maximise the opportunities for the retention and enhancement of koala habitat.

***State Environmental Planning Policy No. 55 – Remediation of Land***

Clause 7(1) of SEPP No. 55 outlines a consent authority "*must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose".*

Documentation supplied in support of the application indicates that 396 Bells Line of Road has been used in the past for grazing, agricultural and rural residential purposes. Based on this history a Detailed Site Investigation Report including sampling and testing has been prepared for the application.

The report identifies the presence of asbestos material associated with the former dwelling house onsite. The Detailed Site Investigation Report outlines that this material should be removed and disposed of to an appropriately licenced waste facility.

With the implementation of appropriate strategies and validation reporting the Detailed Site Investigation Report concludes that the land is suitable for residential development. If the proposed development is to be approved, then appropriate conditions of consent can be imposed to ensure any necessary site remediation and validation is undertaken prior to the issue of a Subdivision Certificate.

On the basis of the above, it is considered that the Council has adequately considered the question of land contamination and that the proposal can proceed in satisfaction of the provisions of SEPP No. 55.

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

The subject site falls within the boundary of SREP No. 20. This Policy aims "*to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context*".

SREP No. 20 requires an assessment of local environmental plans, development control plans and development applications with regard to the general and specific considerations, policies and strategies set out in the Policy. In amending the Hawkesbury Local Environmental Plan 2012 Minimum Lot Size Maps with Planning Proposal No. LEP001/12, the Council was required to consider the Regional Plan.

The submitted Statement of Environmental Effects in support of the development application contains reference to Part 2 Clause 6 of the SREP20 that deals with specific planning policies and strategies, with Clause 6(1) being Total catchment management. This is a particular challenge for the development application because it is a single development parcel within a much broader catchment.

It can be argued that the proposed retention, revegetation and protection of the riparian corridors is consistent with the environmental and flora and fauna considerations of the SREP

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No.20. The provision of reticulated sewer would satisfy its environmental and water quality objectives.

However, the site is located within the Kurrajong Kurmond Residential Investigation Area and there is no evidence provided as to how this singular development proposal is consistent with or in satisfaction of the overall outcomes that are being sought for this broader area by the regional plan. In other words, what is the total catchment management strategy in satisfaction of the SREP No. 20 and how does this development proposal satisfy it.

Without such context, it is difficult to say categorically that the subdivision will not significantly impact on the environment of the Hawkesbury-Nepean River in either a local or regional context. This is a difficult question for the applicant alone to answer. In this respect the development application, although responding to the recent change in the minimum lot size maps, could be said to be premature because the site does not yet have a full planning context around it within which properly informed catchment analysis and decisions can be made.

***Hawkesbury Local Environmental Plan 2012***

The relevant local planning instrument is the Hawkesbury Local Environmental Plan 2012 (HLEP2012). The following paragraphs assess the development proposal against the relevant provisions of the HLEP2012

Part 2 Permitted or prohibited development

The proposed subdivision is permissible with consent subject to Clause 2.6(1) of the Hawkesbury LEP 2012.

The subject land is zoned RU1 Primary Production. A small portion of the site is zoned SP2 Infrastructure – Classified Road for the purpose of road widening and is identified on the Land Reservation Acquisition Maps of the HLEP 2012 with the Roads and Maritime Service the responsible acquisition authority. This has been acknowledged in the development application and in the formal response from the RMS. If approval is granted an appropriate condition of consent will be required to ensure acquisition proceeds accordingly.

Clause 2.1 identifies the land use zones under the HLEP2012 and Clause 2.2 makes reference to the Land Zoning Maps. The subject site is identified upon the Land Zoning Map Sheet LZN\_008AA as RU1 Primary Production.

Clause 2.3 refers to zone objectives and the Land Use Tables. Clause 2.3(2) is very specific and states that the consent authority “*must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone*”. This is particularly relevant in a case such as this, where the minimum lot size for subdivision has been amended but the underlying zoning of the land has not.

The Land Use Table of the Hawkesbury LEP 2012 establishes the following zone objectives for the RU1 Primary Production zone:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage agricultural activities that do not rely on highly fertile land.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*

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- *To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

As noted, Clause 2.3(2) of Hawkesbury LEP 2012 states Council's obligation in relation to the zone objectives and their importance in assessing development proposals. Given the chance to change the zoning of the land with the recent Planning Proposal, the Council chose not to do this and therefore it should be accepted that the zone objectives will play a significant part in the assessment of the development proposal.

Conversely, a number of the zone objectives are clearly not as relevant to the proposal as they may have previously been on account of the site-specific lot size controls established by the aforementioned Planning Proposal and subsequent amendments to the Hawkesbury LEP 2012.

It is open to debate as to where the weight of determination should be placed in this case. It could be argued that the minimum lot size controls, which are development standards, should be given more weight than the zone objectives in respect of establishing the character and density of the development. In fact, the submitted Statement of Environmental Effects reads as an argument in support of this contention as it relies far more heavily upon compliance with the minimum lot size as a reason to support the proposal.

However, it is considered that this represents a misreading of the construction of the planning system that establishes a logical and sequential approach to the assessment of development proposals in the following way. A development must firstly be permissible with reference to the land use table; it must then be suitable when matched against the objectives of the zone; and then it must be compliant having regard to any particular development standards to be imposed.

This is not to say that all of the zone objectives must be satisfied, but conversely it also means that mere compliance with a numerical development standard is not enough to secure approval, particularly in a case where attainment of objectives for an area are not positively addressed.

It is instructive and of significance that the underlying zoning of the land was not changed when the minimum lot size for subdivision was changed. Despite the ability for smaller lot sizes to be considered, the land remains, at least at present, within a rural zone. It is also important that the development standard is framed as a 'minimum' standard, meaning that development for new allotments should not fall below a certain size, implying that in some circumstances it may require something above the minimum to secure appropriate outcomes.

In other words, a minimum lot size standard is not an 'as of right' allowance. In this case, of the 35 lots situated within the 2000m<sup>2</sup> minimum lot size area, the development proposes eighteen (18) at exactly the minimum lot size. A further seven (7) are less than 2200m<sup>2</sup>. Of the remaining ten (10) lots, eight (8) are between 2,200m<sup>2</sup> and 2500m<sup>2</sup>, with only two (2) being more than 2,500m<sup>2</sup>. These are Lot 2 (4000m<sup>2</sup>) at the entrance to the subdivision with frontage to both Bells Line of Road and the new entrance road and Lot 28 on the northern boundary of the site.

The accumulated impact of this maximisation of lot numbers is a development not conducive to an appropriate outcome and pushes the proposed development further away from attainment of any of the zone objectives than would be possible with a lesser number of larger lots. For instance, landscaping and character values of the locality will be difficult to retain with the

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predominance of minimally sized lots that will be the subject of future residential development of significant scale.

The larger central lots that will retain the riparian corridors are large enough to accommodate development that can be respectful of the topography of the land, however this is not the case with many of the smaller lots. In regards to the topography of the land, there is a significant fall from Bell Line of Road down to the riparian corridor, with a corresponding rise back up again on the other side of the creek. There are areas that exceed 15%. Most lots will be subject to benching with significant earthworks and the use of retaining walls. This not only expands the resultant building footprint but limits genuine opportunity for substantial revegetation and landscaping.

This could be assumed as being standard practice in standard density residential locations and could be reasonable in this location on larger lots where the balance between earthworks and retention of natural landforms would be achieved. However, the accumulated impact of a large number of minimally sized lots is of major concern.

Through the Statement of Environmental Effects, the applicant has addressed the objectives of the RU1 zone and made statements as to how the development responds to those objectives. The following Table provides a précis of the applicant's response to the zone objectives.

<b>RU1 zone objectives</b>	<b>Applicants response as expressed in SEE</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li><i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i></li> </ul>	The area is within the Kurmond village, there is no primary industry in the locality which is characterised by rural residential development	The site is not within the village area. The locality is characterised by rural residential development but with prevailing lot sizes well in excess of those proposed.
<ul style="list-style-type: none"> <li><i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i></li> </ul>	The objective is not relevant to this proposal	The objective remains relevant to the RU1 zone and is not promoted by this development. Under the current lot size, the land has limited primary industry capacity, whereas under the proposed development it would have no primary industry capacity
<ul style="list-style-type: none"> <li><i>To minimise the fragmentation and alienation of resource lands.</i></li> </ul>	The locality is unsuitable for primary industry or intensive agriculture	See above comment
<ul style="list-style-type: none"> <li><i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i></li> </ul>	Notwithstanding the RU1 zone, the locality is characterised by rural residential properties of varying sizes.	The proposed residential development of the land is unlikely to lead to land use conflicts given the existing predominance of residential occupation of the land and the limited existing agricultural activity

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RU1 zone objectives	Applicants response as expressed in SEE	Comment
<ul style="list-style-type: none"> <li><i>To encourage agricultural activities that do not rely on highly fertile land.</i></li> </ul>	The objective does not apply to the proposal	It is accepted that rural activities on the land are unlikely
<ul style="list-style-type: none"> <li><i>To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.</i></li> </ul>	The development will be connected to water and sewer systems	It is accepted that the issues of water quality have been addressed to satisfaction
<ul style="list-style-type: none"> <li><i>To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.</i></li> </ul>	The proposal includes a riparian corridor containing endangered ecological community	The proposed larger lots within the riparian corridor provides the opportunity to conserve and enhance some native vegetation however vegetation and connectivity outside of the riparian corridor is not adequately resolved
<ul style="list-style-type: none"> <li><i>To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.</i></li> </ul>	It is considered that the landscape values of the rural village area will be retained	This conclusion from the SEE is not supported. The larger lots along the riparian corridor is a positive aspect of the proposal however its value in retaining the existing landscape value of the site is likely to be significantly diminished by the predominance of smaller residential lots that will not sustain sufficient distances between the future built form or provide for any meaningful revegetation opportunities thus adversely impacting on the landscape quality of the site. The site will lose all semblance of an agricultural component

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<b>RU1 zone objectives</b>	<b>Applicants response as expressed in SEE</b>	<b>Comment</b>
<i>To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.</i>	The development will not detract from the existing rural character. The development has made suitable arrangements for reticulated water and sewer and entered into a Planning Agreement which will provide funds for the provision of public amenities	The conclusion that the development will not detract from the existing rural character is not supported. See comments above. The density and pattern of development is at odds with that existing. The work of the Kurmond Kurrajong Investigation Area has yet to be completed and it is this work that will be key in setting parameters for the future character of the locality, particularly in how it identifies key landscape qualities and opportunities for landscape and vegetation connectivity. The arrangements for water and sewer and the benefits that can accrue through the Planning Agreement are acknowledged

The existing zone objectives clearly are no longer as closely aligned with the land as they were when the larger 10 hectare minimum lot size prevailed. However, in changing the minimum lot size, a deliberate decision was made to retain the underlying zoning and therefore not to abandon the zone objectives.

It is this tension that is at the core of the assessment of the submitted DA – outcomes or compliance. This is evident in the SEE when it states that the change in lot size will ‘overtake’ some of the zone objectives and justifies this with the claim that the lot sizes now in place are complied with.

However, Council could have changed the zoning at the same time as they supported the change in minimum lot sizes, but they did not. This must be seen as significant and does not allow the applicant or the Council to put aside the zone objectives.

The work of the Kurmond Kurrajong Investigation Area is proceeding and it is this work that will be vital for the future of the locality, in all likelihood leading to a revised set of objectives for the area. This work should continue as a priority.

Although the development application has been facilitated by a change to the minimum lot size maps and the proposal is numerically compliant, it remains somewhat ‘random’ in the sense that the required strategic context remains unresolved. For instance, a proper strategic context would identify terrestrial biodiversity connections in support of the mapping in the HLEP2012. It would provide some basic future road layouts to ensure optimum safety and efficiency for the road network. It would identify the important cultural and scenic landscapes that are key to the character of the area.

