



Hawkesbury City Council

ordinary
meeting
business
paper

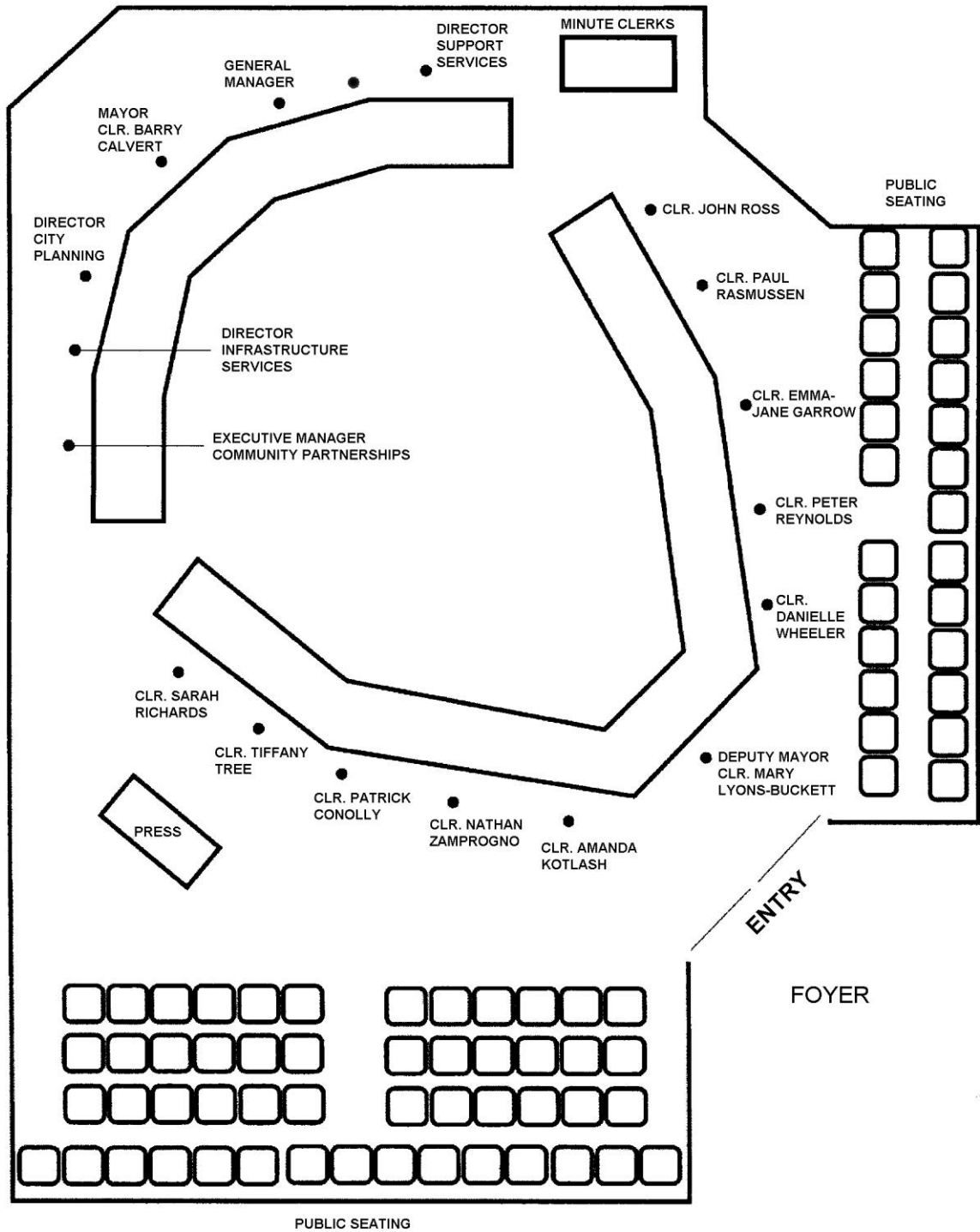
date of meeting: 10 September 2019
location: council chambers
time: 6:30 p.m.



mission statement

*Hawkesbury City Council
leading and working
with our community
to create a healthy
and resilient future.*

Hawkesbury City Council



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QUESTIONS WITH NOTICE **216**

Item: 174 Councillor Questions with Notice 216

ORDINARY MEETING
Procedural Matters
Meeting Date: 10 September 2019

PROCEDURAL MATTERS

Welcome

The Mayor, Councillor Barry Calvert will acknowledge the Indigenous Heritage.

The General Manager will address the Council meeting, mentioning:

- Emergency Procedures
- Recording of the Council Meeting
- Statement regarding people addressing the Meeting
- Mobile phones

Attendance

Attending Councillors and Council staff members will be noted for the purposes of the Minutes.

Apologies and Leave of Absence

The Mayor will ask for any Apologies or Leave of Absence Requests to be noted.

Declaration of Interest

The Mayor will ask for any Declaration of Interests from the attending Councillors. These will then be addressed at the relevant item.

Acknowledgement of Official Visitors to the Council

The Mayor will acknowledge and welcome official visitors to the Council and make any relevant presentations as required.

ORDINARY MEETING

Procedural Matters

Meeting Date: 10 September 2019

ordinary

section 1

confirmation of minutes

ORDINARY MEETING

SECTION 1 - Confirmation of Minutes

Meeting Date: 10 September 2019

SECTION 1 - Confirmation of Minutes



Hawkesbury City Council

ordinary meeting minutes

date of meeting: 27 August 2019

location: council chambers

time: 6:30 p.m.

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ORDINARY MEETING

Minutes: 27 August 2019

Minutes of the Ordinary Meeting held at the Council Chambers, Windsor, on 27 August 2019, commencing at 6:33pm.

Welcome

The Mayor, Councillor Barry Calvert acknowledged the Indigenous Heritage.

The Acting General Manager addressed the Council meeting, mentioning:

- Emergency Procedures
- Recording of the Council Meeting
- Statement regarding people addressing the Meeting
- Mobile phones

ATTENDANCE

PRESENT: Councillor Barry Calvert, Mayor, Councillor Mary Lyons-Buckett, Deputy Mayor and Councillors Patrick Conolly, Emma-Jane Garrow, Sarah Richards, John Ross, Danielle Wheeler and Nathan Zamprogno.

ALSO PRESENT: Acting General Manager – Linda Perrine, Director Infrastructure Services - Jeff Organ, Acting Director Support Services – Emma Galea, Manager Corporate Communication - Suzanne Stuart, Acting Manager Corporate Services and Governance – Linda Hewitt and Administrative Support Coordinator - Tracey Easterbrook.

APOLOGIES AND LEAVE OF ABSENCE

Apologies for absence were received from Councillor Kotlash, Councillor Rasmussen, Councillor Reynolds and Councillor Tree.

190 RESOLUTION:

RESOLVED on the motion of Councillor Richards and seconded by Councillor Wheeler that the apologies be accepted and that leave of absence from the meeting be granted.

DECLARATIONS OF INTEREST

There were no Declarations of Interest made.

Acknowledgement of Official Visitors to the Council

There were no official visitors to Council.

ORDINARY MEETING

Minutes: 27 August 2019

SECTION 1 - Confirmation of Minutes

191 RESOLUTION:

RESOLVED on the motion of Councillor Lyons-Buckett and seconded by Councillor Garrow that the Minutes of the Ordinary Meeting held on the Tuesday, 13 August 2019, be confirmed.

ORDINARY MEETING

Minutes: 27 August 2019

SECTION 2 – Mayoral Minutes

Item: 162 **MM - Lower Portland Ferry - (79351, 79353)**

MOTION:

RESOLVED on the motion of Councillor Calvert.

Refer to RESOLUTION

192 RESOLUTION:

RESOLVED on the motion of Councillor Calvert.

That:

1. Council accept the offer of recurrent funding contribution by the NSW Government, for the operation of The Lower Portland Ferry.
2. The Minister for Transport and Roads, Leader of the House the Hon. Andrew Constance MP be thanked for the offer of funding.
3. A further report be prepared and submitted for Council's consideration following consideration of the matter by The Hills Shire Council and formalisation of a funding agreement with Transport for NSW.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Garrow, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Kotlash, Rasmussen, Reynolds and Tree.

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Minutes: 27 August 2019

SECTION 3 – Reports for Determination

GENERAL MANAGER

Item: 154 GM - Regional Strategic Alliance - (79358)

Directorate: General Manager

MOTION:

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

Refer to RESOLUTION

193 RESOLUTION:

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

1. That the Council notes the resolutions of the Regional Strategic Alliance adopted at its Board meeting held on 7 August 2019 relative to “Item 5: Regional Strategic Alliance Future” that:
 - “1. In recognising that processes associated with the Western Sydney City Deal have generally overtaken the need for the Regional Strategic Alliance, that the Regional Strategic Alliance Board recommends to the three member Councils that the Regional Strategic Alliance be dissolved within three months of the date of this Board Meeting.
 2. That the General Managers of the three Councils work together to confirm arrangements for resolving outstanding administration and financial matters.
 3. That recommendations for the dissolution of the Regional Strategic Alliance, including arrangements required to resolve all administrative and financial matters upon the dissolution of the Regional Strategic Alliance, be considered by each member Council at the ordinary meeting of that Council to be held in August or September 2019.
 4. That the General Managers work together to identify ongoing projects and activities for continuation, notably in regional tourism, and the mechanisms that will enable this to occur.”
2. That the Council endorses the dissolution of the Regional Strategic Alliance between Blue Mountains, Penrith and Hawkesbury Councils in accordance with the Regional Strategic Alliance Board Meeting recommendations detailed in Part 1 above and proceeds with withdrawing from the Alliance and working with the other General Managers to resolve all remaining administrative and financial matters.
3. Council continues to work with the other Councils to identify ongoing projects and activities for continuation notably in regional tourism and mechanisms to enable this to occur.
4. A further report regarding regional tourism initiatives and projects be presented to Council in the last quarter of 2019.

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5. Hawkesbury Council requests return of its share of residual funds, which have been paid into the Regional Strategic Alliance.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Garrow, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Kotlash, Rasmussen, Reynolds and Tree.

SUPPORT SERVICES

Item: 155 **SS - Submission to the Local Government Rating System Report issues by the Independent Pricing and Regulatory Tribunal - (95496)**

Previous Item: 221, Ordinary (11 October 2016)
87, Ordinary (10 May 2016)

Directorate: Support Services

MOTION:

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

Refer to RESOLUTION

194 RESOLUTION:

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

That the Hawkesbury City Council Submission to the Review of the Local Government Rating System – Final Report dated December 2016, attached as Attachment 1 to this report, is submitted to the Office of Local Government. In regard to the main outcomes of the review, the submission states that:

- Council is not in a position to determine whether it supports or not, the mandated use of the Capital Improved Value valuation method to levy local council rates in metropolitan Councils. Further information is required as to the practical implementation of this valuation basis. More information is required in regard to the trigger for supplementary valuations to capture capital improvements and the process that would be implemented to capture those triggers. Further details are also sought in regard to alignment of the Capital Improved Value with the market value for each individual property.
Council does not support a staged introduction of the Capital Improved Value valuation method. It is suggested that the new valuation method is introduced in full, in one year, following an extensive period of community consultation prior to the effective date.
- Council does not support allowing councils' general income to increase as the communities they serve grow, as further clarification in regard to the proposed calculation formula is required.

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- Council supports the replacement of the “centre of population” basis for residential sub-categories, with “town or villages” or residential areas”. This will provide greater flexibility for Councils when setting rates in residential areas.

Council supports the principle that there is a limit in regard to the relative rating burden distribution across the determined sub-categories.

- Council does not support the principle of rating exemptions, regardless of whether they are based on land use or ownership.
- Whilst specific comments were not invited in regard to recommendations relating to improve assistance to pensioners, comments in regard to this matter have been included in the general comments part of the feedback form. Council supports the introduction of a rates deferral scheme operated by the State Government as an option to the current \$250 Pensioner Concession.
- Council supports the introduction of more options to set rates within rating categories. Council supports the introduction of an Environmental Land category and the addition of Business sub-categories ‘industrial’ and or ‘commercial’ in addition to centre of activity. Council supports the introduction of a category for vacant land and suggests that the option to sub-categorise land based on geographic location is added, rather than replace the current basis of farming intensity.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Garrow, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Kotlash, Rasmussen, Reynolds and Tree.

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Minutes: 27 August 2019

Item: 156 **SS - Monthly Investments Report - July 2019 - (95496)**

Previous Item: 150, Ordinary (26 June 2018)

Division: Support Services

MOTION:

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

Refer to RESOLUTION

195 RESOLUTION:

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

That the Monthly Investments Report for July 2019 be received and noted.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Garrow, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Kotlash, Rasmussen, Reynolds and Tree.

ORDINARY MEETING

Minutes: 27 August 2019

SECTION 4 – Reports of Committees

Item: 157 **ROC - Infrastructure Committee - 24 July 2019 - (95495, 143704)**

Directorate: Infrastructure Services

MOTION:

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

Refer to RESOLUTION

196 RESOLUTION:

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

That:

1. The Minutes of the Infrastructure Committee meeting held on 24 July 2019 be received and noted.
2. Council Officers develop a draft document based on evidence and data that includes the points shown in the Draft Advocacy Table (as contained in the minutes of the meeting), the document to be circulated to the group as soon as practicable.
3. The Draft Transport Policy be received and noted.
4. The Draft Transport Policy be forwarded to all Councillors for discussion and feedback at a briefing at a time to be determined and advised.
5. The number of Infrastructure Committee meetings is to be increased to address present and emerging issues.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Garrow, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Kotlash, Rasmussen, Reynolds and Tree.

ORDINARY MEETING

Minutes: 27 August 2019

Item: 158 **ROC - Heritage Advisory Committee - 1 August 2019 - (124414, 80242)**

Directorate: City Planning

MOTION:

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

Refer to RESOLUTION

197 RESOLUTION:

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

That:

1. The Minutes of the Heritage Advisory Committee Meeting held on 1 August 2019 be received and noted.
2. In relation to the item in General Business of the Minutes regarding Brick Barrel Drains in Richmond, Council endorse the recommendations of the Heritage Advisory Committee, namely that:
 - a) Council note the significance of the brick barrel drains in Richmond, and
 - b) Council investigates the location of the drain and it is appropriately mapped.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Garrow, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Kotlash, Rasmussen, Reynolds and Tree.

ORDINARY MEETING

Minutes: 27 August 2019

Item: 159 **ROC - Local Traffic Committee - 12 August 2019 - (95495, 80245)**

Directorate: Infrastructure Services

MOTION:

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

Refer to RESOLUTION

198 RESOLUTION:

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

That the Minutes of the Local Traffic Committee meeting held on 12 August 2019 be received and noted.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Garrow, Kotlash, Rasmussen, Reynolds and Tree.

ORDINARY MEETING

Minutes: 27 August 2019

QUESTIONS WITH NOTICE

Item: 160 Councillor Questions with Notice

Response to Councillor Question with Notice listed in the Business Paper of 27 August 2019 were provided and discussed.

In relation to Question 1 of the Business Paper, Councillor Lyons-Buckett, Deputy Mayor sought advice as to whether the publication of a printed brochure for using in outer/remote areas was still being pursued, given the particular circumstances including loss of communications that would be faced by those communities in emergency situations.

The Director of Infrastructure Services advised that, the issue remains open and further opportunities for funding and agency support would continue to be pursued.

ORDINARY MEETING

Minutes: 27 August 2019

CONFIDENTIAL REPORTS

199 RESOLUTION:

RESOLVED on the motion of Councillor Garrow, seconded by Councillor Richards.

That:

1. The Council meeting be closed to deal with confidential matter and in accordance with Section 10A of the Local Government Act, 1993, members of the Press and the public be excluded from the Council Chambers during consideration of the following item:

Item: 161 IS – Tender No. T00092 – Determination of the Tender for the Overhaul of The Lower Portland Ferry – (95495, 79344, 112333)

*This report is **CONFIDENTIAL** in accordance with Section 10A(2)(*) of the Local Government Act, 1993 as it relates to details concerning tenders for the supply of goods and/or services to Council and it is considered that the release of the information would, if disclosed, confer a commercial advantage on a person or organisation with whom the Council is conducting (or proposes to conduct) business and, therefore, if considered in an open meeting would, on balance, be contrary to the public interest.*

2. In accordance with the provisions of Section 11(2) & (3) of the Local Government Act, 1993 the reports, correspondence and other relevant documentation relating to these matters be withheld from the Press and public.

The Mayor asked for representation from members of the public as to why Council should not go into closed Council to deal with these confidential matters.

There was no response, therefore, the Press and the public left the Council Chambers.

200 RESOLUTION:

RESOLVED on the motion of Councillor Conolly, seconded by Councillor Garrow that open meeting be resumed.

ORDINARY MEETING

Minutes: 27 August 2019

Item: 161 **IS - Tender No. T00092 - Determination of Tender of the Overhaul of The Lower Portland Ferry - (95495, 79344, 112333)**

Directorate: Infrastructure Services

MOTION:

The Acting Director Support Services advised that whilst in closed session, the Council RESOLVED on the motion of Councillor Lyons-Buckett, seconded by Councillor Ross.

Refer to RESOLUTION

201 RESOLUTION:

The Acting Director Support Services advised that whilst in closed session, the Council RESOLVED on the motion of Councillor Lyons-Buckett, seconded by Councillor Ross.

That Council adopt the Officer's Confidential Recommendation as outlined in the report relating to the tender for the overhaul of The Lower Portland Ferry and the resolution be made public following acceptance of the tender by The Hills Shire Council.

For the Motion: Councillors Calvert, Lyons-Buckett, Conolly, Garrow, Richards, Ross, Wheeler and Zamprogno.

Against the Motion: NIL.

Absent: Councillors Kotlash, Rasmussen, Reynolds and Tree.

The meeting terminated at 8:25pm.

Submitted to and confirmed at the Ordinary meeting held on 10 September 2019.

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Mayor

ordinary

section 2

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ORDINARY MEETING

SECTION 2 – Mayoral Minute

Meeting Date: 10 September 2019

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SECTION 2 – Mayoral Minute
Meeting Date: 10 September 2019

SECTION 2 – Mayoral Minutes

Item: 163 **MM - Moving Towards a Zero Emissions Organisation and Local Government Area - (80093)**

REPORT:

The Intergovernmental Panel on Climate Change Report released in October 2018 stipulates the need for “rapid, far-reaching” changes to all aspects of society if the world is to limit global warming to 1.5°C. The report determines that global greenhouse gas emissions must reach net zero by 2050 if we are to keep to that limit.

Consistent with this position, The NSW Government released its Climate Change Policy Framework, which commits NSW to the aspirational objectives of achieving net-zero emissions by 2050 and helping NSW to become more resilient to a changing climate.

In recognition of the importance local government plays in addressing climate change, Hawkesbury City Council has been actively implementing emissions reduction strategies and reporting on emissions.

To this end, over the past 12 months Council has installed over 700kW of solar panels which led to Council being selected as a finalist in the recent Cities Power Partnerships - National Climate Awards. Other initiatives that have been developed in order to reduce emissions include funding the conversion of traditional street lighting to LED lights. Council also has plans to investigate related initiatives in relation to:

- Investigating the feasibility of establishing a local renewable energy / solar farm project
- Increasing canopy cover, utilising enhanced water cycle management opportunities and using more appropriate construction materials to reduce urban heat island effects and the associated medical costs to the wider community
- Reducing the overall use of water whilst increasing the use of recycled water
- Better managing the collection of waste to reduce landfill and increase recycling
- Working in association with the Sydney Resilience Plan and local residents to create a more connected, capable and resilient community with greater capacity to work together to respond to the threats and effects of flood, fire and extreme heat

Council is a member of various groups focused on climate change mitigation, and in March 2019 declared that we are in a State of Climate Emergency that requires urgent action by all levels of government (including local councils).

It is recognised that human induced climate change represents one of the greatest threats to humanity, civilisation, and other species and that it is still possible to prevent the most catastrophic outcomes if, and only if, societies take emergency action.

By committing to becoming a zero emissions council by 2050 we will be able to track our success and give progress reports to residents. It will also provide direction for future council planning.

To achieve this, Council and all levels of Government need to take steps to move towards zero emissions.

ORDINARY MEETING
SECTION 2 – Mayoral Minute
Meeting Date: 10 September 2019

RECOMMENDATION:

That Council:

1. Commits to working with local government and other levels of government to become a net zero emissions organisation by 2050, if not sooner.
2. Writes to WSROC to have this matter placed on the agenda for their November 2019 Board Meeting.
3. Recommends that WSROC invite all member Councils to commit to becoming net zero emissions organisations in the same timeline as Hawkesbury City Council (if they have not already done so).
4. Recommends that WSROC works with its member Councils collectively to aim for the Community of Western Sydney to also have net zero emissions by the year 2050.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF MAYORAL MINUTE Oooo

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reports
for determination

ORDINARY MEETING

SECTION 3 – Reports for Determination

Meeting Date: 10 September 2019

ORDINARY MEETING
SECTION 3 – Reports for Determination
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SECTION 3 – Reports for Determination

PLANNING DECISIONS

Item: 164 **CP - Structure Plan for Kurmond-Kurrajong - (95498, 124414)**

Previous Item: 40 Ordinary (March 2015)
 114 Ordinary (July 2015)
 134 Ordinary (August 2015)
 199 Ordinary (November 2015)
 188 Ordinary (August 2016)

Directorate: City Planning

PURPOSE OF THE REPORT:

The purpose of this report is to seek Council's consideration of the Draft Kurmond-Kurrajong Structure Plan.

The report provides a chronology of the events relating to Kurmond-Kurrajong Investigation Area to date, including details of the individual planning proposals received; planning proposals sent for a Gateway Determination; planning proposals gazetted and planning proposals withdrawn or refused.

EXECUTIVE SUMMARY:

The Residential Land Strategy 2011 was adopted by Council on 10 May 2011. The aim of the Residential Land Strategy was to:

- accommodate between 5,000 to 6,000 additional dwellings by 2031, primarily within the existing urban areas as prescribed in the Department of Planning and Infrastructure's (DP&I) North West Subregional Strategy;
- preserve the unique and high quality natural environment of the LGA;
- accommodate 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; and
- ensure that the appropriate infrastructure is planned and provided to cater for future development.

The Residential Land Strategy does not rezone land or approve development of areas or localities. It established a planning framework to assist in the implementation of the above aims. Following assessment of the various opportunities and constraints, it recommended a series of areas requiring further investigation for general, low density or medium density residential zonings around Richmond/Hobartville, North Richmond, Wilberforce, Glossodia, and Windsor/South Windsor/Bligh Park.

However, at the time, no funding was allocated by Council to implement the Strategy and undertake the identified investigations.

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It should also be noted that the Residential Land Strategy did not specifically identify Kurmond and Kurrajong for investigation.

Additionally, the Residential Land Strategy was also to be used to guide the preparation and assessment of rezoning proposals (Planning Proposals).

On 3 February 2015, through a Mayoral Minute, Council resolved to carry out investigations within the "Kurmond Village large lot residential/rural-residential Investigation Area". These investigations were to determine the suitability of the identified lands for large lot residential and/or rural residential development.

Funding for relevant consultancies to undertake the Structure Plan was not provided by Council at the time, and planning work was limited to internal staff resources that were also engaged with numerous other projects, and on top of other work being undertaken. Whilst the adoption of the 2018/2019 Budget included a strategy for funding relevant studies, difficulties in filling staff vacancies limited progress in relation to the completion of the necessary studies.

With the introduction of amendments to State legislation, each Council was required to reflect the direction of the new Sydney Region Plan, and in the case of Hawkesbury, the Western City District Plan in the preparation of a Draft Local Strategic Planning Statement. A series of associated background studies to inform the preparation of the Draft Local Strategic Planning Statement are also required. This resulted in a reorientation of the work being undertaken in order to meet the deadlines set by the State Government to prepare these various strategies. Unlike the majority of other Metropolitan Sydney Councils who received \$2.5M each to undertake this work, no funding was provided to Hawkesbury City Council to undertake this work. As such this work has had to be undertaken with internal staff resourcing on top of other work being undertaken.

A series of separate studies have either been undertaken or considered as part of the process of informing the preparation of a Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan

RECOMMENDATION SUMMARY:

That Council adopt the Draft Kurmond Kurrajong Investigation Area Structure Plan for the purposes of public exhibition.

REPORT:

Detailed History

The following has been provided by way of background with respect to the Kurmond-Kurrajong Investigation Area.

ORDINARY MEETING
SECTION 3 – Reports for Determination
Meeting Date: 10 September 2019

Background in Chronological Order	
10 May 2011	<p>Hawkesbury Residential Land Strategy adopted by Council.</p> <p>The Residential Land Strategy mapped certain areas within the Local Government Area to investigate the potential for General, Low Density or Medium Density residential zonings. The Residential Land Strategy also provided the category to identify investigation areas for future development within and on the periphery of rural villages.</p>
5 February 2013	<p>Council resolved to carry out investigations within the “Kurmond Village large lot residential/rural-residential Investigation Area”.</p> <p>These investigations were to determine the suitability of the identified lands for large lot residential and/or rural residential development.</p>
24 June 2014	<p>Council resolved to review the area for investigation identified by Council on 5 February 2013 and determined that this was to be the first area to have a development/structure plan prepared.</p>
3 February 2015 Mayoral Minute	<p>Council resolved to suspend acceptance of new planning proposals under the Hawkesbury Residential Land Strategy until the key implementation actions of the Residential Land Strategy, in particular structure planning and development contribution planning had been completed for the Kurmond-Kurrajong Investigation Area, or 31 July 2015.</p> <p>Planning proposals that had already been received by Council were to continue to be processed. Those planning proposals, in accordance with previous resolutions of Council were not to proceed to gazettal until the relevant structure plan or S94 Plan was in place.</p> <p>The identified structure and development contributions planning was to be given priority.</p>
31 March 2015	<p>Council resolved to adopt the Investigation Area to enable structure planning and development contributions planning for the purposes of large lot residential/ rural-residential development within the Kurmond and Kurrajong area.</p>
28 July 2015	<p>Council resolved that the development principles and local planning approach outlined in the report be adopted as an Interim Policy for the purpose of structure planning within the Kurmond and Kurrajong Investigation Area.</p> <p>Council’s resolution of 3 February 2015 was maintained for Kurmond and Kurrajong. Council resolved to suspend acceptance of new planning proposals under the Hawkesbury Residential Land Strategy until 30 November 2015.</p>
24 November 2015	<p>A progress report was presented to Council on the Kurmond-Kurrajong Investigation Area and to inform Council of the status of other planning proposals within the Investigation Area.</p>
30 August 2016	<p>A further progress report was provided to Council where it was resolved to defer the item for the consideration of the new Council.</p>

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26 November 2016	<p>Council resolved:</p> <p><i>That:</i></p> <ol style="list-style-type: none"> <i>1. Council receive the results of the Kurmond and Kurrajong Investigation Area Survey.</i> <i>2. Council Staff identify a number of specific areas (based upon Constraints Mapping, survey results and the preferred approach as outlined in this report) for possible, but not certain, development of additional large lot residential/rural-residential development throughout the Investigation Area and some residential development up to, but not within, the existing villages of Kurmond and Kurrajong.</i> <i>3. The identified areas be further consulted with the community regarding future development.</i> <i>4. The results of that further consultation be reported to Council.</i> <i>5. Council not accept any further planning proposal applications within the Kurmond and Kurrajong investigation area until such time as the structure planning as outlined in this report is completed. Council receive a progress report on the structure planning prior to July 2017.</i> <i>6. Council continue processing the planning proposals within the investigation area that have received support via a Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016.</i>
30 May 2017	<p>Council reaffirmed its previous resolution in relation to new Planning Proposals within the Investigation Area, which read as follows:</p> <p><i>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.</i></p>
13 April 2018	<p>Clouston Associates were commissioned to undertake a Landscape Character Study of Kurmond and Kurrajong.</p>
31 July 2018	<p>Report to Council informing the progress of the Kurmond Kurrajong Investigation Area including the Kurmond Kurrajong Landscape Character Study prepared by Clouston Associates.</p>

Background

The purpose of this section of the report is to provide Council with background material in terms of the Hawkesbury Residential Land Strategy 2011, and ongoing Structure Planning processes associated with the Kurmond-Kurrajong Investigation Area, and in particular highlight details of recent relevant studies, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan

This section also includes details of all individual planning proposals within the Investigation Area.

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The report also highlights a series of next steps in respect of the Kurmond-Kurrajong Investigation Area Structure Planning process, and other recommendations from identified matters within the studies.

Housing Context

Whilst Structure Planning for the Kurmond-Kurrajong Investigation Area was commenced in 2015, it is important to understand the context in which this ongoing strategy work is being undertaken. This is also the case for the review of the Residential Land Strategy that Council has resolved to undertake.

Metropolitan Context

Planning for future residential uses in the Hawkesbury Local Government Area (LGA) needs to consider how the LGA itself, and the wider district and region, is expected to grow and change over the next few decades.

This requires Council to work within the strategic planning direction set by the NSW Government and the Greater Sydney Commissions for:

- Greater Sydney in the Greater Sydney Region Plan - a metropolis of 3 Cities including the Western Parkland City
- The Western City District, of which the Hawkesbury is a part.

Greater Sydney Region Plan

The Greater Sydney Region Plan forecasts that between 2016 and 2036, the Western City District is expected to grow by 740,000 people in 2016 to 1.1 million people by 2036. This equates to a need for nearly 40,000 new homes in 2016-2021 alone, and nearly 185,000 new homes between 2016 and 2036. Of this, the Western City District Plan sets a five-year housing target for Hawkesbury LGA of 1,150 new homes between 2016 to 2021. Existing Residential Zonings within the Hawkesbury already provide for an additional 4,500 dwellings located at:

- Vineyard Stage 1 (2,500 dwellings)
- Redbank (1,400 Lots)
- Jacaranda Ponds (580 Lots)

However, further work is required to understand the housing and economic impacts of the growing population, with the Hawkesbury LGA projected to grow from around 67,000 people in 2016 to just over 85,000 people by 2036.

The Greater Sydney Region Plan also notes that flooding in the Hawkesbury-Nepean Valley is one of the most significant natural hazards in Greater Sydney. It states that if the 1867 flood - where the river level reached 19.7 metres at Windsor - were repeated today, 12,000 residential properties would be impacted, 90,000 people would need evacuation and damages would cost an estimated \$5 billion.

Furthermore, existing crossings across the Hawkesbury River become inoperable at less than a 1:10 flood, making additional growth on the west side of the river highly problematic.

Western City District Plan

The Western City District Plan collectively classes Richmond and Windsor as a strategic centre, recognising its expanded role as a hub for retail and commercial services; major health facilities including the Notre Dame University medical teaching campus. The Plan also identifies a growing tourism opportunity, focused on colonial history, rural character, agriculture and environmental assets including the Greater Blue Mountains World Heritage area, the Hawkesbury River and the surrounding agricultural lands.

The Plan sets a baseline target of 12,000 jobs by 2036 (up from 10,300 in 2016) with a higher target of 16,500 jobs.

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The existing aerospace and defence activities at RAAF Base Richmond is a hub of logistics support for the Australian Defence Force. Over 450 aerospace workers work within the precinct for the Royal Australian Air Force, United States Air Force, Northrop, Airbus Group Australia Pacific, Lockheed Martin, Standard Aero, GE Aviation, L3 Aviation Products and CAE.

Combined, the RAAF Base, Western Sydney University Hawkesbury campus, TAFE NSW Richmond, and a new STEM (Science, Technology, Engineering and mathematics) Secondary School will complement business activities around the Badgerys Creek Aerotropolis that will be focused on the planned Western Sydney Airport.

North West Growth Area

Part of Hawkesbury LGA is within the North West Growth Area, an area designated by the NSW Government as suitable for large scale Greenfield land releases. In the case of Hawkesbury, the release areas are also located within a relatively short distance of the Richmond rail line.

Western Sydney City Deal

Hawkesbury City Council is involved in the Western Sydney City Deal, a 20-year agreement between the Australian and NSW governments and Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly councils that will optimise the opportunity of the new airport and focus on connectivity; jobs; skills and education; planning and housing; liveability and environment; and governance.

Western Sydney Airport will also create international and domestic tourism opportunities. This will have a positive influence on the Hawkesbury's visitor economy by better connecting visitors to visitor experiences such as the Hawkesbury Farm Gate Trails, and exceptional landscapes and waterways, in addition to heritage areas including the Macquarie towns and the Hawkesbury Regional Gallery and Museum.

The Hawkesbury's unique landscape also offers rich soils for agricultural production that can in turn lead to export opportunities that will link to Badgerys Creek Airport. The Western Sydney University at Hawkesbury Campus and AgriPark Research Centre provide tertiary education in medical and forensic science, animal science, natural science, sustainable agriculture and food security with world-class research facilities in grasses, pastures, legumes, insects and ecology.

Hawkesbury LGA is, therefore, ready to face the future, which a rich and diverse economy and expected population growth that can be optimised to bring more opportunities and services to more people.

Hawkesbury Housing and Employment Strategy.

In response to these issues and opportunities, Council needs to develop detailed housing and employment strategies.

In the case of housing, planning that focuses housing development in the right locations:

- Within the areas of the North West Growth Area located within Hawkesbury
- Near existing transport connections or centres
- Within easy access of future job locations
- Within existing urban areas with good access to existing services such as education, health and commercial services that minimise risks associated with flooding and bushfires.

In the case of employment, planning that focuses economic development in the right locations, that build on:

- The areas natural advantages, its rich soils and associated agricultural lands, its areas of natural beauty and wilderness
- Its strengths, the cluster of aerospace, education, research and employment activities between Windsor and Richmond

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- Richmond and Windsor as a strategic centre, recognising its expanded role as a hub for retail and commercial services; major health facilities including the Notre Dame University medical teaching campus
- Growing tourism opportunities, focused on colonial history, rural character, agriculture and environmental assets including the Greater Blue Mountains World Heritage area, the Hawkesbury River and the surrounding agricultural lands.

Hawkesbury Residential Land Strategy 2011

On 10 May 2011 Council adopted the Residential Land Strategy. The aims of the Residential Land Strategy are to:

- accommodate between 5,000 to 6,000 additional dwellings by 2031, primarily within the existing urban areas as prescribed in the Department of Planning and Infrastructure's (DP&I) North West Subregional Strategy;
- preserve the unique and high quality natural environment of the LGA;
- accommodate 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; and
- ensure that the appropriate infrastructure is planned and provided to cater for future development.

The Residential Land Strategy does not rezone land or approve development of areas or localities. It established a planning framework to assist in the implementation of the above aims, and following assessment of the various opportunities and constraints recommended a series of areas requiring further investigation for general, low density or medium density residential zonings around Richmond/Hobartville, North Richmond, Wilberforce, Glossodia, and Windsor/South Windsor/Bligh Park.

It should also be noted that the Residential Land Strategy did not specifically identify Kurmond and Kurrajong for investigation.

Additionally, the Residential Land Strategy was also to be used to guide the preparation and assessment of rezoning proposals (Planning Proposals).

The Residential Land Strategy contained the following commentary and criteria regarding large lot residential / rural residential development.

"2.10 Strategy for Rural Village Development

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

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

“3.3.8 Role of Rural Residential Development

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

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

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

Future rural residential development, that is large lot residential dwellings, will be required to:

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

“6.5 Rural Village Development Criteria

While the majority of future residential development will occur within existing residential areas or on the periphery of existing urban areas and corridors, it is recognised that there is a need to maintain the ongoing viability of rural villages. Future development within rural villages should be primarily low density and large lot residential dwellings.

Additionally all future low density and large lot residential development in rural villages must:

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

Kurmond–Kurrajong Investigation Area

The Kurmond-Kurrajong Investigation Area was not identified within the Residential Land Strategy. However, the investigation area was identified by considering the location criteria provided within the Residential Land Strategy (i.e. “within 1km radius” and “cluster around or on the periphery of villages”), undertaking a desk top survey of matters such as slope, existing vegetation, existing road layout and accesses, and zone and property boundaries.

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Figures 1, 2, 3 and 4 below illustrates the Kurmond-Kurrajong Investigation Area

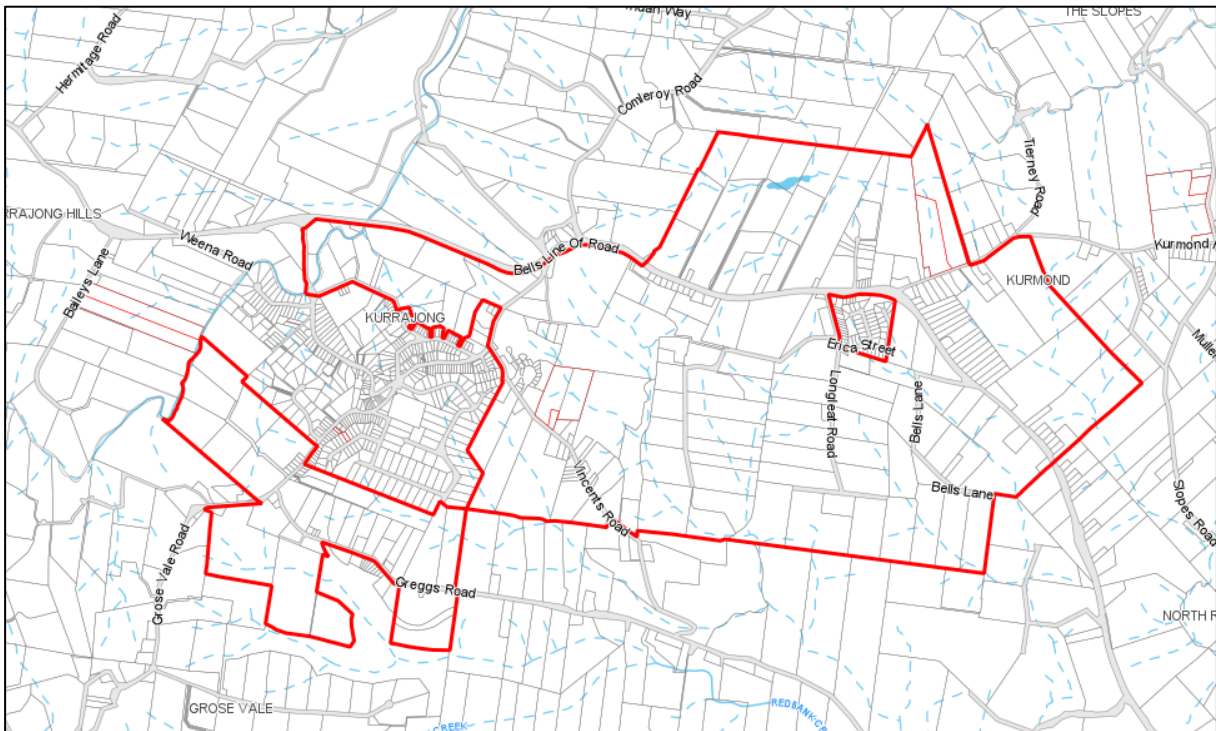


Figure 1: Kurmond-Kurrajong Investigation Area

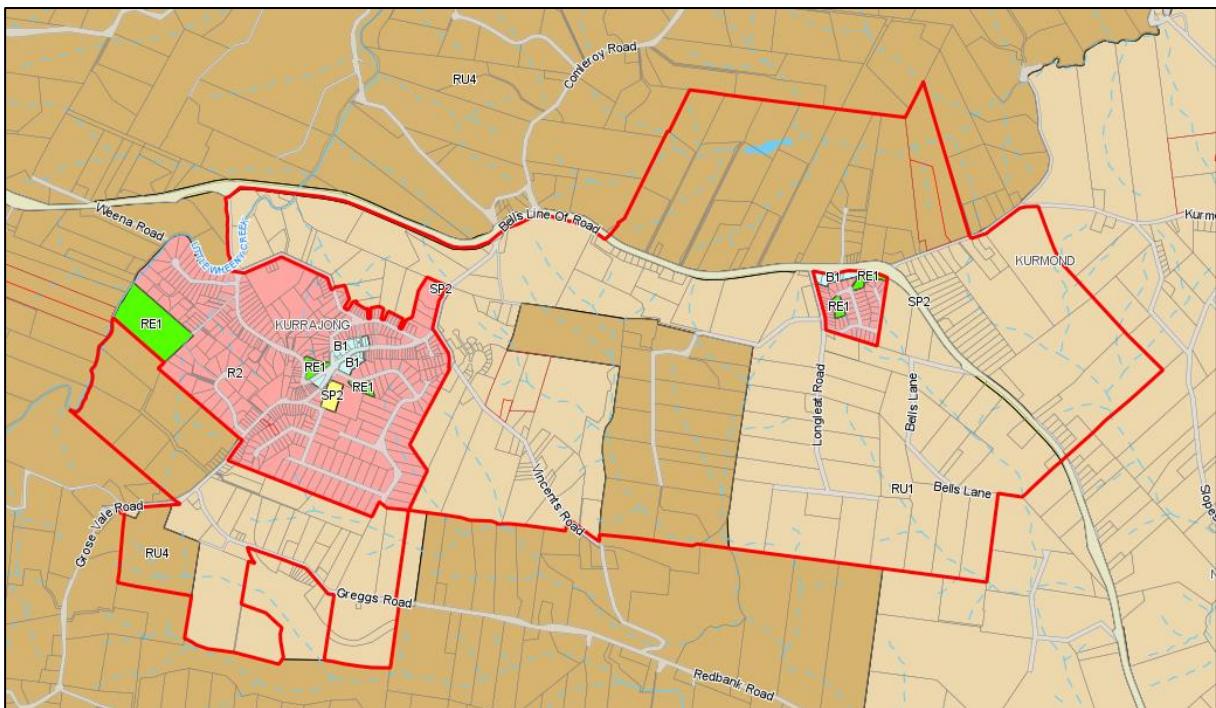


Figure 2: Zoning Map Kurmond-Kurrajong Investigation Area

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Figure 3: Lot Size Map of Kurmond-Kurrajong Investigation Area

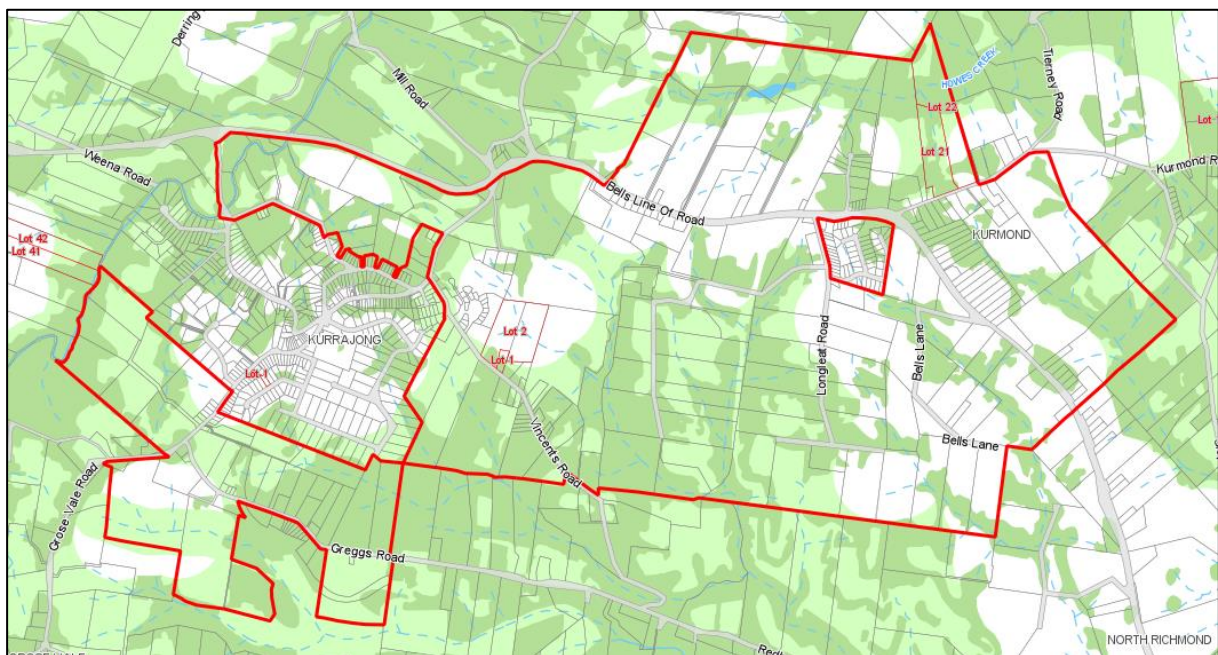


Figure 4: Biodiversity Map of Kurmond-Kurrajong Investigation Area

Commercial/Retail Findings

Leyshon Consulting was commissioned by Council to undertake a commercial/retail assessment of the existing villages of Kurmond and Kurrajong. The paper provided by Leyshon Consulting provided a summary of the key observations following a review of relevant data and an inspection of the Kurmond and Kurrajong villages.

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The key observations included:

- Kurmond and Kurrajong centres draw their resident-based sales/business from a common residential catchment.
- A population of 9,086 certainly would be sufficient to support a much larger provision of retail floor-space in both centres than the amount of retailing which currently exists.
- The population of the Kurmond and Kurrajong areas exhibits above average socio-economic characteristics which is usually indicative of an area having an above average demand for retail floor-space.
- Analysis of 2016 census data indicates the population of Kurmond and Kurrajong and surrounding areas broadly can be described as somewhat older, higher proportion of married persons, higher proportion of traditional families, lower proportion of tertiary educated persons, higher proportion of trade qualified persons, higher proportion of people born in Australia, low unemployment rate and well above average median household income.
- There is sufficient population in the areas surrounding the Kurmond and Kurrajong villages to support a much larger provision of retailing and associated services than currently exists. The fact that both centres remain relatively small, however, is likely to be a function of their location, history and topography as well as competition from larger centres such as North Richmond, Richmond and Windsor.
- That no clear need exists for strategies to be adopted to increase the residential population surrounding the two villages in order to either underwrite their viability or to support a greater range of retail floor-space and services than each currently contains.

The commercial/retail assessment recommended that the Kurmond and Kurrajong village centres do not need significant public capital expenditure at present. It is considered Council's approach should be based on the concept of applying a "light touch" as the village centres appear to be working well at this time.

The assessment further recommended some greater attention to kerbside landscaping within the centre to be considered.

These findings have also been highlighted in the work being undertaken to date by SGS Economics and Planning who are undertaking the Employment Lands Study for the Hawkesbury LGA. Amongst other analysis, SGS Economics and Planning have undertaken an analysis of retail needs on an LGA wide basis, which has highlighted that in terms of villages such as Kurmond and Kurrajong these are functioning and viable centres based on the existing population and demographics. Recommended improvements moving forward are centred around the local character of each town and village and particularly focussed on the experience that residents and visitors enjoy within those centres ie. ensure that these places and spaces are the types of places that would encourage residents and visitors to stay longer. Council's focus on Vibrant Towns and Villages is certainly centred on that approach, with the City Deal funding under the Liveability Program set to transform Windsor, Richmond and South Windsor in the first instance. A summary of initial findings from the Employment Lands Strategy relevant to this matter include:

- Smaller centres and villages to become vibrant local hubs;
- Developing Hawkesbury tourism as a major focus;
- Development needs to be sensitive and balanced with the natural setting of the Hawkesbury and existing heritage, character and lifestyle
- Tourism (Protect and showcase what we have)
- Growing tourism opportunity, focused on colonial history, rural character, agriculture and environmental assets including the Greater Blue Mountains World Heritage area, the Hawkesbury River and the surrounding agricultural lands
- Major recreational playground for Greater Sydney
- Strengths include the natural environment, heritage and cultural assets
- Provision of quality nature and cultural based experiences
- Protect and enhance what we have in order to market the product

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Environmental Assessment

Council's LEP 2012 biodiversity and corridor layer covers a wide area of remnant vegetation as well as existing and potential biodiversity connectivity. It includes areas of small patches of vegetation in properties as well as large tracts of vegetation with state conservation priority across multiple ownerships.

Since the development of the layer, a wide variety of more recent biodiversity conservation guidelines, planning documents and policies have evolved that require Council consideration in its provision of regulatory requirements and operational management.

Council must be adequately informed, to be ready to effectively respond to the recent comprehensive changes to NSW biodiversity legislation. This includes Council's assessment of development proposals that require mandatory biodiversity offsetting for specified development thresholds.

Additionally, since the LEP 2012 biodiversity mapping, the extant area of remnant vegetation will have changed, primarily through clearance in intensively developed areas.

To support decision making arising from these changes it is required to develop a suite of strategic biodiversity planning tools and supporting information. A biodiversity prioritisation framework identifies the relative conservation significance of areas of native habitat across private and public land tenures which provides an overarching basis for strategic planning products. Prioritisation of biodiversity across the LGA will allow, not only an improved planning decision framework, but will also support a range of other financial, administrative and operational decisions and activities.

Council is undertaking this wider project in order to provide an initial biodiversity prioritisation framework and a suite of supporting tools for further development to improve and inform Council decision making and strategic planning.

Key objectives of the initial stage of the project include:

- Collate and review relevant biodiversity information to support decision making, including update of extant vegetation mapping
- Identify relevant criteria and associated information / data for the development of a biodiversity prioritisation framework
- Prepare an initial biodiversity prioritisation dataset for discussion with Council
- Assess a number of pilot sites to test the initial outcomes of the prioritisation framework

The framework and tools will take into account new legislation, use updated mapping of biodiversity values and ultimately reflect Council and community priorities to achieve effective long-term conservation outcomes.

The approach to prepare the initial prioritisation framework and mapping includes:

- Review of existing background information and data suitable for use in the process which has included:
 - Vegetation community and condition mapping
 - Species records and predictive habitat modelling
 - Drainage / riparian and wetland areas
 - Lands identified for conservation
- Update extent of latest vegetation mapping
- Habitat corridor analysis
- Develop criteria for prioritisation framework
- Data analysis and prioritisation mapping
- Validate prioritisation framework with pilot sites

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This work has been undertaken by Ecological, with the report regarding the mapping process, and relevant information for the Kurmond-Kurrajong Investigation Area included as Attachment 1.

Landscape Character Study for the Kurmond-Kurrajong Investigation Area

In order to appropriately inform the structure planning process for the Kurmond-Kurrajong Investigation Area, Clouston Associates were commissioned to prepare a Landscape Character Study of the Kurmond Kurrajong Investigation Area. The purpose of the Study is to provide a landscape character study of Kurrajong and Kurmond that determines what aspects of the streetscapes, landscapes and buildings positively contribute to making the area identifiable and unique. This Study also directs recommendations for appropriate locations, typical lots sizes and desired built form character for future development in the Investigation Area.

The Kurrajong and Kurmond Landscape Character Study prepared by Clouston Associates is provided as Attachment 2.

Hawkesbury Rural Lands Strategy - Initial Findings

Council is also in the process of undertaking a Rural Lands Study of the Hawkesbury LGA in order to inform the Draft Local Strategic Planning Statement and subsequent amendments to the Hawkesbury Local Environmental Plan and Development Control Plan to reflect the Sydney Region Plan and Western City District Plan. The following points of note are highlighted from work associated with the Rural Lands Study to date.

Environmental and Landscape Significance

The areas of environmental value include the following:

- Hawkesbury, Grose, Macdonald & Colo Rivers and their tributaries
- Wetlands and Lagoons
- National Parks and areas of native vegetation on private land

Areas of Landscape Significance are as follows:

- Escarpment from Bowen Mountain to East Kurrajong
- Richmond Lowlands
- Pitt Town Bottoms
- Hawkesbury, Grose, Macdonald & Colo Rivers and their tributaries

Opportunities/Challenges

Link to Tourism - need to provide for tourism related activities in rural areas

Draft Local Strategic Planning Statement Character Statements

As part of preparation of the Draft Local Strategic Planning Statement, Character Statements have been prepared for each of the towns, villages and localities within the Hawkesbury. Relevant to this matter, the following key points include:

Kurmond Local Character

- Rural village feel which boasts picturesque views of the valleys, pastoral lands and Blue Mountains from ridgelines
- Heritage listed buildings
- Farming and country living lifestyle
- Small but vibrant centre
- Vibrant, active and affluent community

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- Transitioned from agricultural to lifestyle.

Kurrajong Local Character

- Rural village feel at the base of the Blue Mountains
- Scenic views of valleys, Blue Mountains, & escarpments
- Heritage listed buildings
- Agricultural lands previously used to cultivate orchids, apples and citrus
- An oasis of hidden treasure providing the serenity and tranquility of bushlands
- Travellers and tourist dream
- Lifestyle living
- Active and affluent community
- Small but vibrant centre
- Engaged community through cultural activities and events.

Hawkesbury Traffic Study

SMEC Australia Pty Ltd were engaged by Council to undertake a comprehensive traffic study to:

- identify the current and future traffic and transport patterns
- assist Council in planning for the current and future traffic and transport needs of the Hawkesbury Community.

The study assesses the likely traffic impacts stemming from the future growth in the Hawkesbury Local Government Area in order to determine any required improvements or capacity needs to minimise any adverse traffic impacts of proposed development.

SMEC undertook the Study in two Stages, with Stage 1 having already been completed and reported to Council in September 2018. Stage 1 of the Traffic Study concluded that:

“To estimate future traffic flows with the addition of a new bridge near Navua Reserve, the Roads and Maritime STFM strategic model was coded to include the new bridge. This showed that the new bridge in the vicinity of Navua Reserve would result in the redistribution of traffic, which would result in a reduction in traffic at the Bells Line of Road/Gross Vale Road signalised intersection, at the Kurrajong Road/Old Kurrajong Road priority intersection, as well as Richmond Bridge.

Assessment indicates that a new bridge at Navua Reserve in 2027 would provide positive impact relating to the operation of the Bells Line of Road/ Gross Vale Road intersection and the Kurrajong Road/Old Kurrajong Road priority intersection would also operate satisfactorily during peak periods”.

The Stage 1 assessment also provided a good understanding of the problem locations and issues for assessment in further detail as part of Stage 2 of this Study.

Stage 2 of the Study involves a number of key actions including the following:

- Undertake strategic assessment of proposed road projects and associated road alignments
- Determine the current and future based road network and demands
- Identify critical road network locations in consultation with Council and assess such road network locations in detail
- Test future road network demand scenarios, including a new bridge in the vicinity of Navua Reserve and other road infrastructure scenarios, as required

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- Develop a strategic traffic model for Council to use now and in the future to assess the implications of background traffic growth, potential new roads infrastructure, as well as the impacts of other influencing factors, such as new developments.
- Prepare Stage 2 traffic report following completion of the required traffic modelling to identify critical road network elements that require to be upgraded to support future traffic growth, consider the impacts of the proposed strategic road projects and associated infrastructure as required.

In terms of Stage 2 of the traffic modelling for the Kurmond Kurrajong area the Hawkesbury Traffic Study has modelled a future base year 2027 with the following parameters, in order to assess impacts of any further development:

- The proposed new Grose River Bridge is operational
- Takes into account the remaining Redbank development (1,250 dwellings), Glossodia (250 dwellings), Pitt Town (150 dwellings) and Vineyard (900 dwellings).
- Includes the RMS upgrades along Bells Line of Road at Grose Road, Yarramundi Lane and Bosworth Street/ March Street as well as the new Windsor Bridge.

In addition to modelling the future base year of 2027, the following Scenarios have been tested relative to the future base year:

- Scenario 1 - Future year base without Gross River Bridge
- Scenario 2 - Future year base plus 200 dwellings within the Kurmond/Kurrajong investigation area
- Scenario 3 - Future year base plus an additional 5% growth at Richmond and Windsor/South Windsor areas.

Interim advice from the Consultant is that the new Grose River Bridge will improve the operation of the network taking into account the projected development in the future base year (2027) that includes development sites such as Redbank. The scenario modelling of the proposed 200 dwellings within the Kurmond-Kurrajong Investigation Area indicates that this development option is not considered to have any notable impact.

It should be pointed out that this Scenario is tested on the basis that the new Grose River Bridge is in place and that without the new bridge in place it would only lead to further deterioration in the road network performance.

The traffic assessment indicates that duplication of the Richmond bridge would be required to accommodate further development even with the new Grose River Bridge in place.

Kurmond and Kurrajong – View Classification and Design Guidelines

As outlined within the Kurmond Kurrajong Landscape Character Study, further work has been undertaken to inform the structure planning process through preparation of View Classification and Design Guidelines which is attached to this report.

This study includes:

- Principles of view evaluation including planning frameworks and NSW Land and Environment Court Principles
- A system for classifying views to determine those views of high significance
- Diagrams to support design related controls

These view classifications and design guidelines have informed the Draft Kurmond Kurrajong Structure Plan.

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Current Planning Controls in Kurmond-Kurrajong Area

The Kurmond-Kurrajong Investigation Area is zoned RU1 Primary Production and RU4 Primary Production Small Lots. The Minimum Lot Size range from 1000-2000sqm, 2000-4000sqm, 4000sqm-1ha, 1ha-2ha, 2ha-4ha, 4ha-10ha, and 10ha+, within the investigation area. The Minimum Lot Size man is illustrated in Figure 2 above. The investigation area also include a range of Biodiversity.

Currently, the Hawkesbury LEP 2012 provisions for RU1 and RU4 zones (Figure 2) are summarised in Table 1 as follows:

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Zone	Zone Objectives	Permitted without consent	Permitted with consent
RU1 Primary Production	<p>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</p> <p>To encourage diversity in primary industry enterprises and systems appropriate for the area.</p> <p>To minimise the fragmentation and alienation of resource lands.</p> <p>To minimise conflict between land uses within this zone and land uses within adjoining zones.</p> <p>To encourage agricultural activities that does not rely on highly fertile land.</p> <p>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.</p> <p>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.</p> <p>To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.</p> <p>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.</p>	<p>Bed and breakfast accommodation;</p> <p>Environmental protection works;</p> <p>Extensive agriculture;</p> <p>Home occupations.</p>	<p>Animal boarding or training establishments;</p> <p>Boarding houses;</p> <p>Boat sheds;</p> <p>Building identification signs;</p> <p>Business identification signs;</p> <p>Camping grounds;</p> <p>Caravan parks;</p> <p>Cemeteries;</p> <p>Centre-based child care facilities;</p> <p>Charter and tourism boating facilities;</p> <p>Community facilities;</p> <p>Correctional centres;</p> <p>Crematoria;</p> <p>Dual occupancies (attached);</p> <p>Dwelling houses;</p> <p>Educational establishments;</p> <p>Entertainment facilities;</p> <p>Environmental facilities;</p> <p>Extractive industries;</p> <p>Farm buildings;</p> <p>Flood mitigation works;</p> <p>Food and drink premises;</p> <p>Forestry;</p> <p>Funeral homes;</p> <p>Health consulting rooms;</p> <p>Helipads;</p> <p>Heliports;</p> <p>Home-based child care;</p> <p>Home industries;</p> <p>Hospitals;</p> <p>Intensive livestock agriculture;</p> <p>Intensive plant agriculture;</p> <p>Jetties;</p> <p>Landscaping material supplies;</p> <p>Moorings;</p> <p>Open cut mining;</p> <p>Places of public worship;</p> <p>Plant nurseries;</p> <p>Public administration buildings;</p> <p>Recreation areas;</p> <p>Recreation facilities (indoor);</p> <p>Recreation facilities (outdoor);</p> <p>Registered clubs;</p> <p>Respite day care centres;</p> <p>Roads;</p> <p>Roadside stalls;</p> <p>Rural industries;</p> <p>Rural supplies;</p> <p>Rural workers' dwellings;</p> <p>Tourist and visitor accommodation;</p> <p>Truck depots;</p> <p>Veterinary hospitals;</p> <p>Water recreation structures;</p> <p>Water storage facilities.</p>
RU4 Primary Production Small Lots	<p>To enable sustainable primary industry and other compatible land uses.</p> <p>To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.</p> <p>To minimise conflict between land uses within this zone and land uses within adjoining zones.</p>	<p>Bed and breakfast accommodation;</p> <p>Environmental protection works;</p> <p>Extensive agriculture;</p> <p>Home occupations.</p>	<p>Animal boarding or training establishments;</p> <p>Boarding houses;</p> <p>Boat sheds;</p> <p>Building identification signs;</p> <p>Business identification signs;</p> <p>Camping grounds;</p> <p>Caravan parks;</p> <p>Cemeteries;</p> <p>Centre-based child care facilities;</p> <p>Charter and tourism boating facilities;</p> <p>Community facilities;</p> <p>Dual occupancies (attached);</p> <p>Dwelling houses;</p> <p>Educational establishments;</p> <p>Entertainment facilities;</p>

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Zone	Zone Objectives	Permitted without consent	Permitted with consent
	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.		Environmental facilities; Farm buildings; Flood mitigation works; Food and drink premises; Home-based child care; Home industries; Intensive livestock agriculture; Intensive plant agriculture; Jetties; Landscaping material supplies; Moorings; Places of public worship; Plant nurseries; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; Roadside stalls; Rural supplies; Rural workers' dwellings; Tourist and visitor accommodation; Veterinary hospitals; Water recreation structures; Water storage facilities.

Environmental, Social and Economic Values - State Level Considerations - Metropolitan Rural Area:

Relevant to consideration of this matter is the fact that the Hawkesbury is located within the Metropolitan Rural Area. This requires Council to give consideration to a number of matters including:

Environmental Attributes:

- Scenic and landscape amenity;
- Air and water quality;
- Native vegetation and biodiversity; and
- Bushfire hazard.

Social Attributes:

- Cultural and heritage values;
- Scenic amenity;
- Tourism and recreation;
- Community interaction; and
- Infrastructure and amenities.

Economic Attributes:

- Land zone;
- Lot size;
- Planning/Statutory controls;
- Access to utilities;
- Views and vistas;
- Distance to services.

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Hawkesbury Local Planning Panel Advice

It should be noted that individual planning proposals for 42 and 98 Bells Lane, Kurmond which are Pre Gateway matters were reported to the Hawkesbury Local Planning Panel for advice. This advice included:

The Planning Proposal to amend the Hawkesbury Local Environmental Plan 2012 proceed for Gateway determination subject to the following:

The LEP amendment process be 24 months to allow time for Council to complete its strategic planning for the investigation area including:

- *the whole investigation area be evaluated for appropriate zoning;*
- *the completion of a planning controls for the Kurmond Kurrajong Investigation Area.*
- *completion of the following site-specific studies by the applicant:*
 - *Environmental design/site capacity*
 - *Bush fire assessment*
 - *Flora and Fauna assessment*
 - *Traffic impact assessment*
 - *Waste water feasibility*
 - *Infrastructure requirements and funding*
- *A coordinated approach to all current planning proposals be undertaken for the Kurmond Kurrajong Investigation Area currently before Council, including the subject site.*

Western Sydney Planning Panel Decisions

It is also appropriate to consider the decisions of the Western Sydney Planning Panel who considered rezoning reviews for 79 Bells Lane & 2 Inverary Drive. As a summary of the decisions in those matters, the Panel highlighted that in dealing with the planning proposals with the Kurmond-Kurrajong Investigation Area, Council should consider:

- Appropriate zoning
- Impacts on riparian corridors
- Vegetation
- Bushfire
- Lot Sizes – increasing lot sizes as move further away from centres

Planning Proposals

Figure 4 and Table 2 below summarises all the past and current planning proposals and its status affecting properties within the Kurmond-Kurrajong Investigation Area.

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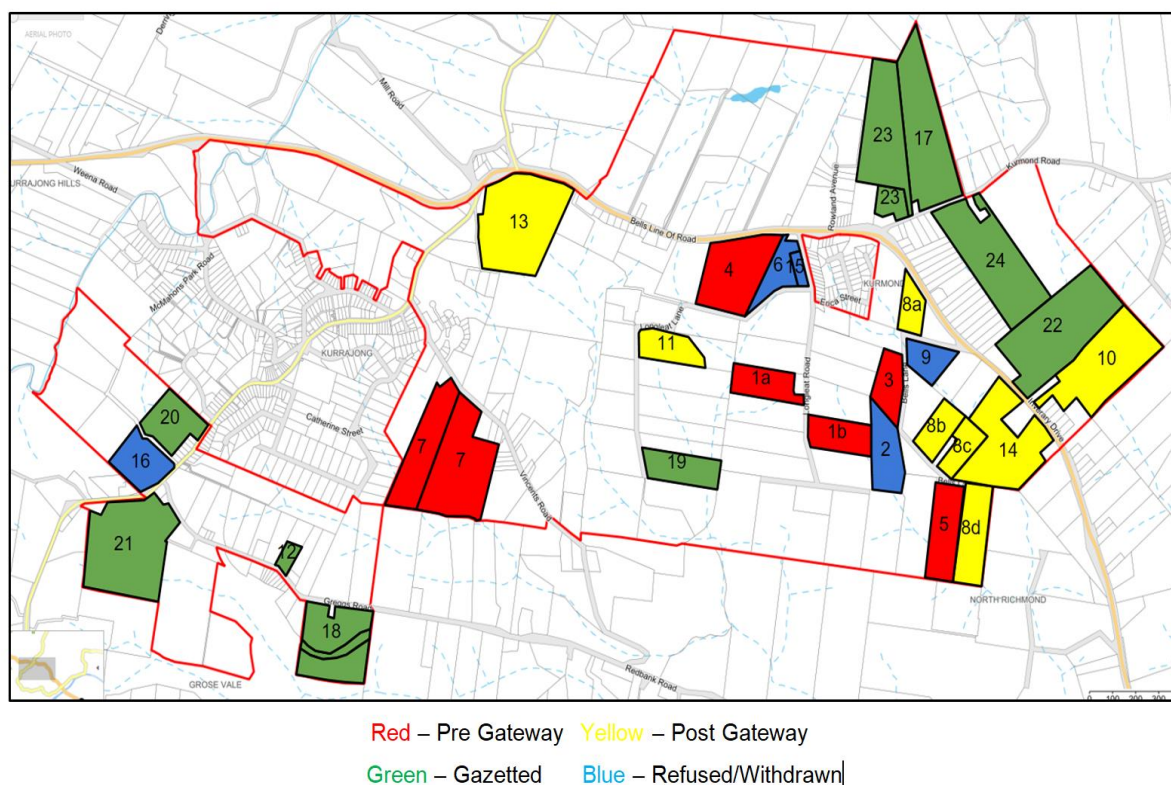


Figure 5: Past and Current Planning Proposals within the Kurmond-Kurrajong Investigation Area

Current Planning Proposals within Kurmond-Kurrajong Investigation Area Pre-Gateway.

No on Map	Application No	Date Received	Address	Proposed number of Lots	Status of the Planning Proposal
1	LEP017/16	29/11/2016	49 and 56 Longleat Road, Kurmond	10	Applicant advised of Council's resolutions of and requested to provide advice as to how they wish to proceed (defer, withdraw, report to Council)
3	LEP009/16	23/03/2016	42 Bells Lane, Kurmond	5	Planning proposal deferred until adoption of policy for KKIA at Ordinary meeting of 14 February 2017.
4	LEP007/16	09/02/2016	535 Bells Line of Road, Kurmond	5	Applicant requested 6 June 2017 that the planning proposal be deferred.
5	LEP006/16	09/02/2016	98 Bells Lane, Kurmond	4	Planning proposal deferred until adoption of policy for KKIA at Ordinary meeting of 14 February 2017.
7	LEP003/16	21/01/2016	36 and 42 Vincents Road, Kurrajong	6	Applicant advised of Council's resolution and requested to provide advice as to how they wish to proceed (defer, withdraw, report to Council).

Current Planning Proposals within Kurmond-Kurrajong Investigation Area Post-Gateway.

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No on Map	Application No	Date Received	Address	Proposed number of Lots	Status of the Planning Proposal
8	LEP002/15	30/01/2015	79, 95 & 100 Bells Lane, Kurmond	18	Gateway determination issued 23 June 2018.
10	LEP005/14	23/12/2014	2 Inverary Drive, Kurmond	33	Gateway determination issued 28 June 2018.
11	LEP010/16	11/04/2016	74 Longleat Lane, Kurmond	2	Gateway determination issued 23 September 2016. Public exhibition to commence.
13	LEP006/14	18/08/2014	631 Bells Line of Road, Kurrajong	10	Council deferred the matter pending the results of the Comprehensive Traffic Study 11 April 2017.
14	LEP009/13	14/11/2013	377 Bells Line of Road, Kurmond	6	Matter deferred by Council.

Planning Proposals within Kurmond-Kurrajong Investigation Area Gazetted, Refused or Withdrawn.

No on Map	Application No	Date Received	Address	Proposed number of Lots	Status of the Planning Proposal
6	LEP005/16	09/02/2016	3 Longleat Road, Kurmond	-	Applicant withdrew planning proposal 26 June 2018.
12	LEP004/16	03/02/2016	452 Greggs Road, Kurrajong	2	Published/ Gazetted on NSW Legislation website on 8/06/2018.
2	LEP016/16	18/11/2016	72 Bells Lane, Kurmond	-	Determined by JRPP to not proceed to Gateway 26 March 2018
16	LEP001/16	19/01/2016	1041 Grose Vale Road, Kurrajong	-	Withdrawn on 4 October 2016.
9	LEP007/14	24/12/2014	3 Bells Lane, Kurmond	-	Withdrawn on 18 December 2017.
15	LEP008/16	01/03/2016	7 Longleat Road, Kurmond	-	Withdrawn 18 August 2016.
18	LEP003/14	09/09/2014	431 and 431A Greggs Road, Kurrajong	8	Gazetted on 18 August 2017.
17	LEP002/14	30/05/2014	1420 Kurmond Road, Kurmond	11	Gazetted on 23 June 2017.
19	LEP007/13	28/10/2013	136 Longleat Lane, Kurmond	4	Gazetted 9 December 2016. No DA received to date.
20	LEP004/13	25/03/2013	1059A Grose Vale Road, Kurrajong	9	JRPP appointed as RPA. Gazetted 9 June 2017.
21	LEP003/13	20/02/2013	1026 Grose Vale Road, Kurrajong	2	Gazetted 16 October 2015. DA0647/16 approved for 2 lot subdivision.
22	LEP001/12	25/10/2012	396 Bells Line of Road, Kurmond	37	Gazetted 27 January 2017. DA0332/16 received for community title subdivision resulting in 37 development lots from this property.
23	LEP11-001/12	01/08/2012	1442 and 1442A Kurmond Road, Kurmond	13	Gazetted 9 June 2017.
24	LEP89005/10	15/12/2010	1411 Kurmond Road, Kurmond	5	Gazetted 16 January 2015. DA0701/14 approved 5 lot subdivision.