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In the absence of this proper context, the underlying zoning remains as the most important yardstick for measuring the developments suitability. Therefore in the circumstances, the zone objectives must still be given weight and the proposed development does not adequately respond to those objectives.

Part 4 Principal development standards

Clause 4.1 deals with minimum subdivision lot size and makes reference to the Lot Size maps of the HLEP2012. Following the recent amendment to the HLEP2012, the Lot Size Maps show that the site is subject to minimum lot size for subdivision of 2,000m<sup>2</sup>, 1Ha and 1.5Ha. A minimum lot size control of 10Ha applies to 2 Inverary Drive.

Clause 4.1AA deals specifically with minimum lot sizes for community title subdivision.

The proposed subdivision layout corresponds with the Lot Size Map and the proposed residential allotments satisfy the minimum lot size controls of Clauses 4.1(3) and 4.1AA(3) of the Hawkesbury LEP 2012. The land comprising 2 Inverary Drive, exclusive of Lot 1 which is to contain the septic holding tank and pump station, also satisfies the minimum lot size control of 10Ha.

The proposed community title lot, Lot 1, is not subject to minimum lot size controls pursuant to Clause 4.1AA(3) of the Hawkesbury LEP 2012.

The residue lots, Lots 40 and 41 are not exempt from Council's minimum lot size controls. To address this issue it is recommended that a condition on any consent that may be issued be imposed requiring these undersized residue lots to either be consolidated with the adjoining residential lots or incorporated into the community lot. This would not prevent Lot 41 from being consolidated with the adjoining property at 1 Inverary Drive.

Clause 4.1B deals with additional requirements for subdivision in certain rural zones including the RU1 Primary production zone.

The Clause requires the consent authority to be satisfied of certain matters in its consideration of development proposals. Consent cannot be granted unless:

- (a) *the pattern of lots created by the subdivision and the location of any buildings on those lots is not likely to have a significant impact on any threatened species, populations or endangered ecological community or regionally significant wetland, waterways, groundwater or agricultural activities in the locality, and*
- (b) *the consent authority is satisfied that each lot to be created contains a suitable area for a dwelling house, an appropriate asset protection zone relating to bush fire hazard and an adequate sewage management system if sewerage is not available, and*
- (c) *if sewerage is not available—the consent authority has considered a geotechnical assessment that demonstrates the land is adequate for the on-site disposal of effluent, and*
- (d) *the consent authority is satisfied that there is a satisfactory ratio between the depth of each lot and the frontage of each lot, having regard to the purpose for which the lot is to be used.*

The submitted Statement of Environmental Effects does not appear to have considered this Clause.

The proposed lot layout provides for larger lots along the riparian corridor thus decreasing the potential impacts upon threatened species or EEC. This lot arrangement will not alter the impacts upon agricultural activities in the locality. Each lot will have a suitable building area and sewerage will be made available. The ratio of lot depth to lot frontage is considered acceptable.

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However the development is likely to have adverse impacts through the inappropriate pattern of lots created by the subdivision that will not advance the objectives of environmental conservation and rural character.

There are no other principal development standards applicable to the site or to the development proposal.

Part 5 Miscellaneous provisions

Clause 5.1 identifies the relevant acquisition authority for that part of the land within the SP2 Infrastructure Classified Road zone as the Roads and Maritime Service. This has been acknowledged and an appropriate condition of consent can be imposed as necessary.

Clause 5.1A does not allow consent to be granted on land identified as classified road unless it is for road purposes. The development proposal complies with this Clause.

There are no other miscellaneous provisions applicable to the site or to the development proposal.

Part 6 Additional local provisions

Clause 6.1 deals with acid sulphate soils. The land is within Class 5 as identified on the Acid Sulphate Soils map. There is no adjacent Class 1,2, 3, or 4 land and there is no work proposed that would affect the water table. No specific controls would be required.

Clause 6.4 deals with terrestrial biodiversity. Reference is made to the relevant Terrestrial Biodiversity Map which identifies the site as containing both significant vegetation and a role in connectivity between significant vegetation.

The Statement of Environmental Effects refers to reports prepared in support of the Planning Proposal and it is clear that this issue was an important part of the consideration of the Planning Proposal.

However, Clause 6.4 specifically sets out to maintain terrestrial biodiversity, requires Council to consider a specific development proposal rather than a concept and promotes the well recognised avoid, minimise and mitigate approach to ecological outcomes.

Regardless of the land use zoning or the minimum lot size, Clause 6.4 requires the consent authority to consider the following:

- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:*
  - (a) whether the development:*
    - (i) is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
    - (ii) is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
    - (iii) has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
    - (iv) is likely to have any adverse impact on the habitat elements providing connectivity on the land.*
  - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Council's mapping system indicates that the land contains Shale Sandstone Transition Forest (High and Low Sandstone Influence), Shale Plains Woodland and Regenerating Acacia Scrub vegetation communities. Shale Plains Woodland (which is also known Cumberland Plain



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Woodland) is listed as being critically endangered whilst Shale Sandstone Transition Forest is listed as endangered under the Threatened Species Conservation Act 1995.

The submitted Flora and Fauna Assessment Reports, including seven part tests of significance, detail that the development of the land is unlikely to significantly impact threatened species, populations or endangered ecological communities subject to the removal of weeds, the retention and revegetation of the riparian corridors and the protection of the riparian corridor via a Vegetation Management Plan. Furthermore, the reports do not identify the three existing dams on 396 Bells Line of Road as comprising significant aquatic habitat.

A Vegetation Management Plan, including species selection and ongoing monitoring and maintenance requirements, has been provided and may be registered on the title of the affected residential lots to satisfy the environmental and conservation objectives of the zone. The retention and protection of the riparian corridors and the provision of a single crossing over a watercourse is also consistent with Kurmond Kurrajong Investigation Area Interim Policy.

However, the fundamental challenge for the development proposal is in dealing with these issues within the broader context of the locality, especially taking a biodiversity perspective when the obvious interconnections between this site and adjoining sites are considered. This is particularly critical in relation to those proposed lots on the north eastern side of the riparian corridor that is land identified as being a connectivity area between the higher grade vegetation within the riparian corridor and important vegetated areas further north east.

Clause 6.4(3) (a) iii) and (iv) are specific in their intent to avoid fragmentation and ensure connectivity of important native vegetation areas. The proposed larger lots have been included to provide protection to the riparian areas and this is a positive element of the proposal. However, the effect of the majority of the lots within the subdivision will be to dislocate identified biodiversity corridors, in particular to the north east of the riparian corridor. This potential impact is exacerbated by the predominance of lots proposed at the absolute minimum lot size. Although they may be compliant, they are not entirely suitable for the sites circumstances.

The combination of small lot size, slope and residential development expectations will result in little to no ability to maintain any native vegetation as the lots will be dominated by the built form.

It is conceivable that a more holistic overview of the locality would allow for a different response - one more aligned with the imperatives of Clause 6.4 rather than an outcome that seems exclusively to focus on the riparian corridor. Even allowing for the importance of that corridor, the outcome is not considered acceptable and represents an opportunity lost in achieving an important ecological objective of Council.

Section 6.7 of the Hawkesbury LEP 2012 requires the provision of essential services to new allotments. A feasibility letter from Sydney Water outlines that potable water and reticulated sewer may be made available, whilst conditions may be imposed regarding electricity and telecommunications facilities. Confirmation of these services would be required prior to the release of any relevant Construction Certificates or Subdivision Certificates.

**iii. Development Control Plan applying to the land:**

***Hawkesbury Development Control Plan 2002***

The proposal has been considered against the provisions of the Hawkesbury DCP 2002:

Part A Chapter 3: Notification:

The application was originally notified from 3 to 17 June 2016 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. With the submission of amended plans and details of

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the proposed sewer line the application was re-notified from 11 to 25 May 2017. A total of four submissions were received in response to the notification and are discussed later in this report.

Part C Chapter 1 Landscaping

This Section of the DCP requires consideration of the existing environment into which development will be placed. It requires development to retain, protect and enhance existing native vegetation.

In this case, this requirement is complementary to the biodiversity imperatives of the HLEP2012.

The proposed development responds positively in respect of the riparian corridor, but less so for the other areas of the site. Refer to previous comments.

Part D Chapter 3 – Subdivision

Section 3.2 deals with Flora and Fauna Protection and has the basic aim of protecting bushland and habitats from the impacts of subdivision and of subsequent development. It has two specific objectives as follows:

- *The movement of fauna species on sites should be maximised so as to maintain biological diversity within the subdivision and road network.*
- *Opportunities for revegetation should be pursued as part of the subdivision process as a trade off for site development and as a means of value adding to the environment through the development process.*

The submitted Statement of Environmental Effects has addressed the particular rules set out in this Section of the DCP that are designed to give effect to the main objectives.

As noted earlier in the comments relating to landscaping, the development proposal responds in a positive way to these two objectives and to the rules of the DCP through the identified riparian corridor, but it is not convincing outside of that area. Simply put, the subdivision pattern outside of the riparian corridor will not allow for the movement of fauna species and does not provide for revegetation opportunities. It does not allow for linkages to other bushland areas other than the riparian corridor despite the connectivity importance identified upon the Terrestrial Biodiversity maps of the HLEP2012.

Section 3.3 deals with Visual amenity and has the basic aim of ensuring that subdivision and subsequent development does not impact upon important views and vistas. Also it seeks to ensure that subdivisions are designed so as to preserve and enhance visual landscapes.

The proposed development does this in a satisfactory manner in relation to the riparian corridor but not in relation to the smaller lots either side of the riparian corridor. The density of development is such that the built form will completely dominate the landscape character of the locality. The resultant visual impact will be significant.

Section 3.8 deals with Rural and Rural-Residential subdivision. The submitted Statement of Environmental Effects provides comments in relation to this Section as far as it is relevant to the development proposal.

Council's Development Engineer has reviewed the proposal and is supportive of the road design plans subject to the imposition of conditions.

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The application proposes the dedication of the roads to Council upon the completion of the development. Whilst it is not typically Council's policy to take on roads associated with a community title subdivision, it has been argued that in this instance the roads are to be constructed to Council's design specifications for a medium collector and local roads and the dedication of the roads as public roads will also allow Council garbage trucks to service the estate. This is a matter that should be more fully resolved before any development consent was to be issued and as for other issues, it would benefit from a comprehensive consideration of the Kurmond Kurrajong Investigation Area.

**iv. Planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F:**

The executed VPA requires the payment of contributions based on the number of residential allotments. A contribution of \$30,000.00 applies per lot and will be indexed based on changes to the Consumer Price Index (CPI).

Appendix 1 of the VPA indicates that the collected contributions will help to fund bus shelters, the relocation of speed zones, an upgrade of the Kurmond to North Richmond Cycleway, North Richmond Jetty upgrade, fire station upgrades, Library computer equipment, Museum items, car park lighting and landscaping works.

**v. Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

The proposal is generally consistent with the Upper Hawkesbury River Estuary Coastal Zone Management Plan. Conditions may be imposed to ensure that erosion and sedimentation control measures are implemented for the works.

**vi. Matters prescribed by the Regulations:**

The payment of development contributions is required under the executed VPA for 396 Bells Line of Road.

**b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:**

**Context and Setting**

The setting for the proposed development is a locale that exhibits a range of residential and rural residential development on properties of various sizes. It exhibits semi rural characteristics rather than any specific agricultural land use pattern. Despite the multitude of existing dwelling houses that surround the subject site, there remains many views and vistas that reinforce the rural rather than the residential ambience of the area. The development pattern tends to be smaller lots with residential development along the road pattern, with larger rural lots, such as the subject site, sitting behind providing the dominant rural views and vistas and the still obvious rural setting to the locality.

The context however is far more problematic because it is an area in transition. There is no doubt that at some time in the near future additional development will occur, not only upon the subject site but also upon adjoining sites. However, despite the transition, the context is still predominately rural, not residential.

Oddly, this situation is currently not to the applicant's advantage because the full context of that transition has not been determined sufficiently to answer the multitude of questions that arise as an area moves from one dominant development scenario to another.

This lack of a full planning context leads to significant questions over whether this development proposal is a positive or negative impact for the locality. On the balance of the prevailing

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planning controls, the conclusion is that the development as proposed is more likely to be a negative outcome and therefore should not be supported at this time.

**Access, Transport and Traffic**

For the proposed development of the site, this issue has been satisfied through the agreement of the RMS to the new intersection design between the proposed subdivision and Bells Line of Road.

It is unclear however if this access point and arrangement would be the optimum outcome if the total context of the Kurmond Kurrajong Investigation Area was considered. Similar to the comments above relative to context, approval of the proposed new road and intersection will impact upon future traffic management and road layout decisions that will need to be made for the broader Kurmond Kurrajong Investigation Area. It is not considered that these questions have been adequately addressed.

**Utilities**

Appropriate arrangements have been made for the servicing of the proposed development. It is unclear whether or not future subdivisions within the locality would lead to a different arrangement.

**Flora and Fauna**

The proposed development makes adequate provision for the protection of vegetation within the riparian corridor. However, the land either side of the corridor, in particular to the north east of the creek, effectively splits the riparian corridor from the other identified terrestrial biodiversity land on the HLEP2012 Terrestrial Biodiversity maps. The number of lots proposed and the density of development upon them will not allow for any connectivity to other 'green web' lands.

Similar to the comments above in relation to context, approval of the development in the current form will impact upon the future biodiversity connectivity and landscape conservation decisions that will need to be made for the broader Kurmond Kurrajong Investigation Area.

**Social Impact in the Locality**

In a general sense, the availability of additional housing choices should be seen as a positive social outcome.

In this particular circumstance there is the strong possibility of a future social problem arising due to the poor relationship that will be created between the existing restaurant at 406E Bells Line of Road that shares a common boundary with the development site. This business establishment has only recently undergone extensive renovations. It has a car park, garbage storage area and outdoor dining verandah directly adjoining proposed lots within the subdivision.

There is a strong potential of future conflict between this existing commercial use and the new residential dwellings that will be built on these lots. Such an outcome could be mitigated through a different lot layout that incorporated larger lots in the vicinity of the restaurant to enable larger separation distances to be established. The current lot layout has not adequately considered this neighbouring land use and it has not been acknowledged in the submitted Statement of Environmental Effects.

**Cumulative Impacts**

The development is proposed within an area that will in all likelihood be subject to further development pressures. However, at this stage the extent of such proposals is unknown and therefore any potential cumulative impacts cannot be assessed.

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The claim in the Statement of Environmental Effects that there is no cumulative impacts associated with the proposal is not accepted. This is because there will likely be similar developments repeated throughout the locality. There is however limited opportunity to assess how these developments aggregate to deliver a coherent and sustainable outcome for the locality. That is the work of the Kurmond Kurrajong Investigation Area.

Without the ability to assess how numerous developments ‘come together’, then the risk is high that cumulative impacts will not be well managed.

This is a critical concern as to why support for the development proposal at this point in time is difficult to recommend.

**c) Suitability of the site for the development:**

The site is suitable for some subdivision development. The recent planning history is well documented and supports this contention. As the submitted SEE points out, the site is within the Kurmond Kurrajong Investigation Area and the genesis of the recent amendment to the lot size maps of the HLEP2012 was the Hawkesbury Residential Land Strategy.

However, successful long term planning outcomes still require development approval decisions to be made in the appropriate context with the benefit of all necessary information. Only then can the consent authority be assured not only that a site is suitable for development but that a particular development proposal is suitable for that site in the prevailing circumstances.

Important issues of biodiversity, landscape character, traffic and access and utility services would all benefit from the holistic appraisal that can be supplied by the Kurmond Kurrajong Investigation Area work.

**d) Any submissions made in accordance with the Act or the Regulations:**

The application was originally notified from 3 to 17 June 2016 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. With the submission of amended plans and details of the proposed sewer line the application was re-notified from 11 to 25 May 2017. A total of four submissions were received in response to this notification, with two submission received in response to the first notification period and an additional two submissions received in response to the second notification period.

The matters raised in these submissions are detailed below in italics, followed by a response by the assessing officer:

*Bells Line of Road experiences significant traffic congestion and the approval of this and other developments west of the river will exacerbate this issue.*

Officer's comment: As discussed previously Bells Line of Road currently experiences significant traffic volumes during peak periods. The cumulative impacts of planning proposals for subdivision within the Kurmond Kurrajong Investigation Area will be investigated by Council as part of the review of the Hawkesbury Residential Land Strategy and any further Structure Planning.

The submitted Traffic Report indicates that the development will generate a minor level of additional traffic to and from the site and will not significantly impact upon the performance of Bells Line of Road.

Neither the RMS nor Council's Development Engineer have objected to the subject proposal on traffic grounds.

The submission however is consistent with the view that the full context of planning in this area is not available.

*The prepared Traffic Report contains a number of errors and the prepared surveys are limited.*

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Officer's comment: See above comments.

A detailed design of the intersection has been reviewed and the concurrence of the RMS has been provided.

*The proposal relies on a Planning Proposal that is yet to be finalised.*

Officer's comment: Planning Proposal No. LEP001/12 for 396 Bells Line of Road was approved by Council and the subsequent amendments to the Hawkesbury LEP 2012 were gazetted on 27 January 2017.

*The proposed 2,000m<sup>2</sup> lot sizes are inconsistent with the surrounding properties and the prevailing rural character.*

Officer's comment: All lots proposed are compliant with the minimum lot size maps as amended by Planning Proposal No. LEP001/12.

Rural character and outlook impacts are discussed elsewhere in this report.

*The proposal relies on the provision of sewer from Sydney Water however no approval has been obtained.*

Officer's comment: A feasibility letter has been provided outlining Sydney Water's requirements for the provision of water and sewer services. The obtainment of a Section 73 Certificate from Sydney Water will be required.

*The subdivision will impact on views and the outlook from the restaurant at 406 Bells Line of Road.*

Officer's comment: The restaurant at 406 Bells Line of Road, like the majority of nearby dwelling houses, is constructed on the ridgeline and has rural views over the central gully, bushland and surrounds.

A planning principle for views was established in the judgement of *Tenacity Consulting v Warringah* [2004] NSWLEC 140. This planning principle has generally been accepted as the primary guide for assessing views although Council's planning documents do not specifically refer to this planning principle. The planning principle provides the following assessment:

*The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable).*

*To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.*

1. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
2. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from*

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*front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

3. *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*
4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The land falls gradually from Bells Line of Road from approximately 95m AHD at its highest point down to 52-60m AHD for the intermittent watercourse running northwest to southeast through the centre of the property. From the central gully the land then rises to a level of approximately 84m AHD in the northern corner.

The rear deck of the restaurant at 406 Bells Line of Road is elevated approximately 3m above the natural ground level and is located approximately 10m from its shared boundary with 396 Bells Line of Road. From this location the patrons of the restaurant benefit from rural pasture and bushland views, as well as wider district views.

Applying the above principles to the subject proposal, it is considered that the foreground views over pasture and vegetation within 396 Bells Line of Road are neither iconic nor unique and most relevantly, are over private property which the restaurant does not own or control. Whilst the views are obtained from the rear of the property, the views are not owned and there are no guarantees that views from a development will be maintained. The patrons of the restaurant would also be transient in nature.

Rural and semi-rural views are available for many kilometres along Bells Line of Road and are not unique to this location.

It is recognised that foreground views will change significantly as a consequence of dwelling construction following the subdivision. However, the further district views to the higher ridgeline to the north will not be lost due to the nature of the terrain.

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In relation to the fourth and final step established by the planning principle, the proposal complies with the relevant site-specific planning controls (minimum lot sizes) established for 396 Bells Line of Road through the Minimum Lot Size maps. It is open to debate as to the level of attainment of the zone objectives. Therefore, on balance and having considered the planning principle of Tenacity Consulting v Warringah, it is considered that the impacts to views and outlook do not, of themselves, warrant the refusal of the application, although it does contribute to the concern arising of the resultant impact of the development.

*The application should be amended to include the intended subdivision of 2 Inverary Drive.*

Officer's comment: The subject application includes 2 Inverary Drive to allow for the creation of a community lot and the construction of a septic holding tank and pump station. The creation of this lot will not result in the 2 Inverary Drive failing to comply with the minimum 10Ha minimum lot size control.

A Planning Proposal to establish planning controls for the further subdivision of 2 Inverary Drive is currently being considered by Council and the Department of Planning and Environment.

*The portion of land adjoining 1 Inverary Drive should be retained as a Torrens title lot as opposed to community title.*

Officer's comment: It is understood that a boundary adjustment is to be undertaken and a portion of land identified as Lot 40 will be dedicated to the neighbouring property at 1 Inverary Drive. However, Council has not been formally advised of this adjustment and based on Council's lot size controls a condition is recommended requiring this land to form a part of the community lot or be consolidated with adjoining lots because it is not possible to utilise the provisions of Clause 4.6 to allow a variation in lot size of the magnitude required. This could be a lot on the subject site or the neighbouring property. This recommended condition will not prevent the consolidation of this residue lot.

*The existing dam on 2 Inverary Drive should be retained for stormwater drainage purposes with the further subdivision of this allotment.*

Officer's comment: The removal of the dam at 2 Inverary Drive is not proposed with the current application.

*Covenants should be registered on the titles of the residential lots to prohibit dual occupancies.*

Officer's comment: Whilst a series of restrictions and covenants have been nominated by the developer to guide future development, no such restrictions on dual occupancies have been nominated by the developer. As attached dual occupancies are permissible within the RU1 Primary Production zone it is considered unreasonable for Council to impose such a requirement. In any event, HLEP2012 utilises Clause 1.9A, which has the effect of putting aside any such covenant that would seek to restrict or prohibit development otherwise allowed by the local planning instrument.

**e) The Public Interest:**

The claim within the Statement of Environmental Effects that the development is in the public interest is not supported.



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The public interest is best served when development proposals are consistent with the established planning regime and when areas in transition can be managed effectively to ensure there are positive outcomes resulting from development.

It is generally not satisfactory to simply be a permissible development to claim that it is in the public interest. Private interests are benefitted from individual decisions and outcomes arising from permissible development, whereas the public interest is generally served by coordinated decisions, that take into consideration a broader context and elevate outcomes above the mere perfunctory.

In this case, the land is located within the Kurmond Kurrajong Investigation Area, an area clearly in transition but not yet enjoying the benefits of a fully coordinated approach to development. This is acknowledged as a responsibility of Council and work is ongoing to have suitable guidelines and controls in place as soon as possible.

The planning history of the site has been discussed earlier in this assessment report and it is a fact that the proposed development satisfies the newly established minimum subdivision lot size controls of the Hawkesbury LEP 2012 following Council's approval of Planning Proposal No. LEP001/12.

However, the development does not satisfactorily address the objectives of the RU1 Primary Production zone; a zone that was not changed when the HLEP2012 lot size maps were amended under Planning Proposal No. LEP001/12. As a result the design and character of the subdivision is not reflective of development that would ordinarily be anticipated within the RU1 zone.

It is also considered that the layout does not adequately or comprehensively consider and respond to likely development scenarios that will arise when, as expected, the work of the Kurmond Kurrajong Investigation Area is completed. This issue is not assisted by the applicant's maximisation of lot yield with a predominance of lots at or marginally above the minimum allowable lot size. This is not a criticism of the applicant, simply a statement that in this case the maximum yield is not providing for a development in the public interest.