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Policy considerations

The Hawkesbury Residential Land Strategy provides a guideline to further investigation of potential for general, low density or medium density residential zones. The guideline provided that areas within 1km radius around villages with services that meet existing neighbourhood criteria to be investigated for future residential development potential.

The Western City District Plan has set a dwelling target of 1,150 dwellings for five years (2016-2021) for Hawkesbury LGA with anticipated future targets to be announced soon.

A Metropolis of Three Cities sets a District 20-year strategic target of 184,500 dwellings, equating to an average annual supply of 9,225 dwellings over 20 years, or approximately one in four of all new homes in Greater Sydney over the next 20 years.

Future Transport 2056 identifies city-shaping transport projects that will, in long term, improve accessibility to jobs and services and act as a stimulus for additional housing supply. To deliver the 20-year strategic housing target, Councils should in local housing strategies, investigate and recognise opportunities for long term housing supply associated with city-shaping transport corridors; growing, emerging and new centres; and other areas with high accessibility.

Consultation

Once the Kurmond-Kurrajong Investigation Area Structure Plan is complete, it will be publicly exhibited in accordance with Council's Community Engagement Policy 2007 and the EP&A Act requirements.

The community engagement methodology will include but is not limited to:

- Newspaper publication;
- Letter drops;
- Information sessions held at the Kurmond and Kurrajong Village centres;
- Hard copies of the exhibition placed at the administration centre and Council Library; and
- Exhibition placed on Council's Website at 'Your Hawkesbury Your Say' page.

At the conclusion of the public exhibition, a further report will be provided to Council to consider any submissions received.

Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The report is consistent with the following Focus Areas, Directions and Strategies within the CSP.

Our Leadership

1.5 Regulation and Compliance:

- 1.5.1 Undertake Council initiatives within a clear and fair framework of strategic planning policies, procedures and service standards as required under all regulatory frameworks.
- 1.5.2 Best practise sustainability principles, accountability and good governance are incorporated in all activities undertaken by Council.

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Our Environment

- 3.1 The natural environment is protected and enhanced - Value, protect and enhance our unique natural environment
- 3.1.1 Encourage effective management and protection of our rivers, waterways, riparian land, surface and ground waters, and natural eco-systems through local action and regional partnerships.
- 3.1.2 Act to protect and improve the natural environment including working with key agency partners.
- 3.1.3 Minimise our community's impacts on habitat and biodiversity and protect areas of conservation value.
- 3.1.4 Use a range of compliance measures to protect the natural environment.

Our Future

5.1 Strategic Planning Governance

- 5.1.1 Council's planning is integrated and long term.
- 5.1.2 Council's decision making on all matters is transparent, accessible and accountable.
- 5.1.3 Council will continually review its service provision to ensure best possible outcomes for the community.
- 5.1.4 Encourage increased community participation in planning and policy development. 5.1.5 The needs of our community will be reflected in Local, State and Regional Plans.

Discussion

The Draft Kurmond Kurrajong Structure Plan has been prepared following consideration of a series of separate studies have either been undertaken or considered as part of the process of informing the preparation of a Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan

The Draft Kurmond Kurrajong Structure Plan has been attached to this report, and details the purpose and process undertaken to prepare the Structure Plan.

Financial Implications

There are no financial implications in terms of this report.

Fit For the Future Strategy Considerations

The matter in this report is consistent with Council's Fit for the Future Strategy, considerations.

Sustainable Population Growth - continued implementation of Hawkesbury Residential Land Strategy to concentrate new residential development around existing urban centres and villages.

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Conclusion

Based on consideration of the various studies that have informed the preparation of the Draft Structure Plan, that Council adopt the Draft Kurmond Kurrajong Structure Plan for the purposes of public exhibition.

Planning Decision

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

RECOMMENDATION:

That Council adopt the Draft Kurmond-Kurrajong Structure Plan for the purposes of public exhibition.

ATTACHMENTS:

- AT - 1** Ecological - Biodiversity Priority Rank for Kurmond-Kurrajong Investigation Area - (*Distributed under separate cover*).
- AT - 2** Kurmond and Kurrajong Landscape Character Study - (*Distributed under separate cover*).
- AT - 3** Kurmond-Kurrajong Structure Plan - (*Distributed under separate cover*).
- AT – 4** Kurmond and Kurrajong – View Classification and Design Guidelines - (*Distributed under separate cover*).

oooO END OF REPORT Oooo

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Item: 165 **CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lot 40 DP 7565, 42 Bells Lane, Kurmond - (95498, 124414)**

Previous Item: 5, Ordinary (31 January 2017)
 RM2, Ordinary (14 February 2017)

Directorate: City Planning

PLANNING PROPOSAL INFORMATION

File Number: LEP009/16
Property Address: 42 Bells Lane, Kurmond
Applicant: Glenn Falson Urban and Rural Planning Consultant
Owner: Estate of GG Michael & GA Michael
Date Received: 23 March 2016
Current Minimum Lot Size: 10 Hectares
Proposed Minimum Lot Size: 4,000m²
Current Zone: RU1 Primary Production
Site Area: 2.992ha

Key Issues: ♦ Hawkesbury Local Planning Panel Advice
 Draft Kurmond Kurrajong Investigation Area Structure Plan
 ♦ Kurmond-Kurrajong Landscape Character Study
 ♦ Consistency with Adopted Development Constraints Principles

Recommendation:

That Council support the recommendation of the Hawkesbury Local Planning Panel in respect of Planning Proposal LEP009/16 at 42 Bells Lane, Kurmond and request that the Applicant amends the Planning Proposal to meet the advice of the Hawkesbury Local Planning Panel, the requirements of the Kurmond and Kurrajong Landscape Character Study, the Draft Kurmond Kurrajong Structure Plan, and the development constraint principles adopted by Council.

EXECUTIVE SUMMARY:

Council has received a planning proposal from Glenn Falson Urban and Rural Planning Consultant (the Applicant) which seeks to amend the *Hawkesbury Local Environmental Plan 2012* to enable the subdivision of Lot 40 DP 7565, 42 Bells Lane, Kurmond into five lots.

The purpose of this report is to:

- Advise Council of the recommendation of the Hawkesbury Local Planning Panel in respect of this matter;
- Provide an assessment of the merits of the Planning Proposal; and
- Make a recommendation that the Planning Proposal be amended to meet the advice provided by the Hawkesbury Local Planning Panel, the requirements of the Kurmond and Kurrajong Landscape Character Study, the Draft Kurmond Kurrajong Structure Plan, and the development constraint principles adopted by Council.

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In accordance with the Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act, 1979*, the Planning Proposal was referred to the Hawkesbury Local Planning Panel for comment. Whilst a number of planning proposals including this matter were originally received prior to the commencement of this new requirement, the Department of Planning, Industry and Environment have stipulated that they require the advice of a Local Planning Panel when submitting any planning proposal for a Gateway Determination. The Panel recommended that the Planning Proposal proceed for a 'Gateway' determination subject to meeting certain requirements as outlined in this report.

A series of separate studies have either been undertaken or considered as part of the process of informing the preparation of the Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan

Clouston Associates were commissioned by Council to complete a Landscape Character Study as part of the structure planning process for the Kurmond-Kurrajong Investigation Area, and in July 2018 Council considered a report on the matter and resolved to apply the approach adopted in the Study.

As outlined in this report, the planning proposal is considered to be inconsistent with the recommendations of the Kurmond and Kurrajong Landscape Character Study having regard to the protection of the pastoral character of the locality, and the subject site being within a significant views/vista corridor.

In addition, the Draft Kurmond Kurrajong Structure Plan has been prepared. In relation to the subject site, the Structure Plan nominates a minimum lot size for subdivision of 1 ha in order to maintain the pastoral character of the locality. The Planning Proposal is seeking to permit lot sizes of a minimum of 4,000m², and is therefore considered to be inconsistent with the Draft Structure Plan.

This report provides Council with an overview of the Planning Proposal and recommends that the planning proposal be amended based on the advice of the Hawkesbury Local Planning Panel and the identified inconsistencies with the Draft Kurmond Kurrajong Structure Plan, the Kurmond and Kurrajong Landscape Character Study, and Council's adopted development constraint principles.

As this matter has an extensive history, comprising many elements, the Officers report is divided into the following sections to assist in its explanation and consideration:

1.	Subject Site	Pages 39-40
2.	Kurmond-Kurrajong Investigation Area	Pages 40-41
3.	Kurmond-Kurrajong Structure Plan	Page 41
4.	Detailed History and Planning Proposal	Pages 42-43
5.	Policy Considerations	Pages 43-44
6.	Discussion	Pages 44-63
7.	Consultation	Pages 64-65
8.	Conformance to Hawkesbury Community Strategic Plan	Pages 65-66
9.	Fit for the Future	Page 66
10.	Conclusion	Page 66

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REPORT:

Context and Background

1. Subject Site

The subject site is legally described as Lot 40 DP 7565 and is known as 42 Bells Lane, Kurmond. It has an area of 2.992ha and is irregular in shape with an approximate road frontage of 298m and average depth of 113m.

The site is located within the Kurmond and Kurrajong Investigation Area as shown in Figure 1 below.

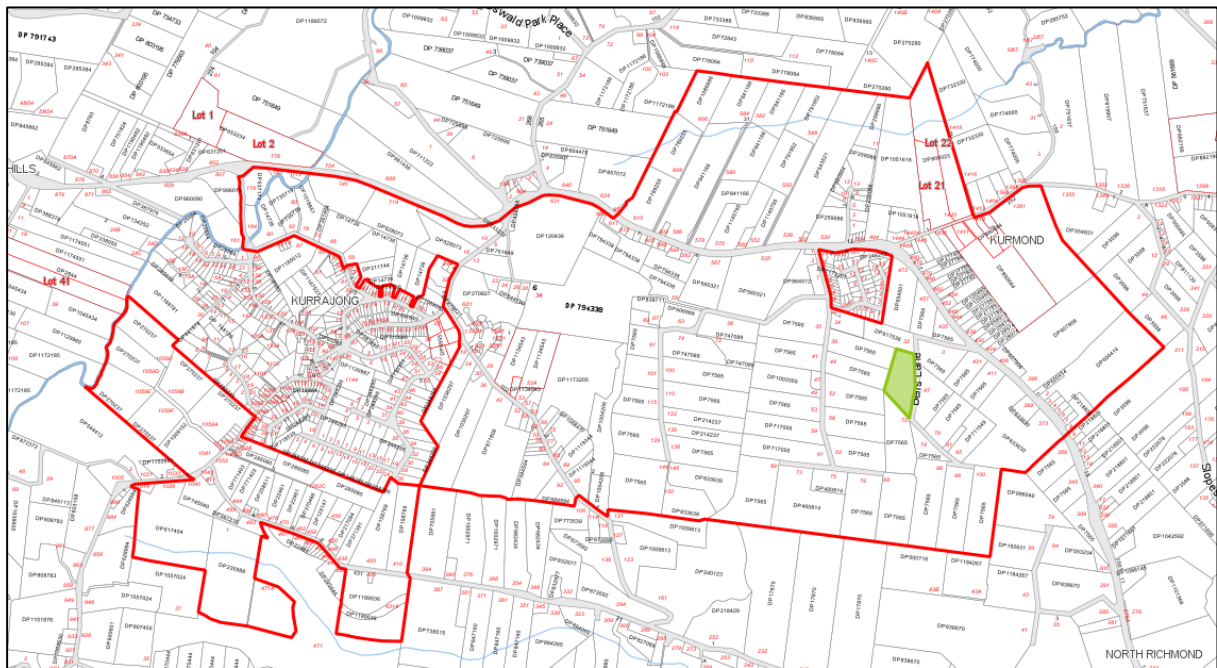


Figure 1: Site Location within Kurmond-Kurrajong Investigation Area

The subject site is currently zoned RU1 Primary Production under the *Hawkesbury Local Environmental Plan 2012*. The current minimum lot size for subdivision of this land is 10ha.

The subject site is used for rural residential purposes and contains an existing dwelling, outbuilding and pool.

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

The whole site is shown as being within Class 5 Acid Sulfate Soils on the Acid Sulphate Soils Planning Maps contained within the *Hawkesbury Local Environmental Plan 2012*. Acid Sulfate Soil Classification 5 represents a relatively low chance of acid sulphate soils being present on the site.

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

The site contains 'Significant Vegetation' as identified on the Terrestrial Biodiversity Map of the *Hawkesbury Local Environmental Plan 2012*. Vegetation on the site is generally located around the existing dam and at the rear of the dwelling house.

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

The land varies in height from approximately 80m AHD along the Bells Lane road frontage to 102m AHD at the rear of the subject site. Based on Council's slope mapping, the subject site contains some land having slopes in excess of 15% surrounding the dam and along the Bells Lane frontage.

Properties immediately to the north, south, east and west of the subject site are all similarly zoned RU1 Primary Production. Further to the west and southwest, land is zoned RU4 Primary Production Small Lots. The current minimum lot size applicable for the subdivision of the immediate surrounding properties is 10ha.

Land surrounding the subject site is comprised of lots having sizes that predominantly range between 1ha and 10ha. The immediate surrounding area of the subject site is predominantly characterised by rural residential uses.

2. Kurmond-Kurrajong Investigation Area

Through a Mayoral Minute on 3 February 2015, Council resolved to undertake structure planning within the Kurmond-Kurrajong Investigation Area. This structure planning process was to determine the suitability of the identified lands for large lot residential and/or rural residential development.

On 31 March 2015, Council considered a report on proposed large lot residential/rural-residential development within an approximately one kilometre radius of the Kurrajong and Kurmond neighbourhood centres and resolved to adopt an investigation area to enable structure planning and development contributions planning for this purpose.

The Investigation Area was identified by considering the location criteria provided within the Hawkesbury Residential Land Strategy (i.e. "within 1km radius" and "cluster around or on the periphery of villages"), undertaking a desk top survey of matters such as slope, existing vegetation, watercourses, existing road layout and accesses, and zone and property boundaries.

In July 2015, Council resolved to adopt the development constraint principles and local planning approach outlined in the Council report of 28 July 2015 as an Interim Policy for the purpose of structure planning within the Kurmond and Kurrajong Investigation Area. An assessment of this Proposal against the Interim Policy is discussed further in this Report.

On 29 November 2016, Council considered a report on the Kurmond-Kurrajong Investigation Area Survey Results and resolved as follows:

"That:

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

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6. *Council continue processing the planning proposals within the investigation area that have received support via a Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016."*

The subject site is located within the Kurmond-Kurrajong Investigation Area. Having regard to item 6 of the above resolution, the subject Planning Proposal was received 23 March 2016.

Recent progress with respect to the Kurmond-Kurrajong Investigation Area has included preparation or consideration of a number of associated studies, to inform the preparation of the Draft Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan.

Council considered a report regarding the Kurmond and Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

In addition, the Study recommended that Council consider the following provisions when determining planning proposals:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety
- Accommodate on-site sewerage detention and management.

The recommendations of this Study have been considered in the assessment of this Planning Proposal, and are discussed further in this Report.

3. Kurmond Kurrajong Structure Plan

The Draft Kurmond Kurrajong Structure Plan has been prepared based on consideration of the various studies. The aim of the Structure Plan is to provide the planning framework to enable the future development of the area whilst maintaining the biodiversity, ecological, scenic, character and amenity values of the locality. One of the main determining factors in achieving this aim is an appropriate minimum lot size for subdivision.

To ensure the protection of the landscape character, biodiversity, and the existing views and vistas within the area, the draft Structure Plan proposes a minimum lot size for subdivision of 1 ha or 4,000m² dependent on locality. It is considered that areas immediately surrounding the town centre villages of Kurmond and Kurrajong should have a minimum lot size of 4,000m², essentially providing for an expansion of the denser existing residential areas, closer to services and amenities, while minimising impacts on the surrounding rural character and views and vistas. For all other properties within the Kurmond Kurrajong Investigation Area a minimum of 1 ha is proposed to maintain existing views and vistas and/or to protect the pastoral character as identified in the Kurmond and Kurrajong Landscape Character Study.

The Planning Proposals consistency with the Draft Kurmond Kurrajong Structure Plan is discussed further in this Report.

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4. Detailed History and Planning Proposal

On 23 March 2016, Council received a planning proposal from Glenn Falson Urban & Rural Planning Consultant, seeking to amend the *Hawkesbury Local Environmental Plan 2012* in order to allow the subdivision of Lot 40 DP 7565, 42 Bells Lane, Kurmond into five lots with a minimum lot size of not less than 4,000m².

The planning proposal has previously been reported to Council, with the following resolutions:

31 January 2017 Ordinary Meeting

"That:

Council refuse the preparation of the planning proposal for 42 Bells Lane, Kurmond as:

- 1. There is insufficient infrastructure to support this proposal.*
- 2. The proposal is inconsistent with SREP 20 as development should not reduce the viability of agricultural land or contribute to suburban sprawl."*

14 February 2017 Ordinary Meeting

"That the resolution from the Council Ordinary Meeting of 31 January 2017 in relation to Item 6 concerning CP - Planning Proposal to Amend the Hawkesbury Local Environment Plan 2012 - 42 Bells Lane, Kurmond be rescinded."

And Further

"That Council defer the matter in relation to the Planning Proposal to amend the Hawkesbury Local Environment Plan 2012 relating to 42 Bells Lane, Kurmond, pending completion of studies which will determine the total lot yield in Kurmond-Kurrajong Investigation Area and a report explaining the impact of that yield on relevant infrastructure be considered by Council and the adoption of a long term policy for development in the locality."

The planning proposal seeks to amend the *Hawkesbury Local Environmental Plan 2012* in order to permit the subdivision of the site into five lots.

The planning proposal aims to achieve this by amending the relevant Lot Size Map of the *Hawkesbury Local Environmental Plan 2012* in order to provide a minimum lot size of 4,000m². The Applicant also suggests that an appropriate provision be included in the *Hawkesbury Local Environmental Plan 2012* to limit the maximum number of lots created by future subdivision of the land to five lots.

A concept plan for a proposed five lot subdivision is shown in Figure 2 below. The areas of the proposed lots in the concept plan area shown in Table 1. This plan has been provided for discussion purposes only relating to the potential lot yield of the site and the proposed minimum lot sizes, and as such does not form part of the planning proposal.

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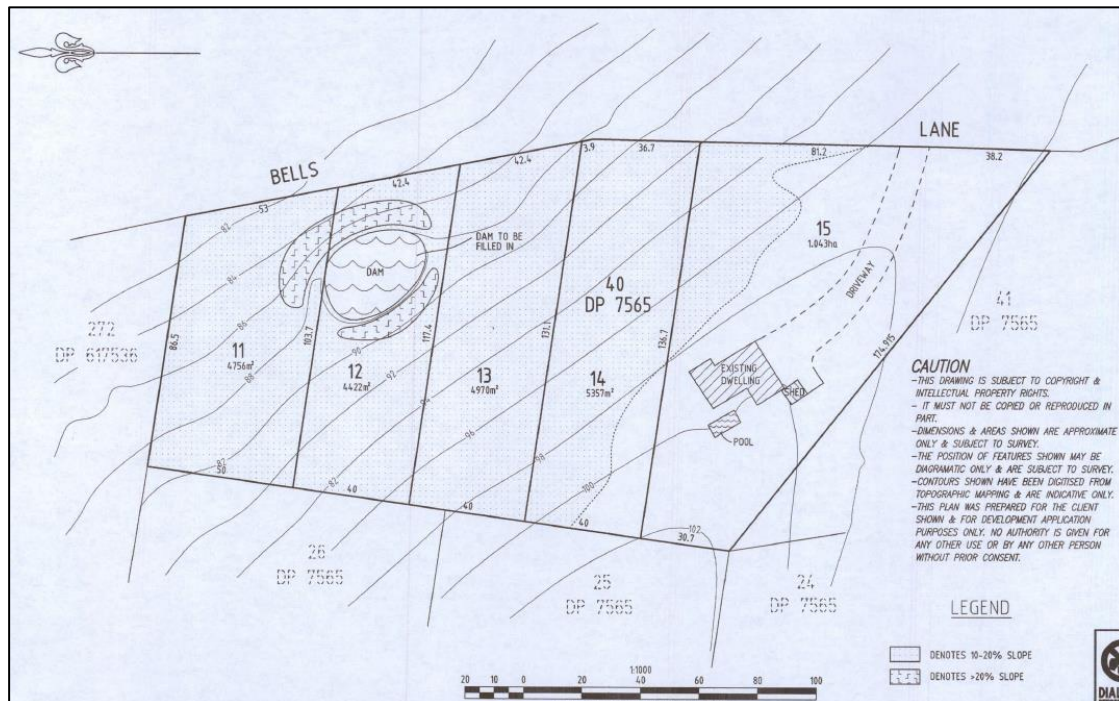


Figure 2 - Concept Subdivision Plan (Not for adoption)

Table 1: Size of Proposed Lots (Not for adoption)

Lot Number	Area
11	4,756m ²
12	4,422m ²
13	4,970m ²
14	5,357m ²
15	1.043ha

Applicant's Justification of Proposal

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

- The proposed subdivision is consistent with the Hawkesbury Residential Land Strategy.
- The subject site is located within the Kurmond-Kurrajong Investigation Area and is included in an investigation area map prepared by Council.
- The preliminary site investigations reveal that the site is capable of subdivision into approximately five lots that would be consistent with other lands in the vicinity, and would form an appropriate component of village expansion at Kurmond.
- The proposed lot sizes are capable of containing on-site wastewater disposal systems and are appropriate in terms of bushfire control and vegetation and flora/fauna management.

5. Policy Considerations

The Department of Planning and Environment's document "A Guide to Preparing Planning Proposals", October 2016 advises:

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

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

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

In accordance with a Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act, 1979*, a planning proposal is required to be referred to the local planning panel for advice prior to the planning proposal being forwarded to the Minister under Section 3.34 of the *Environmental Planning and Assessment Act, 1979* for a ‘Gateway’ determination. The Planning Proposal was presented to the Hawkesbury Local Planning Panel Meeting of 18 October, 2018.

At that Meeting, the Hawkesbury Local Planning Panel recommended that further site specific studies be carried out prior to referral of the Planning Proposal to the Department of Planning and Environment for a ‘Gateway’ determination and a recommendation of this Report is for the Applicant to be requested to provide these studies.

The Department of Planning and Environment’s ‘A guide to preparing planning proposals’ August 2016 also requires the applicant to demonstrate that a planning proposal is consistent with applicable local strategies/strategic plans, State Environmental Planning Policies and Section 9.1 Directions (formerly Section 117 Directions). This is discussed further in this Report.

6. Discussion

The Greater Sydney Region Plan, the Western City District Plan and Hawkesbury Residential Land Strategy

The Greater Sydney Region Plan and the Western City District Plan establishes the broad planning directions for the Sydney metropolitan area and north-western sector of Sydney respectively. These documents identify a number of strategies, objectives/priorities and actions relating to the economy and employment, centres and corridors, housing, transport, environment and resources, parks and public places, implementation and governance.

These documents have a high level metropolitan and regional focus and for the most part are not readily applicable to a singular rural residential planning proposal at Kurmond. Notwithstanding this, an assessment of the planning proposal against these policy documents conclude that the proposal is consistent with these strategies.

The Hawkesbury Residential Land Strategy seeks to identify residential investigation areas and sustainable development criteria.

The Hawkesbury Residential Land Strategy contains the following commentary and criteria regarding large lot residential/rural residential development:

“2.10 Strategy for Rural Village Development

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

Future development in rural villages should be of low density and large lot dwellings, which focus on proximity to centres and services and facilities. Rural village development should also minimise

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impacts on agricultural land, protect scenic landscape and natural areas, and occur within servicing limits or constraints.”

The planning proposal can be considered as a rural residential development on the fringe of the Kurmond Village.

The Hawkesbury Residential Land Strategy states that the future role of rural residential development is as follows:

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

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

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

For the purposes of this planning proposal, the relevant criteria for rural residential development, as stated in Section 6.5 of the Hawkesbury Residential Land Strategy, is that it be large lot residential dwellings, and:

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

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

The site is on the fringe of the Kurmond Village, and is within the one kilometre radius specified in the Hawkesbury Residential Land Strategy.

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

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

On 30 August 2011, Council adopted the following Policy:

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

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Note 1:

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

Note 2:

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

Compliance with the Hawkesbury Residential Land Strategy has been discussed previously in this report. It is considered that the planning proposal is consistent with Council's Community Strategic Plan as discussed later in this report.

Council Policy - Our City Our Future Rural Rezoning Policy

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

Since the time of adoption, this Policy has essentially been superseded by subsequent amendments to the *Hawkesbury Local Environmental Plan 1989*, the *Western City District Plan*, the *Hawkesbury Residential Land Strategy*, the *Hawkesbury Community Strategic Plan*, the commencement of the *Hawkesbury Local Environmental Plan 2012*, and the Department of Planning and Environment's 'Gateway' system for dealing with planning proposals.

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

a) Fragmentation of the land is to be minimised

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

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

Applicant's Response The proposal is consistent with this principle.

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

Applicant's Response The site does not front a main road.

d) No subdivision along ridgelines or escapements

Applicant's Response The site is not on a ridgeline or in an escarpment area.

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- e) **Where on site effluent disposal is proposed, lots are to have an area of at least one (1) hectare unless the effectiveness of a smaller area can be demonstrated by geotechnical investigation.**

Applicant's Response The lots will vary in size down to a minimum of approximately 4,420m². This is larger than the size of allotment (4,000m²) that is indicated generally by Council as being the minimum to contain on-site effluent disposal in later studies (e.g. Kurrajong Heights, Wilberforce and within LEP 2012 generally).

Officer Comments The planning proposal is not accompanied by a wastewater feasibility assessment demonstrating that the proposed lot sizes have the capacity to accommodate an on-site sewage management system. However, in consideration of the size and location of relatively unconstrained land within each proposed lot, it is anticipated that each proposed lot is capable of supporting the on-site disposal of wastewater. This can be confirmed with the submission of a wastewater feasibility assessment.

The Hawkesbury Local Planning Panel recommended that a wastewater feasibility assessment be provided prior to the planning proposal proceeding to a 'Gateway' determination.

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

Applicant's Response The subdivision does not propose removal of vegetation. It is proposed that a small dam be filled in and there is some vegetation around that dam. It is possible that this vegetation can be retained or be replaced in a more suitable location.

Officer Comments The removal of native vegetation will be required for the removal/filling in of the existing dam on proposed Lots 11 and 12. This vegetation is located within an area identified as 'Significant Vegetation' on the Terrestrial Biodiversity Map of the LEP 2012. However, following a site inspection, it is considered that the dam and associated vegetation does not provide significant habitat due to its limited size, composition and condition, and impacts from the use of the land for cattle grazing. This can be confirmed by the submission of a flora and fauna assessment.

The Hawkesbury Local Planning Panel recommended that a flora and fauna assessment be provided prior to the proposal proceeding to a 'Gateway' determination.

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

Applicant's Response The rezoning process has altered since this policy of Council. The Gateway process will dictate whether further studies are required. It is noted that Council has embarked on preparing a S7.11 Plan which will apply to this Planning Proposal if finalised by the time of completion of the proposal. Otherwise a Voluntary Planning Agreement can be entered into so that an amount approximating what might be levied under S7.11 can be provided for roads and other community infrastructure.

Officer Comments As per the Department of Planning and Environment's guidelines for planning proposals, the Applicant has identified the relevant environmental considerations for the proposal, including flora and fauna, watercourses, on-site effluent disposal and bushfire. Whilst specialist reports addressing these matters have not been provided, the need for further

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information/consideration would normally be a matter for the Department of Planning and Environment to determine as part of their 'Gateway' process.

However, as previously discussed, the Hawkesbury Local Planning Panel has recommended that further studies be provided prior to the proposal proceeding to a 'Gateway' determination to address environmental impacts arising from the Proposal.

The need for a Section 7.11 Contribution Plan or a Voluntary Planning Agreement can be determined and discussed further with the Applicant if this planning proposal is to proceed.

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

Applicant's Response The proposal is for a 'normal' Torrens Title subdivision. Due to the size of the site, long road frontage and proposed lot layout there is no significant advantage to having a Community Title subdivision.

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

Section 9.1 Directions (previously Section 117)

The Minister for Planning, under section 9.1(2) of *Environmental Planning and Assessment Act, 1979* issues directions that relevant planning authorities, including councils, must comply with when preparing planning proposals. The directions cover the following broad range of categories:

- Employment and resources;
- Environment and heritage;
- Housing, infrastructure and urban development;
- Hazard and risk;
- Regional planning;
- Local plan making; and

Typically, the Section 9.1 Directions will require certain matters to be complied with and/or require consultation with government authorities during the preparation of the planning proposal.

The Section 9.1 Directions do allow for planning proposals to be inconsistent with the Directions. In general terms a planning proposal may be inconsistent with a Direction only if the Department of Planning and Environment is satisfied that the proposal is:

- a) justified by a strategy which:
 - gives consideration to the objectives of the Direction, and
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - is approved by the Director-General of the Department of Planning and Environment, or
- b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of the Direction, or

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- c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of the Direction, or
- d) is of minor significance.

The Hawkesbury Residential Land Strategy has been prepared with consideration given to the various policies and strategies of the NSW State Government and Section 9.1 Directions of the Minister. In this regard, a planning proposal that is consistent with the Hawkesbury Residential Land Strategy is more likely to be able to justify compliance or support for any such inconsistency.

A summary of the key Section 9.1 Directions follows:

Direction 1.2 Rural Zones

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

The planning proposal seeks an amendment to the Lot Size Map of the *Hawkesbury Local Environmental Plan 2012* and does not propose any changes to the current RU1 Primary Production zoning. As a consequence, the planning proposal will result in an increase in the density of land. The Applicant states:

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

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

As the proposal is for limited large lot housing lots and is of minor significance the proposal does not warrant the preparation of a specific rural study. This is particularly the case noting Council’s Residential Strategy that identified site such as this for village expansion.”

This inconsistency will be considered by the Department of Planning and Environment as part of their ‘Gateway’ determination.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

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

Should Council resolve to proceed with the planning proposal and receive a Gateway determination advising to proceed with the planning proposal from Department of Planning and Environment, the Department of Industry will be consulted seeking comments on this matter in accordance with the Direction 1.3(4).

Direction 1.5 Rural Lands

This Direction applies when a planning proposal is prepared that will affect land within an existing or proposed rural or environmental protection zone or changes the existing minimum lot size on land within a rural or environmental protection zone.

The Planning Proposal proposes a change to the minimum lot size for subdivision of the subject site.

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It is considered that the Planning Proposal is consistent with this Direction as:

- it is consistent with applicable strategic plans, including the Sydney Region Plan and the Western City District Plan, as discussed in this Report.
- the locality is currently being used predominantly for rural residential purposes and has been identified as an area for increased residential development under Hawkesbury Residential Land Strategy 2012. The Structure Planning for this area has been advanced as discussed previously in this Report.
- it will not result in any adverse impacts on the environmental values of the land, including biodiversity, native vegetation, cultural heritage, and watercourses.
- the natural and physical constraints of the subject site will not inhibit the future development of the site for residential purposes.
- future development of the subject site for rural residential purposes is not expected to impact on farmer's rights to farm, or give rise to land use conflicts, given the rural residential nature of surrounding properties.
- given the intent of the area for increased rural residential development, the fragmentation of rural zoned land is anticipated.
- the subject site is not identified as State significant agricultural land.
- the Planning Proposal is considered to be consistent with the social, economic and environmental interests of the community.

Having said this, it should be noted that whilst rural residential development of the subject site is considered appropriate, the final density of that development will depend on consideration of various site specific studies and the Draft Kurmond Kurrajong Structure Plan.

Direction 3.4 Integrating Land Use and Transport

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

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

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

Direction 4.1 Acid Sulfate Soils

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. This Direction requires consideration of the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning and Environment.

The subject site is identified as containing "Class 5 Acid Sulfate Soils on the Acid Sulphate Soils Planning Maps contained within the *Hawkesbury Local Environmental Plan 2012*, and as such any future development on the land will be subject to Clause 6.1 Acid Sulfate Soils of the *Hawkesbury Local Environmental Plan 2012* which has been prepared in accordance with the Acid Sulfate Soils Model Local Environmental Plan provisions within the Acid Sulfate Soils Planning Guidelines adopted by the Director General.

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This Direction requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soil study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of such study to the Director General prior to undertaking community consultation in satisfaction of Schedule 1 Clause 4 of the *Environmental Planning and Assessment Act, 1979*. An acid sulfate soil study has not been included in the planning proposal but the Department of Planning and Environmental will consider this as part of their 'Gateway' determination, and if required can request further information/consideration of this matter.

Direction 4.4 Planning for Bushfire Protection

The subject site is shown as being bushfire prone, containing Vegetation Category 1 on the NSW Rural Fire Service's Bushfire Prone Land Map. This Direction requires consultation with the NSW Rural Fire Service following receipt of a 'Gateway' determination, compliance with Planning for Bushfire Protection 2006, and compliance with various Asset Protection Zones, vehicular access, water supply, layout, and building material provisions.

Direction 6.1 Approval and Referral Requirements

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

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

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

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessary restrictive site specific planning controls. The planning proposal proposes an amendment to the Lot Size Map of the *Hawkesbury Local Environmental Plan 2012* and, in addition, a provision in the Local Environmental Plan to restrict the lot yield from subdivision of the subject site. The Department of Planning and Environment have previously allowed similar restrictions on subdivision lot yields with the inclusion of *Clause 4.1G - Restriction on the number of lots created by subdivision of certain land* in *Hawkesbury Local Environmental Plan 2012*. It will be a matter for the Department of Planning and Environment to determine if this inconsistency is justifiable.

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Whilst this is the case, it is considered that a restriction on lots yield is not warranted given that the proposed minimum lot size and constraints of the site will limit the lot yield.

State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are *State Environmental Planning Policy No. 44 – Koala Habitat Protection*, *State Environmental Planning Policy No. 55 - Remediation of Land*, *Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995)*, and *Sydney Regional Environmental Plan No. 20 - Hawkesbury - Nepean River (No.2 - 1997)*.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The Applicant advises:

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

The aim of this State Environment Planning Policy is to “*encourage the proper conservation and management of natural vegetation that provide habitat for koalas... ..*” In this regard, the presence of ‘core koala habitat’, as defined by this State Environmental Planning Policy, needs to be identified as part of a planning proposal to ensure that future development is not prevented by this Policy. The consistency of future development with this State Environmental Planning Policy can be confirmed by the submission of a flora and fauna assessment.

State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 55 requires consideration as to whether or not land is contaminated and, if so, whether it is suitable for future permitted uses in its current state or whether it requires remediation. The State Environmental Planning Policy may require Council to obtain, and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

The Applicant states that:

“The land has not been used for any intensive agricultural use or any other use that would suggest that remediation is required. There is no obvious evidence of surface or groundwater pollution. It is not believed that any geotechnical investigations need to be carried out for the planning proposal to proceed. Investigations could take place if required at the time of the hydraulic assessment for effluent disposal.”