In summary, due to the lack of a coordinated planning structure within this area, the development outcome is not optimum and therefore the proposed development could not be said to be in the public interest at this time.

**Conclusion**

The conclusion of this assessment report is that the development proposal should not be supported at this time.

Critical in reaching this conclusion are two significant factors:

- the failure of the application to properly address the objectives of the RU1 Primary Production zone that remain in place for the site and the surrounding land despite the recent change in the minimum lot size maps for the site; and
- the inability of the application to properly consider the context of the proposed development within the Kurmond Kurrajong Investigation Area because the work being undertaken by the Council in this area is ongoing

Despite the long time frame involved since the initial Planning Proposal application was made for the subject site and despite the Council support for the amendment to the relevant Lot Size Maps, the total strategic planning process remains unresolved and therefore in some respects the Development Application is premature.

It is understandable why the applicant would have come forward with a specific development proposal, but conversely Council is not obliged to accept a development outcome that has not convincingly demonstrated its suitability within an area clearly in transition.

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One decision of Council (the Planning Proposal) does not necessarily bind them into support for another decision (a Development Application). In circumstances such as these, the consent authority should be cautious and ensure appropriate long term decisions are made notwithstanding the fact that the timetable for the making of those decisions may not be to the timetable that the applicant would prefer to work to.

It is considered an important fact that the underlying zoning of the subject site remains as RU1 Primary Production with all of the zones attendant objectives still required to be a factor in any assessment process. It is not optional to consider zone objectives. The compliance of a development proposal with a numerical development standard should not be read as sufficient justification for approval if zone objectives have not been adequately addressed and satisfied.

The conclusion of this assessment report is that this fact was not given sufficient weight by the development application, resulting in a proposal that although numerically compliant would not lead to appropriate development outcomes. Therefore it cannot be supported at this time.

**RECOMMENDATION:**

That:

1. Development Application DA0332/16 at 396 Bells Line of Road, Kurmond, for the subdivision of land into 37 residential lots in a community title scheme be REFUSED for the following reasons:
  - a) The proposed development fails to adequately respond to Clause 2.3 of Hawkesbury Local Environmental Plan 2012, Zone objectives and Land Use Table, specifically the objectives of the RU1 Primary Production zone, in its failure to ensure the development retains or enhances existing landscape values and its failure to ensure the development does not detract from the existing rural character of the site and the surrounds. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act).
  - b) The proposed development fails to adequately address and respond to the requirements of Clause 4.1B Hawkesbury Local Environmental Plan 2012, Additional requirements for subdivision in certain rural, residential and environmental protection zones, in the inappropriate pattern of lots created by the subdivision that will not advance the objectives of environmental conservation and rural character. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act).
  - c) The proposed development fails to adequately respond to Clause 6.4 of Hawkesbury Local Environmental Plan 2012, Terrestrial biodiversity, in the likely fragmentation and disturbance of biodiversity composition on the land and adverse impacts on habitat elements that currently provide connectivity. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act).
  - d) The proposed development is likely to have adverse impacts upon biodiversity within the locality as well as adverse impacts upon the existing character of the locality, specifically the prevailing rural views and vistas. (Section 4.15(1)(b) of the Environmental Planning and Assessment Act).
  - e) The proposed development is currently not in the public interest because it has not adequately demonstrated how it appropriately complies with and complements the broader planning outcomes being sought by Hawkesbury City Council through the work of the Kurmond Kurrajong Investigation Area. (Section 4.15(1)(e) of the Environmental Planning and Assessment Act).

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2. Council officers:
  - a) Review the Contamination Documentation supplied with the application, in particular those sections that confirm the presence of asbestos material associated with the former dwelling house on site
  - b) Work with the owner to confirm how this material should be removed and disposed of to an appropriately licensed waste facility

**ATTACHMENTS:**

- AT - 1** Plans of the Proposal  
**AT - 2** Locality Plan  
**AT - 3** Aerial Photograph

**oooO END OF REPORT Oooo**

# HAWKESBURY INDEPENDENT HEARING AND ASSESSMENT PANEL

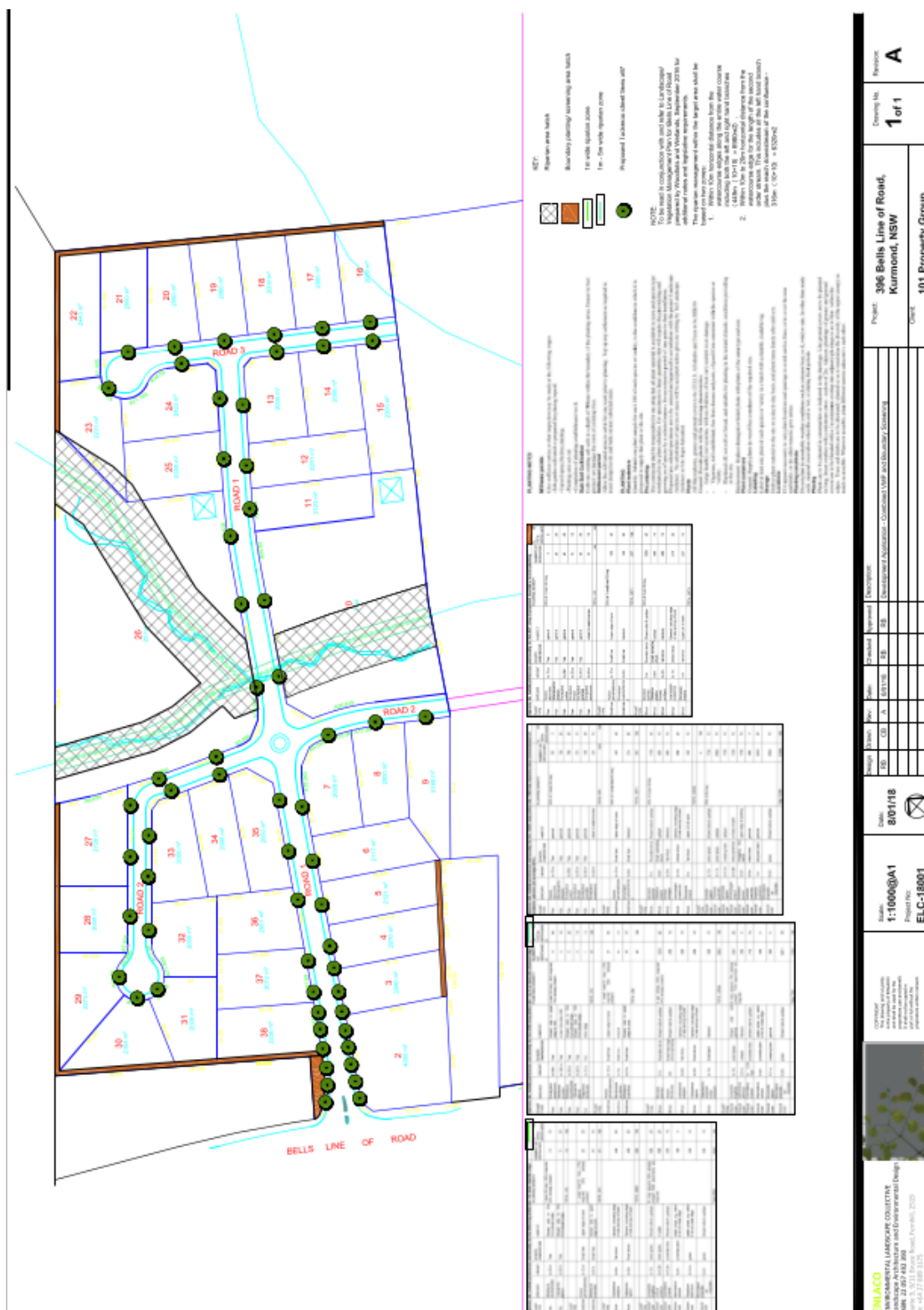
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### AT - 1 Plans of the Proposal



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This aerial map shows the Kurmond area, with a large red-outlined parcel labeled DP 600114. The map includes surrounding roads like Belis Line Of Road and Slopes Road, and various other land parcels with their respective DP numbers. A scale bar at the bottom right indicates distances from 0 to 200 meters.



## HAWKESBURY INDEPENDENT HEARING AND ASSESSMENT PANEL

### SECTION 1 – Reports for Determination

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**Item: 002**                      **CP - DA0357/17 - 122 Hermitage Road Kurrajong Hills - Lot 22 DP 806072 - Telecommunications Facility - (95498, 137060, 134788)**

**Directorate:**                City Planning

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#### DEVELOPMENT INFORMATION

**File Number:**                DA0357/17  
**Property Address:**        Lot 22 DP 806072, 122 Hermitage Road Kurrajong Hills  
**Applicant:**                    NBN  
**Owner:**                        Ms EM McDonald  
**Proposal Details:**        Telecommunications Facility - Installation of NBN Fixed Wireless Facility  
**Estimated Cost:**           \$250,000.00  
**Zone:**                         RU4 Primary Production Small Lots under *Hawkesbury Local Environmental Plan 2012*.  
**Date Received:**            22/06/2017  
**Advertising:**                10/07/2017 – 24/07/2017 and 4/08/2017 - 18/08/2017  
  
**Key Issues:**                ♦ Radiation exposure  
                                     ♦ Visual impact  
                                     ♦ Alternative site

**Recommendation:**      Approval

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#### REPORT:

##### Executive Summary

This application seeks the consent for the erection of a NBN (National Broadband Network) Fixed Wireless Facility at 122 Hermitage Road, Kurrajong Hills.

The proposed development is permitted on the land pursuant to State Environmental Planning Policy (Infrastructure) 2007. An assessment of the proposal reveals that the development is consistent having regard to the relevant planning matters applicable to the development.

Council has received five submissions in response to the application. An assessment of the issues raised in the submissions received has found that the main concerns of the development relate to information submitted with the application, property values, co-location, ecological impacts, visual impact and public health. The information submitted with the application has been reviewed and satisfies concerns raised in the submissions received.

The proposal will service the internet connection needs of the surrounding rural community, is permitted with consent and is not expected to result in any adverse impacts on the locality. It is therefore recommended that the proposal be supported subject to the conditions recommended in the report.

##### Reasons for Reporting to Local Planning Panel

The proposal is being reported to Local Planning Panel under the *Environmental Planning and Assessment Act 1979* as the application is unable to be determined under Delegation of Council Staff.

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**Description of Proposal**

The proposed Telecommunications Facility will involve the construction of a 40 metre high NBN Communications Tower at Lot 22 DP 806072, 122 Hermitage Road, Kurrajong Hills NSW 2758. This tower is to provide wireless broadband connections to homes in this rural area. The proposed facility will be located at the rear part of the site.

The proposed Fixed Wireless Facility is a terminal site. It has been designed not only to provide wireless broadband services to surrounding premises, but to also connect back into the broader fixed wireless network.

The property has a site area of 4.1350 hectares and contains a dwelling house. The total proposed works are to occupy 80 square metres of the property. The development site boundary is to be fenced with 2.4 metre high chain-link security fencing. Access to the property will be via the existing driveway that extends west off Hermitage Road. A new access, approximately 260m in length, will be constructed from the end of the existing driveway up to the NBN network compound area on the property.

The proposed monopole will penetrate the obstacle limitation surface prepared by Richmond RAAF Base, which precludes complying development under Clause 116A(2)(g) of State Environmental Planning Policy (Infrastructure) 2007. As such development consent is required from Council.