However, the Applicant also states that the site “*has been cleared in the past for grazing activities.*” According to Table 1 - *Some Activities that may cause contamination* of the *Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land*, agricultural activities may cause contamination.

It is considered that the grazing of livestock creates a low potential/risk of land contamination and this matter can be considered in greater detail as part of any future development applications for subdivision of the land. Notwithstanding this, the need for further investigations as part of this planning proposal will be considered by the Department of Planning and Environment as part of their ‘Gateway’ determination.

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

The primary aims of *Sydney Regional Environmental Plan No. 9* are to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance and to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential. The site is not within the vicinity of land described in Schedule 1 and 2 of the Sydney Regional Environmental

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

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

The aim of *Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)* is to protect the environment of the Hawkesbury - Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. This requires consideration of the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, impacts of the development on the environment, the feasibility of alternatives and consideration of specific matters such as total catchment management, water quality, water quantity, flora and fauna, agriculture, rural residential development and the metropolitan strategy.

Specifically the Sydney Regional Environmental Plan encourages Council to consider the following:

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

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- consider the need to control access to flora and fauna habitat areas;
- give priority to agricultural production in rural zones;
- protect agricultural sustainability from the adverse impacts of other forms of proposed development;
- consider the ability of the site to sustain over the long term the development concerned;
- maintain or introduce appropriate separation between rural residential use and agricultural use on the land that is proposed for development;
- consider any adverse environmental impacts of infrastructure associated with the development concerned.

The site falls within the *Middle Nepean and Hawkesbury River Catchment Area* of the Sydney Regional Environmental Plan.

It is considered that the future use of the planned additional lots for rural residential purposes will be able to comply with the relevant provisions of the Sydney Regional Environmental Plan or be able to appropriately minimise any impacts.

Assessment of the Merits of the Planning Proposal

Landscape Character Study for the Kurmond-Kurrajong Investigation Area

In April 2018 Council engaged Clouston Associates to undertake a Landscape Character Study of the Kurmond-Kurrajong Investigation Area in order to determine what aspects of streetscapes, landscapes and buildings positively contribute to making Kurmond and Kurrajong unique. The Study also recommended strategies/controls to preserve and enhance the existing landscape when facilitating rural residential development within the Investigation Area.

Council considered the report regarding the Kurmond Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

A number of recommendations identified in the Study include:

- Complete landscape character study and establish related controls
- Pursue consolidation of rural zoning (at that stage potentially R5 – Large Lot Residential)
- Update controls on rural lot sizes
- Engage stakeholders in urban design upgrade concepts for the two villages
- Establish relevance of outcomes to other rural areas of the council.

In addition, the following development provisions were also recommended in the Study:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas.
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety.
- Accommodate on-site sewerage detention and management.

The Kurmond Kurrajong Landscape Character Study identified 4 landscape character types which are identified on the Landscape Character Map. The Pastoral landscape character types occurs on the subject site:

Pastoral Valleys: *The rural character of the region is defined by the lightly sloping open pastures with scattered trees over gently sloping terrain. Significant areas of land have been cleared for grazing and agricultural uses. Properties are dotted amongst the hills and valleys of the landscape situated between groupings of trees.*

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The Kurmond Kurrajong Landscape Character Study identifies that “*the pastoral character contributes to the scenic qualities of the area by virtue of the lack of buildings.*”

In addition, the subject site is located within a views/vista corridor of high significance as identified in the Kurmond Kurrajong Landscape Character Study

Given the above, it is considered that the subdivision layout as proposed for 42 Bells Lane, Kurmond would not be compatible with the identified ‘Pastoral Valley’ character of the area, especially when considering the location, scale and density of both existing and likely future development on the land in relation to the size of the proposed lots. In turn, this would have an adverse impact on the significant views/vista corridor in which the land is situated.

A full assessment of the planning proposal against the Kurmond Kurrajong Landscape Character Study is contained within Attachment 1 to this Report.

Kurmond Kurrajong Structure Plan

In order to achieve the recommendations of the Kurmond Kurrajong Landscape Character Study, the Structure Plan has considered the most appropriate minimum lot size for subdivision that would achieve the aims of providing for housing while protecting the biodiversity, ecological, scenic, character and amenity values of the locality.

The Draft Structure Plan stipulates a minimum lot size of 1 ha for the subject site. A minimum lot size of 1 ha is considered to be compatible with the maintenance of the pastoral character of the locality, as it affords greater separation of development between lots to provide a low density amenity, and in doing so maintains the values of the view/vista corridor in which the subject site is located.

It is therefore recommended that the Applicant be requested to amend the Planning Proposal to provide a minimum lot size of 1 ha. This would enable a three lot subdivision of the subject site.

Council’s Interim Policy 28 July 2015 – Development Principles

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

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

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

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Topography

The land varies in height from approximately 80m AHD along the Bells Lane road frontage to 102m AHD at the rear of the subject site. Based on Council's slope mapping, the subject site contains some land having slopes in excess of 15% surrounding the dam as shown in Figure 3.

Figure 3 illustrates the proposed lots in relation to the slope of the subject site.

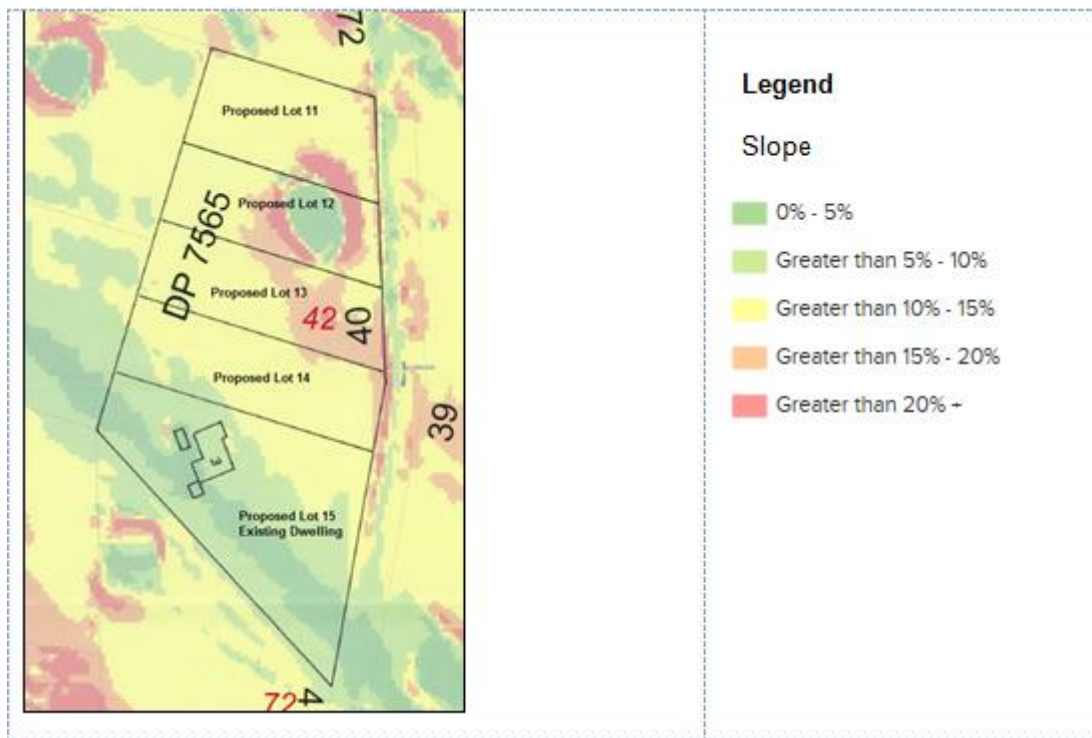


Figure 3 – Slope Analysis

This slope analysis highlights that:

- Access from Bells Lane to proposed Lots 11, 12, 13 and 14 will need to cross land that is in excess of 15%. This entails a small, narrow strip across the front of the proposed lots.
- A driveway to a building area on proposed Lot 13 will need to cross land having a slope in excess of 15-20%.

It is also noted that earthworks for the filling of the dam may provide land levels less than 15% to accommodate access and/or a building platform on proposed Lot 12.

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

The identified inconsistencies with this requirement are considered to be able to be resolved through:

- the reconsideration of access points/arrangements; and
- the appropriate design of 'crossover' access to the proposed lots.

It is recommended that the Applicant prepare a revised subdivision concept plan consistent with the adopted development principles, and incorporating a minimum lot size of 1 ha.

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Ecology

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

“The site is included in the Terrestrial Biodiversity Map within Council’s LEP2012. The map indicates that approximately 8% of the site is classified as “significant vegetation” with the remainder classified as clear of “significant vegetation”. However, an inspection of the aerial photo of the site reveals that the area noted as “significant” is on fact a few trees around a small dam and some scattered shade trees the majority of which do not have a continuous canopy.

It may be appropriate that a formal report on flora/fauna of the site is carried out to assist in final subdivision design however this assessment (and cost) would be more appropriate if identified through the ‘Gateway’ process of the Department of Planning and Environment. It is not believed that formal flora/fauna assessment is required at this stage (and probably not all).”

Council’s vegetation mapping records the subject site as containing Shale Sandstone Transition Forest, which is a critically endangered ecological community under the *Biodiversity Conservation Act, 2016*. This vegetation community is located around the existing dam.

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

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

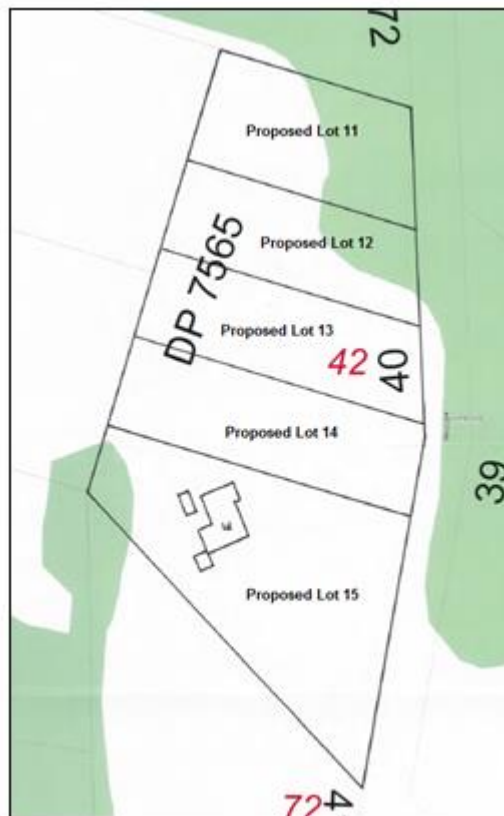


Figure 4 – Mapped Significant Vegetation on the Subject Site

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Figure 5 – Aerial Photo of the Subject Site

The Aerial Photo in Figure 5 shows that each lot contains a cleared area suitable for a dwelling house.

The filling of the dam will result in the removal of vegetation located in an area nominated as 'Significant Vegetation'. Investigations have not been carried out to determine the ecological value of the existing dam or its surrounding remnant vegetation. However, following a site inspection, it is expected that the dam and associated vegetation does not provide significant habitat due to its limited size, composition and condition, and the impacts from the use of the land for cattle grazing. This can be confirmed by the submission of a flora and fauna assessment.

It is noted that the Hawkesbury Local Planning Panel recommended that a flora and fauna assessment be provided prior to the planning proposal proceeding to a 'Gateway' determination.

In addition, since the lodgement of this Planning Proposal, the *Biodiversity Conservation Act 2016* has come into effect. Whilst the Hawkesbury Local Government Area is within a designated interim area under the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, the provisions of the *Biodiversity Conservation Act 2016* will not apply until 24 November 2019, and as such any future development application for subdivision of the subject site after this time will be subject to its provisions.

Part of the subject site is mapped as having biodiversity values on the Office of Environment and Heritage's Biodiversity Values Map (Figure 6), and therefore any removal of native vegetation for future subdivision or development within this mapped area will be subject to the biodiversity offset scheme.

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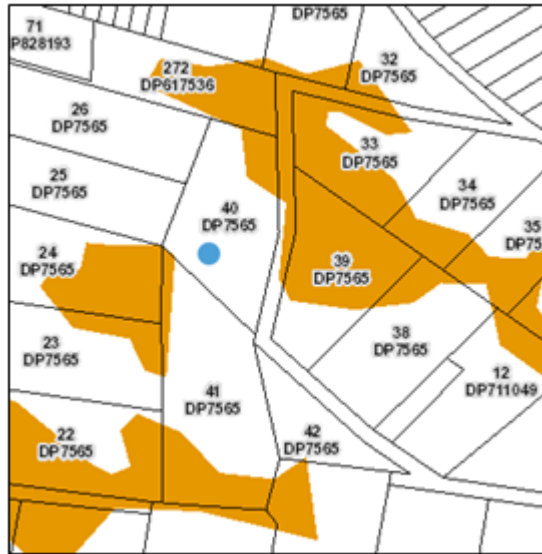


Figure 6 - Extract of OEH's Biodiversity Values Map

Zone Objectives

The subject site is zoned RU1 Primary Production under the *Hawkesbury Local Environmental Plan 2012*. In dealing with all other planning proposals within the Kurmond Kurrajong Investigation Area the subsequent amendments to the *Hawkesbury Local Environmental Plan 2012* agreed to by Council have not altered the zoning of the respective sites, nor the zone objectives.

The Land Use Table of the *Hawkesbury Local Environmental Plan 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.*
- *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.*

Clause 2.3(2) of *Hawkesbury Local Environmental Plan 2012* outlines that Council “must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone”.

However, it should be noted that there is no requirement for a subsequent development to be consistent with all the objectives of a zone particularly when the development satisfies all other applicable development standards.

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A future development application over the subject site should this planning proposal proceed will have regard to the zone objectives at the time. However, it should be noted that in dealing with all planning proposals that have proceeded towards a Local Environmental Plan Amendment to date, the specific approach by Council was to amend the minimum lot sizes as expressed through the Lot Size Map.

The recently completed Kurmond-Kurrajong Landscape Character Study recommends Council to consider possible rezoning of rural land with subdivision potential for rural residential purposes within the Kurmond Kurrajong Investigation Area to avoid any possible inconsistencies with respect to zone objectives.

Once the Structure Plan for the Kurmond-Kurrajong Investigation Area is finalised and a suitable land area is identified for rural residential purposes, Council will be able to consider possible alternative zones for the locality.

However, in the interim, it is considered warranted to proceed with the making of plans to give effect to the planning proposals by way of amendment to the Lot Size Map only. In future, Council would be able to rezone the potential rural land including the subject site property and other rural properties subject of the previous Local Environmental Plan amendments that enabled subdivision of those properties.

Access and Transport

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

The planning proposal is not supported by a traffic impact statement

SMEC Australia Pty Ltd were engaged by Council to undertake a comprehensive traffic study to:

- identify the current and future traffic and transport patterns
- assist Council in planning for the current and future traffic and transport needs of the Hawkesbury Community.

The study assesses the likely traffic impacts stemming from the future growth in the Hawkesbury Local Government Area in order to determine any required improvements or capacity needs to minimise any adverse traffic impacts of proposed development.

SMEC undertook the Study in two Stages, with Stage 1 having already been completed and reported to Council in September 2018. Stage 1 of the Traffic Study concluded that:

“To estimate future traffic flows with the addition of a new bridge near Navua Reserve, the Roads and Maritime STFM strategic model was coded to include the new bridge. This showed that the new bridge in the vicinity of Navua Reserve would result in the redistribution of traffic, which would result in a reduction in traffic at the Bells Line of Road/Gross Vale Road signalised intersection, at the Kurrajong Road/Old Kurrajong Road priority intersection, as well as Richmond Bridge.

Assessment indicates that a new bridge at Navua Reserve in 2027 would provide positive impact relating to the operation of the Bells Line of Road/ Gross Vale Road intersection and the Kurrajong Road/Old Kurrajong Road priority intersection would also operate satisfactorily during peak periods”.

The Stage 1 assessment also provided a good understanding of the problem locations and issues for assessment in further detail as part of Stage 2 of this Study.

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Stage 2 of the Study involves a number of key actions including the following:

- Undertake strategic assessment of proposed road projects and associated road alignments
- Determine the current and future based road network and demands
- Identify critical road network locations in consultation with Council and assess such road network locations in detail
- Test future road network demand scenarios, including a new bridge in the vicinity of Navua Reserve and other road infrastructure scenarios, as required
- Develop a strategic traffic model for Council to use now and in the future to assess the implications of background traffic growth, potential new roads infrastructure, as well as the impacts of other influencing factors, such as new developments.
- Prepare Stage 2 traffic report following completion of the required traffic modelling to identify critical road network elements that require to be upgraded to support future traffic growth, consider the impacts of the proposed strategic road projects and associated infrastructure as required.

In terms of Stage 2 of the traffic modelling for the Kurmond-Kurrajong area the Hawkesbury Traffic Study has modelled a future base year 2027 with the following parameters, in order to assess impacts of any further development:

- The proposed new Grose River Bridge is operational
- Takes into account the remaining Redbank development (1,250 dwellings), Glossodia (250 dwellings), Pitt Town (150 dwellings) and Vineyard (900 dwellings).
- Includes the RMS upgrades along Bells Line of Road at Grose Vale Road, Yarramundi Lane and Bosworth Street/ March Street as well as the new Windsor Bridge.

In addition to modelling the future base year of 2027, the following Scenarios have been tested relative to the future base year:

- Scenario 1 - Future year base without Gross River Bridge
- Scenario 2 - Future year base plus 200 dwellings within the Kurmond-Kurrajong investigation area
- Scenario 3 - Future year base plus an additional 5% growth at Richmond and Windsor/ South Windsor areas.

Interim advice from the Consultant is that the new Grose River Bridge will improve the operation of the network taking into account the projected development in the future base year (2027) that includes development sites such as Redbank. The scenario modelling of the proposed 200 dwellings within the Kurmond-Kurrajong Investigation Area indicates that this development option is not considered to have any notable impact.

It should be pointed out that this Scenario is tested on the basis that the new Grose River Bridge is in place and that without the new bridge in place it would only lead to further deterioration in the road network performance.

The traffic assessment indicates that duplication of the Richmond bridge would be required to accommodate further development even with the new Grose River Bridge in place.

In previous reports to Council dealing with other planning proposals within the vicinity of Kurmond and Kurrajong it has been noted that Council has received petitions from residents west of the Hawkesbury River concerned about rezoning of land for residential purposes in the absence of required infrastructure upgrades. It is considered that it is a fundamental matter to be dealt with by Council prior to the finalisation of any planning proposals in the locality as the cumulative impact of these types of development could be unacceptable if no traffic improvements are made. In response to this issue the Applicant states:

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"It is envisaged that if this Planning Proposal were to proceed a contribution would be levied on the subdivision for each additional lot created to assist in implementation of traffic and other infrastructure in the locality. Alternatively, the landowner could enter into a Voluntary Planning Agreement with Council. An amount approximating what might come from the S7.11 Plan can be levied on the resultant subdivision if the S7.11 Plan has not at that time been implemented."

On 10 November 2015 Council considered a report on Voluntary Planning Agreements for the Kurmond Kurrajong Investigation Area, and resolved as follows:

"That:

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

The Applicant's suggestion of a Voluntary Planning Agreement is consistent with Council's resolution. If the planning proposal is to proceed further discussions will be held with the Applicant and land owner regarding the preparation of a draft Voluntary Planning Agreement.

Bushfire Hazard

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

The planning proposal is not accompanied by a bushfire assessment report. Given the site is identified as bushfire prone, should Council resolve to proceed with the planning proposal and receive a 'Gateway' determination advising to proceed, the planning proposal will be referred to the NSW Rural Fire Service, being the responsible authority for bushfire protection.

Agricultural Land Classification

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

- "3. Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production level is moderate because of edaphic factors or environmental constraints. Erosion hazard, soil structural breakdown or other factors including climate may limit the capacity for cultivation, and soil conservation or drainage works may be required."*

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

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Services

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

The planning proposal is not accompanied by a wastewater feasibility assessment report or any other relevant statement or study. As the site does not have access to a reticulated sewerage system, future development of the site would be dependent upon an appropriate on-site sewage management system. The Applicant states that "*each lot is of sufficient size to dispose of on-site effluent*". Whilst the sizes of the proposed lots as a whole may be adequate, the constraints of the land within each lot, such as dams, significant vegetation and slope, needs to be considered, and ultimately reduces the 'useable' area of the lots for this purpose.

For the above reasons it is recommended that a wastewater feasibility assessment report be requested to confirm the suitability of each lot for onsite effluent disposal.

Heritage

The site is not identified as a heritage item in Schedule 5 Environmental Heritage of the *Hawkesbury Local Environmental Plan 2012*, is not located within a conservation area and is not subject to any heritage order or within the immediate vicinity of any identified heritage item.

Section 7.11 Contributions or a Voluntary Planning Agreement

The planning proposal will be subject to either a Section 7.11 Developer Contributions Plan or a Voluntary Planning Agreement.

The Applicant has acknowledged that if the planning proposal is to proceed further, preparation of a Section 7.11 Developer Contributions Plan or a draft Voluntary Planning Agreement to support the required infrastructure upgrade in the locality as a consequence of the development would be required.

On 10 November 2015 Council considered a report on Voluntary Planning Agreements for the Kurmond and Kurrajong Investigation Area and resolved as follows:

"That:

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

The Applicant's suggestion of a Voluntary Planning Agreement is consistent with the above Council resolution. If the planning proposal is to proceed further discussions will be held with the Applicant and property owner regarding the preparation of a draft Voluntary Planning Agreement.

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7. Consultation

The Planning Proposal was reported to the Hawkesbury Local Planning Panel Meeting of 18 October 2018 for advice/comments.

In respect to this Planning Proposal, the Panel advised:

“This Planning Proposal raises a number of issues with regards to balancing long term strategic objectives with individual interests.

The Panel finds itself being asked to advise Council on the merits of individual planning proposals whilst the strategic overview of the Kurmond Kurrajong Investigation Area is still under investigation.

The Panel does not think this is the appropriate approach to effective management of the Kurmond Kurrajong Investigation Area. However, the Panel is also conscious of the history of the four remaining pre Gateway Planning Proposals in Council, including the two Proposals subject of reports before the Panel.

The Panel considers it would be unfair to the applicant and relevant land owners to defer or refuse the application but the Panel are also of a mind that the proposal is not in a form that can be supported for Gateway. This includes concerns with respect to the desired future character of the area, the actual subdivision being proposed, the appropriate zoning for the site (and other sites seeking similar subdivision) and the preparation of sufficient supporting documentation to address environmental matters.

In the Panels view, the public interest is best served by coordinated decisions that take into consideration a broader context, and evaluate outcomes above the specific interest of individuals. The Panel considers that long term strategic planning should have been completed before these planning proposals were considered.

At this Meeting, the Panel also resolved to recommend that:

1. *The Planning Proposal to amend the Hawkesbury Local Environmental Plan 2012 - 42 Bell (sic) Lane, Kurmond, proceed for Gateway determination subject to the following:*
 - a. *the LEP amendment process be 24 months to allow time for Council to complete its strategic planning for the investigation area including:*

Comment: Should it be determined in the future that the Planning Proposal be forwarded for a ‘Gateway’ determination, a request can be made to the Department of Planning and Environment for a 24 month timeframe for the completion of the Local Environmental Plan amendment. However, given that work has progressed with various studies and the Draft Kurmond Kurrajong Structure Plan has been prepared this may not be required.

- b. *the proposed subdivision not exceed five lots*

Comment: The subject site is 2.992ha in area. With a proposed minimum lot size of 4,000m², numerically the subject site has potential for seven lots. However, given the constraints of the subject site, it is considered that a yield of more than five lots is unlikely. The proposed minimum lot sizes and potential lot yield is discussed further in this Report.

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c. *completion of the following site-specific studies by the applicant:*

- i. Environmental design/site capacity*
- ii. Bush fire assessment*
- iii. Flora and Fauna assessment*
- iv. Traffic impact assessment*
- v. Waste water feasibility*
- vi. Infrastructure requirements and funding*

Comment: It is recommended that the Applicant provide the above listed reports to ensure the appropriateness of this Local Environmental Plan amendment having regard to the desired future character of the area, the appropriate minimum lot size/s, and the environmental constraints of the subject site.

2. *Council seek funding from the Department of Planning and Environment to enable the strategic planning for the Kurmond Kurrajong Investigation Area.*

Comment: Council Officers have contacted the Department of Planning and Environment in this regard to no avail.

3. *A coordinated approach to all current planning proposals be undertaken for the Kurmond Kurrajong Investigation Area currently before Council, including the subject site.*

Comment: A coordinated approach in the assessment of planning proposals within the Kurmond Kurrajong Investigation Area will be undertaken for all current planning proposals within this Area. This will include consistency in the criteria used for assessment, the information required to be lodged with a proposal, as well as procedural requirements. The preparation of the Draft Structure Plan and covering report addresses this matter.

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

8. Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The proposal is consistent with the following Focus Areas, Directions and Strategies within the Community Strategic Plan.

Our Environment

3.1 The natural environment is protected and enhanced

3.1.4 Minimise our community's impacts on habitat and biodiversity and protect areas of conservation value.

3.4 The sustainability of our environment is improved

3.4.2 Development is functional, attractive and sympathetic with the environment, and avoids unnecessary use of energy, water and other resources.

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Our Future

5.3 Shaping our Growth – Respond proactively to planning and the development of the right local infrastructure.

5.3.3 Plan for a balance of agriculture, natural environment and housing that delivers viable rural production and maintains rural character.

9. Fit For The Future Strategy Considerations

The proposal is aligned with Council's long term plan to improve and maintain organisational sustainability and achieve Fit for the Future financial benchmarks. The proposal will enable Council to sustainably manage community assets in accordance with the scheduled program of works in the Long-Term Financial Plan.

10. Conclusion

The Planning Proposal was reported to the Hawkesbury Local Planning Panel for advice on 18 October 2018. The Panel recommended that the Planning Proposal proceed to a 'Gateway' determination subject to the completion of the following site specific studies by the Applicant:

- *Environmental design/site capacity*
- *Bush fire assessment*
- *Flora and Fauna assessment*
- *Traffic impact assessment*
- *Waste water feasibility*
- *Infrastructure requirements and funding*

The provision of these reports will ensure the appropriateness of this Local Environmental Plan amendment having regard to the desired future character of the area, the appropriate minimum lot size/s, and the environmental constraints of the subject site.

The Planning Proposal is considered to be inconsistent with the recommendations of the Kurmond Kurrajong Landscape Character Study and Draft Kurmond Kurrajong Structure Plan in regard to the protection of the pastoral character of the locality and the significant views/vista corridor in which the subject site is situated. For this reason it is further considered that a minimum lot size of 1 ha should be applied to the proposal.

In addition, the Proposal does not meet the requirements of Council's adopted development constraints principles in respect to access and slope. Further, the Planning Proposal does not demonstrate, through lack of the appropriate studies, consistency with these principles in respect to significant vegetation, asset protection areas and on site effluent disposal.

It is therefore recommended that Council support the recommendations of the Hawkesbury Local Planning Panel and request that the Applicant amend the Planning Proposal to undertake the abovementioned further studies, amend the Planning Proposal to provide a minimum lot size for subdivision of 1 ha, and amend the subdivision concept plan to demonstrate how access to each lot can be achieved via land with a slope less than 15%.

Planning Decision

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

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RECOMMENDATION:

That:

1. Council support the recommendations of the Hawkesbury Local Planning Panel dated 18 October 2018.
2. The Applicant be requested to provide:
 - a. An amended planning proposal to provide a minimum lot size for subdivision of 1 ha.
 - b. An amended concept plan demonstrating how access to each lot can be achieved via land with a slope less than 15%.
 - c. Environmental design/site capacity assessment.
 - d. Bush fire assessment.
 - e. Flora and Fauna assessment.
 - f. Traffic impact assessment.
 - g. Waste water feasibility assessment.
 - h. Infrastructure requirements and funding assessment.
3. Following submission of an amended planning proposal and further studies Planning Proposal LEP009/16 be reported to Council for consideration as to whether the Proposal will be supported for a 'Gateway' determination.

ATTACHMENTS:

- AT - 1** An Assessment of the Planning Proposal Against the Recommendations of the Kurmond Kurrajong Investigation Area Landscape Character Study.
- AT - 2** Proposed Minimum Lot Size Map.

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**AT - 1 An Assessment of the Planning Proposal Against the Recommendations of
the Kurmond Kurrajong Investigation Area Landscape Character Study**

	Objective	Guideline	Application	LEP009/16 42 Bells Lane, Kurmond
Public Transport	Encourage bus use between neighbourhoods and major transit nodes (Richmond/Windsor).	Weather sheltered/ well-lit bus stops (<400m walk) <ul style="list-style-type: none"> • Access to real time travel information • Peak services to reflect realistic demand/requirements of residents. 	Kurrajong and Kurmond Neighbourhood centres and major roads through Investigation Area.	No impact. Voluntary Planning Agreements to contribute towards provision of services and amenities.
Private Vehicle (including parking)	Coordinate approach to traffic flow and management to streamline roadways/ infrastructure.	Avoid multiple, isolated intersections, particularly from new development directly onto main roads <ul style="list-style-type: none"> • Keep parking clear of all documented district or regional views. 	Roads and on road parking in proposed developments <ul style="list-style-type: none"> • Main road upgrades (eg Bells Line of Road). 	Future parking associated with residential development onsite. With appropriate siting of new development on larger lots (1 ha) unlikely to impact vistas.
Cycling and Walking	Promote walk/ cycle as means of accessing shops, bus routes and schools within neighbourhoods.	Establish cycle lane/path between Kurrajong and Kurmond <ul style="list-style-type: none"> • Create a safe and comfortable pedestrian environment within neighbourhood centres/villages, especially along ridges • Focus on 800m walking catchment within villages. 	Cycle infrastructure (bike lockers etc) at Kurrajong and Kurmond centres <ul style="list-style-type: none"> • Dedicated cycle lane to follow ridge line road • Walkability action plan within Kurmond and Kurrajong. 	Voluntary Planning Agreements or Section 7.11 Contributions Plan to provide for services and amenities.
Universal Access	Maximise universal access as far as natural gradients permit.	Define, audit and update most walkable routes within neighbourhoods <ul style="list-style-type: none"> • Ensure bus routes including community buses link valleys to ridgetops in villages to encourage walking within village and reduced car dependency for short trips. 	Ridgeline streets in Kurmond and Kurrajong	Given that a slope of 15% exists along the front boundary of the subject site it is considered that reconsideration of access points/ arrangements is warranted to provide one new access point and road to service the proposed new lots.
Residential	Maintain clear	Focus principal residential population	Principal residential population in and	The subject site is within the adopted

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	Objective	Guideline	Application	LEP009/16 42 Bells Lane, Kurmond
	distinction in residential types related to location and geography.	<p>in and around compact neighbourhood centres</p> <ul style="list-style-type: none"> • Prevent development and subdivision from sprawling and create a buffer between residential and active rural land uses • Ensure rural lot sizes maintain low density, optimise ecological corridors and open views. • Potential R5 Large Lot Residential Zone (4,000m²) • Use built form that responds to the steep terrain - a small footprint that steps down with the contours. 	around Kurmond and Kurrajong.	<p>Kurmond/Kurrajong Investigation Area boundary.</p> <p>Minimum lot sizes of 4000m² inconsistent with the maintenance of pastoral character and view corridors.</p> <p>Recommend a minimum lot size of 1 ha to maintain <u>character</u>.</p> <p>Future development can be accommodated on land free of significant vegetation, riparian vegetation, watercourses or slopes greater than 15%.</p>
Retail Commercial	Maintain clear distinction between <u>retail</u> commercial and rural land uses.	<p>Retail and commercial within neighbourhood cores.</p> <ul style="list-style-type: none"> • Road front restaurants/hotels on main roads only • Encourage farm gate providers. 	<p>Neighbourhood centres</p> <ul style="list-style-type: none"> • Bells Line of Road • Farm gate properties. 	Not Applicable
Transport	Promote ease of access and movement around neighbourhood centres.	<p>Slow vehicle travel speeds, clearly legible environments (signage, cues, wayfinding)</p> <ul style="list-style-type: none"> • Integrated pedestrian/cycle/public transport information • Adequate car parking consolidated wherever possible in centres to avoid continuous line of cars on streets • Simple pull-offs on main roads near major views. 	<p>On/off street parking in neighbourhood centres</p> <ul style="list-style-type: none"> • Formalised pull-offs on Bells Line of Road near views. 	<p>Voluntary Planning Agreements or Section 7.11 Contributions Plan to provide for services and amenities for public domain.</p> <p>The planning proposal is not located in the neighborhood centre.</p>
Public Domain	Promote safe, pleasant public domain reflecting neighbourhood status.	<p>Vegetation, shade, shelter, quality pedestrian surfaces, social seating, lighting in critical locations and interpretation</p>	<p>Specifically in the village and Neighbourhood Centres</p> <ul style="list-style-type: none"> • Social gathering space at Kurmond for <u>domain</u>. 	<p>Voluntary Planning Agreements or Section 7.11 Contributions Plan to provide for services and amenities for public <u>domain</u>.</p>

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	Objective	Guideline	Application	LEP009/16 42 Bells Lane, Kurmond
		<ul style="list-style-type: none"> Formalised lookouts with wide district/ regional views Avoid conflict between pedestrians, cycles and vehicles. 	locals shopping.	
Topography	Ensure that the area's natural topography is conserved.	Controls on cut and fill in all built form including roads <ul style="list-style-type: none"> Maintenance of natural stream form. 	Across the Investigation Area	Future development can be accommodated on land free of significant vegetation, riparian vegetation, watercourses or slopes greater than 15%. Cut and fill controls a matter to be included within a development control plan or to be considered with a development application.
Hydrology	Maintain and enhance the natural riparian systems of the area.	Follow riparian guidelines on stream types and riparian corridor controls (NSW Office of Water) <ul style="list-style-type: none"> Minimise/consolidate road crossings of creeks Restore minor creeks and chain of ponds as part of related development. 	Across the Investigation Area.	No watercourse present on subject site.
Vegetation	Protect land identified as high and very high priority habitat (Ecological, 2018) from impact of residential development. <ul style="list-style-type: none"> Conserve and enhance natural habitat corridors. 	Retain, protect and regenerate vegetation corridors identified in mapping <ul style="list-style-type: none"> Do not permit small lot (<0.5ha) development of land identified as high, very high priority Include riparian corridor restoration (planting) in development obligations. 	Any applicable land in Investigation Area.	Subject site identified as low/moderate priority habitat. Subject site is predominantly cleared – no vegetation corridors exist.
Bushfire	Maintain bushfire protection.	APZ <ul style="list-style-type: none"> Suitable access including for fire fighting vehicles. 	Across the Investigation Area	Bushfire control measures can be achieved.
Climate Change	Mitigate temperature	Tree canopy cover	Tree canopy	Future development

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	Objective	Guideline	Application	LEP009/16 42 Bells Lane, Kurmond
	change.	<ul style="list-style-type: none"> Riparian corridor ecology. 	especially on roads and in village centres.	can be accommodated on land free of significant vegetation, riparian vegetation, or watercourses.
Physical Heritage	Conserve heritage items (including trees).	Monitor condition of heritage items <ul style="list-style-type: none"> Consider extent of curtilage and integration of items. 	Throughout the Investigation Area.	Not Applicable.
Heritage Interpretation	Make the story of the locality accessible and engaging.	Maintain views that assist in interpretation <ul style="list-style-type: none"> Promote heritage trails. 	Throughout the Investigation Area.	<p>The subject site is located within a high significant view/vista corridor, and therefore a lot size of 5000m² or greater is required.</p> <p>The planning proposal seeks to enable a five lot subdivision with lot sizes 4,000 to 5,000m².</p> <p>However, to maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is recommended.</p>
Urban Character	Maintain and enhance compact character of existing villages and neighbourhoods.	Respect existing scale and form: 1-2 storey limit <ul style="list-style-type: none"> Retain existing subdivision pattern - avoid lot amalgamation. Low FSR per lot. Focus on high street as location for services rather than outside of neighbourhoods Ridge line profile and view corridors to inform decisions in relation to scale and form of buildings (eg extensions or granny flats). 	Kurrajong and Kurmond neighbourhood centres.	Not Applicable. Development assessment consideration
Rural Character	Retain and protect pastoral/rural character <ul style="list-style-type: none"> Maintain clear distinction between urban rural interfaces. 	Prevent rezoning of critical land parcels that provide significant view corridors <ul style="list-style-type: none"> Permit rezoning and subdivision of land deemed appropriate/lower 	Lands within Investigation Area.	<p>The subject site is located within a high significant view/vista corridor, and therefore a lot size of 5000m² or greater is required.</p> <p>The planning proposal seeks to enable a five</p>

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	Objective	Guideline	Application	LEP009/16 42 Bells Lane, Kurmond
		order in terms of views. Prevent creation of small lot sizes • Control on road signage and promotions.		lot subdivision with lot sizes 4,000 to 5,000m ² . However, to maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is recommended.
Views and Vistas	Conserve 'pastoral' views, particularly from ridge line major roads • Protect regional vistas from neighbourhoods.	Document and maintain key regional and district views (see maps) • Interpret views at key locations • Prevent loss of views from roads through controls on private boundary fences and hedges heights and designs.	Lands within Investigation Area.	The subject site is located within a high significant view/vista corridor, and therefore a lot size of 5000m ² or greater is required. However, to maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is recommended. Matters to be included within a development control plan or to be considered with a development application.
Microclimate	Optimise sun in winter and shade in summer • Maximise cooling breezes in summer • Provide ample outdoor seating.	Carefully considered application of evergreen and deciduous trees, with primary focus on native species • Careful selection of non-invasive exotic species on streets in Centres.	Shade and sun (and seating) particularly important in Centres and on roadsides.	Matters to be included within a development control plan or to be considered with a development application.
Passive Surveillance	Ensure a sense of personal safety for the public and residents.	Design with OPTED principles	Investigation Area.	Matters to be included within a development control plan or to be considered with a development application.
Urban (in town or village)	Retain existing scale and form. Prevent urban sprawl into currently non-urban areas or areas with significant view/ vistas.	1-2 storeys. Consider impact of parapet and roof form on backdrop perspective. Protect existing incidental/occasional views (along streets, between buildings, pedestrian experience) • Typical lot sizes (TBC) • Maximum site	Kurmond and Kurrajong neighbourhood centres.	Matters to be included within a development control plan or to be considered with a development application.