The application is supported by the following;

- Environmental EME Report
- Vegetation Survey and Koala Habitat Assessment
- Aviation Assessment

**History of Approvals**

DA1028/04      Shed

DA0544/13      Dwelling House – Conversion of existing shed to a dwelling and attached garage

**Council Policies, Procedures and Codes to which the matter relates**

Telecommunications Act 1997

NSW Telecommunications Facilities Guideline Including Broadband (2010)

State Environmental Planning Policy No. 44—Koala Habitat Protection (SEPP No. 44)

State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)

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

Hawkesbury Local Environmental Plan (LEP) 2012

Hawkesbury Development Control Plan (DCP) 2002

**Matters for consideration under Telecommunications Act 1997**

The *Telecommunications Act 1997* sets out the requirements for low impact telecommunication facilities under Schedule 3 – Carriers' powers and immunities. If the proposed tower is deemed low impact by this Act then the proposal is exempt from requiring planning consent. In this case, the telecommunications tower for NBN is not considered in the Act to be low impact due to its size and scale, and therefore requires the consent of Council.

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

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

**a. The provisions of any:**

**i. Environmental Planning Instrument:**

**State Environmental Planning Policy No. 44 – Koala Habitat Protection**

The proposal will require the removal of nine native trees. The submitted Vegetation Survey and Koala Habitat Assessment Report indicates that the majority of the trees proposed to be removed are semi-mature Sydney Green Wattles (*Acacia parramattensis*). These trees have low amenity and ecological resource values, and are not potential or core koala (*Phascolarctos cinereus*) habitat.

**State Environmental Planning Policy (Infrastructure) 2007**

This Policy sets out a consistent plan by which infrastructure services are developed in NSW. Clauses 116 and 116A Exempt and Complying Development specify the circumstances in which the development may be classified. In this case, the telecommunications tower will penetrate the obstacle limitation surface prepared by Richmond RAAF Base, which precludes exempt and complying development under Clause 116 and 116A of the Infrastructure SEPP. As such development consent is required from Council.

Telecommunications towers are permissible with consent on any land under Clause 115(1) of the Infrastructure SEPP.

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

The proposal is consistent having regard to this Plan. The proposed telecommunications tower to be installed would not have an impact on the scenic quality of the Hawkesbury-Nepean River or the quantity or quality of water entering the catchment.

**Hawkesbury Local Environmental Plan 2012**

An assessment of the proposed development against the relevant provisions of Hawkesbury LEP 2012 follows:

Clause 1.2 – Aim of Plan

The proposal is considered to be consistent with the aims of the Plan as outlined in Clause 1.2(2) of Hawkesbury LEP 2012 in that it will not result in significant environmental impacts.

Clause 2.2 – Zoning of land to which Plan applies

The site is zoned RU4 Primary Production Small Lots under the Hawkesbury LEP 2012

Clause 2.3 – Zone objectives and Land Use Table

The proposal is permissible under Clause 115(1) of the Infrastructure SEPP as opposed to the Hawkesbury LEP 2012.

The proposal is consistent with the overall objectives of the zone in that it would not constrain primary industry or other compatible land uses. Development is to occur in a way that does not have a significant impact on the water catchment of nearby water systems and land surface conditions; and enhances the extension and provision of public amenities and services by means of improved internet connection.

Clause 4.3 – Height of Buildings

Not applicable. Telecommunications facilities are not defined as 'buildings' and accordingly the building height provisions of the Hawkesbury LEP 2012 do not apply.

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Clause 6.4 – Terrestrial Biodiversity

The land is identified on the *Hawkesbury Local Environmental Plan 2012 Terrestrial Biodiversity Map* as being affected by biodiversity. However, the proposed trees to be removed are limited to nine trees due to the siting of the proposed development and in order to provide an adequate Asset Protection Zone around the facility.

The submitted '*Vegetation Survey & Koala Habitat Assessment*' report prepared by James Gibson and Grant Harris concluded that '*None of the species proposed for removal are listed under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) or Threatened species Act 1995 (TSC Act).... The proposed works will not adversely impact vegetation and neighbouring properties*'.

Council's Tree Management Officer reviewed the report and supports the recommendations listed in the above report. These matters will be included in Council's recommendations.

**ii. Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:**

No Draft Environmental Planning Instruments apply to the subject development.

**iii. Development Control Plan applying to the land:**

**Hawkesbury Development Control Plan 2002**

The proposal is generally consistent with the aims and objectives of the Hawkesbury DCP 2002. An assessment of the proposal against the relevant provisions of this Plan follows:

Part A: Chapter 3 – Notification

The notification of the development was required under Part A Chapter 3 of the Hawkesbury DCP 2002. The application was exhibited twice from 10/07/2017 to 24/07/2017 and from 4/08/2017 to 18/08/2017 due to the distribution of incorrect site plan.

Five submissions were received, and are discussed below.

Part C: Chapter 2 – Car Parking and Access

The proposal satisfies the aims and objectives of this control by ensuring adequate off street parking, access and exit of all vehicles in a forward direction and not increasing the congestion or demand on the public road. Parking will not be required as the facility is self-operating. One vehicle will be used for servicing three times a year therefore parking is deemed adequate.

Part C: Chapter 3 – Signage

Signage will not be required for advertising purposes. The only proposed signage is to be fixed on the security fence to avoid trespassers.

Part C: Chapter 4 – Soil Erosion and Sediment Control

Silt and sediment control measures are to be installed and will be maintained until the facility is operational. No waste or contamination is expected. After the facility is operational, waste will not be generated as it is unoccupied.

Part C: Chapter 8 – Management of Construction and Demolition Waste

The proposal aims to remove any demolition and construction waste after the facility is constructed. A waste management plan is not required as the facility will not generate any

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waste after it is constructed. The type of development is not expected to generate excessive waste due to the size and nature of the works.

*Part C: Chapter 9 – Preservation of Trees and Vegetation*

As stated above, it is proposed to remove nine trees to establish the nbn access track, compound and asset protection zone around the facility. The removal of these trees will not affect the diversity of the corridor and is considered as being low impact. Council's Tree Management Officer has reviewed the proposal and raised no issues.

Generally, the imposition of a standard condition requiring the planting of two replacement trees for the removal of each tree is recommended to offset their loss however due to the size of the property consisting of a large number of trees, nine replacement plantings are recommended.

Support of the proposal would not result in any significant impacts to any native flora and fauna habitats or significantly impact the amenity or visual appearance of the locality. The proposal is not in conflict with the objectives of the clause.

*Part D: Chapter 5 – Telecommunications*

This chapter specifies that:

- towers are to be located 300 metres away from any schools, child care centres, hospitals;
- towers are to be located 300 metres away from residential dwellings unless annual average exposure at any such premises is less than  $0.2\mu\text{W}/\text{cm}^2$ .
- towers must be of minimal visual impact.
- towers should be avoided in environmentally sensitive areas.

It is noted that the controls of the Hawkesbury DCP 2002 relate to mobile phone base stations only. These controls do not strictly apply to NBN Fixed Wireless Facilities as these are generally covered by federal legislation.

No community sensitive sites have been identified within a 500m radius of the proposed development location.

The closest dwelling is located within the same lot, approximately 200m of the proposed development. The next closest dwelling is located approximately 325m to the north east. It is noted that the proposal will operate in significant compliance with mandatory safety standards. The submitted EME report shows that the maximum predicted EME will equate to 0.073% of the maximum exposure limit. This is approximately 1300 times below the maximum allowable exposure limit (where 100% of the limit is still considered to be safe).

The minimal visual impact of the proposal at Kurrajong Hills is limited by both the terrain and the location of existing development along ridgelines. The proposed facility has been set back towards the rear property boundary to maximise spatial separation from Hermitage Road and adjacent land uses and will require minimum clearing of vegetation. The proposed 40m high monopole, painted in grey, is considered to be the smallest structure capable of meeting the coverage and operational objectives. Given the substantial vegetation in the surrounding area, the proposed monopole will be naturally screened from the adjacent dwellings.

The proposal will require a small amount of vegetation clearing to construct the proposed compound and asset protection zone. Due to the size and nature of the proposed facility it is considered that the proposal will not adversely affect the built and natural environment.

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- iv. **Planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F:**

Not applicable.

- v. **Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

The proposal is consistent with the Upper Hawkesbury River Estuary Coastal Zone Management Plan.

- vi. **Matters prescribed by the Regulations:**

Should the application be supported the EP&A Regulation 2000 outlines that the development is to:

- comply with the National Construction Code/Building Code of Australia (BCA), and
- be levied against Council's S94A Development Contributions Plan. Whilst the proposal is for infrastructure, it is not being carried out by Council or the NSW State Government and is not excluded from contributions under this plan.

- b. **The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:**

The following matters have been considered in the assessment of this development application:

**NSW Telecommunications Facilities Guideline Including Broadband (2010)**

This guiding document from the Department of Planning and Environment outlines the principle requirements for the establishment of infrastructure facilities in NSW which state that a telecommunications facility:

- should be sited to minimise visual impact,
- co-located wherever possible,
- must meet the health standards for exposure to radio emissions, and
- minimise disturbance and risk but maximise compliance.

The proposed location of the tower will intend to minimise the visual impact on the local community. This location was chosen to maximise spatial separation from the road frontage and adjoining land uses and incorporate existing vegetation for screening. The proposal will utilise a slimline monopole rather than a more bulky lattice tower design and will be set back from surrounding built infrastructure.

Co-location does not apply as the tower is in a rural environment. There are currently no existing telecommunications facilities located in the vicinity with the required position and/or height and/or structural suitability that are potentially capable of providing the wireless radio services to the locality on which the proposed equipment can be co-located.

The proposal meets the minimal health requirements for electromagnetic exposure by registering 0.073% of the maximum allowable exposure limit as identified in the Environmental EME Report. As a result, disturbance is not deemed as being significant and, once established, the tower poses little risk to the surrounding environment.

The proposed NBN Tower will penetrate the Richmond RAAF Base obstacle limitation. In this location, the ground level alone penetrates the obstacle limitation surface prepared by

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Richmond RAAF Base by 60m. Surrounding vegetation and built structures also penetrate the obstacle limitation surface.

The Department of Defence assessed this proposal for any potential impacts on the safety of military flying operations for aircraft using the airfield at RAAF Richmond as well as possible interference to Defence communications and radar. This proposal has been assessed as having a negligible impact on operations at RAAF Richmond subject to various conditions.

The tower is deemed as being compliant with these guidelines.

**Context & Setting & Visual Appearance**

The subject site is located within an area typified by predominantly rural and rural residential land holdings. The surrounding land retains existing mature vegetation that will screen visual impacts at ground level and soften visual impacts on the wider surrounding view sheds. The proposed monopole has been located along the rear property boundary to maximise spatial separation and ensure the existing amenity is maintained.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* which has established a four step assessment of view sharing. The steps are as follows:

1. *The assessment of the views affected,*

The Court said: *'The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than view without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.'*

2. *Consideration from what part of the property views are obtained,*

The Court said: *'the second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.'*

3. *The extent of the impact,*

The Court said: *'the third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating'; and*

4. *The reasonableness of the proposal that is causing the impact*

The Court said: *'The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable'.*

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The surrounding land is undulating and the tower is set against a significant vegetated ridge line that rises more than 200m above the height of the structure, offering an appropriate backdrop to screen the monopole. To the east of the tower there is a vast landscape picture offering distant city view. No such iconic views (e.g. the Opera House, the Harbour Bridge or North Head) will likely to be obstructed by the proposed tower.

Submission has been received claiming that the proposed tower has a potential to obstruct the easterly views from any future building to be developed on the clear part of the hill. However, no such development proposal for any building currently exists with Council and it is very hard to assess the view loss qualitatively from any part of the future building.

The Court poses two questions in *Tenacity Consulting v Warringah* (2004) NSWLEC 140 (paragraphs 23-33). The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

As discussed in the previous sections, the proposal complies with the relevant legislations and environmental planning controls. A number of alternative sites have been considered by the applicant, however, not counted for a number of reasons. These have been discussed in the sections under submissions in this report.

It is noted that there are restrictions in lowering the height of a telecommunications facility, as the panel antennas must be at a height where there are no substantial obstructions to the signal transmission and transmission dishes must achieve a direct line of sight with adjoining network facilities. Whilst the proposed facility is not entirely screened by vegetation it is sited at an elevation and adjacent to dense vegetation that aid in concealing the facility. The proposed tower will be located approximately 600m away, towards the rear part of the site, and as such would be some distance from public access road. The distant view would result in the tower appearing smaller that is would be upon closer inspection. From top of the hill, towards the easterly view, it will not represent a one off, isolated vertical element in the locality, but rather an additional vertical element to the power pole elements and trees that already exist in the area. The design of the monopole structure itself has been developed with the aim of minimising a bulky profile and utilising a grey colour which will best blend with the background which is typically the sky.

The development is therefore not expected to significantly adversely impact upon the amenity or visual amenity of the area. The context and setting is deemed satisfactory for the location of a telecommunication tower.

**Access**

The NBN network compound will be accessed via the existing crossover and driveway off Hermitage Road. The existing driveway extends from the road frontage to the existing dwelling on site. It is proposed to install a new access track, approximately 260m in length, from the end of the existing driveway to the proposed compound location. It will require the removal of two trees and pruning of two trees to facilitate safe, all weather access. Access is secured by way of lease agreement and will be registered on the land title where it is to be established.

The development is expected to generate minimal traffic as the facility will only be inspected/serviced three times a year and will remain unattended at all times. Therefore, access is deemed satisfactory.

Traffic on the main road is expected to increase with trucks and workers over the 10 week proposed construction time however Hermitage Road is a low traffic generator therefore the minimal increase in traffic is deemed satisfactory.



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**Utilities**

The facility will be powered by an existing point of supply, connected via an underground sub main cable. The proposed underground power will be located in the middle of the existing and proposed access track to avoid environmental disturbance.

In the unlikely event that power is not available to the site; a temporary power supply would be required in the form of a generator.

**Flora & Fauna**

The application is for the removal of approximately nine trees. A 'Vegetation Survey and Koala Habitat Assessment' prepared by James Gibson and Grant Harris dated 27 February 2017 concludes that the proposed works will not adversely impact on the existing vegetation environment.

In addition to the siting of compound and asset protection zone, the submitted report also took into consideration the likely arboricultural impacts of the access track and crane stand area, and installation of submains cable.

The report listed few recommendations namely;

- *'Remove trees # 1, 2, 3, 4, 5, 6, 7, 11 and 12 prior to commencement of works ;*
- *Install tree protection in accordance with As4970-2009 Protection Trees on Development Sites to protect trees adjacent to proposed works;*
- *Prune the branches of trees # 8, 9 and 10 where they extend over the proposed access track area and APZ. Pruning to be undertaken by a professional arborist, in accordance with AS 4373 – 2007 Pruning of Amenity Trees;*
- *Route the submains cable along the existing seal track and proposed access track extension, avoid encroachment into tree protection zones (TPZs). Where required, under-boring can be used to minimise arboricultural impacts;*
- *The access track within the tree protection zones (TPZs) of trees to be retained should be constructed above the existing grade of permeable material;*
- *Cut and fill with battering for the access track and crane hard stand area to be placed outside of the TPZs of trees to be retained'.*

These will be conditioned in the consent if the application is recommended for approval.

**Proximity to Richmond RAAF Base**

The proposed telecommunications facility will penetrate the Richmond RAAF Base obstacle limitation surface. An 'Aeronautical Study – NBN Telecommunications Tower RAAF Base Richmond' prepared by Aviation projects Pty Ltd was submitted to Department of Defence for their review. The Department was satisfied with the report and the recommendations as outlined in that report given the condition that the height of the proposed tower must not exceed the maximum heights of 268m AHD.

The proposal has been designed to satisfy Department of Defence conditions and maintain an acceptable level of visual prominence to the surrounding community. The proposed design includes a medium intensity, steady aircraft warning light installed atop the monopole. The warning light will only operate during daylight hours and will be connected to an automatic switching mechanism that turns off the light at pre-set illumination or time settings. The Department of Defence raised no issues with this mitigation measure.

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**Bush Fire**

The subject land is identified as bush fire prone land. The proposed tower will be sited on a cleared land. A 10m asset protection zone (APZ) has been nominated in compliance with *Rural Fire Service Practise Note 1/11 Telecommunications Towers in Bush Fire Prone Areas*. Nine trees will be required to be removed due to the establishment of the asset protection zone and access track.

Further building elements will be constructed to withstand a radiant heat of  $40\text{kWm}^2$ , however some components such as cabling will be unable to meet this requirement.

**Noise & Vibration**

Noise will be limited to the construction phase. The premises will generally remain unoccupied.

**Technological Hazards**

The tower is expected to emit 0.073% of the total exposure limit according to the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

It should be noted that 100% exposure is deemed as the safe exposure limit. The tower is proposed to incorporate technologies which reduce power consumption and exposure limits during low demand intervals and has the ability to completely shut off if no data transmission is required. As a result, the proposal is deemed as being of low technological hazard.

**Safety, Security & Crime Prevention**

The site will be secured with a chain wire 2.4 metre high fence and will include signage to prevent public access. The site is expected to remain secure and safe.

**Construction**

Construction is expected to take 10 weeks from start to finish. The construction is considered of low impact. The proposal is expected to bring positive social and economic outcomes through the provision of improved broadband.

**c. Suitability of the site for the development:**

The location and setting of the proposed development is suitable with regard to the relevant environmental planning policies and potential environmental impacts which have been discussed previously in this report. There are no environmental or physical constraints that would prevent the proposed use from occurring on the land.

**d. Any submissions made in accordance with the Act or the Regulations:**

The application was exhibited twice due to the distribution of incorrect site plan during the first exhibition period. The exhibition was from 10 July 2017 to 24 July 2017 and, from 4 August 2017 to 18 August 2017. Five submissions were received. The issues raised in the submissions and the applicant's response against them are provided below:

Public health impacts

*Applicant's response:*

*The nbn Fixed Wireless network, and other communications networks, transmits radio signals or electromagnetic energy (EME) – the same kind of signal as radio and television broadcasts. These radio signals are subject to the same public health and safety standard, and have been present in the environment for generations....*

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*nbn fixed wireless facilities contribute very little radio signal to the environment. The maximum signal strength at Kurrajong Hills from a 40m monopole would be 0.073% of the safety limit, or more than 1,300 times weaker than the allowable radio signal strength. This is a very low level and represents a very significant margin of compliance....*

*nbn has a legal, environmental and ethical obligation to deliver a network that operates safely and responsibly, without posing risk to any members of the general public. At all times, and in any location, nbn operates its fixed wireless radio network safely and responsibly at signal strengths significantly below WHO and Australian standards.*

Network design for future better option

*Applicant's response:*

*nbn is upgrading the current telecommunications network in the most cost-efficient way using best-fit technology and taking into account existing infrastructure, in keeping with the government's multi-Technology-Mix model....*

*Due to Australia's size and particular geographic challenges the cost of providing fixed line services to all Australian premises is prohibitive.....*

*A complex process of analysis, using proprietary information systems and analytical tools, has been applied to the design and intended service delivery to Kurrajong Hills. It has resulted in nbn designing a fixed wireless service for this area, based on local assessment, and in keeping with the Government's Statement of Expectation objectives of:*

*'....completing the network and ensuring that all Australians have access to very fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers'*

*Fixed wireless facilities are typically deployed in rural and rural residential communities, and nbn respectfully maintains that this is the best fit technology for the Kurrajong Hills community.*

Public interest / value of the Fixed Wireless service

*Applicant's response:*

*Several submissions have claimed that the proposed facility only services the interest of the landowner and nbn, however nbn respectfully disagrees with this view, and maintains that feedback obtained during informal consultation supports our position that the proposed fixed wireless service is valuable to this community.*

*nbn notes that current services across Kurrajong Hills are poor, and this is illustrated by the Federal Government's National Map demonstrates the median ADSL speed across Kurrajong Hills ranges from between 6.04Mbps and 8 Mbps. Kurrajong Hills also has the second lowest ranking for broadband quality in Australia ("D" ranking)....*

*We highlight that nbn<sup>TM</sup> fixed wireless will provide the area with a service significantly faster, more reliable and more equitable than current ADSL, mobile or satellite option.....*

*nbn advises that it has also announced a new wholesale speed tier of 100Mbps download and 40Mbps upload on the fixed wireless network, which will be available to retailers to offer in 2018...*

*nbn also respectfully advises that feedback from residents attending the Community Information Session held on 28 June 2017 was largely positive, and suggests many in the community also consider the proposed fixed wireless service to be in the public interest.*

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Alternative sites

*Applicant's response:*

*nbn notes that one submission has suggested a relocation of the facility approximately 60m south within the subject lot and that another submission suggested a relocation closer to Hermitage Road.*

*nbn investigated these suggestions from varying aspects including technical, planning, tenure and ecological impacts. nbn advises that a relocation of the proposed facility closer to Hermitage Road would not represent an improvement in planning merit, as it would inevitably locate the proposal in much closer proximity to a greater number of surrounding residences, greatly increasing visual impacts to both residents and visitors to the area.*

*With regards to the proposal for a 60m relocation within the subject site, nbn advises first and foremost such a move does not have the approval of the landowner.....owing to the very steep gradient of the land, the suggested location would necessitate a large amount of cut and fill to establish a 4m retaining wall to extend an access track to the site. This retaining wall would also require more vegetation removal than is currently proposed....The suggested location is in a more densely vegetated area that would need an additional 15 trees to be removed.....*

*nbn respectfully maintains that for reasons of tenure and reasons of planning merit, the proposed relocation within the property is not considered feasible or a better planning outcome.*

Visual impact

*Applicant's response:*

*Given that clear line of sight is integral to the functioning of any radio communication antennas, it is not possible to completely mitigate all impacts on surrounding view sheds....*

*We endeavour to minimise the visual prominence of the facility wherever it is possible to do so. There are restrictions in lowering the height of a telecommunications facility, as the panel antennas must be at a height where there are no substantial obstructions to the signal transmission and transmission dishes must achieve a direct line of sight with adjoining network facilities...*

*Our ability to minimise visual impact at Kurrajong Hills is limited by both the terrain and the location of existing development along ridgelines. However nbn has been able to select a location on the periphery of the community amongst vegetation that will aid in concealing views to the facility from surrounding residential properties without requiring unnecessary vegetation clearance. As such, whilst the proposed facility is not entirely screened by vegetation it is sited at an elevation and adjacent to dense vegetation that aid in concealing the facility. Further, the pole is set against a significant, vegetated ridge line that rises more than 200m above the height of the structure, offering an appropriate backdrop to screen the monopole....*

*nbn investigated numerous alternative locations to provide a service to Kurrajong Hills and Kurrajong but was unable to secure tenure at a number of properties. Thirteen (13) properties were not interested or unresponsive about the nbn proposal, and nbn considered five (5) more alternatives in detail.*

*In summary, these alternatives were discounted for the following reasons:*

- 52 Douglas Farm Rd - this location (150m east of the dwelling at 52A Douglas Farm Rd and 180m northwest of 53 Douglas Farm Rd) had less vegetation screening and less separation to adjoining residences, increasing visual impact. It was considered to have poorer planning merit.*

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- 19 Hermitage Rd - nbn could not secure tenure at this location
- 144 Hermitage Rd - this location was discounted due to close proximity to multiple surrounding residences - it was judged to have considerably less planning merit.
- 49 Hermitage Rd - this location is very exposed with less vegetation screening in all directions - it was considered to have greater visual intrusion.
- 150 Hermitage Rd - this location was considered a poor technical solution to deliver service across Kurrajong Hills as it is located 60m lower than the ground elevation of the proposed location. It would result in a significant loss of service.