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	Objective	Guideline	Application	LEP009/16 42 Bells Lane, Kurmond
		coverage controls for built form and minimum landscape controls.		
Periphery (edge of town or village)	Consolidate urban form around neighbourhoods.	Establish limit to neighbourhood fringe (exclusion zone/rural character zone) Focus commercial and retail within neighbourhoods. Large lot rural residential which does not interrupt views and vistas.	Consider visual impact of development proposals from carriageway and impact on views and vistas, including whilst travelling.	Matters to be included within a development control plan or to be considered with a development application.
Rural (out of town or village)	Maintain significant sweeping pastoral views by avoiding development of critical view paths.	Land with supporting building on lot as dominant built form <ul style="list-style-type: none"> Consolidate built form footprint and access driveways (including outbuildings, pools, courts etc) (Not less than 4000m²) with prescribed building envelopes for all lots Maximum site coverage controls for built form and minimum landscape controls. 	Rural zoned land within the Investigation Area.	To maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is recommended. Matters to be included within a development control plan or to be considered with a development application.
Power lines	Minimise visual impacts of power lines.	Selection of vegetation species under power lines <ul style="list-style-type: none"> Direction of easement across topography and especially over ridge lines Level of co-operation with power suppliers. 	Investigation Area.	Matters to be included within a development control plan or to be considered with a development application.
Transport	Maximise opportunity to access transport and promote walking.	Bus routes maximise catchment <ul style="list-style-type: none"> Community buses link valleys to ridge lines in village centres. 	Throughout but especially around village centres.	Not Applicable.

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0000 END OF REPORT 0000

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Item: 166 **CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012
- Lot 49 DP 7565, 98 Bells Lane Kurmond - (95498, 124414)**

Previous Item: 5, Ordinary, (31 January 2017)
 RM3, Ordinary, (14 February 2017)

Directorate: City Planning

PLANNING PROPOSAL INFORMATION

File Number: LEP006/16
Property Address: 98 Bells Lane, Kurmond
Applicant: Glenn Falson Urban and Rural Planning Consultant
Owner: DE Thompson
Date Received: 9 February 2016
Current Minimum Lot Size: 10 Hectares
Proposed Minimum Lot Size: 4,000m²
Current Zone: RU1 Primary Production
Site Area: 4.924ha

Key Issues: ♦ Hawkesbury Local Planning Panel Advice
 Draft Kurmond-Kurrajong Investigation Area Structure Plan
 ♦ Kurmond Kurrajong Landscape Character Study
 ♦ Consistency with Adopted Development Constraint Principles

Recommendation:

That Council support the recommendation of the Hawkesbury Local Planning Panel in respect of Planning Proposal LEP006/16 at 98 Bells Lane, Kurmond and request that the Applicant amends the Planning Proposal to meet the advice of the Hawkesbury Local Planning Panel, the requirements of the Kurmond and Kurrajong Landscape Character Study, the Draft Kurmond Kurrajong Structure Plan and the development constraint principles adopted by Council.

EXECUTIVE SUMMARY:

Council has received a planning proposal from Glenn Falson Urban and Rural Planning Consultant (the Applicant) which seeks to amend the *Hawkesbury Local Environmental Plan 2012* to enable the subdivision of Lot 49 DP 7565, 98 Bells Lane, Kurmond into four lots with minimum lots sizes of 4,000m², 1 ha and 2 ha.

The purpose of this report is to:

- Advise Council of the recommendations of the Hawkesbury Local Planning Panel in respect of this matter;
- Provide an assessment of the merits of the Planning Proposal; and
- Make a recommendation that the Planning Proposal be amended to meet the advice provided by the Hawkesbury Local Planning, the requirements of the Kurmond and Kurrajong Landscape Character Study, the Draft Kurmond Kurrajong Structure Plan, and the development constraint principles adopted by Council.

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In accordance with the Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act, 1979*, the Planning Proposal was referred to the Hawkesbury Local Planning Panel for comment. Whilst a number of planning proposals including this matter were originally received prior to the commencement of this new requirement, the Department of Planning, Industry and Environment have stipulated that they require the advice of a Local Planning Panel when submitting any planning proposal for a Gateway Determination. The Panel recommended that the Planning Proposal proceed for a 'Gateway' determination subject to meeting certain requirements as outlined in this report.

A series of separate studies have either been undertaken or considered as part of the process of informing the preparation of the Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan

Clouston Associates were commissioned by Council to complete a Landscape Character Study as part of the structure planning process for the Kurmond Kurrajong Investigation Area, and in July 2018 Council considered a report on the matter and resolved to apply the approach adopted in the Study.

As outlined in this report, the planning proposal is considered to be inconsistent with the recommendations of the Kurmond and Kurrajong Landscape Character Study having regard to the protection of the pastoral character of the locality, and the subject site being within a significant views/vista corridor.

In addition, the Draft Kurmond Kurrajong Structure Plan has been prepared. In relation to the subject site, the Structure Plan nominates a minimum lot size for subdivision of 1 ha in order to maintain the pastoral character of the locality. The Planning Proposal is seeking to permit lot sizes of a minimum of 4,000m², and is therefore considered to be inconsistent with the Draft Structure Plan.

This report provides Council with an overview of the Planning Proposal and recommends that the planning proposal be amended based on the advice of the Hawkesbury Local Planning Panel and the identified inconsistencies with the Draft Kurmond Kurrajong Structure Plan, the Kurmond and Kurrajong Landscape Character Study, and Council's adopted development constraint principles.

As this matter has an extensive history, comprising many elements, the Officers report is divided into the following sections to assist in its explanation and consideration:

1.	Subject Site	Pages 77-78
2.	Kurmond Kurrajong Investigation Area	Pages 78-79
3.	Kurmond Kurrajong Structure Plan	Page 79
4.	Detailed History and Planning Proposal	Pages 80-81
5.	Policy Considerations	Page 81
6.	Discussion	Pages 81-101
7.	Consultation	Pages 101-103
8.	Conformance to Hawkesbury Community Strategic Plan	Page 103
9.	Fit for the Future	Page 103
10.	Conclusion	Pages 103-104

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REPORT:

Context and Background

1. Subject Site

The subject site is Lot 49 DP 7565, 98 Bells Lane, Kurmond. It has an area of 4.92ha and is regular in shape with an approximate frontage of 126 metres and depth of 389 metres.

The subject site is located within the Kurmond-Kurrajong Investigation Area as shown in Figure 1 below.

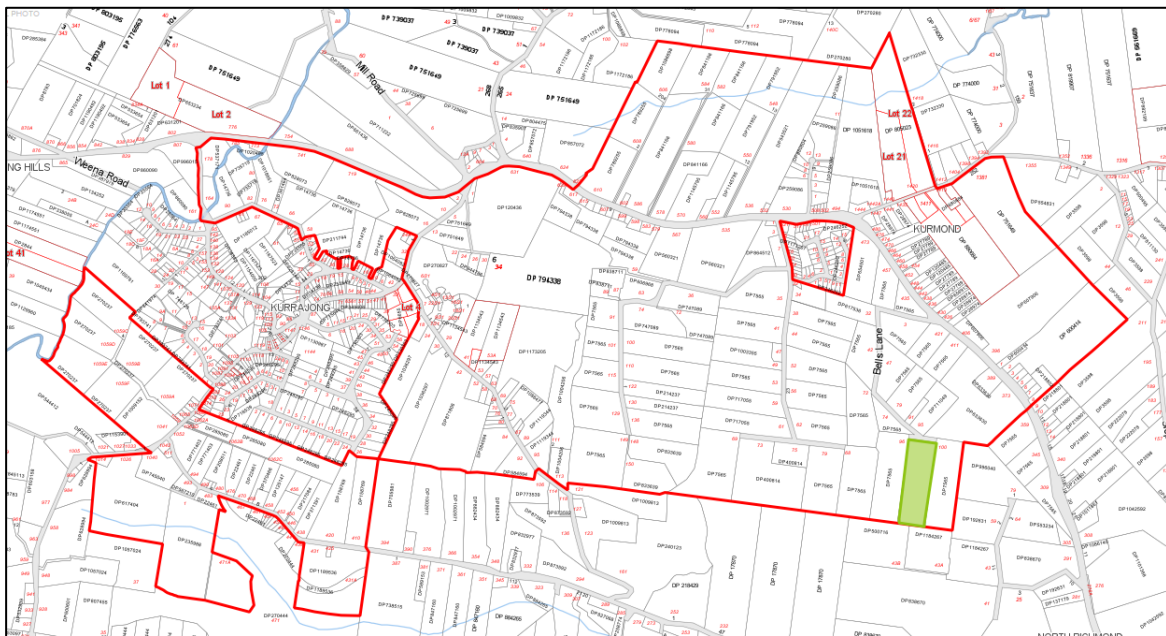


Figure 1: Site Location within Kurmond-Kurrajong Investigation Area

The subject site is currently zoned RU1 Primary Production under the LEP 2012, with the current minimum lot size for subdivision of this land being 10ha.

The subject site is used for rural residential purposes and contains an existing dwelling and an outbuilding.

A watercourse traverses the property in a north-west to south-east direction at the rear of the subject site and an existing dam is located within this watercourse. The watercourse and dam is surrounded by native vegetation.

The subject site is shown as being bushfire prone (Bushfire Vegetation Categories 1 and 3) on the NSW Rural Fire Service's Bushfire Prone Land Map.

The entire subject site is shown as being within Class 5 Acid Sulfate Soils on the Acid Sulphate Soils Planning Maps contained within the LEP 2012. Acid Sulfate Soil Classification 5 represents a relatively low chance of acid sulphate soils being present on the subject site.

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

The subject site has been identified as having 'Significant Vegetation' and 'Connectivity between Significant Vegetation' on the Terrestrial Biodiversity Map. The area of 'Significant Vegetation' generally corresponds with the existing vegetation located around the watercourse towards the rear of the subject site.

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

The land varies in height from approximately 90 metres AHD along the Bells Lane road frontage to 58 metres AHD along the watercourse towards the rear of the subject site. The land then rises to the rear boundary to 68 metres AHD. Based on Council's slope mapping, the subject site contains land having slopes in excess of 15% within the north-western frontage of the subject site, areas adjacent to the watercourse and a portion of land located centrally within the subject site.

Properties immediately to the north, south, east and west of the subject site are all similarly zoned RU1 Primary Production. Further to the west and southwest, land is zoned RU4 Primary Production Small Lots. The current minimum lot size applicable for the subdivision of the immediate surrounding properties is 10ha.

Land surrounding the subject site is comprised of lots having sizes that predominantly range between 1ha and 10ha. The immediate surrounding area of the subject site is predominantly characterised by rural residential uses.

2. Kurmond-Kurrajong Investigation Area

Through a Mayoral Minute on 3 February 2015, Council resolved to undertake structure planning within the Kurmond-Kurrajong Investigation Area. This structure planning process was to determine the suitability of the identified lands for large lot residential and/or rural residential development.

On 31 March 2015, Council considered a report on proposed large lot residential/rural-residential development within an approximately one kilometre radius of the Kurrajong and Kurmond neighbourhood centres and resolved to adopt an investigation area to enable structure planning and development contributions planning for this purpose.

The Investigation Area was identified by considering the location criteria provided within the Hawkesbury Residential Land Strategy (i.e. "within 1km radius" and "cluster around or on the periphery of villages"), undertaking a desk top survey of matters such as slope, existing vegetation, watercourses, existing road layout and accesses, and zone and property boundaries.

In July 2015, Council resolved to adopt the development constraint principles and local planning approach outlined in the Council report of 28 July 2015 as an Interim Policy for the purpose of structure planning within the Kurmond and Kurrajong Investigation Area. An assessment of this Proposal against the Interim Policy is discussed further in this Report.

On 29 November 2016, Council considered a report on the Kurmond-Kurrajong Investigation Area Survey Results and resolved as follows:

"That:

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

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5. *Council not accept any further planning proposal applications within the Kurmond and Kurrajong investigation area until such time as the structure planning as outlined in this report is completed. Council receive a progress report on the structure planning prior to July 2017.*
6. *Council continue processing the planning proposals within the investigation area that have received support via a Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016."*

The subject site is located within the Kurmond-Kurrajong Investigation Area. Having regard to item 6 of the above resolution, the subject Planning Proposal was received 23 March 2016.

Recent progress with respect to the Kurmond-Kurrajong Investigation Area has included preparation or consideration of a number of associated studies, to inform the preparation of the Draft Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan.

Council considered a report regarding the Kurmond and Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

In addition, the Study recommended that Council consider the following provisions when determining planning proposals:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety
- Accommodate on-site sewerage detention and management.

The recommendations of this Study have been considered in the assessment of this Planning Proposal, and are discussed further in this Report.

3. Kurmond Kurrajong Structure Plan

The Draft Kurmond Kurrajong Structure Plan has been prepared based on consideration of the various studies. The aim of the Structure Plan is to provide the planning framework to enable the future development of the area whilst maintaining the biodiversity, ecological, scenic, character and amenity values of the locality. One of the main determining factors in achieving this aim is an appropriate minimum lot size for subdivision.

To ensure the protection of the landscape character, biodiversity, and the existing views and vistas within the Area, the draft Structure Plan proposes a minimum lot size for subdivision of 1 ha or 4,000m² dependent on locality. It is considered that areas immediately surrounding the town centre villages of Kurmond and Kurrajong should have a minimum lot size of 4,000m², essentially providing for an expansion of the denser existing residential areas, closer to services and amenities, while minimising impacts on the surrounding rural character and views and vistas. For all other properties within the Kurmond Kurrajong Investigation Area a minimum of 1 ha is proposed to maintain existing views and vistas and/or to protect the pastoral character as identified in the Kurmond and Kurrajong Landscape Character Study.

The Planning Proposals consistency with the Draft Kurmond Kurrajong Structure Plan is discussed further in this Report.

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4. Detailed History and Planning Proposal

On 9 February 2016, Council received a planning proposal from Glenn Falson Urban & Rural Planning Consultant, seeking to amend the *Hawkesbury Local Environmental Plan 2012* in order to allow the subdivision of Lot 49 DP 7565, 98 Bells Lane, Kurmond into four lots with minimum lot sizes of not less than 4,000m², 1ha and 2ha.

The planning proposal has previously been reported to Council, with the following resolutions:

31 January 2017 Ordinary Meeting

"That:

Council refuse the preparation of the planning proposal for 42 Bells Lane, Kurmond as:

- 1. There is insufficient infrastructure to support this proposal.*
- 2. The proposal is inconsistent with SREP 20 as development should not reduce the viability of agricultural land or contribute to suburban sprawl."*

14 February 2017 Ordinary Meeting

"That the resolution from the Council Ordinary Meeting of 31 January 2017 in relation to Item 6 concerning CP - Planning Proposal to Amend the Hawkesbury Local Environment Plan 2012 - 42 Bells Lane, Kurmond be rescinded."

And Further

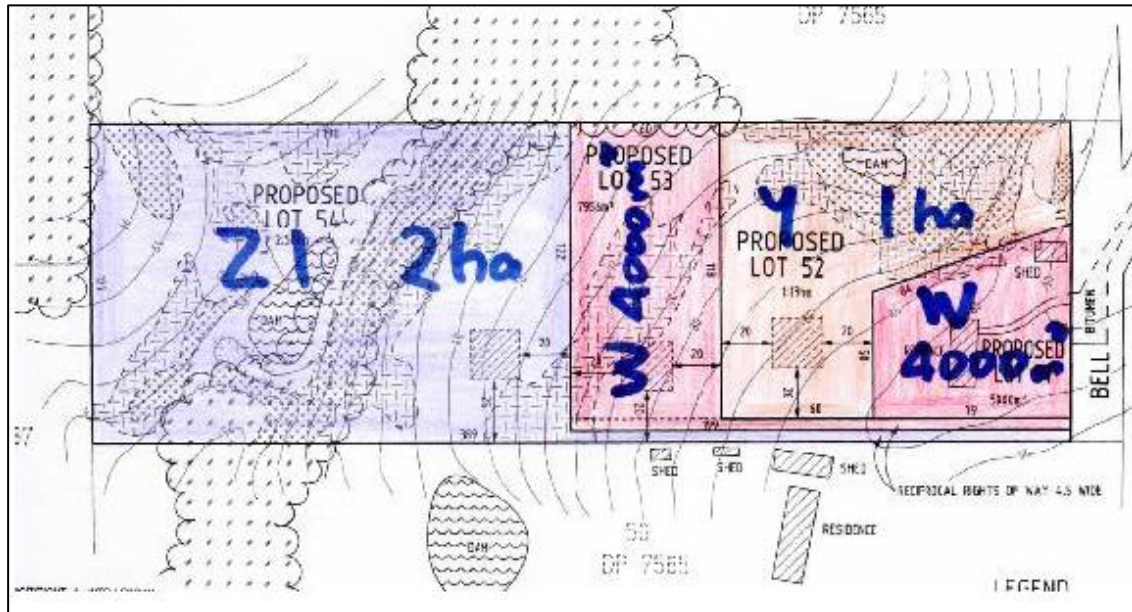
"That Council defer the matter in relation to the Planning Proposal to amend the Hawkesbury Local Environment Plan 2012 relating to 42 Bells Lane, Kurmond, pending completion of studies which will determine the total lot yield in Kurmond-Kurrajong Investigation Area and a report explaining the impact of that yield on relevant infrastructure be considered by Council and the adoption of a long term policy for development in the locality."

The planning proposal seeks an amendment to the LEP in order to permit the subdivision of the site into four lots.

The planning proposal aims to achieve this by amending the relevant Lot Size Map of the LEP 2012 in order to provide minimum lot sizes of 4,000m², 1ha and 2ha. The Applicant also suggests that an appropriate provision be included in the LEP 2012 to limit the maximum number of lots created by future subdivision of the land to four lots.

A concept plan for the proposed four lot subdivision is shown in Figure 2. The areas of the proposed lots in the concept plan are shown in Table 1. This plan has been provided for discussion purposes only in relation to the potential lot yield of the site and the proposed minimum lot sizes, and as such does not form part of the planning proposal.

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**Figure 2 – Concept Subdivision Plan
(Not for adoption)**

Table 1: Size of Proposed Lots (Not for adoption)

Lot Number	Area
51	5,000m ²
52	1.13ha
53	7,956m ²
54	2.5ha

Applicant's Justification of Proposal

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

- The proposed subdivision is consistent with the Hawkesbury Residential Land Strategy (HRLS).
- The subject site is located within the Kurmond-Kurrajong Investigation Area and is included in an investigation area map prepared by Council.
- The preliminary site investigations reveal that the site is capable of subdivision into approximately four lots that would be consistent with other lands in the vicinity, and would enable an appropriate expansion of the Kurmond Village.
- The proposed lot sizes are capable of containing on-site wastewater disposal system and are appropriate in terms of bushfire control and vegetation and flora/fauna management.
- Electricity, telephone, garbage and recycling facilities are currently available to the site.

5. Policy Considerations

The Department of Planning and Environment's document "A Guide to Preparing Planning Proposals", October 2016 advises:

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

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

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

In accordance with a Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act, 1979*, a planning proposal is required to be referred to the local planning panel for advice prior to the planning proposal being forwarded to the Minister under Section 3.34 of the *Environmental Planning and Assessment Act, 1979* for a ‘Gateway’ determination. The Planning Proposal was presented to the Hawkesbury Local Planning Panel Meeting of 18 October, 2018.

At that Meeting, the Hawkesbury Local Planning Panel recommended that further site specific studies be carried out prior to referral of the Planning Proposal to the Department of Planning and Environment for a ‘Gateway’ determination and a recommendation of this Report is for the Applicant to be requested to provide these studies.

The Department of Planning and Environment’s ‘A guide to preparing planning proposals’ August 2016 also requires the applicant to demonstrate that a planning proposal is consistent with applicable local strategies/strategic plans, State Environmental Planning Policies and Section 9.1 Directions (formerly Section 117 Directions). This is discussed further in this Report.

6. Discussion

The Greater Sydney Region Plan, the Western City District Plan and Hawkesbury Residential Land Strategy

The Greater Sydney Region Plan and the Western City District Plan establishes the broad planning directions for the Sydney metropolitan area and north-western sector of Sydney respectively. These documents identify a number of strategies, objectives/priorities and actions relating to the economy and employment, centres and corridors, housing, transport, environment and resources, parks and public places, implementation and governance.

These documents have a high level metropolitan and regional focus and for the most part are not readily applicable to a singular rural residential planning proposal at Kurmond. Notwithstanding this an assessment of the planning proposal against these policy documents conclude that the proposal is consistent with these strategies.

The Hawkesbury Residential Land Strategy seeks to identify residential investigation areas and sustainable development criteria.

The Hawkesbury Residential Land Strategy contains the following commentary and criteria regarding large lot residential/rural residential development:

“2.10 Strategy for Rural Village Development

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

Future development in rural villages should be of low density and large lot dwellings, which focus on proximity to centres and services and facilities. Rural village development should also minimise

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impacts on agricultural land, protect scenic landscape and natural areas, and occur within servicing limits or constraints.”

The planning proposal can be considered as a rural residential development on the fringe of the Kurmond Village.

The Hawkesbury Residential Land Strategy states that the future role of rural residential development is as follows:

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

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

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

For the purposes of this planning proposal, the relevant criteria for rural residential development, as stated in Section 6.5 of the Hawkesbury Residential Land Strategy, is that it be large lot residential dwellings, and:

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

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

The site is on the fringe of the Kurmond Village, and is within the one kilometre radius specified in the Hawkesbury Residential Land Strategy.

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

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

On 30 August 2011, Council adopted the following Policy:

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

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Note 1:

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

Note 2:

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

Compliance with the Hawkesbury Residential Land Strategy has been discussed previously in this report. It is considered that the planning proposal is consistent with Council's Community Strategic Plan as discussed later in this report.

Council Policy - Our City Our Future Rural Rezoning Policy

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

Since the time of adoption, this Policy has essentially been superseded by subsequent amendments to the *Hawkesbury Local Environmental Plan 1989*, the *Western City District Plan*, the *Hawkesbury Residential Land Strategy*, the *Hawkesbury Community Strategic Plan*, the commencement of the *Hawkesbury Local Environmental Plan 2012*, and the Department of Planning and Environment's 'Gateway' system for dealing with planning proposals.

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

a) Fragmentation of the land is to be minimised

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

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

Applicant's Response The proposal is consistent with this principle.

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

Applicant's Response The site does not front and is not visible from a main road.

d) No subdivision along ridgelines or escarpments.

Applicant's Response The site is not on a ridgeline or escarpments.

e) Where on-site effluent disposal is proposed, lots are to have an area of at least one (1) hectare unless the effectiveness of a smaller area can be demonstrated by geotechnical investigation.

Applicant's Response The lots will vary in size down to a minimum of approximately 5,000m². A lesser area than this, 4,000m², is the size of allotment that is indicated by Council as normally being the minimum to contain on-site effluent disposal

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in later studies (e.g. Kurrajong Heights, Wilberforce and within LEP 2012 generally). The 5,000m² lot is that around the existing house that already has an effluent disposal system within the proposed lot boundaries. The other three lots are 2.5ha, 1.1ha and 7,956m², each of which is well able to contain on site effluent disposal."

Officer Comments

The planning proposal is not accompanied by a wastewater feasibility assessment demonstrating that the proposed lot sizes have the capacity to accommodate an on-site sewage management system. However, in consideration of the size and location of unconstrained land within each proposed lot, it is anticipated that each proposed lot is capable of supporting the on-site disposal of wastewater. This can be confirmed with the submission of a wastewater feasibility assessment.

The Hawkesbury Local Planning Panel recommended that a wastewater feasibility assessment be provided prior to the planning proposal proceeding to a 'Gateway' determination.

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

Applicant's Response

The subdivision does not propose removal of vegetation. The indicative dwelling sites on the two (sic) vacant lots would have sufficient open area around them for bushfire asset protection zones. Some vegetation management may be required however this is believed to be minimal.

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

Applicant's Response

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

Officer Comments

As per the Department of Planning and Environment's guidelines for planning proposals, the Applicant has identified the relevant environmental considerations for the proposal, including flora and fauna, watercourses, on-site effluent disposal and bushfire. Whilst specialist reports addressing these matters have not been provided, the need for further information/consideration will be a matter for the Department of Planning and Environment to determine as part of their 'Gateway' process. In this regard, it is recommended that a flora and fauna assessment, bushfire assessment and wastewater feasibility assessment be requested following a 'Gateway' determination.

The need for a Section 7.11 Contribution Plan or a Voluntary Planning Agreement can be determined and discussed further with the Applicant if this planning proposal is to proceed.

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

Applicant's Response

The form of title for subdivision of the land has not been determined. Community title can be investigated should the Planning Proposal proceed.

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Officer Comments

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

Section 9.1 Directions (previously Section 117)

The Minister for Planning, under section 9.1(2) of *Environmental Planning and Assessment Act, 1979* issues directions that relevant planning authorities, including councils, must comply with when preparing planning proposals. The directions cover the following broad range of categories:

- Employment and resources;
- Environment and heritage;
- Housing, infrastructure and urban development;
- Hazard and risk;
- Regional planning;
- Local plan making; and

Typically, the Section 9.1 Directions will require certain matters to be complied with and/or require consultation with government authorities during the preparation of the planning proposal.

The Section 9.1 Directions do allow for planning proposals to be inconsistent with the Directions. In general terms a planning proposal may be inconsistent with a Direction only if the Department of Planning and Environment is satisfied that the proposal is:

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

The Hawkesbury Residential Land Strategy has been prepared with consideration given to the various policies and strategies of the NSW State Government and Section 9.1 Directions of the Minister. In this regard, a planning proposal that is consistent with the Hawkesbury Residential Land Strategy is more likely to be able to justify compliance or support for any such inconsistency.

A summary of the key Section 9.1 Directions follows:

Direction 1.2 Rural Zones

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

The Applicant states that the planning proposal would either amend the Lot Size Map and/or insert an appropriate provision in the Local Environmental Plan to restrict the lot yield for subdivision of the land. Either way, the planning proposal does not propose a change of zoning or propose provisions that will

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increase the permissible density of land. It is therefore considered that the planning proposal is consistent with this Direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

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

Should Council resolve to proceed with the planning proposal and receive a Gateway determination advising to proceed with the planning proposal from Department of Planning and Environment, the Department of Industry will be consulted seeking comments on this matter in accordance with the Direction 1.3(4).

Direction 1.5 Rural Lands

This Direction applies when a planning proposal is prepared that will affect land within an existing or proposed rural or environmental protection zone or changes the existing minimum lot size on land within a rural or environmental protection zone.

The Planning Proposal proposes a change to the minimum lot size for subdivision of the subject site.

It is considered that the Planning Proposal is consistent with this Direction as:

- it is consistent with applicable strategic plans, including the Sydney Region Plan and the Western City District Plan, as discussed in this Report.
- the locality is currently being used predominantly for rural residential purposes and has been identified as an area for increased residential development under Hawkesbury Residential Land Strategy 2012. The Structure Planning for this area has been advanced as discussed previously in this Report.
- it will not result in any adverse impacts on the environmental values of the land, including biodiversity, native vegetation, cultural heritage, and watercourses.
- the natural and physical constraints of the subject site will not inhibit the future development of the site for residential purposes.
- future development of the subject site for rural residential purposes is not expected to impact on farmer's rights to farm, or give rise to land use conflicts, given the rural residential nature of surrounding properties.
- given the intent of the area for increased rural residential development, the fragmentation of rural zoned land is anticipated.
- the subject site is not identified as State significant agricultural land.
- the Planning Proposal is considered to be consistent with the social, economic and environmental interests of the community.

Having said this, it should be noted that whilst rural residential development of the subject site is considered appropriate, the final density of that development will depend on consideration of various site specific studies and the Draft Kurmond Kurrajong Structure Plan.

Direction 3.4 Integrating Land Use and Transport

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

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

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street connections, pedestrian access, cycle access, management of parking supply, road management, and good urban design.

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

Direction 4.1 Acid Sulphate Soils

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.

This Direction requires consideration of the Acid Sulphate Soils Planning Guidelines adopted by the Director-General of the Department of Planning and Environment.

The subject site is identified as containing “Class 5 Acid Sulphate Soils on the Acid Sulphate Soils Planning Maps contained within the Local Environmental Plan, and as such any future development on the land will be subject to Clause 6.1 Acid Sulphate Soils of the *Hawkesbury Local Environmental Plan 2012* which has been prepared in accordance with the Acid Sulphate Soils Model Local Environmental Plan provisions within the Acid Sulphate Soils Planning Guidelines adopted by the Director General.

This Direction requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulphate soils on the Acid Sulphate Soils Planning Maps unless the relevant planning authority has considered an acid sulphate soil study assessing the appropriateness of the change of land use given the presence of acid sulphate soils. The relevant planning authority must provide a copy of such study to the Director General prior to undertaking community consultation in satisfaction of Schedule 1 Clause 4 of the *Environmental Planning and Assessment Act, 1979*. An acid sulphate soil study has not been included in the planning proposal but the DP&E will consider this as part of their “Gateway” determination, and if required can request further information/consideration of this matter.

Direction 4.4 Planning for Bushfire Protection

The subject site is shown as being bushfire prone, containing Vegetation Category 1 on the NSW Rural Fire Service’s Bushfire Prone Land Map. This Direction requires consultation with the NSW Rural Fire Service following receipt of a “Gateway” determination, compliance with Planning for Bushfire Protection 2006, and compliance with various Asset Protection Zones, vehicular access, water supply, layout, and building material provisions.

Direction 6.1 Approval and Referral Requirements

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

- “(a) *minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and*
- “(b) *not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:*
 - (i) the appropriate Minister or public authority, and*
 - (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act, and*

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

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

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessary restrictive site specific planning controls. The planning proposal proposes an amendment to the Lot Size Map of the *Hawkesbury Local Environmental Plan 2012*. This will not result in the creation of an unnecessary restriction, and it is therefore considered that the proposed amendment is consistent with this Direction.

Direction 7.1 Implementation of ‘A Plan for Growing Sydney’

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

State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are *State Environmental Planning Policy No. 44 – Koala Habitat Protection*, *State Environmental Planning Policy No. 55 - Remediation of Land*, *Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995)*, and *Sydney Regional Environmental Plan No. 20 - Hawkesbury - Nepean River (No.2 - 1997)*.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The Applicant advises:

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

The aim of this State Environment Planning Policy is to “*encourage the proper conservation and management of natural vegetation that provide habitat for koalas... ..*” In this regard, the presence of ‘core koala habitat’, as defined by this State Environmental Planning Policy, needs to be identified as part of a planning proposal to ensure that future development is not prevented by this Policy. The consistency of future development with this State Environmental Planning Policy can be confirmed by the submission of a flora and fauna assessment.

State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 55 requires consideration as to whether or not land is contaminated and, if so, whether it is suitable for future permitted uses in its current state or whether it requires remediation. The State Environmental Planning Policy may require Council to obtain, and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

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The Applicant states that:

'The land has not been used for any intensive agricultural use or any other use that would suggest that remediation is required. There is no obvious evidence of surface or groundwater pollution. It is not believed that any geotechnical investigations need to be carried out for the planning proposal to proceed.'

The Applicant also states that the subject site "may have been used for hobby grazing activities in the past." According to Table 1 - *Some Activities that may cause contamination of the Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land*, agricultural activities may cause contamination.

It is considered that the grazing of livestock creates a low potential/risk of land contamination and this matter can be considered in greater detail as part of any future development applications for subdivision of the land. Notwithstanding this, the need for further investigations as part of this planning proposal will be considered by the Department of Planning and Environment as part of their 'Gateway' determination.