*Accordingly nbn does not believe an alternative location can provide service to this area while reducing amenity impacts to surrounding properties and the community as a whole. Given the reasons outlined above, nbn does not propose to amend the proposal beyond recommending it be painted grey.*

Concerns regarding the planning report

*Applicant's response:*

*One submission has suggested that there were inaccuracies within the DA, stating that their home 300m from the proposed facility was not considered as to be visually impacted by the proposed tower....It was further stated that the facility was not in compliance with the Principles of NSW Telecommunication Facilities Guideline Including Broadband (2010) as the proposal will obstruct significant views.*

*As stated above due to the nature of telecommunication facilities it is impossible to entirely screen the facility owing to the nature of the use. Notwithstanding, design and siting measures have been undertaken to mitigate impacts of the view corridors. The proposed facility has been sited at the periphery of the existing development amongst mature vegetation with a very significant ridge line rising above it so as to mitigate visual impacts to existing residential properties.*

*The definition of a vista is extremely subjective, and we highlight that within the context of the broader local landscape, which includes a ridge line rising hundreds of metres above the street level, the proposed monopole facility will not dominate the surrounds. It has no impact on existing tourist outlooks along Kurrajong Heights (Figure 3), and, being located at the western periphery of the existing development, is located as far from surrounding residences as possible.*

Reduced options for future land use

*Applicant's response:*

*Concern was raised that the proposed nbn<sup>TM</sup> fixed wireless facility would preclude future uses of adjoining properties. nbn advises that the proposed facility will not restrict any future uses either of the subject property or surrounding properties. The proposed facility does not alienate the use of any surrounding properties, nor impose encumbrances on the adjoining properties.*

Ecological impacts and future tree removal and pruning

*Applicant's response:*

*An environmental report was prepared to assess the vegetation over the property and the impacts of removal. The report supplied to Council identifies nine (9) trees proposed for removal. This is significantly less than the 24 trees required to be removed for the alternative raised at the stakeholder meeting located 60m south of the proposed site. The report also concludes that the removal of the trees will have limited environmental impact. As such, nbn*

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*considers the removal of this vegetation to have a minor impact, and that the proposal entails minimal ecological impact...*

*nbn advises Council that the proposed facility has been designed with future service capability in mind, and adequately takes into account both the topography and vegetation. nbn does not intend future tree removal or pruning as suggested in submissions.*

Co-location

*Applicant's response:*

*nbn advises that co-location by telecommunications carriers is a possibility, though not always a foregone outcome, as a result of an nbn<sup>TM</sup> fixed wireless facility being established. nbn cannot deny applications for co-location from carriers to co-locate on the nbn structure. The Telecommunications Act encourages co-location amongst all telecommunication carriers. However, we advise that the proposed fixed wireless facility at Kurrajong Hills has been designed only with our service in mind.*

*Furthermore, pursuant to the Telecommunication (Low Impact Facilities) Determination 1997, carriers must seek consent from Council for any significant height increase of a facility.... In addition, any height increase will also require approval from Department of Defence, as the increased height will further infringe the Richmond RAAF Base Obstruction Limitation Surface (OLS).*

Property values

*Applicant's response:*

*nbn appreciates that infrastructure designed to deliver a broadband service across an entire community, which has broad public interest, can have varying impacts on individual properties, with some having no amenity impacts at all, while others are in relatively close proximity to proposed facilities. We understand that some residents regard this as intrinsically unfair, despite the fact that all public utility services (telecommunications, water, electricity etc.) require infrastructure that unavoidably results in varying amenity impacts within different communities.*

*nbn also appreciates that impacts to amenity are associated with perceptions of property value. As above, in delivering this public utility service, nbn seeks to the best of our ability to minimise amenity impacts, both generally and to specific surrounding properties. By minimising our impacts on amenity, nbn has due regard to the value of surrounding properties.*

Consultation

*Applicant's response:*

*Several submissions have suggested that the consultation for the proposed facility has been inadequate and lacking transparency, and nbn respectfully disagrees with this. In addition to the statutory consultation conducted by Council as per NSW Planning legislation, nbn conducted proactive, informal consultation with the community, including:*

- issuing written invitations to more than 900 surrounding households on 7 June 2017 to attend a community information session regarding the proposal;*
- holding a community Information session on 28 June 2017, which was attended by approximately 50 people; and,*
- advertising the Community Information Session with a large, colour advertisement twice in the Hawkesbury Gazette on 14th and 21st of June 2017.*

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*nbn additionally met with submitters for two hours on 7 September 2017 to discuss their concerns and provide additional information regarding the proposal - especially in relation to public health and safety, which featured strongly in submissions. nbn respectfully submits that the consultation undertaken at Kurrajong Hills significantly exceeded statutory requirements, and was both transparent, accessible and appropriate.*

Planning Comments:

The applicant has provided a comprehensive response in respect to the concerns raised by the local community. It is considered that the applicant's responses have adequately responded to resident's objections and concerns. Further justification from the applicant is not required for Council to make a determination of the proposal. The matters raised in the submissions received and the Applicant's responses to those issues have been considered and it is noted that the proposal is consistent with relevant State and Council planning controls affecting the site.

It is considered that the proposed development of the telecommunications monopole is consistent with the Electromagnetic Emissions (EME) and public health requirements set by the Australian Communication and Media Authority (ACMA) and Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The proposal has demonstrated that it will provide benefit to Kurrajong Hills and surrounding community.

An assessment against the planning principles regarding the likely visual impact has been demonstrated in the earlier section of this report. The visual impact and the perceived effect on the amenity of the landscape is a subjective matter. Telecommunications facilities need to rely on height in order to work effectively. A balance must therefore be achieved between the effective facilitation of the NBN network and the perceived effect on the visual amenity. A judgement has to be made as to whether an area contains such scenic beauty or a sensitive environment that it should be preserved irrespective or whether the intrusion of a monopole structure can be acceptable in a visual sense set against the prevailing character of the landscape.

There is no question that the monopole will be visible within the locality. The key factor is to what extent the tower's exposed presence becomes so dominant as to erode the prevailing character and amenity of the locality. Towers of all sorts of descriptions and functions are increasingly a fact of our modern technology and the services the community demands from them. They have become part of our landscape and largely accepted for the contribution they make.

The scale and proportion of the proposed monopole, being of a slim-line nature and having a grey coloured finish will help soften its impact but not eliminate its presence entirely (this would be impossible to achieve anyway).

It is therefore considered that the matters raised in the submission received do not warrant the refusal of the application. Appropriate conditions will be included in the recommendation to minimise any adverse impact to the adjoining properties.

**e. The Public Interest:**

It is acknowledged that there are currently no existing suitable telecommunication facilities located in the vicinity with a structure that is suitably capable of providing wireless broadband services to the Kurrajong Hills area. The new National Broadband Network will provide the community with far greater access to high quality broadband services. Reliable broadband internet is important to ensure the economic growth of communities, and the facility is likely to have significant social and economic benefits for the local community. Therefore, the development, would one hand, have a positive social and economic impact to the locality as it would provide a service that requires a high demand of consumer usage.

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The facility would have significant benefits for residents and businesses in Kurrajong Hills area, enabling improvements in service delivery and productivity in a number of areas including health, education, financial services etc.

The application is considered to be in the public's interest by providing fast and reliable internet services, and the ability to interconnect rural areas.

#### Development Contributions

##### Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015)

The following development contributions apply to this development - \$2,500.00. Accordingly, a condition of consent is required to be imposed in this regard.

#### Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act with all matters specified under Section 4.15 having been taken into consideration. The proposal to install an NBN fixed wireless facility is recommended to be supported due to the complying nature of the application. No issues exist that would hinder the approval of the development.

#### RECOMMENDATION:

That development application DA0357/17 at Lot 22 DP 806072, 122 Hermitage Road Kurrajong Hills NSW for - Telecommunications Facility - Installation of NBN Fixed Wireless Facility be approved subject to the following conditions:

#### General Conditions

##### 1. Approved Plans and Supporting Documentation

The development must be carried out generally in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where amended in red on the plans and/or amended by other conditions of consent:

###### a) Plans Reference:

Drawing Number/Name	Prepared by	Issue No.	Date
Site Specific Notes, Dwg No. 2URR-51-08-KURJ-C1	Visionstream Pty Ltd	04	5/07/2017
Overall Site Plan, Dwg No. 2URR-51-08-KURJ-C2	Visionstream Pty Ltd	04	5/07/2017
Site Setout Plan, Dwg No. 2URR-51-08-KURJ-C3	Visionstream Pty Ltd	04	5/07/2017
Site Elevation, Dwg No. 2URR-51-08-KURJ-C4	Visionstream Pty Ltd	04	5/07/2017
Asset Protection Zone, Dwg No. 2URR-51-08-KURJ-C5	Visionstream Pty Ltd	04	5/07/2017
NBN Antenna Configuration & Setout Plan, Dwg No. 2URR-51-08-KURJ-A1	Visionstream Pty Ltd	04	5/07/2017



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b) Document Reference:

Document	Reference	Prepared By	Date
Aeronautical Study - NBN Telecommunications Towers RAAF Base Richmond	Ref No. 060804-1	Aviation Projects Pty Ltd	13/04/2017
Vegetation Survey & Koala Habitat Assessment	-	James Gibson & Grant Harris	27/02/2017

No works, other than those approved (including raising or lowering of ground levels on the site, or construction of retaining walls on any property boundary) are permitted by this consent.

Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and
- (iii) any conditions contained in this consent.

## 2. Appointment of a Principal Certifying Authority

No work shall commence until:

a) A Building Construction Certificate is issued by:

- (i) Council; or
- (ii) An Accredited Certifier;

b) A Principal Certifying Authority is appointed for the building/engineering works and the following details relating to the carrying out of the works have been provided:

- (i) name and licence number of the builder undertaking the construction works; or
- (ii) name and permit number of the owner-builder (if relevant);

c) The Principal Certifying Authority has:

- (i) provided a copy of the notice of its determination to the consent authority, and to Council (within two days after the date of the determination);
- (ii) notified the person having benefit of the consent of any critical stage inspections and other inspections that it requires to be carried out in relation to the approved work;
- (iii) notified Council of its appointment (not less than two days before commencement of building work);

d) The person having benefit of the consent (if not carrying out work as an owner-builder) has:

- (i) appointed a principal contractor who must hold a 'contractor licence' if any residential building work is involved;
- (ii) notified the Principal Certifying Authority of the appointment of the principal contractor;
- (iii) notified the principal contractor of any critical stage inspections or any other inspections that are required to be carried out in relation to the approved work;

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- e) At least two days' notice are to be provided to Council of the date on which it is proposed to commence work associated with this development consent.

**3. Part 4A Certificates Required**

The accredited certifier shall provide copies of all Part 4A certificates issued under the *Environmental Planning and Assessment Act 1979* relevant to this development to Council within seven days of issuing the certificate.

Note: A registration fee applies.

**4. Prescribed Conditions - Compliance with National Construction Code**

All building works must be carried out in accordance with the requirements of the National Construction Code (Building Code of Australia).

**5. Tree Removal & Pruning - Approved Works**

This consent is limited to the removal of nine trees and pruning of three trees as identified in the approved Vegetation Survey & Koala Habitat Assessment dated 27 February 2017.

**6. Tree Pruning - Branch Removal**

Tree pruning works are to be carried out by a suitably qualified arborist in accordance with the Australian Standard AS 4373 - '1996 Pruning of Amenity Trees'.

**7. Disposal of Cleared Vegetation**

Vegetation waste resulting from the approved clearing of the site shall be salvaged for re-use, either in log form, or as a woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots, stumps or declared weed species shall be disposed of in an approved manner.

No vegetative material is to be disposed of by burning on-site other than in an approved heating or cooking device.

**8. Tree Removal - Replacement Planting Required**

A minimum of nine replacement trees shall be planted on the property. These trees are to be native species and have a height of no less than 15 metres at maturity.

The replacement trees shall be planted no later than three months after tree removal has taken place and the trees shall be protected and maintained so as to ensure that they reach maturity.

**9. Tower Height**

The height of the NBN Fixed Wireless Facility (NBN tower) shall not exceed 268m AHD.

**10. Tower Colour**

The monopole and associated outdoor units shall be painted in 'Grey' or similar to recede into the landscape. Details are to be provided to Council for approval prior to the issue of a Construction Certificate.

**Prior to the Issue of Construction Certificate**

**11. Long Service Levy Payment**

The payment of a long service levy as required under Part 5 of the *Building and Construction Industry Long Service Payments Act 1986* is required. Evidence that the levy has been paid, is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: All building works valued at \$25,000 or above are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Payments Corporation offices or most councils.

**12. Section 94A (Monetary) Contributions**

A contribution under Section 7.12 of the *Environmental Planning and Assessment Act 1979* must be paid in accordance with the following:

a) Contribution Required

In accordance with Council's Section 94A Contributions Plan 2015, a monetary contribution (indexed at the time of payment) must be paid to Council for the amount specified below.

b) Amount of Contribution

The amount of the contribution is \$2,500.00.

This fee is based on the supplied value-of-works of \$250,000.00.

The contribution amount detailed in (b) will be indexed at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics (Table 6401.0).

Contributions must be receipted by Council and evidence of payment submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Please present a copy of this condition when paying the contribution at Council's Customer Service Centre so that it can be recalculated.

Note: In the event that the estimated value of works increases in association with the Construction Certificate the Section 94A contribution payable is to be based on the revised value of works.

**13. Structural Engineers Design - Concrete and Structural Steel**

A qualified Structural Engineer's design for all reinforced concrete and structural steel shall be provided to the Certifying Authority prior to issue of Construction Certificate.

**14. Access Track**

- a) The submains cable is to be routed along the existing seal track and proposed access track extension as recommended in the approved Vegetation Survey & Koala Habitat Assessment dated 27 February 2017. This submains cable route shall avoid encroachment into tree protection zones (TPZs). Where required, under-boring is to be used to minimise arboricultural impacts.

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- b) The access track, within the tree protection zones (TPZs) of trees to be retained, shall be constructed above the existing grade of a permeable material as recommended in the approved Vegetation Survey & Koala Habitat Assessment dated 27 February 2017.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

**Prior to Any Works Commencing on Site**

**15. Principal Certifying Authority - Details**

The applicant shall advise Council of the name, address and contact number of the Principal certifier, in accordance with Section 81A 2(b) of the *Environmental Planning and Assessment Act 1979*.

**16. Toilet Facilities**

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer;
- b) be attached to an approved on-site effluent disposal system;
- c) be a temporary chemical closet that is regularly maintained; and
- d) appropriate facilities for the disposal of sanitary items are to be provided within the toilet.

**17. Notice of Commencement**

No work shall commence until a notice of commencement has been provided to Council. This notice is to be provided not less than two days from the date on which it is proposed to commence work associated with this Development Consent. The notice must also contain:

- a) details of the appointment of a Principal Certifying Authority (PCA) providing name, address and telephone number; and
- b) details of the name, address and licence details of the Builder.

**18. Principal Certifying Authority (PCA) Site Sign**

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifying Authority for the work;
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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**19. Safety Fencing**

The site is to be secured by a fence, in accordance with NSW WorkCover requirements, to prevent unauthorised access during the period of all works.

**20. Erosion and Sediment Control for Minor Development**

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Landcom's publication 'Managing Urban Stormwater - Soils and Construction (2004)'.

**During Construction**

**21. Construction Hours**

Clearing of land, running of machinery, excavation, and/or earthworks, building works and the delivery of building materials shall be carried out between the following hours:

- a) between 7am and 6pm, Mondays to Fridays inclusive;
- b) between 8am and 4pm, Saturdays;
- c) no work on Sundays and public holidays; and
- d) works may be undertaken outside these hours where:
  - (i) the delivery of vehicles, plant or materials is required outside these hours by the Police or other authorities;
  - (ii) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and
  - (iii) a variation is approved in advance in writing by Council.

**22. Site Management During Construction**

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Copies of receipts stating the following must be given to the principal certifying authority:
  - (i) the place to which waste materials were transported;
  - (ii) the name of the contractor transporting the materials; and
  - (iii) the quantity of materials transported off-site and recycled or disposed of.
- d) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.
- e) During construction:
  - (i) all vehicles entering or leaving the site must have their loads covered;
  - (ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads; and
  - (iii) any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to the public.

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- f) At the completion of the works, the work site must be left clear of waste and debris.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council shall be obtained prior to any closing of the road reserve or footpath area. The closure shall take place in accordance with Council's written approval. The area shall be signposted and such signposting be maintained in a way that ensures public safety at all times.

**23. Loading and Unloading During Construction**

The following requirements apply.

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.

**24. Critical Stage Inspections**

Prior to the commencement of building work and at nominated stages during the construction of the building, a minimum of 48 hours' notice is required to be provided to allow the Principal Certifying Authority to ensure that the critical stage inspections are undertaken.

Note: Critical stage inspections are required to be carried out in accordance with Clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

**25. Management of Overland Flows**

The works associated with the development shall ensure that:

- a) all natural water flow from adjoining properties is not impeded or diverted; and
- b) surface and subsurface water flows are not redirected or concentrated onto adjoining properties.

**26. Heritage - Archaeological Discovery During Works**

Should any Aboriginal relics or European historical relics be unexpectedly discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the following agencies are to be informed of the discovery:

- a) Council;
- b) the Heritage Council of NSW in accordance with Section 146 of the *Heritage Act 197*;; and/or

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- c) the National Parks and Wildlife Service is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*.

**27. Tree Protection**

Tree protection fencing is to be installed to protect trees that are to be retained from construction impacts, in particular soil compaction.

**28. Cut and fill batters**

Cut and fill with battering for the access track and crane hard stand area to be placed outside of the tree protection zones (TPZs) of trees to be retained.

**Prior to Issue of Occupation Certificate**

**29. Survey Certificate at Completion**

A Survey Certificate, prepared by a Registered Surveyor, is to certify the location of the building in relation to the boundaries of the allotment.

The certificate is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

**30. Occupation Certificate - Prior to Commencement of Use**

The development shall not be occupied or used prior to the issuing of a Final Occupation Certificate or Interim Occupation Certificate by the Principal Certifying Authority. Where an Interim Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

A copy of the Occupation Certificate shall be submitted to Council within two days of issue.

**Advisory Notes**

**(i) Equitable Access**

The applicant shall make themselves aware of the *Discrimination Against People with Disabilities Act (DDA)* and assess their responsibilities and liabilities with regards to the provision of access for all people.

**(ii) Acid Sulfate Soils - Monitoring of Excavation During Works**

All excavations are to be monitored to ensure that acid sulphur soils are not encountered during works. Signs that may indicate the presence of acid sulphur soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

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**(iii) Site Contamination Discovered During Demolition or Construction**

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, then the applicant must be immediately notified and works must cease. Works must not recommence on site until the consultation is made with Council.

**(iv) Dial Before You Dig**

Prior to commencement of work, the free national community service 'Dial Before You Dig' shall be contacted on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

**(v) Requirements of 88B Instrument**

The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

**(vi) Department of Defence**

The applicant is required to make detailed enquiries with the Department of Defence prior to the commencement of any works in order to ensure there are no requirements concerning the methods of construction or installation of the approved structures.



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**ATTACHMENTS:**

**AT - 1** Location of the Site

**AT - 2** Aerial View of the Locality

**AT - 3** Aerial View Highlighting Terrain that rises to the west

**AT – 4** Site Plan

**AT - 5** Elevation

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AT -3 – Aerial View Highlighting Terrain that rises to the west



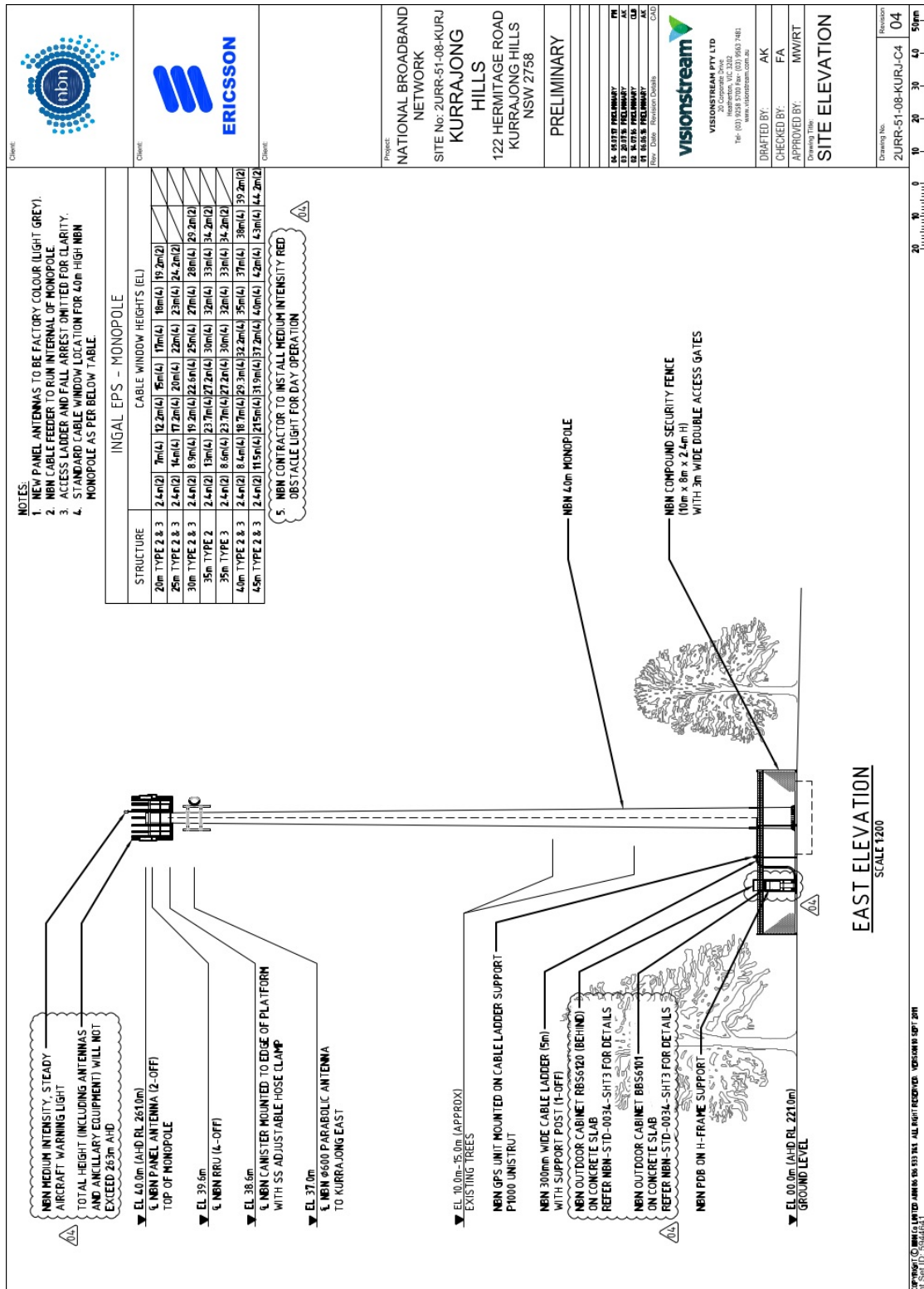
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## AT -4 – Elevation



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hawkesbury  
independent  
hearing and  
assessment  
panel

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business  
paper

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