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

The primary aims of *Sydney Regional Environmental Plan No. 9* are to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance and to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential. The subject site is not within the vicinity of land described in Schedule 1 and 2 of the *Sydney Regional Environmental Plan* nor will the proposed development restrict the obtaining of deposits of extractive material from such land.

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

The aim of *Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)* is to protect the environment of the Hawkesbury - Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. This requires consideration of the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, impacts of the development on the environment, the feasibility of alternatives and consideration of specific matters such as total catchment management, water quality, water quantity, flora and fauna, agriculture, rural residential development and the metropolitan strategy.

Specifically the Sydney Regional Environmental Plan encourages Council to consider the following:

- rural residential areas should not reduce agricultural viability, contribute to urban sprawl or have adverse environmental impact (particularly on the water cycle and flora and fauna);
- develop in accordance with the land capability of the site and do not cause land degradation;
- the impact of the development and the cumulative environmental impact of other development proposals on the catchment;
- quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters;
- consider the need to ensure that water quality goals for aquatic ecosystem protection are achieved and monitored;
- consider the ability of the land to accommodate on-site effluent disposal in the long term and do not carry out development involving on-site disposal of sewage effluent if it will adversely affect the water quality of the river or groundwater. Have due regard to the nature and size of the site;
- minimise or eliminate point source and diffuse source pollution by the use of best management practices;

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- site and orientate development appropriately to ensure bank stability;
- protect the habitat of native aquatic plants;
- locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land;
- consider the range of flora and fauna inhabiting the site of the development concerned and the surrounding land, including threatened species and migratory species, and the impact of the proposal on the survival of threatened species, populations and ecological communities, both in the short and longer terms;
- conserve and, where appropriate, enhance flora and fauna communities, particularly threatened species, populations and ecological communities and existing or potential fauna corridors;
- minimise adverse environmental impacts, protect existing habitat and, where appropriate, restore habitat values by the use of management practices;
- consider the impact on ecological processes, such as waste assimilation and nutrient cycling;
- consider the need to provide and manage buffers, adequate fire radiation zones and building setbacks from significant flora and fauna habitat areas;
- consider the need to control access to flora and fauna habitat areas;
- give priority to agricultural production in rural zones;
- protect agricultural sustainability from the adverse impacts of other forms of proposed development;
- consider the ability of the site to sustain over the long term the development concerned;
- maintain or introduce appropriate separation between rural residential use and agricultural use on the land that is proposed for development;
- consider any adverse environmental impacts of infrastructure associated with the development concerned.

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

Assessment of the Merits of the Planning Proposal

Landscape Character Study for the Kurmond-Kurrajong Investigation Area

In April 2018 Council engaged Clouston Associates to undertake a Landscape Character Study of the Kurmond-Kurrajong Investigation Area in order to determine what aspects of streetscapes, landscapes and buildings positively contribute to making Kurmond and Kurrajong unique. The Study also recommended strategies/controls to preserve and enhance the existing landscape when facilitating rural residential development within the Investigation Area.

Council considered the report regarding the Kurmond Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

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A number of recommendations identified in the Study include:

- Complete landscape character study and establish related controls
- Pursue consolidation of rural zoning (at that stage potentially R5 – Large Lot Residential)
- Update controls on rural lot sizes
- Engage stakeholders in urban design upgrade concepts for the two villages
- Establish relevance of outcomes to other rural areas of the council.

In addition, the following development provisions were also recommended in the Study:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas.
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety.
- Accommodate on-site sewerage detention and management.

The Kurmond Kurrajong Landscape Character Study identified 4 landscape character types which are identified on the Landscape Character Map. The Pastoral landscape character types occurs on the subject site:

Pastoral Valleys: *The rural character of the region is defined by the lightly sloping open pastures with scattered trees over gently sloping terrain. Significant areas of land have been cleared for grazing and agricultural uses. Properties are dotted amongst the hills and valleys of the landscape situated between groupings of trees.*

The Kurmond Kurrajong Landscape Character Study identifies that “*the pastoral character contributes to the scenic qualities of the area by virtue of the lack of buildings.*”

In addition, the subject site is located within a views/vista corridor of high significance as identified in the Kurmond Kurrajong Landscape Character Study.

Given the above, it is considered that the subdivision layout as proposed for 98 Bells Lane, Kurmond would not be compatible with the identified ‘Pastoral Valley’ character of the area, especially when considering the location, scale and density of both existing and likely future development on the land in relation to the size of the proposed lots. In turn, this would have an adverse impact on the significant views/vista corridor in which the land is situated.

A full assessment of the planning proposal against the Kurmond Kurrajong Landscape Character Study is contained within Attachment 1 to this Report.

Kurmond Kurrajong Structure Plan

In order to achieve the recommendations of the Kurmond Kurrajong Landscape Character Study, the Structure Plan has considered the most appropriate minimum lot size for subdivision that would achieve the aims of providing for housing while protecting the biodiversity, ecological, scenic, character and amenity values of the locality.

The Draft Structure Plan stipulates a minimum lot size of 1 ha for the subject site. A minimum lot size of 1 ha is considered to be compatible with the maintenance of the pastoral character of the locality, as it affords greater separation of development between lots to provide a low density amenity, and in doing so maintains the values of the view/vista corridor in which the subject site is located.

A minimum lot size of 2ha has been nominated for the rear of the subject site and corresponds to Proposed Lot 54 on the concept subdivision plan. Given that the watercourse, dam and Significant Vegetation/riparian vegetation are located in this area, a minimum lot size of 2 ha is supported for the retention and preservation of these features whilst providing an area suitable for future development on the land for a dwelling house.

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It is therefore recommended that the Applicant be requested to amend the Planning Proposal to provide a minimum lot size of 1 ha and 2 ha. Given the physical constraints of the land, it is estimated that this would enable a two to three lot subdivision of the subject site.

Council's Interim Policy 28 July 2015 – Development Principles

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

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

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

Topography

The land varies in height from approximately 90m AHD along the road frontage to 58m AHD along the watercourse to the rear of the land. The slope then rises to the rear boundary to 68m AHD.

Based on Council's slope mapping, the subject site contains land having slopes in excess of 15% within the north-western frontage of the site, within areas adjacent to the watercourse and within a portion of land located centrally within the site as shown in Figure 5.

The concept plan for the proposed four lot subdivision attached to the planning proposal shows building footprints for future dwellings on the proposed lots. Proposed Lot 51 contains the existing house. Proposed Lot 52 will have frontage to Bells Lane. Proposed Lots 53 and 54 will gain access via a reciprocal right of way from Bells Lane. Figure 3 illustrates the proposed lots and related building footprints in relation to the slopes of the subject site.

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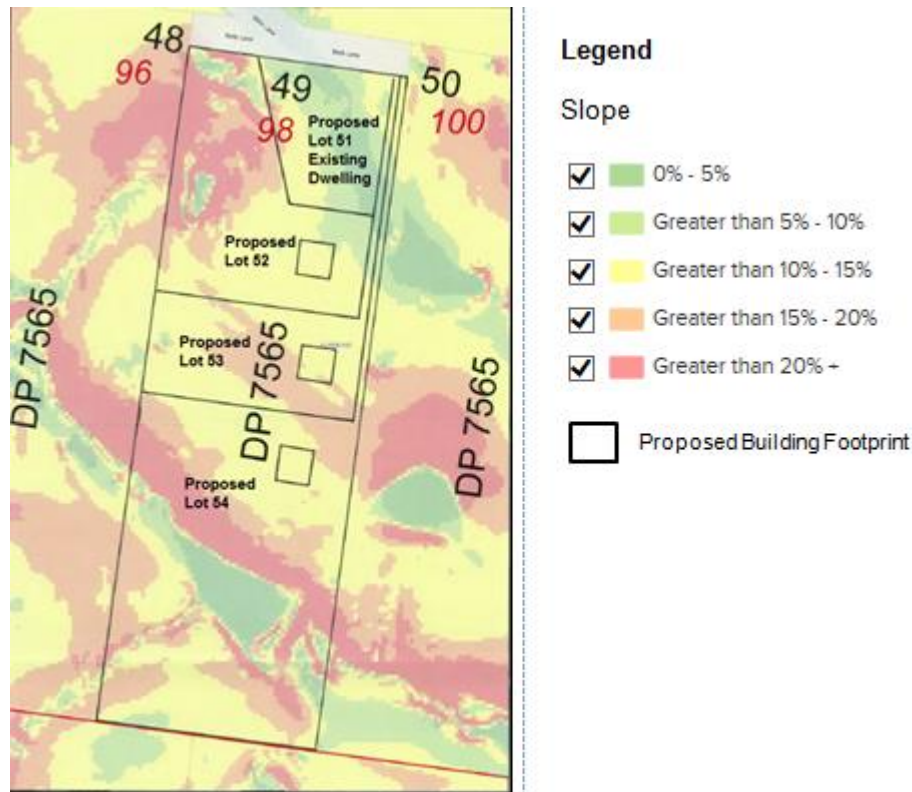


Figure 3 – Slope Analysis

This slope analysis highlights that:

- the building footprints on Proposed Lots 53 and 54 are mostly on land with a slope of 10-15%, with a small encroachment on land having a slope of 15-20%
- asset protection areas for Proposed Lots 53 and 54 will encroach on land having a slope of 15-20% to a minor degree
- the access handle to Proposed Lot 54 traverses land having a slope of 15-20%
- access to the building footprint located on Proposed Lot 52 from Bells Lane will traverse land having slopes of 15-20% and 20+%.

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

The identified inconsistencies with this requirement are considered to be minor and/or able to be resolved through:

- a minor relocation of building footprint/envelopes subject to the provision of appropriate Asset Protection Zones
- the appropriate orientation and design of access to the building envelope having regard to the contours of the land
- the provision of access to the building envelope on Proposed Lot 52 from the access handle/s to Proposed Lots 53 and 54.

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It is recommended that the Applicant prepare a revised subdivision concept plan consistent with the adopted development principles, and incorporating a minimum lot size of 1 ha.

Ecology

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

“The site is included in the Terrestrial Biodiversity Map within Council’s LEP2012. The map indicates that approximately 1/4 of the site is classified as ‘significant vegetation’ with approximately 5% as ‘connectivity between significant vegetation’.

Whilst a flora/fauna assessment of the site has not been carried out at this stage it can be seen that the subdivision and dwelling locations can take place without impact on vegetation. It is not considered that a formal report on flora/fauna of the site is required at this stage but would be more appropriate if identified through the Gateway process of the Department of Planning & Infrastructure. In reality however vegetation will not be affected and a flora/fauna assessment is probably not required.”

Council vegetation mapping records the subject site as containing Shale Sandstone Transition Forest, which is a critically endangered ecological community under the Biodiversity Conservation Act, 2016. This vegetation community is located along the watercourse at the rear of proposed lot 54.

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

The building envelope indicated for proposed lot 54 is located partially within significant vegetation as shown in Figure 4.



Figure 4: Mapped Significant Vegetation on Subject Site

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Figure 5: Aerial Photo of Subject Site

However, the Aerial Photo in Figure 5 shows that the nominated building footprint on Proposed Lot 54 is within an existing cleared area.'

The planning proposal is considered to be consistent with the development principles adopted by Council given that:

- an appropriate setback of the building envelope on Proposed Lot 54 from the watercourse can be achieved
- the existing dam located within the watercourse is being retained
- the existing watercourse and surrounding vegetation is being retained wholly within one allotment (Proposed Lot 54).

However, it is unclear as to whether or not the trees, or riparian vegetation, adjacent to the building footprint on Proposed Lot 54 will need to be removed in order to establish bushfire asset protection zones. These trees are located within the area of mapped 'Significant Vegetation'.

A flora and fauna assessment and a bushfire assessment have not been submitted with the application, and for the above reasons it is recommended that these reports be requested.

It is noted that the Hawkesbury Local Planning Panel recommended that a flora and fauna assessment and bushfire assessment be provided prior to the planning proposal proceeding to a 'Gateway' determination.

In addition, since the lodgement of this Planning Proposal, the *Biodiversity Conservation Act 2016* has come into effect. Whilst the Hawkesbury Local Government Area is within a designated interim area under the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, the provisions of the *Biodiversity Conservation Act*

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2016 will not apply until 24 November 2019, and as such any future development application for subdivision of the subject site after this time will be subject to its provisions.

Part of the subject site is mapped as having biodiversity values on the Office of Environment and Heritage's Biodiversity Values Map (Figure 6), and therefore any removal of native vegetation for future subdivision or development within this mapped area will be subject to the biodiversity offset scheme.

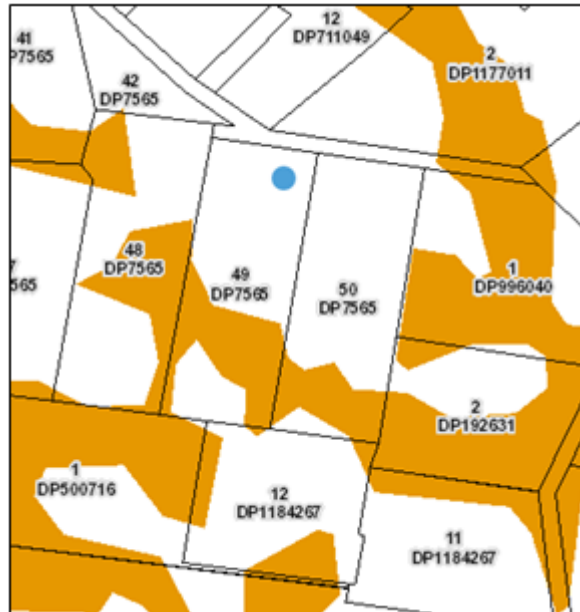


Figure 6 - Extract of OEH's Biodiversity Values Map

Zone Objectives

The subject site is zoned RU1 Primary Production under the *Hawkesbury Local Environmental Plan 2012*. In dealing with all other planning proposals within the Kurmond-Kurrajong Investigation Area the subsequent amendments to the *Hawkesbury Local Environmental Plan 2012* agreed to by Council have not altered the zoning of the respective sites, nor the zone objectives.

The Land Use Table of the *Hawkesbury Local Environmental Plan 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.*
- *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.*

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Clause 2.3(2) of *Hawkesbury Local Environmental Plan 2012* outlines that Council “*must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone*”.

However, it should be noted that there is no requirement for a subsequent development to be consistent with all the objectives of a zone particularly when the development satisfies all other applicable development standards.

A future development application over the subject site should this planning proposal proceed will have regard to the zone objectives at the time. However, it should be noted that in dealing with all planning proposals that have proceeded towards a Local Environmental Plan Amendment to date, the specific approach by Council was to amend the minimum lot sizes as expressed through the Lot Size Map.

The recently completed Kurmond-Kurrajong Landscape Character Study recommends Council to consider possible rezoning of rural land with subdivision potential for rural residential purposes within the Kurmond-Kurrajong Investigation Area to avoid any possible inconsistencies with respect to zone objectives.

Once the Structure Plan for the Kurmond-Kurrajong Investigation Area is finalised and a suitable land area is identified for rural residential purposes, Council will be able to consider possible alternative zones for the locality.

However, in the interim, it is considered to be warranted to proceed with the making of plans to give effect to the planning proposals by way of amendment to the Lot Size Map only. In future, Council would be able to rezone the potential rural land including the subject site and other rural properties subject of the previous Local Environmental Plan amendments that enabled subdivision of those properties.

Access and Transport

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

The planning proposal is not supported by a traffic impact statement

SMEC Australia Pty Ltd were engaged by Council to undertake a comprehensive traffic study to:

- identify the current and future traffic and transport patterns
- assist Council in planning for the current and future traffic and transport needs of the Hawkesbury Community.

The study assesses the likely traffic impacts stemming from the future growth in the Hawkesbury Local Government Area in order to determine any required improvements or capacity needs to minimise any adverse traffic impacts of proposed development.

SMEC are undertook the Study in two Stages, with Stage 1 having already been completed and reported to Council in September 2018. Stage 1 of the Traffic Study concluded that:

“To estimate future traffic flows with the addition of a new bridge near Navua Reserve, the Roads and Maritime STFM strategic model was coded to include the new bridge. This showed that the new bridge in the vicinity of Navua Reserve would result in the redistribution of traffic, which would result in a reduction in traffic at the Bells Line of Road/Gross Vale Road signalised intersection, at the Kurrajong Road/Old Kurrajong Road priority intersection, as well as Richmond Bridge.

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Assessment indicates that a new bridge at Navua Reserve in 2027 would provide positive impact relating to the operation of the Bells Line of Road/ Gross Vale Road intersection and the Kurrajong Road/Old Kurrajong Road priority intersection would also operate satisfactorily during peak periods”.

The Stage 1 assessment also provided a good understanding of the problem locations and issues for assessment in further detail as part of Stage 2 of this Study.

Stage 2 of the Study involves a number of key actions including the following:

- Undertake strategic assessment of proposed road projects and associated road alignments
- Determine the current and future based road network and demands
- Identify critical road network locations in consultation with Council and assess such road network locations in detail
- Test future road network demand scenarios, including a new bridge in the vicinity of Navua Reserve and other road infrastructure scenarios, as required
- Develop a strategic traffic model for Council to use now and in the future to assess the implications of background traffic growth, potential new roads infrastructure, as well as the impacts of other influencing factors, such as new developments.
- Prepare Stage 2 traffic report following completion of the required traffic modelling to identify critical road network elements that require to be upgraded to support future traffic growth, consider the impacts of the proposed strategic road projects and associated infrastructure as required.

In terms of Stage 2 of the traffic modelling for the Kurmond Kurrajong area the Hawkesbury Traffic Study has modelled a future base year 2027 with the following parameters, in order to assess impacts of any further development:

- The proposed new Grose River Bridge is operational
- Takes into account the remaining Redbank development (1,250 dwellings), Glossodia (250 dwellings), Pitt Town (150 dwellings) and Vineyard (900 dwellings).
- Includes the RMS upgrades along Bells Line of Road at Grose Vale Road, Yarramundi Lane and Bosworth Street/ March Street as well as the new Windsor Bridge.

In addition to modelling the future base year of 2027, the following Scenarios have been tested relative to the future base year:

- Scenario 1 - Future year base without Gross River Bridge
- Scenario 2 - Future year base plus 200 dwellings within the Kurmond-Kurrajong Investigation Area
- Scenario 3 - Future year base plus an additional 5% growth at Richmond and Windsor/ South Windsor areas.

Interim advice from the Consultant is that the new Grose River Bridge will improve the operation of the network taking into account the projected development in the future base year (2027) that includes development sites such as Redbank. The scenario modelling of the proposed 200 dwellings within the Kurmond/Kurrajong investigation area indicates that this development option is not considered to have any notable impact.

It should be pointed out that this Scenario is tested on the basis that the new Grose River Bridge is in place and that without the new bridge in place it would only lead to further deterioration in the road network performance.

The traffic assessment indicates that duplication of the Richmond bridge would be required to accommodate further development even with the new Grose River Bridge in place.

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In recent reports to Council dealing with other planning proposals within the vicinity of Kurmond and Kurrajong it has been noted that Council has received petitions from residents west of the Hawkesbury River concerned about rezoning of land for residential purposes in the absence of required infrastructure upgrades. It is considered this is a fundamental matter to be dealt with by Council prior to the finalisation of any planning proposals in the locality as the cumulative impact of these types of development will be unacceptable if no traffic improvements are made. In response to this issue the Applicant states:

"it is envisaged that if this Planning Proposal were to proceed a contribution would be levied on the subdivision for each additional lot created to assist in implementation of traffic infrastructure in the locality. Alternatively, the landowner could enter into a Voluntary Planning Agreement with Council so that an amount approximating what might come from the S7.11 Plan can be levied with the resultant subdivision if the S7.11 Plan has not at that time been implemented."

On 10 November 2015 Council considered a report on Voluntary Planning Agreements for the Kurmond-Kurrajong Investigation Area, and resolved as follows:

"That:

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

The Applicant's suggestion of a Voluntary Planning Agreement is consistent with Council this resolution. If the planning proposal is to proceed further discussions will be held with the Applicant and land owner regarding the preparation of a draft Voluntary Planning Agreement.

Bushfire Hazard

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

The planning proposal is not accompanied by a bushfire assessment report. Given the site is identified as bushfire prone, should Council resolve to proceed with the planning proposal and receive a 'Gateway' determination advising to proceed, the planning proposal will be referred to the NSW Rural Fire Service, being the responsible authority for bushfire protection.

Agricultural Land Classification

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

- "3. Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production level is moderate because of edaphic factors or environmental constraints. Erosion hazard, soil structural*

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breakdown or other factors including climate may limit the capacity for cultivation, and soil conservation or drainage works may be required."

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

Services

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

The planning proposal is not accompanied by a wastewater feasibility assessment or any other relevant statement or study. As the subject site does not have access to a reticulated sewerage system, future development will be dependent upon appropriate on-site sewage management systems. The Applicant states that the "*subject site is large enough for each proposed lot to have on-site disposal*". Whilst the sizes of the proposed lots as a whole may be adequate, the constraints of the land within each lot, such as watercourses, dams, significant vegetation and slope, need to be considered, and ultimately reduces the 'useable' area of the proposed lots for this purpose.

For the above reasons it is recommended that a wastewater feasibility assessment be requested to confirm the suitability of each proposed lot for on-site effluent disposal.

Heritage

The site is not identified as a heritage item in Schedule 5 Environmental Heritage of the *Hawkesbury Local Environmental Plan 2012*, is not located within a conservation area and is not subject to any heritage order or within the immediate vicinity of any identified heritage item.

Section 7.11 Contributions or a Voluntary Planning Agreement

Should the planning proposal proceed it will be subject to either a Section 7.11 Developer Contributions Plan or a Voluntary Planning Agreement.

The Applicant has acknowledged that if the planning proposal is to proceed further, preparation of a Section 7.11 Developer Contributions Plan or a draft Voluntary Planning Agreement to support the required infrastructure upgrade in the locality as a consequence of the development would be required.

7. Consultation

The Planning Proposal was reported to the Hawkesbury Local Planning Panel Meeting of 18 October 2018 for advice/comments.

In respect to this Planning Proposal, the Panel advised:

"This Planning Proposal raises a number of issues with regards to balancing long term strategic objectives with individual interests.

The Panel finds itself being asked to advise Council on the merits of individual planning proposals whilst the strategic overview of the Kurmond Kurrajong Investigation Area is still under investigation.

The Panel does not think this is the appropriate approach to effective management of the Kurmond Kurrajong Investigation Area. However, the Panel is also conscious of the history of the four remaining pre Gateway Planning Proposals in Council, including the two Proposals subject of reports before the Panel.

The Panel considers it would be unfair to the applicant and relevant land owners to defer or refuse the application but the Panel are also of a mind that the proposal is not in a form that can be

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supported for Gateway. This includes concerns with respect to the desired future character of the area, the actual subdivision being proposed, the appropriate zoning for the site (and other sites seeking similar subdivision) and the preparation of sufficient supporting documentation to address environmental matters.

In the Panels view, the public interest is best served by coordinated decisions that take into consideration a broader context, and evaluate outcomes above the specific interest of individuals. The Panel considers that long term strategic planning should have been completed before these planning proposals were considered.

At this Meeting, the Panel also resolved to recommend that:

1. *The Planning Proposal to amend the Hawkesbury Local Environmental Plan 2012 – 98 Bells Lane, Kurmond, proceed for Gateway determination subject to the following:*

- a. *the LEP amendment process be 24 months to allow time for Council to complete its strategic planning for the investigation area including:*

Comment: Should it be determined in the future that the Planning Proposal be forwarded for a 'Gateway' determination, a request can be made to the Department of Planning and Environment for a 24 month timeframe for the completion of the Local Environmental Plan amendment. However, given that work has progressed with various studies and the Draft Kurmond Kurrajong Structure Plan has been prepared this may not be required.

- b. *the proposed subdivision not exceed four lots*

Comment: The subject site is 4.92ha in area. The Planning Proposal includes minimum lot sizes of 2ha, 1 ha and 4,000m². Given the constraints of the subject site, it is considered that a yield of more than four lots is unlikely. The proposed minimum lot sizes and potential lot yield is discussed further in this Report.

- c. *completion of the following site-specific studies by the applicant:*

- i. *Environmental design/site capacity*
 - ii. *Bush fire assessment*
 - iii. *Flora and Fauna assessment*
 - iv. *Traffic impact assessment*
 - v. *Waste water feasibility*
 - vi. *Infrastructure requirements and funding*

Comment: It is recommended that the Applicant provide the above listed reports to ensure the appropriateness of this Local Environmental Plan amendment having regard to the desired future character of the area, the appropriate minimum lot size/s, and the environmental constraints of the subject site.

2. *Council seek funding from the Department of Planning and Environment to enable the strategic planning for the Kurmond Kurrajong Investigation Area.*

Comment: Council Officers will contact the Department of Planning and Environment in this regard.

3. *A coordinated approach to all current planning proposals be undertaken for the Kurmond Kurrajong Investigation Area currently before Council, including the subject site.*

Comment: A coordinated approach in the assessment of planning proposals within the Kurmond Kurrajong Investigation Area will be undertaken for all current

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planning proposals within this Area. This will include consistency in the criteria used for assessment, the information required to be lodged with a proposal, as well as procedural requirements. The preparation of the Draft Structure Plan and covering report addresses this matter.

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

8. Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The proposal is consistent with the following Focus Areas, Directions and Strategies within the Community Strategic Plan.

Our Environment

3.1 The natural environment is protected and enhanced

3.1.4 Minimise our community's impacts on habitat and biodiversity and protect areas of conservation value.

3.4 The sustainability of our environment is improved

3.4.2 Development is functional, attractive and sympathetic with the environment, and avoids unnecessary use of energy, water and other resources.

Our Future

5.3 Shaping our Growth – Respond proactively to planning and the development of the right local infrastructure.

5.3.3 Plan for a balance of agriculture, natural environment and housing that delivers viable rural production and maintains rural character.

9. Fit For The Future Strategy Considerations

The proposal is aligned with Council's long term plan to improve and maintain organisational sustainability and achieve Fit for the Future financial benchmarks. The proposal will enable Council to sustainably manage community assets in accordance with the scheduled program of works in the Long-Term Financial Plan.

10. Conclusion

The Planning Proposal was reported to the Hawkesbury Local Planning Panel for advice on 18 October 2018. The Panel recommended that the Planning Proposal proceed to a 'Gateway' determination subject to the completion of the following site specific studies by the Applicant:

- *Environmental design/site capacity*
- *Bush fire assessment*
- *Flora and Fauna assessment*
- *Traffic impact assessment*
- *Waste water feasibility*
- *Infrastructure requirements and funding*

The provision of these reports will ensure the appropriateness of this Local Environmental Plan amendment having regard to the desired future character of the area, the appropriate minimum lot size/s, and the environmental constraints of the subject site.

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The Planning Proposal is considered to be inconsistent with the recommendations of the Kurmond Kurrajong Landscape Character Study and Draft Kurmond Kurrajong Structure Plan in regard to the protection of the pastoral character of the locality and the significant views/vista corridor in which the subject site is situated. For this reason it is further considered that a minimum lot size of 1 ha should be applied to the proposal.

In addition, the Proposal does not meet the requirements of Council's adopted development constraints principles in respect to access and slope. Further, the Planning Proposal does not demonstrate, through lack of the appropriate studies, consistency with these principles in respect to significant vegetation, asset protection areas and on site effluent disposal.

It is therefore recommended that Council support the recommendations of the Hawkesbury Local Planning Panel and request that the Applicant amend the Planning Proposal to undertake the abovementioned further studies, and amend the subdivision concept plan as follows:

- a. provide minimum lots sizes of 1 ha and 2 ha;
- b. provide access to each lot via land with a slope less than 15%;
- c. locate building envelopes and asset protection areas to ensure they are located on land having a slope of less than 15%;
- d. demonstrate that significant vegetation or riparian vegetation will not be required to be removed for the establishment of bushfire asset protection area.

Planning Decision

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

RECOMMENDATION:

That:

1. Council support the recommendations of the Hawkesbury Local Planning Panel dated 18 October 2018.
2. The Applicant be requested to provide:
 - a. An amended subdivision concept plan that:
 - i. provides a minimum lot size of 1 ha and 2 ha;
 - ii. provides access to each lot via land with a slope less than 15%;
 - iii. locates building envelopes and asset protection areas to ensure they are located on land having a slope of less than 15%;
 - iv. demonstrates that significant vegetation or riparian vegetation will not be required to be removed for the establishment of bushfire asset protection area.
 - b. Environmental design/site capacity assessment
 - c. Bush fire assessment
 - d. Flora and Fauna assessment
 - e. Traffic impact assessment
 - f. Waste water feasibility assessment
 - g. Infrastructure requirements and funding assessment

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3. Following submission of an amended planning proposal and further studies, Planning Proposal LEP006/16 be reported to Council for consideration as to whether the Proposal will be supported for a 'Gateway' determination.

ATTACHMENTS:

- AT - 1** Assessment of the Planning Proposal Against the Recommendations of the Kurmond-Kurrajong Investigation Area Landscape Character Study.
- AT - 2** Proposed Minimum Lot Size Map.

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AT - 1 An Assessment of the Planning Proposal Against the Recommendations of the
Kurmond-Kurrajong Investigation Area Landscape Character Study

	Objective	Guideline	Application	LEP006/16 98 Bells Lane, Kurmond
Public Transport	Encourage bus use between neighbourhoods and major transit nodes (Richmond/Windsor).	Weather sheltered/ well-lit bus stops (<400m walk) • Access to real time travel information • Peak services to reflect realistic demand/requirements of residents.	Kurrajong and Kurmond Neighbourhood centres and major roads through Investigation Area.	No impact. Voluntary Planning Agreements to contribute towards provision of services and amenities.
Private Vehicle (including parking)	Coordinate approach to traffic flow and management to streamline roadways/ infrastructure.	Avoid multiple, isolated intersections, particularly from new development directly onto main roads • Keep parking clear of all documented district or regional views.	Roads and on road parking in proposed developments • Main road upgrades (eg Bells Line of Road).	Future parking associated with residential development onsite. With appropriate siting of new development on larger lots (1 ha) unlikely to impact vistas.
Cycling and Walking	Promote walk/ cycle as means of accessing shops, bus routes and schools within neighbourhoods.	Establish cycle lane/path between Kurrajong and Kurmond • Create a safe and comfortable pedestrian environment within neighbourhood centres/villages, especially along ridges • Focus on 800m walking catchment within villages.	Cycle infrastructure (bike lockers etc) at Kurrajong and Kurmond centres • Dedicated cycle lane to follow ridge line road • Walkability action plan within Kurmond and Kurrajong.	Voluntary Planning Agreements or Section 7.11 Contributions Plan to provide for services and amenities.
Universal Access	Maximise universal access as far as natural gradients permit.	Define, audit and update most walkable routes within neighbourhoods • Ensure bus routes including community buses link valleys to ridgetops in villages to encourage walking within village and reduced car dependency for short trips.	Ridgeline streets in Kurmond and Kurrajong	N/A.
Residential	Maintain clear distinction in	Focus principal residential population in and around compact	Principal residential population in and around Kurmond and	The subject site is within the adopted Kurmond/Kurrajong

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	Objective	Guideline	Application	LEP006/16 98 Bells Lane, Kurmond
	residential types related to location and geography.	<p>neighbourhood centres</p> <ul style="list-style-type: none"> Prevent development and subdivision from sprawling and create a buffer between residential and active rural land uses Ensure rural lot sizes maintain low density, optimise ecological corridors and open views. Potential R5 Large Lot Residential Zone (4,000m²) Use built form that responds to the steep terrain - a small footprint that steps down with the contours. 	Kurrajong.	<p>Investigation Area boundary.</p> <p>Minimum lot size of 4000m² inconsistent with the maintenance of pastoral character and views/vista corridor.</p> <p>Recommend a minimum lot size of 1 ha and 2 ha to maintain character.</p> <p>Future development can be accommodated on land free of significant vegetation, riparian vegetation, watercourses or slopes greater than 15%.</p>
Retail Commercial	Maintain clear distinction between retail/ commercial and rural land uses.	<p>Retail and commercial within neighbourhood cores.</p> <ul style="list-style-type: none"> Road front restaurants/hotels on main roads only Encourage farm gate providers. 	<p>Neighbourhood centres</p> <ul style="list-style-type: none"> Bells Line of Road Farm gate properties. 	Not Applicable
Transport	Promote ease of access and movement around neighbourhood centres.	<p>Slow vehicle travel speeds, clearly legible environments (signage, cues, wayfinding)</p> <ul style="list-style-type: none"> Integrated pedestrian/cycle/public transport information Adequate car parking consolidated wherever possible in centres to avoid continuous line of cars on streets Simple pull-offs on main roads near major views. 	<p>On/off street parking in neighbourhood centres</p> <ul style="list-style-type: none"> Formalised pull-offs on Bells Line of Road near views. 	<p>Voluntary Planning Agreements or Section 7.11 Contributions Plan to provide for services and amenities for public domain.</p> <p>The planning proposal is not located in the neighborhood centre.</p>
Public Domain	Promote safe, pleasant public domain reflecting neighbourhood status.	<p>Vegetation, shade, shelter, quality pedestrian surfaces, social seating, lighting in critical locations and interpretation</p> <ul style="list-style-type: none"> Formalised lookouts 	<p>Specifically in the village and Neighbourhood Centres</p> <ul style="list-style-type: none"> Social gathering space at Kurmond for locals shopping. 	Voluntary Planning Agreements or Section 7.11 Contributions Plan to provide for services and amenities for public domain.

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	Objective	Guideline	Application	LEP006/16 98 Bells Lane, Kurmond
		with wide district/ regional views • Avoid conflict between pedestrians, cycles and vehicles.		
Topography	Ensure that the area's natural topography is conserved.	Controls on cut and fill in all built form including roads • Maintenance of natural stream form.	Across the Investigation Area	Future development can be accommodated on land free of significant vegetation, riparian vegetation, watercourses or slopes greater than 15%. Cut and fill controls a matter to be included within a development control plan or to be considered with a development application.
Hydrology	Maintain and enhance the natural riparian systems of the area.	Follow riparian guidelines on stream types and riparian corridor controls (NSW Office of Water) • Minimise/consolidate road crossings of creeks • Restore minor creeks and chain of ponds as part of related development.	Across the Investigation Area.	A watercourse, dam and Significant Vegetation/riparian vegetation are located on the site. A minimum lot size of 2 ha is supported for the area of land containing these features for the retention and preservation of these features whilst providing an area suitable for future development on the land for a dwelling house.
Vegetation	Protect land identified as high and very high priority habitat (Ecological, 2018) from impact of residential development. • Conserve and enhance natural habitat corridors.	Retain, protect and regenerate vegetation corridors identified in mapping • Do not permit small lot (<0.5ha) development of land identified as high, very high priority • Include riparian corridor restoration (planting) in development obligations.	Any applicable land in Investigation Area.	Very high priority habitat identified along watercourses; otherwise majority of land within low/ moderate priority. The area of high priority habitat corresponds to the area of the subject site proposed to have a minimum lot size of 2ha.
Bushfire	Maintain bushfire protection.	APZ • Suitable access including for fire fighting vehicles.	Across the Investigation Area	Bushfire control measures can be achieved.

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	Objective	Guideline	Application	LEP006/16 98 Bells Lane, Kurmond
Climate Change	Mitigate temperature change.	Tree canopy cover <ul style="list-style-type: none"> • Riparian corridor ecology. 	Tree canopy especially on roads and in village centres.	Future development can be accommodated on land free of significant vegetation, riparian vegetation, or watercourses.
Physical Heritage	Conserve heritage items (including trees).	Monitor condition of heritage items <ul style="list-style-type: none"> • Consider extent of curtilage and integration of items. 	Throughout the Investigation Area.	Not Applicable.
Heritage Interpretation	Make the story of the locality accessible and engaging.	Maintain views that assist in interpretation <ul style="list-style-type: none"> • Promote heritage trails. 	Throughout the Investigation Area.	<p>The subject site is located within a high significant view/vista corridor, and therefore a lot size of 5000m² or greater is required.</p> <p>The planning proposal seeks to enable a four lot subdivision with lot sizes 4,000m², 1 ha and 2 ha.</p> <p>However, to maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is recommended.</p>
Urban Character	Maintain and enhance compact character of existing villages and neighbourhoods.	Respect existing scale and form: 1-2 storey limit <ul style="list-style-type: none"> • Retain existing subdivision pattern - avoid lot amalgamation. • Low FSR per lot. Focus on high street as location for services rather than outside of neighbourhoods • Ridge line profile and view corridors to inform decisions in relation to scale and form of buildings (eg extensions or granny flats). 	Kurrajong and Kurmond neighbourhood centres.	<p>Not Applicable.</p> <p>Development assessment consideration</p>
Rural Character	Retain and protect pastoral/ rural character <ul style="list-style-type: none"> • Maintain clear distinction between urban rural interfaces. 	Prevent rezoning of critical land parcels that provide significant view corridors <ul style="list-style-type: none"> • Permit rezoning and subdivision of land 	Lands within Investigation Area.	The subject site is located within a high significant view/vista corridor, and therefore a lot size of 5000m ² or greater is required.

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	Objective	Guideline	Application	LEP006/16 98 Bells Lane, Kurmond
		<p>deemed appropriate/lower order in terms of views. Prevent creation of small lot sizes</p> <ul style="list-style-type: none"> Control on road signage and promotions. 		<p>The planning proposal seeks to enable a four lot subdivision with lot sizes 4,000m², 1 ha and 2 ha.</p> <p>However, to maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is <u>recommended</u>.</p>
Views and Vistas	<p>Conserve 'pastoral' views, particularly from ridge line major roads</p> <ul style="list-style-type: none"> Protect regional vistas from neighbourhoods. 	<p>Document and maintain key regional and district views (see maps)</p> <ul style="list-style-type: none"> Interpret views at key locations Prevent loss of views from roads through controls on private boundary fences and hedges heights and designs. 	Lands within Investigation Area.	<p>The subject site is located within a high significant view/vista corridor, and therefore a lot size of 5000m² or <u>greater</u> is required.</p> <p>However, to maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is <u>recommended</u>.</p> <p>Matters to be included within a development control plan or to be considered with a development <u>application</u>.</p>
Microclimate	<p>Optimise sun in winter and shade in summer</p> <ul style="list-style-type: none"> Maximise cooling breezes in summer Provide ample outdoor seating. 	<p>Carefully considered application of evergreen and deciduous trees, with primary focus on native species</p> <ul style="list-style-type: none"> Careful selection of non-invasive exotic species on streets in Centres. 	Shade and sun (and seating) particularly important in Centres and on roadsides.	Matters to be included within a development control plan or to be considered with a development <u>application</u> .
Passive Surveillance	Ensure a sense of personal safety for the public and residents.	Design with CPTED principles	Investigation Area.	Matters to be included within a development control plan or to be considered with a development <u>application</u> .
Urban (in town or village)	Retain existing scale and form. Prevent urban sprawl into currently non-urban areas or areas with significant view/vistas.	<p>1-2 storeys. Consider impact of parapet and roof form on backdrop perspective. Protect existing incidental/occasional views (along streets, between buildings, pedestrian experience)</p> <ul style="list-style-type: none"> Typical lot sizes (TBC) 	Kurmond and Kurrajong neighbourhood centres.	Matters to be included within a development control plan or to be considered with a development <u>application</u> .

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	Objective	Guideline	Application	LEP006/16 98 Bells Lane, Kurmond
		<ul style="list-style-type: none"> Maximum site coverage controls for built form and minimum landscape controls. 		
Periphery (edge of town or village)	Consolidate urban form around neighbourhoods.	Establish limit to neighbourhood fringe (exclusion zone/rural character zone) Focus commercial and retail within neighbourhoods. Large lot rural residential which does not interrupt views and vistas.	Consider visual impact of development proposals from carriageway and impact on views and vistas, including whilst travelling.	Matters to be included within a development control plan or to be considered with a development application.
Rural (out of town or village)	Maintain significant sweeping pastoral views by avoiding development of critical view paths.	Land with supporting building on lot as dominant built form <ul style="list-style-type: none"> Consolidate built form footprint and access driveways (including outbuildings, pools, courts etc) (Not less than 4000m²) with prescribed building envelopes for all lots Maximum site coverage controls for built form and minimum landscape controls. 	Rural zoned land within the Investigation Area.	To maintain view/vista corridor values and pastoral character a minimum lot size of 1 ha is recommended. Matters to be included within a development control plan or to be considered with a development application.
Power lines	Minimise visual impacts of power lines.	Selection of vegetation species under power lines <ul style="list-style-type: none"> Direction of easement across topography and especially over ridge lines Level of co-operation with power suppliers. 	Investigation Area.	Matters to be included within a development control plan or to be considered with a development application.
Transport	Maximise opportunity to access transport and promote walking.	Bus routes maximise catchment <ul style="list-style-type: none"> Community buses link valleys to ridge lines in village centres. 	Throughout but especially around village centres.	Not Applicable.

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AT - 2 Proposed Minimum Lot Size Map



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Item: 167 **CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - Lot 3 DP 747089, 74 Longleat Lane, Kurmond - (95498, 124414)**

Previous Item: 169, Ordinary, (9 August 2016)

Directorate: City Planning

PLANNING PROPOSAL INFORMATION

File Number: LEP010/16
Property Address: 74 Longleat Lane, Kurmond
Applicant: Glenn Falson Urban & Rural Planning Consultant
Owner: Ms R Goody
Date Received: 12 April 2016
Current Minimum Lot Size: 4 Hectares
Proposed Minimum Lot Size: 4,000m² and 2Ha
Current Zone: RU4 Primary Production Small Lots
Site Area: 3.097ha

Key Issues: ♦ Heritage
 ♦ Draft Kurmond-Kurrajong Investigation Area Structure Plan
 ♦ Kurmond Kurrajong Landscape Character Study

Recommendation:

That Council proceed with the making of the Local Environmental Plan amendment.

EXECUTIVE SUMMARY:

On 9 August 2016 Council considered a report regarding a planning proposal, submitted by Glenn Falson Urban and Rural Planning Consultant (the applicant), seeking an amendment to the Hawkesbury Local Environmental Plan 2012 in order to allow development of Lot 3 DP 747089, 74 Longleat Lane, Kurmond primarily for large lot residential purposes.

The purpose of this report is to advise Council of the outcome of the community and relevant public agency consultation for the above planning proposal, and to make recommendations to proceed with the making of an amendment to the *Hawkesbury Local Environmental Plan 2012*.

At the Meeting on 9 August 2016, Council resolved to forward the planning proposal to the Department of Planning and Environment for a Gateway Determination. In their Gateway Determination of 23 September 2016, the Department of Planning and Environment advised Council to proceed with the planning proposal and undertake consultation with the community and public agencies as identified in the Gateway Determination.

Four responses from public agencies and no submissions from the community were received in response to consultation.

A series of separate studies have either been undertaken or considered as part of the process of informing the preparation of the Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study

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- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan

Clouston Associates were commissioned by Council to complete a Landscape Character Study as part of the structure planning process for the Kurmond-Kurrajong Investigation Area, and in July 2018 Council considered a report on the matter and resolved to apply the approach adopted in the Study.

As outlined in this report, the planning proposal is considered to be consistent with the Kurmond and Kurrajong Landscape Character Study.

In addition, the Draft Kurmond Kurrajong Structure Plan has been prepared. In relation to the subject site, the Structure Plan nominates a minimum lot size for subdivision of 1 ha to maintain the pastoral character of the locality. Whilst the Planning Proposal is not consistent with this requirement, it is considered that a minimum lot size of 4,000m² for proposed Lot 11 is justified given that an existing dwelling house will be situated on each new lot and no significant impact on the character or visual amenity will result.

This Report makes a recommendation to proceed with the making of an amendment to the *Hawkesbury Local Environmental Plan 2012* that gives effect to the planning proposal.

As part of the planning proposal documentation, the Applicant acknowledged that if the planning proposal is to proceed further, preparation of a Section 7.11 Developer Contributions Plan or a draft Voluntary Planning Agreement to support the required infrastructure upgrade in the locality as a consequence of the development would be required.

The Applicant has since questioned the need for a voluntary planning agreement as the planning proposal will result in the two existing dwelling houses being located on separate lots, and thereby no further infrastructure or community services will be required.

Historically Council has imposed developer contributions associated with the subdivision of land only on newly created vacant lots, and this has been the case, in particular, for Voluntary Planning Agreements entered into for recent amendments to the *Hawkesbury Local Environmental Plan 2012* for land within the Kurmond Kurrajong Investigation Area, and has thereby set a precedent in this respect. As a result it is considered unreasonable to impose a developer contribution by way of a voluntary planning agreement in this case.

As this matter has an extensive history, comprising many elements, the Officers report is divided into the following sections to assist in its explanation and consideration:

1.	Subject Site	Page 115
2.	Kurmond-Kurrajong Investigation Area	Pages 115-117
3.	Kurmond-Kurrajong Structure Plan	Page 117
4.	Detailed History and Planning Proposal	Pages 117-120
5.	Policy Considerations	Page 120
6.	Discussion	Pages 120-125
7.	Consultation	Pages 125-127
8.	Conformance to Hawkesbury Community Strategic Plan	Page 127
9.	Fit for the Future	Page 127
10.	Conclusion	Page 127

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Context and Background

1. Subject Site

The subject has an area of 3.097ha and is mostly regular in shape and has frontage to Longleat Lane as shown in Figure 1 below.



Figure 1: Subject Site

The subject site is zoned RU4 Primary Production Small Lots under *Hawkesbury Local Environmental Plan 2012* with the current minimum lot size for subdivision of the subject site being 4ha.

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

The subject site is identified as a heritage item of local significance under Schedule 5 of *Hawkesbury Local Environmental Plan 2012*. The significance of this item is mainly attributed to the dwelling known as 'Longleat' located in the northern section of the property.

2. Kurmond-Kurrajong Investigation Area

Through a Mayoral Minute on 3 February 2015, Council resolved to undertake structure planning within the Kurmond-Kurrajong Investigation Area. This structure planning process was to determine the suitability of the identified lands for large lot residential and/or rural residential development.

On 31 March 2015, Council considered a report on proposed large lot residential/rural-residential development within an approximately one kilometre radius of the Kurrajong and Kurmond neighbourhood centres and resolved to adopt an investigation area to enable structure planning and development contributions planning for this purpose.

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The Investigation Area was identified by considering the location criteria provided within the Hawkesbury Residential Land Strategy (i.e. “within 1km radius” and “cluster around or on the periphery of villages”), undertaking a desk top survey of matters such as slope, existing vegetation, watercourses, existing road layout and accesses, and zone and property boundaries.

In July 2015, Council resolved to adopt the development constraint principles and local planning approach outlined in the Council report of 28 July 2015 as an Interim Policy for the purpose of structure planning within the Kurmond-Kurrajong Investigation Area. An assessment of this Proposal against the Interim Policy is discussed further in this Report.

On 29 November 2016, Council considered a report on the Kurmond-Kurrajong Investigation Area Survey Results and resolved as follows:

"That:

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

The subject site is located within the Kurmond-Kurrajong Investigation Area. Having regard to item 6 of the above resolution, the subject Planning Proposal had been supported by Council at its Meeting on 9 August 2016, and had received a Gateway determination advising to proceed dated 23 September 2016.

Recent progress with respect to the Kurmond-Kurrajong Investigation Area has included preparation or consideration of a number of associated studies, to inform the preparation of the Draft Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan.

Council considered a report regarding the Kurmond and Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

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In addition, the Study recommended that Council consider the following provisions when determining planning proposals:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety
- Accommodate on-site sewerage detention and management.

The recommendations of this Study have been considered in the assessment of this Planning Proposal, and are discussed further in this Report.

3. Kurmond Kurrajong Structure Plan

The Draft Kurmond Kurrajong Structure Plan has been prepared based on consideration of the various studies. The aim of the Structure Plan is to provide the planning framework to enable the future development of the area whilst maintaining the biodiversity, ecological, scenic, character and amenity values of the locality. One of the main determining factors in achieving this aim is an appropriate minimum lot size for subdivision.

To ensure the protection of the landscape character, biodiversity, and the existing views and vistas within the area, the draft Structure Plan proposes a minimum lot size for subdivision of 1 ha or 4,000m² dependent on locality. It is considered that areas immediately surrounding the town centre villages of Kurmond and Kurrajong should have a minimum lot size of 4,000m², essentially providing for an expansion of the denser existing residential areas, closer to services and amenities, while minimising impacts on the surrounding rural character and views and vistas. For all other properties within the Kurmond Kurrajong Investigation Area a minimum of 1 ha is proposed to maintain existing views and vistas and/or to protect the pastoral character as identified in the Kurmond and Kurrajong Landscape Character Study.

The Planning Proposals consistency with the Draft Kurmond Kurrajong Structure Plan is discussed further in this Report.

4. Detailed History and Planning Proposal

On 12 April 2016, Council received a planning proposal from Glenn Falson Urban & Rural Planning Consultant (the applicant), seeking to amend *Hawkesbury Local Environmental Plan 2012* in order to allow the subdivision of Lot 3 DP 747089, 74 Longleat Lane, Kurmond into two lots with minimum lot sizes of not less than 4,000m² and 2ha.

On 9 August 2016, Council considered a report on this matter and resolved to forward the planning proposal to the Department of Planning and Environment for a Gateway determination as follows:

“That:

- 1. Council support the preparation of a planning proposal for Lot 3 DP 747089, 74 Longleat Lane, Kurmond to allow development of the land for rural residential development with minimum lot sizes of 4,000m² and 2ha subject to the submission of further studies for consideration in relation to onsite effluent disposal, bushfire and heritage following a ‘Gateway’ determination.*
- 2. The planning proposal be forwarded to the Department of Planning and Environment for a ‘Gateway’ determination.*
- 3. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.*
- 4. The Department of Planning and Environment and the Applicant be advised that in addition to all other relevant planning considerations being addressed, final Council support for the proposal will only be given if Council is satisfied that satisfactory progress, either completion*

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of the Section 94 Developer Contributions Plan or a Voluntary Planning Agreement, has been made towards resolving infrastructure provision for this planning proposal.”

Notification of the planning proposal was sent to various public authorities on 28 September 2016. Community consultation occurred 31 August 2018 to 17 September 2018 during which no submissions were received.

The objective of this planning proposal is to allow the land to be subdivided into large lot residential lots, which are sufficient in size to support sustainable housing within a rural setting.

The intended outcome is to facilitate the subdivision of the land into a maximum of 2 lots, with minimum lot sizes of 4000m² and 2ha.

A concept plan for the proposed two lot subdivision is shown in Figure 2 below. This concept plan shows two lots having sizes of 5,150m² and 2.58ha.

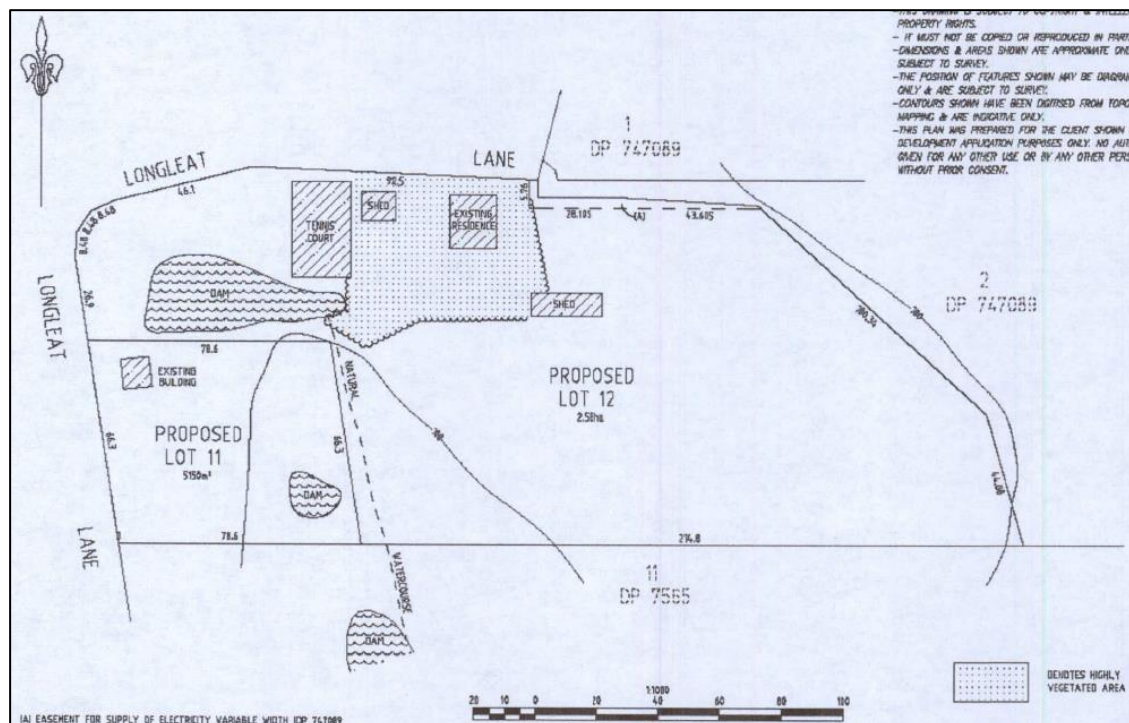


Figure 2: Subdivision Concept Plan

Generally, a subdivision concept plan in support of a planning proposal is only to demonstrate that land has subdivision potential, but it is not a determining factor in the determination of the planning proposal. Also, endorsement/approval of a subdivision concept plan is not part of the plan making process, and is subject of a subsequent Development Application for subdivision of that land if a plan is made to give effect to a planning proposal. Therefore, the subdivision concept plan submitted in support of this planning proposal was not endorsed by Council at its Ordinary Meeting of 9 August 2016.

The proposed outcome will be achieved by amending *Hawkesbury Local Environmental Plan 2012* in the following way:

- Amend Hawkesbury Local Environmental Plan 2012 Lot Size Map Sheet LSZ_008A by changing the minimum lot size for the land to 4000m² and 2ha as shown in Figure 3;
- Amend Hawkesbury Local Environmental Plan 2012 Heritage Map Sheet HER_008A to reflect the new curtilage boundary for the heritage item located on the land as shown in Figure 4.

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- Amend Schedule 5 of Hawkesbury Local Environmental Plan to update the property description to Part Lot 3 DP747089. This will be an interim measure until the property is subdivided. At the time of registration of the new lots, Schedule 5 can be subsequently amended to reflect the current legal description.

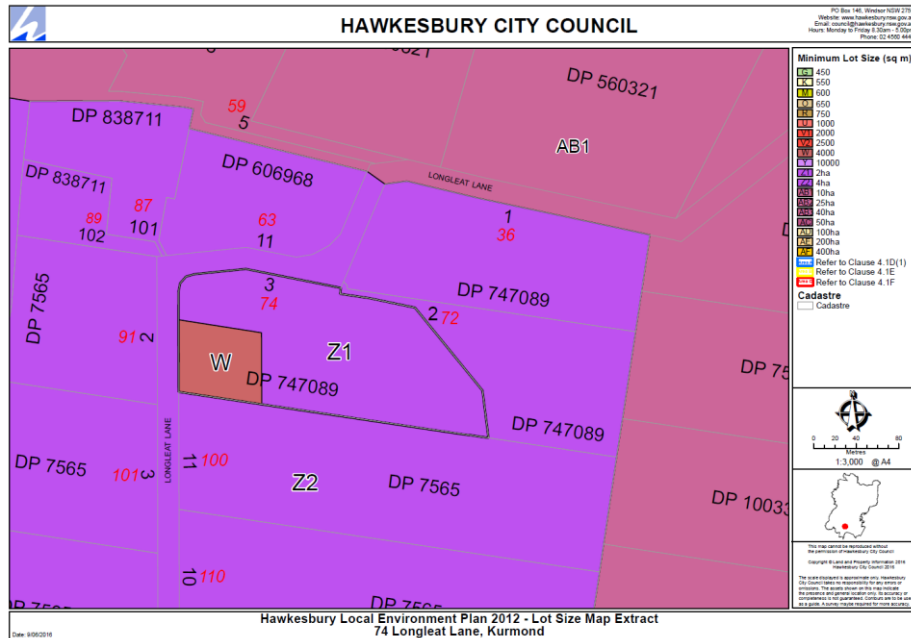


Figure 3: Exhibited Proposed Lot Size Map

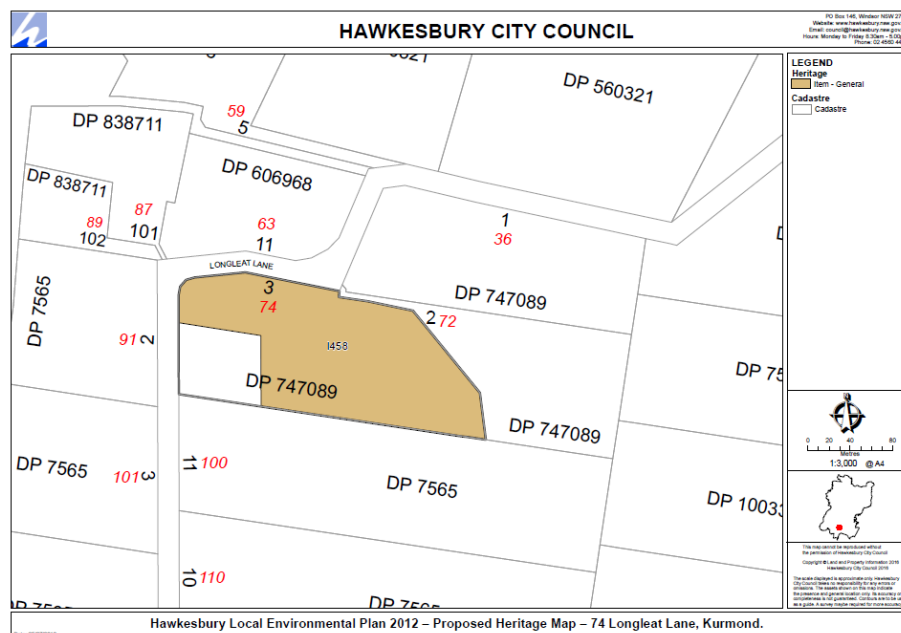


Figure 4: Exhibited Proposed Heritage Map

Authorisation for Council to Exercise Delegation

The "Gateway" determination included authorisation for Council to exercise delegation to make this plan. Should Council resolve to proceed with the making of the plan this authorisation will allow Council Officers to make a direct request to the Parliamentary Counsel's Office to prepare a draft Local Environmental Plan

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to give effect to the planning proposal. Following receipt of an opinion from the Parliamentary Counsel's Office that the plan can be legally made, Council may then make the plan. Council delegated this plan making function to the General Manager by resolution on 11 December 2012.

5. Policy Considerations

The Department of Planning and Environment's '*A guide to preparing planning proposals*' August 2016 (the Guidelines) requires the applicant to demonstrate that a planning proposal is consistent with applicable local strategies/strategic plans, State Environmental Planning Policies and Section 9.1 Directions (formerly Section 117 Directions).

The previous Council report (dated 9 August 2016) for this matter included an assessment of the planning proposal which demonstrated that the proposal's consistency with the *Greater Sydney Region Plan - A Metropolis of Three Cities*, the Western City District Plan, State Environmental Planning Policies and Section 9.1 Ministerial Directions, as well as the local planning/policy framework, including the Hawkesbury Residential Land Strategy.

The Gateway determination advising Council to proceed with the planning proposal advised that inconsistencies with Section 9.1 Ministerial Directions 1.2 *Rural Zones* 2.4 *Integrated Land Use* and 4.1 *Acid Sulfate Soils* are of minor significance and no further approval is required in relation to these Directions.

6. Discussion

Zone Objectives

The subject site is zoned RU4 Primary Production Small Lots under *Hawkesbury Local Environmental Plan 2012*. In dealing with all other planning proposals within the Kurmond-Kurrajong Investigation Area the subsequent amendments to the Local Environmental Plan agreed to by Council have not altered the zoning of the respective sites, nor the zone objectives.

The Land Use Table of the *Hawkesbury Local Environmental Plan 2012* establishes the following zone objectives for the RU4 Primary Production Small Lot zone:

- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *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.*

Clause 2.3(2) of *Hawkesbury Local Environmental Plan 2012* outlines that Council "*must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone*".

However, it should be noted that there is no requirement for a subsequent development to be consistent with all the objectives of a zone particularly when the development satisfies all other applicable development standards.

A number of reports have been presented to Council regarding the Kurmond-Kurrajong Investigation Area. Of primary relevance are the reports to Council on 28 July 2015 and 24 November 2015 which included an analysis of land and environmental constraints within the Kurmond-Kurrajong Investigation Area.

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

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

An assessment of this planning proposal against these fundamental principles and associated recommendations had been undertaken and discussed in the previous report presented to Council's Ordinary Meeting of 9 August 2016, where it was concluded that the proposal was consistent with the principles of the Interim Policy.

A future development application over the subject site should this planning proposal proceed will have regard to the zone objectives at the time. However, it should be noted that in dealing with all planning proposals that have proceeded towards a Local Environmental Plan Amendment to date, the specific approach by Council was to amend the minimum lot sizes as expressed through the Lot Size Map.

The recently completed Kurmond and Kurrajong Landscape Character Study recommends Council to consider possible rezoning of rural land with subdivision potential for rural residential purposes within the Kurmond Kurrajong Investigation Area to avoid any possible inconsistencies with respect to zone objectives.

Hawkesbury Traffic Study

SMEC Australia Pty Ltd were engaged by Council to undertake a comprehensive traffic study to:

- identify the current and future traffic and transport patterns
- assist Council in planning for the current and future traffic and transport needs of the Hawkesbury Community.

The study assesses the likely traffic impacts stemming from the future growth in the Hawkesbury Local Government Area in order to determine any required improvements or capacity needs to minimise any adverse traffic impacts of proposed development.

SMEC are undertook the Study in two Stages, with Stage 1 having already been completed and reported to Council in September 2018. Stage 1 of the Traffic Study concluded that:

“To estimate future traffic flows with the addition of a new bridge near Navua Reserve, the Roads and Maritime STFM strategic model was coded to include the new bridge. This showed that the new bridge in the vicinity of Navua Reserve would result in the redistribution of traffic, which would result in a reduction in traffic at the Bells Line of Road/Gross Vale Road signalised intersection, at the Kurrajong Road/Old Kurrajong Road priority intersection, as well as Richmond Bridge.

Assessment indicates that a new bridge at Navua Reserve in 2027 would provide positive impact relating to the operation of the Bells Line of Road/ Gross Vale Road intersection and the Kurrajong Road/Old Kurrajong Road priority intersection would also operate satisfactorily during peak periods”.

The Stage 1 assessment also provided a good understanding of the problem locations and issues for assessment in further detail as part of Stage 2 of this Study.

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Stage 2 of the Study involves a number of key actions including the following:

- Undertake strategic assessment of proposed road projects and associated road alignments
- Determine the current and future based road network and demands
- Identify critical road network locations in consultation with Council and assess such road network locations in detail
- Test future road network demand scenarios, including a new bridge in the vicinity of Navua Reserve and other road infrastructure scenarios, as required
- Develop a strategic traffic model for Council to use now and in the future to assess the implications of background traffic growth, potential new roads infrastructure, as well as the impacts of other influencing factors, such as new developments.
- Prepare Stage 2 traffic report following completion of the required traffic modelling to identify critical road network elements that require to be upgraded to support future traffic growth, consider the impacts of the proposed strategic road projects and associated infrastructure as required.

In terms of Stage 2 of the traffic modelling for the Kurmond Kurrajong area the Hawkesbury Traffic Study has modelled a future base year 2027 with the following parameters, in order to assess impacts of any further development:

- The proposed new Grose River Bridge is operational
- Takes into account the remaining Redbank development (1,250 dwellings), Glossodia (250 dwellings), Pitt Town (150 dwellings) and Vineyard (900 dwellings).
- Includes the RMS upgrades along Bells Line of Road at Grose Vale Road, Yarramundi Lane and Bosworth Street/ March Street as well as the new Windsor Bridge.

In addition to modelling the future base year of 2027, the following Scenarios have been tested relative to the future base year:

- Scenario 1 - Future year base without Gross River Bridge
- Scenario 2 - Future year base plus 200 dwellings within the Kurmond/ Kurrajong investigation area
- Scenario 3 - Future year base plus an additional 5% growth at Richmond and Windsor/ South Windsor areas.

Interim advice from the Consultant is that the new Grose River Bridge will improve the operation of the network taking into account the projected development in the future base year (2027) that includes development sites such as Redbank. The scenario modelling of the proposed 200 dwellings within the Kurmond-Kurrajong Investigation Area indicates that this development option is not considered to have any notable impact.

It should be pointed out that this Scenario is tested on the basis that the new Grose River Bridge is in place and that without the new bridge in place it would only lead to further deterioration in the road network performance.

The traffic assessment indicates that duplication of the Richmond bridge would be required to accommodate further development even with the new Grose River Bridge in place.

Landscape Character Study for the Kurmond-Kurrajong Investigation Area

In April 2018 Council engaged Clouston Associates to undertake a Landscape Character Study of Kurmond-Kurrajong Investigation Area to determine what aspects of streetscapes, landscapes and buildings positively contribute to make Kurmond and Kurrajong unique. The Study also recommend

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strategies/controls to preserve and enhance the existing landscape when facilitating rural residential development within the Investigation Area.

Council considered the report regarding the Kurmond Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

A number of recommendations identified in the Study include:

- Complete landscape character study and establish related controls
- Pursue consolidation of rural zoning (at that stage potentially R5 – Large Lot Residential)
- Update controls on rural lot sizes
- Engage stakeholders in urban design upgrade concepts for the two villages
- Establish relevance of outcomes to other rural areas of the council.

In addition, the following development provisions were also recommended in the Study:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas.
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety.
- Accommodate on-site sewerage detention and management.

An assessment of the planning proposal against the Landscape Character Study highlights the proposals consistency with the recommendations of the Study for the following reasons:

- The minimum lot sizes of 4,000m² and 2 ha maintains the low density character of the locality;
- A suitable curtilage for the heritage item located on proposed Lot 12 has been determined;
- As an existing dwelling will be located on each proposed lot, there will be minimal impact on existing native vegetation, including endangered ecological communities, and watercourses and riparian areas, or the pastoral character of the locality;
- Each proposed lot is capable of supporting onsite effluent disposal;
- The subject site is not located within an identified View/Vista Corridor under the Study.

A full assessment of the planning proposal against the Landscape Character Study is contained within Attachment 1 to this Report.

Kurmond Kurrajong Structure Plan

In order to achieve the recommendations of the Kurmond Kurrajong Landscape Character Study, the Structure Plan has considered the most appropriate minimum lot size for subdivision that would achieve the aims of providing for housing while protecting the biodiversity, ecological, scenic, character and amenity values of the locality.

The Structure Plan stipulates a minimum lot size of 1 ha for the subject site. However, whilst this is the case, it is considered that, in this instance, having a minimum lot size of 4,000m² for one of the lots is acceptable given that:

- The planning proposal seeks to permit a two lot subdivision of the land to enable the two existing dwellings to be located on separate properties;
- No significant changes will occur to the pastoral character of the locality as dwelling houses will already be located on the resultant lots.
- The views and vistas within the locality will remain unchanged as dwelling houses already exist.

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Heritage

The subject site is identified as a heritage item of local significance under Schedule 5 of *Hawkesbury Local Environmental Plan 2012*. The significance of this item is mainly attributed to the dwelling known as 'Longleat' located in the northern section of the property.

One requirement of the 'Gateway' Determination issued by the Department of Planning and Environment was to determine a curtilage boundary for the heritage item, provide a diagram showing this curtilage and to amend *Hawkesbury Local Environmental Plan 2012* Heritage Map accordingly.

In addition, the Office of Environment and Heritage recommended that prior to the finalisation of the planning proposal that an assessment be undertaken to ensure that an appropriate curtilage for the heritage item has been achieved.

A Statement of Heritage Impact has been subsequently provided in support of the planning proposal and provides an assessment of the heritage significance of the land. The Statement of Heritage Impact concludes that the subdivision as proposed would have no impact on the heritage significance of the house and the boundaries of proposed Lot 12 provides a suitable curtilage for the heritage item. Council's Heritage Advisor has considered this matter, and has no objection to the planning proposal. As a result, a proposed Heritage Map was prepared as shown in Figure 4 above.

Offer of a Voluntary Planning Agreement

Council considered a report on Voluntary Planning Agreements for the Kurmond-Kurrajong Investigation Area at its Ordinary Meeting of 10 November 2015. Council resolved:

"That:

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

The Applicant had acknowledged within the planning proposal documentation that if the planning proposal is to proceed further, preparation of a Section 7.11 Developer Contributions Plan or a draft VPA to support the required infrastructure upgrade in the locality as a consequence of the development would be required.

The Applicant has since questioned the need for a voluntary planning agreement as the planning proposal will result in the two existing dwelling houses being located on separate lot, and thereby no further infrastructure or community services will be required.

Historically, Council has imposed developer contributions associated with the subdivision of land only on newly created vacant lots, and not on the basis of intensification of residential occupancy. This has been the case, in particular, for Voluntary Planning Agreements entered into for recent amendments to *Hawkesbury Local Environmental Plan 2012* for land within the Kurmond-Kurrajong Investigation Area, and has thereby set a precedent in this respect.

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As a result it is considered unreasonable to impose a developer contribution by way of a voluntary planning agreement in this case.

Without a voluntary planning agreement or Section 7.11 Contributions Plan in place for the proposal, any redevelopment of the land, including replacement of the non heritage dwelling house would be subject to Council's Section 7.12 Contributions Plan.

7. Consultation

On 9 August 2016, Council considered a report on the planning proposal and resolved to forward the planning proposal to the Department of Planning and Environment.

In their Gateway Determination of 23 September 2016, the Department of Planning and Environment advised Council to proceed with the planning proposal and undertake consultation with the community and public agencies as identified in the Gateway determination.

In accordance with the Gateway determination requirements:

- the relevant public agencies were consulted under section 3.34(2)(d) of the *Environmental Planning and Assessment Act, 1979* on 28 September 2016; and
- the community was consulted under sections 3.34(2)(c) and Schedule 1 clause 4 of the *Environmental Planning and Assessment Act, 1979* during the period Friday 31 August 2018 to Monday 17 September 2018.

An exhibition notice was placed in the Hawkesbury Courier on 30 August 2018 and letters were sent to adjoining and nearby land owners and occupiers advising of the public exhibition of the planning proposal. The planning proposal and supporting documentation was made available for public viewing during the exhibition period on Council's website and at Council's Administration Office. No submissions were received by the community.

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

- NSW Rural Fire Service
- NSW Office of Environment and Heritage - Heritage Division
- NSW Department of Industry - Geological Survey of New South Wales
- NSW Department of Primary Industries - Agriculture

Council received responses from all of the above mentioned public authorities. Following is a summary of agencies comments and officer responses:

NSW Rural Fire Service

Agency Comment

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

Response

A provision requiring that the future subdivision comply with *Planning for Bushfire Protection 2006* need not be included into the proposed Local Environmental Plan amendment as this is a mandatory matter for consideration at development application stage.

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Office of Environment and Heritage - Heritage Division

Agency Comment

The Office of Environment and Heritage noted that the application did not include a Statement of Heritage Impact Assessment that analyses the impacts of the proposed subdivision on the locally significant heritage item, and also recommended that prior to the finalisation of the planning proposal an assessment be undertaken to ensure an appropriate curtilage for the heritage item has been achieved to avoid any adverse impact the proposed subdivision may have on the heritage item.

The Office of Environment and Heritage also requested that if the planning proposal is approved a clause be inserted stating *“that no further subdivision shall occur on the site that contains the locally listed heritage item known as ‘Longleat’.”*

Response

A Statement of Heritage Impacts and a curtilage diagram has been provided, and included in the exhibition of the proposal. The Statement and diagram was referred to Council's Heritage Advisor for comment. Council's Heritage Advisor raised no objections to the planning proposal.

The suggested clause is not considered to be warranted as proposed Lot 12 will have no further subdivision potential should this amendment be supported. In addition, should the minimum lot size for the land change in the future to allow further subdivision, any development application would require an assessment of the impact of the subdivision on the significance of the heritage dwelling, including its curtilage.

NSW Trade & Investment - Geological Survey of New South Wales

Agency Comment

NSW Trade and Investment raised no objection to the proposal.

NSW Department of Primary Industries - Agriculture

Agency Comment

The Department of Primary Industries provided the following comments:

“DPI Agriculture:

- *has significant concerns about reducing the minimum lot size in the rural zones, RU1, RU2 and RU4 to enable residential development. The proposal does not adhere to the objective of the RU4 zone to “... To enable sustainable primary industry and other compatible land uses’ and it has very limited value for providing the Hawkesbury with dwellings.*
- *recommends that this and similar proposals demonstrate the supply of similar sized lots is needed.*
- *notes that subdivision proposals within RU1, RU2 and RU4 zones should have independent water supply for each lot created to enable agricultural development.*
- *supports strategic planning for growth near existing urban areas, and*
- *encourages Council to strategically plan for residential development in the locality which avoids land use conflict and allows continued access to agricultural resources.*

Response

The Kurmond-Kurrajong Investigation Area was not identified within the Residential Land Strategy. However, the Investigation Area was identified by considering the location criteria provided within the Residential Land Strategy (i.e. “within 1km radius” and “cluster around or on the periphery of villages”), undertaking a desk top survey of matters such as slope, existing vegetation, existing road layout and accesses, and zone and property boundaries.

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Whilst the planning framework for the Kurmond-Kurrajong Investigation Area is still being developed, the planning proposal is considered to be generally consistent with the intended outcomes for this framework.

8. Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The proposal is consistent with the following Focus Areas, Directions and Strategies within the Community Strategic Plan.

Our Environment

- 3.1 The natural environment is protected and enhanced
 - 3.1.4 Minimise our community's impacts on habitat and biodiversity and protect areas of conservation value.
- 3.4 The sustainability of our environment is improved
 - 3.4.2 Development is functional, attractive and sympathetic with the environment, and avoids unnecessary use of energy, water and other resources.

Our Future

- 5.3 Shaping our Growth – Respond proactively to planning and the development of the right local infrastructure.
 - 5.3.3 Plan for a balance of agriculture, natural environment and housing that delivers viable rural production and maintains rural character.

9. Fit For The Future Strategy Considerations

The proposal is aligned with Council's long term plan to improve and maintain organisational sustainability and achieve Fit for the Future financial benchmarks. The proposal will enable Council to sustainably manage community assets in accordance with the scheduled program of works in the Long-Term Financial Plan.

10. Conclusion

The consultation undertaken with the community and the relevant public agencies with respect to the planning proposal do not warrant the abandonment of the planning proposal.

It is therefore recommended that Council proceed with the making of a local environmental plan that will give effect to the proposed amendment described in this report.

Planning Decision

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

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RECOMMENDATION:

That Council:

1. Proceed with the making of a plan to amend the *Hawkesbury Local Environmental Plan 2012* in order to permit the subdivision of Lot 3 DP 747089, 74 Longleat Lane, Kurmond into not more than two large rural residential lots with a minimum lot size of not less than 4,000m² and 2 ha as detailed in this report.
2. Request that the Parliamentary Counsel's Office prepare a draft Local Environmental Plan to give effect to the planning proposal in accordance with Section 59(1) of the *Environmental Planning and Assessment Act, 1979*.
3. Adopt and make the draft local environmental plan, under the authorisation for Council to exercise delegation issued by the Gateway determination, upon receipt of an opinion from Parliamentary Counsel's Office that the plan can be legally made.
4. Following the making of the Plan, advise the Department of Planning and Environment that the Plan has been made and request to notify the Plan on the NSW Legislation website.

ATTACHMENTS:

- AT - 1** Assessment of the Planning Proposal Against the Recommendations of the Kurmond-Kurrajong Investigation Area Landscape Character Study.

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AT - 1 Assessment of the Planning Proposal Against the Recommendations of the Kurmond Kurrajong Investigation Area Landscape Character Study

	Objective	Guideline	Application	LEP010/16 74 Longleat Lane, Kurmond
Public Transport	Encourage bus use between neighbourhoods and major transit nodes (Richmond/Windsor).	Weather sheltered/ well-lit bus stops (<400m walk) • Access to real time travel information • Peak services to reflect realistic demand/requirements of residents.	Kurrajong and Kurmond Neighbourhood centres and major roads through Investigation Area.	No impact.
Private Vehicle (including parking)	Coordinate approach to traffic flow and management to streamline roadways/ infrastructure.	Avoid multiple, isolated intersections, particularly from new development directly onto main roads • Keep parking clear of all documented district or regional views.	Roads and on road parking in proposed developments • Main road upgrades (eg Bells Line of Road).	Future parking associated with existing residential development onsite. Not within an identified view/ vista corridor.
Cycling and Walking	Promote walk/ cycle as means of accessing shops, bus routes and schools within neighbourhoods.	Establish cycle lane/path between Kurrajong and Kurmond • Create a safe and comfortable pedestrian environment within neighbourhood centres/villages, especially along ridges • Focus on 800m walking catchment within villages.	Cycle infrastructure (bike lockers etc) at Kurrajong and Kurmond centres • Dedicated cycle lane to follow ridge line road • Walkability action plan within Kurmond and Kurrajong.	Voluntary Planning Agreements (where relevant) or Section 7.11 Contributions Plan to provide for services and amenities. Contribution not warranted in this case as existing dwelling house will be located on each resultant lot.
Universal Access	Maximise universal access as far as natural gradients permit.	Define, audit and update most walkable routes within neighbourhoods • Ensure bus routes including community buses link valleys to ridgetops in villages to encourage walking within village and reduced car dependency for short trips.	Ridgeline streets in Kurmond and Kurrajong	Access to dwellings on subject site exists.
Residential	Maintain clear distinction in residential types related to location and geography.	Focus principal residential population in and around compact neighbourhood centres	Principal residential population in and around Kurmond and Kurrajong.	The subject site is within the adopted Kurmond Kurrajong Investigation Area boundary.

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	Objective	Guideline	Application	LEP010/16 74 Longleat Lane, Kurmond
		<ul style="list-style-type: none"> Prevent development and subdivision from sprawling and create a buffer between residential and active rural land uses Ensure rural lot sizes maintain low density, optimise ecological corridors and open views. Potential R5 Large Lot Residential Zone (4,000m²) Use built form that responds to the steep terrain - a small footprint that steps down with the contours. 		<p>Minimum lot sizes of 4000m² and 2ha consistent with low density character of locality.</p> <p>Existing dwellings on proposed lots.</p>
Retail Commercial	Maintain clear distinction between retail/ commercial and rural land uses.	<p>Retail and commercial within neighbourhood cores.</p> <ul style="list-style-type: none"> Road front restaurants/hotels on main roads only Encourage farm gate providers. 	<p>Neighbourhood centres</p> <ul style="list-style-type: none"> Bells Line of Road Farm gate properties. 	Not Applicable
Transport	Promote ease of access and movement around neighbourhood centres.	<p>Slow vehicle travel speeds, clearly legible environments (signage, cues, wayfinding)</p> <ul style="list-style-type: none"> Integrated pedestrian/cycle/public transport information Adequate car parking consolidated wherever possible in centres to avoid continuous line of cars on streets Simple pull-offs on main roads near major views. 	<p>On/off street parking in neighbourhood centres</p> <ul style="list-style-type: none"> Formalised pull-offs on Bells Line of Road near views. 	<p>Voluntary Planning Agreements (where relevant) or Section 7.11 Contributions Plan to provide for services and amenities for public domain.</p> <p>Contribution not warranted in this case as existing dwelling house will be located on each resultant lot.</p> <p>The planning proposal is not located in the neighborhood centre.</p>
Public Domain	Promote safe, pleasant public domain reflecting neighbourhood status.	<p>Vegetation, shade, shelter, quality pedestrian surfaces, social seating, lighting in critical locations and interpretation</p> <ul style="list-style-type: none"> Formalised lookouts with wide district/ regional views 	<p>Specifically in the village and Neighbourhood Centres</p> <ul style="list-style-type: none"> Social gathering space at Kurmond for locals shopping. 	<p>Voluntary Planning Agreements (where relevant) or Section 7.11 Contributions Plan to provide for services and amenities for public domain.</p> <p>Contribution not</p>

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	Objective	Guideline	Application	LEP010/16 74 Longleat Lane, Kurmond
		<ul style="list-style-type: none"> • Avoid conflict between pedestrians, cycles and vehicles. 		warranted in this case as existing dwelling house will be located on each resultant lot.
Topography	Ensure that the area's natural topography is conserved.	Controls on cut and fill in all built form including roads <ul style="list-style-type: none"> • Maintenance of natural stream form. 	Across the Investigation Area	Existing development on proposed lots. Cut and fill controls a matter to be included within a development control plan or to be considered with a development application.
Hydrology	Maintain and enhance the natural riparian systems of the area.	Follow riparian guidelines on stream types and riparian corridor controls (NSW Office of Water) <ul style="list-style-type: none"> • Minimise/consolidate road crossings of creeks • Restore minor creeks and chain of ponds as part of related development. 	Across the Investigation Area.	Not Applicable.
Vegetation	Protect land identified as high and very high priority habitat (Ecological, 2018) from impact of residential development. <ul style="list-style-type: none"> • Conserve and enhance natural habitat corridors. 	Retain, protect and regenerate vegetation corridors identified in mapping <ul style="list-style-type: none"> • Do not permit small lot (<0.5ha) development of land identified as high, very high priority • Include riparian corridor restoration (planting) in development obligations. 	Any applicable land in Investigation Area.	Subject site identified as low/moderate priority habitat. Minimum lot size of 4000m ² consistent with habitat priority rating and in maintaining low density character.
Bushfire	Maintain bushfire protection.	APZ <ul style="list-style-type: none"> • Suitable access including for fire fighting vehicles. 	Across the Investigation Area	Existing development on proposed lots. Bushfire control measures can be achieved.
Climate Change	Mitigate temperature change.	Tree canopy cover <ul style="list-style-type: none"> • Riparian corridor ecology. 	Tree canopy especially on roads and in village centres.	Existing development on proposed lots.
Physical Heritage	Conserve heritage items (including trees).	Monitor condition of heritage items	Throughout the Investigation Area.	Subject site identified as a heritage item.

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		<ul style="list-style-type: none"> Consider extent of curtilage and integration of items. 		Planning proposal has demonstrated that subdivision of the land will have no adverse impact on the heritage significance of the site.
Heritage Interpretation	Make the story of the locality accessible and engaging.	Maintain views that assist in interpretation <ul style="list-style-type: none"> Promote heritage trails. 	Throughout the Investigation Area.	Not within an identified view/vista corridor.
Urban Character	Maintain and enhance compact character of existing villages and neighbourhoods.	Respect existing scale and form: 1-2 storey limit <ul style="list-style-type: none"> Retain existing subdivision pattern - avoid lot amalgamation. Low FSR per lot. Focus on high street as location for services rather than outside of neighbourhoods Ridge line profile and view corridors to inform decisions in relation to scale and form of buildings (eg extensions or granny flats). 	Kurrajong and Kurmond neighbourhood centres.	Not Applicable.
Rural Character	Retain and protect pastoral/ rural character <ul style="list-style-type: none"> Maintain clear distinction between urban rural interfaces. 	Prevent rezoning of critical land parcels that provide significant view corridors <ul style="list-style-type: none"> Permit rezoning and subdivision of land deemed appropriate/lower order in terms of views. Prevent creation of small lot sizes Control on road signage and promotions. 	Lands within Investigation Area.	Not within an identified view/vista corridor. As the subject site contains two existing dwelling houses, it is considered that there will be no change to the pastoral character of the locality resulting from the planning proposal.
Views and Vistas	Conserve 'pastoral' views, particularly from ridge line major roads <ul style="list-style-type: none"> Protect regional vistas from neighbourhoods. 	Document and maintain key regional and district views (see maps) <ul style="list-style-type: none"> Interpret views at key locations Prevent loss of views from roads through 	Lands within Investigation Area.	Not within an identified view/vista corridor. Matters to be included within a development control plan or to be considered with a development application.

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	Objective	Guideline	Application	LEP010/16 74 Longleat Lane, Kurmond
		controls on private boundary fences and hedges heights and designs.		
Microclimate	Optimise sun in winter and shade in summer <ul style="list-style-type: none"> • Maximise cooling breezes in summer • Provide ample outdoor seating. 	Carefully considered application of evergreen and deciduous trees, with primary focus on native species <ul style="list-style-type: none"> • Careful selection of non-invasive exotic species on streets in Centres. 	Shade and sun (and seating) particularly important in Centres and on roadsides.	Matters to be included within a development control plan or to be considered with a development application.
Passive Surveillance	Ensure a sense of personal safety for the public and residents.	Design with CPTED principles	Investigation Area.	Matters to be included within a development control plan or to be considered with a development application.
Urban (in town or village)	Retain existing scale and form. Prevent urban sprawl into currently non-urban areas or areas with significant view/ vistas.	1-2 storeys. Consider impact of parapet and roof form on backdrop perspective. Protect existing incidental/occasional views (along streets, between buildings, pedestrian experience) <ul style="list-style-type: none"> • Typical lot sizes (TBC) • Maximum site coverage controls for built form and minimum landscape controls. 	Kurmond and Kurrajong neighbourhood centres.	Matters to be included within a development control plan or to be considered with a development application.
Periphery (edge of town or village)	Consolidate urban form around neighbourhoods.	Establish limit to neighbourhood fringe (exclusion zone/rural character zone) Focus commercial and retail within neighbourhoods. Large lot rural residential which does not interrupt views and vistas.	Consider visual impact of development proposals from carriageway and impact on views and vistas, including whilst travelling.	No adverse impact on views or vistas.
Rural (out of town or village)	Maintain significant sweeping pastoral views by avoiding development of critical view paths.	Land with supporting building on lot as dominant built form <ul style="list-style-type: none"> • Consolidate built form footprint and access driveways (including outbuildings, pools, courts etc) 	Rural zoned land within the Investigation Area.	Minimum lot size of 4000m ² consistent with habitat priority rating and in maintaining low density character. Matters to be included within a development

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	Objective	Guideline	Application	LEP010/16 74 Longleat Lane, Kurmond
		<ul style="list-style-type: none"> • (Not less than 4000m²) with prescribed building envelopes for all lots • Maximum site coverage controls for built form and minimum landscape controls. 		control plan or to be considered with a development application.
Power lines	Minimise visual impacts of power lines.	Selection of vegetation species under power lines <ul style="list-style-type: none"> • Direction of easement across topography and especially over ridge lines • Level of co-operation with power suppliers. 	Investigation Area.	Not Applicable. Existing development on proposed lots.
Transport	Maximise opportunity to access transport and promote walking	Bus routes maximise catchment <ul style="list-style-type: none"> • Community buses link valleys to ridge lines in village centres. 	Throughout but especially around village centres.	Not Applicable. Existing development on proposed lots.

oooO END OF REPORT Oooo

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Item: 168 **CP - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012
- Lot 2 DP 117711, 377 Bells Line of Road, Kurmond - (95498, 124414)**

Previous Item: 205, Ordinary (28 October 2014)
 041, Ordinary (27 February 2018)

Directorate: City Planning

PLANNING PROPOSAL INFORMATION

File Number: LEP009/13
Property Address: 377 Bells Line of Road, Kurmond
Applicant: Glenn Falson Urban & Rural Planning Consultant
Owner: Mr J I Henry
Date Received: 14 November 2013
Current Zone: RU1 Primary Production
Current Minimum Lot Size: 10 Hectares
Proposed Minimum Lot Size: 4,000M² and 1Ha
Site Area 12.55Ha

Key Issues: ♦ Protection of native vegetation on the subject site
 ♦ Draft Kurmond-Kurrajong Investigation Area Structure Plan
 ♦ Kurmond-Kurrajong Landscape Character Study
 ♦ Minimum lot size

Recommendation:

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

EXECUTIVE SUMMARY:

Council at its Ordinary Meeting on 27 February 2018 considered a report on the outcome of consultation on the planning proposal which is seeking an amendment to the LEP in order to allow the subdivision of 377 Bells Line of Road, Kurmond into six large residential lots and one community title lot and resolved to defer the planning proposal pending the receipt of the further studies in relation to the Kurmond-Kurrajong Investigation Area.

The purpose of this report is to make a recommendation to proceed with the making of an amendment to the Hawkesbury Local Environmental Plan 2012 (the LEP) that gives effect to the planning proposal. Additionally, to recommend the exhibition of the draft Voluntary Planning Agreement (VPA) attached to this report for public comment for a minimum of 28 days.

A series of separate studies have either been undertaken or considered as part of the process of informing the preparation of the Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls

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- Hawkesbury Tourism Destination Management Plan

Clouston Associates were commissioned by Council to complete a Landscape Character Study as part of the structure planning process for the Kurmond-Kurrajong Investigation Area, and in July 2018 Council considered a report on the matter and resolved to apply the approach adopted in the Study.

As outlined in this report, the planning proposal is considered to be consistent with the Kurmond and Kurrajong Landscape Character Study.

In addition, the Draft Kurmond Kurrajong Structure Plan has been prepared. In relation to the subject site, the Structure Plan nominates a minimum lot size for subdivision of 4,000m² and as such the planning proposal is consistent with the draft Structure Plan.

This Report makes a recommendation to proceed with the making of an amendment to the Hawkesbury Local Environmental Plan 2012 that gives effect to the planning proposal, and exhibit the draft VPA for public comment.

As this matter has an extensive history, comprising many elements, the Officers report is divided into the following sections to assist in its explanation and consideration:

1. Subject Site	Pages 136-138
2. Kurmond-Kurrajong Investigation Area	Pages 138-139
3. Kurmond-Kurrajong Structure Plan	Pages 140
4. Detailed History and Planning Proposal	Pages 140-146
5. Policy Considerations	Page 146
6. Discussion	Page 146-151
7. Consultation	Pages 151-152
8. Conformance to Hawkesbury Community Strategic Plan	Page 152
9. Fit for the Future	Page 152
10. Conclusion	Page 152

REPORT:

Context and Background

1. Subject Site

The subject site has an area of 10ha, is irregular in shape, and has frontages to both Bells Line of Road and Bells Lane as shown in Figure 2 below.

The subject site is zoned RU1 Primary Production under the LEP with the current minimum lot size for subdivision of the subject site being 10ha. Figure 3 shows an unnamed natural watercourse runs northwest to southeast generally through the middle of the subject site, and native vegetation occurs along the banks of the watercourse and the north-western boundary of the subject site.

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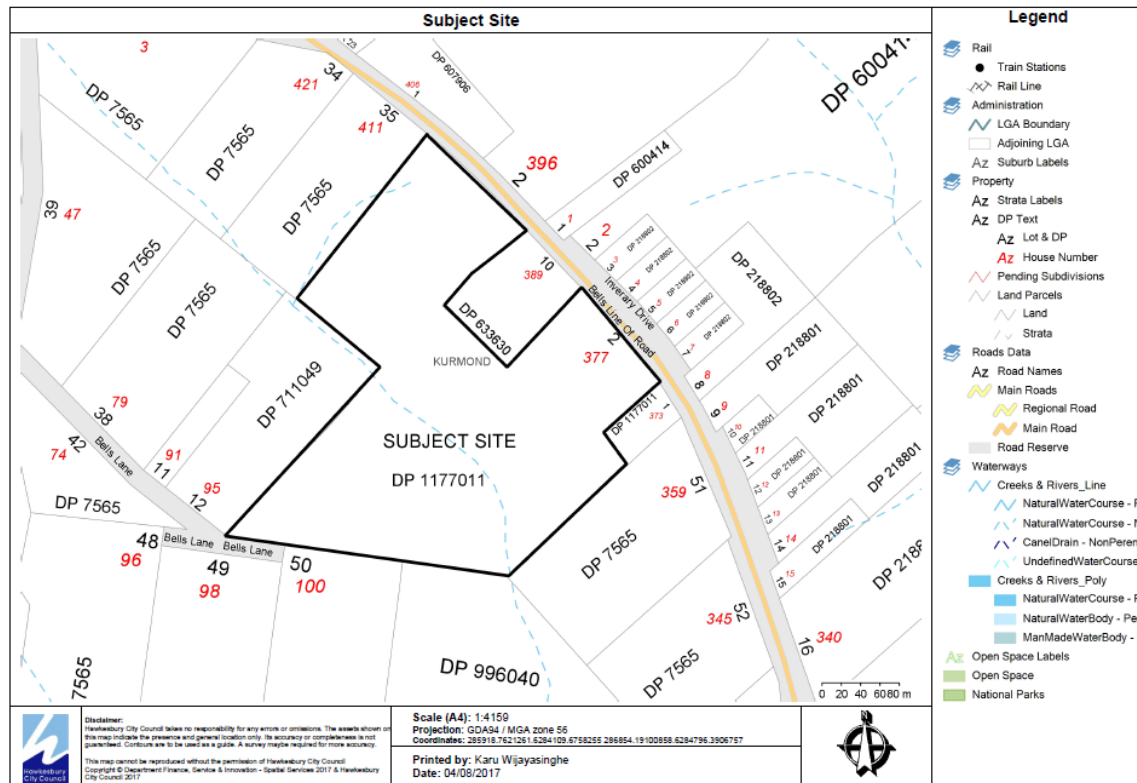


Figure 2: Subject Site

Amended Property Description of the Subject Site

Following registration of a two lot Torrens title subdivision plan with the Land and Property Information and issuing of street numbers for those two lots by Council in June 2017, now that part of the original Lot 11 DP 633630, 373 Bells Line of Road with an area of 10ha is legally described as Lot 2 DP 1177011, 377 Bells Line of Road, Kurmond and the other newly created lot which has an area of 3,165m² containing the existing Veterinary Clinic is now described as Lot 1 DP 1177011, 373 Bells Line of Road, Kurmond.

Therefore, the exhibited planning proposal was amended to reflect this change of property description, and the revised planning proposal and the previous Council report (27 February 2018) referred to Lot 2 DP 1177011, 377 Bells Line of Road, Kurmond as the subject site.

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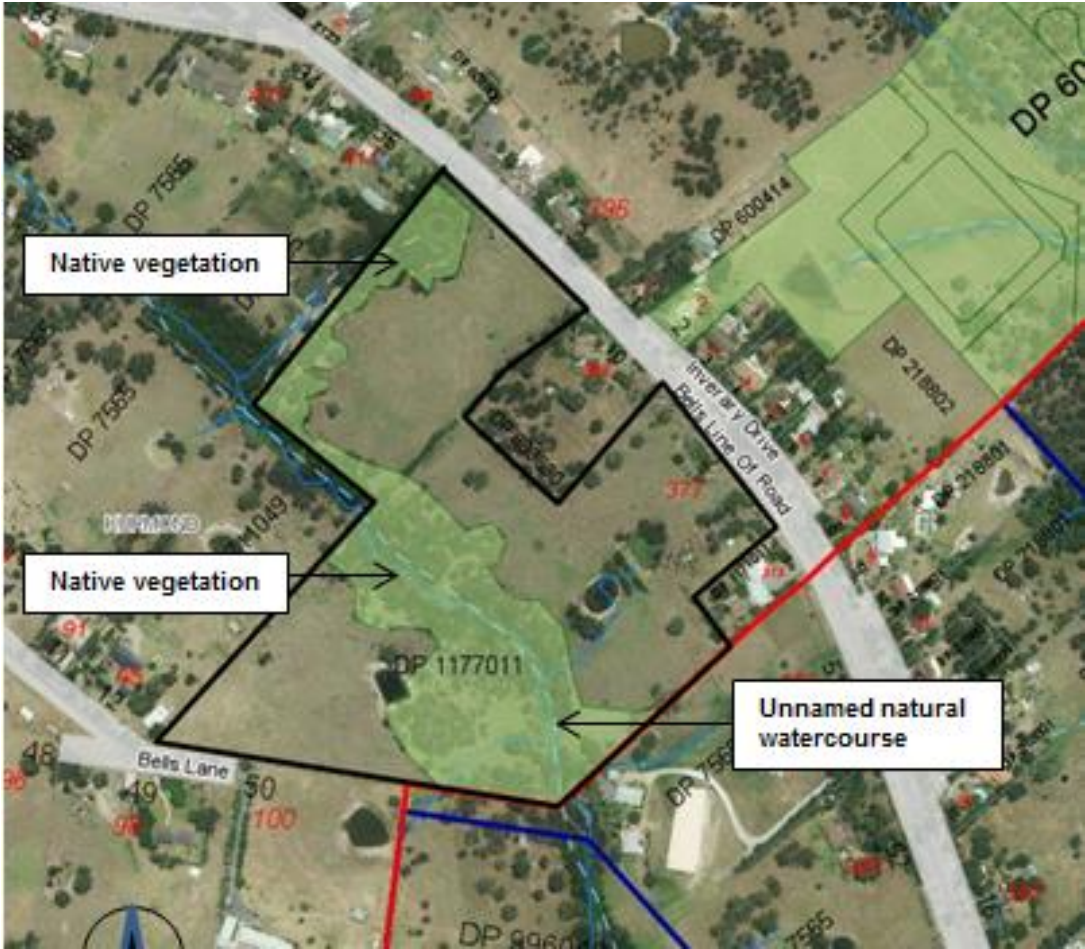


Figure 3: Native Vegetation and Natural Watercourse

2. Kurmond-Kurrajong Investigation Area

Through a Mayoral Minute on 3 February 2015, Council resolved to undertake structure planning within the Kurmond-Kurrajong Investigation Area. This structure planning process was to determine the suitability of the identified lands for large lot residential and/or rural residential development.

On 31 March 2015, Council considered a report on proposed large lot residential/rural-residential development within an approximately one kilometre radius of the Kurrajong and Kurmond neighbourhood centres and resolved to adopt an investigation area to enable structure planning and development contributions planning for this purpose.

The Investigation Area was identified by considering the location criteria provided within the Hawkesbury Residential Land Strategy (i.e. “within 1km radius” and “cluster around or on the periphery of villages”), undertaking a desk top survey of matters such as slope, existing vegetation, watercourses, existing road layout and accesses, and zone and property boundaries.

In July 2015, Council resolved to adopt the development constraint principles and local planning approach outlined in the Council report of 28 July 2015 as an Interim Policy for the purpose of structure planning within the Kurmond-Kurrajong Investigation Area. An assessment of this Proposal against the Interim Policy is discussed further in this Report.

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On 29 November 2016, Council considered a report on the Kurmond-Kurrajong Investigation Area Survey Results and resolved as follows:

"That:

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

In respect of the matter at hand, point 6 of the above resolution is the most relevant in that this particular matter deals with a planning proposal that had been supported by Council at its Meeting on 28 October 2014, and had received a Gateway determination advising to proceed in March 2015.

Recent progress with respect to the Kurmond Kurrajong Investigation Area has included preparation or consideration of a number of associated studies, to inform the preparation of the Draft Kurmond Kurrajong Structure Plan, including:

- Constraints and Opportunities Analysis
- Kurmond and Kurrajong Landscape Character Study
- Ecological/Biodiversity Mapping
- Commercial/Retail Findings - Kurmond and Kurrajong
- Traffic Study
- Views and View Classification and Design Controls
- Hawkesbury Tourism Destination Management Plan.

Council considered a report regarding the Kurmond and Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

In addition, the Study recommended that Council consider the following provisions when determining planning proposals:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety
- Accommodate on-site sewerage detention and management.

The recommendations of this Study have been considered in the assessment of this Planning Proposal, and are discussed further in this Report.

3. Kurmond Kurrajong Structure Plan

The Draft Kurmond Kurrajong Structure Plan has been prepared based on consideration of the various studies. The aim of the Structure Plan is to provide the planning framework to enable the future development of the area whilst maintaining the biodiversity, ecological, scenic, character and amenity values of the locality. One of the main determining factors in achieving this aim is an appropriate minimum lot size for subdivision.

To ensure the protection of the landscape character, biodiversity, and the existing views and vistas within the area, the draft Structure Plan proposes a minimum lot size for subdivision of 1 ha or 4,000m² dependent on locality. It is considered that areas immediately surrounding the town centre villages of Kurmond and Kurrajong should have a minimum lot size of 4,000m², essentially providing for an expansion of the denser existing residential areas, closer to services and amenities, while minimising impacts on the surrounding rural character and views and vistas. For all other properties within the Kurmond Kurrajong Investigation Area a minimum of 1 ha is proposed to maintain existing views and vistas and/or to protect the pastoral character as identified in the Kurmond and Kurrajong Landscape Character Study.

The Planning Proposals consistency with the Draft Kurmond Kurrajong Structure Plan is discussed further in this Report.

4. Detailed History and Planning Proposal

In November 2013, Council received a planning proposal from Urban & Rural Planning Consultant (the applicant), seeking to amend the LEP in order to allow the subdivision of part of the original Lot 11 DP 633630, 373 Bells Line of Road, Kurmond into large rural residential lots and one community lot with minimum lot sizes of not less than 4,000m² and 1ha. In October 2014, Council considered a report on this matter and resolved to forward the planning proposal to the then DP&I for a Gateway determination.

Council records show that a Development Application (DA0602/09) for subdivision of the original Lot 11 DP 633630, 373 Bells Line of Road, Kurmond into two Torrens title lots enabling excision of a land area of 3,165m² at the north-eastern corner of Lot 11 DP 633630 containing the existing Veterinary Clinic from the remainder of 373 Bells Line of Road as shown in Figure 1 below was approved by Council in September 2010.

However, given the approved two lot subdivision had not been registered with the Land and Property Information at the time of the government agency and community consultation, the planning proposal subject of the consultation identified part of Lot 11 DP 633630, 373 Bells Line of Road, Kurmond as the subject site.

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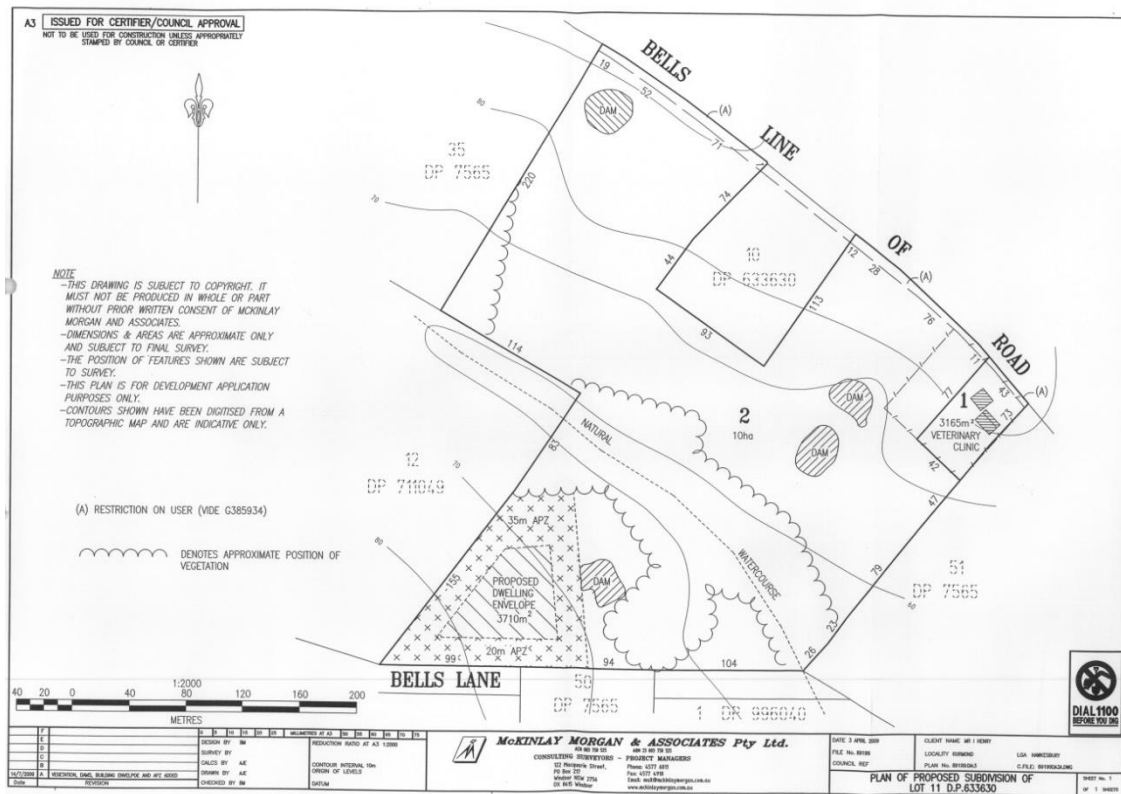


Figure 1: Approved Two Lot Torrens Title Subdivision

The planning proposal submitted by the applicant seeks an amendment to the Lot Size Map of the LEP to enable the subdivision of the subject site into six large rural residential lots with a minimum lot size not less than 4,000m² and one community title lot. The planning proposal was supported by the following reports:

- Flora and Fauna Assessment Report prepared by Anderson Environmental Pty Ltd
- Bushfire Assessment Statement prepared by Control Line Consulting

The planning proposal also contains a subdivision concept plan depicting six large rural residential lots ranging in size from 7,828m² to 2.45ha and a community title lot containing a private access and a vegetated riparian area as shown in Figure 4 below.

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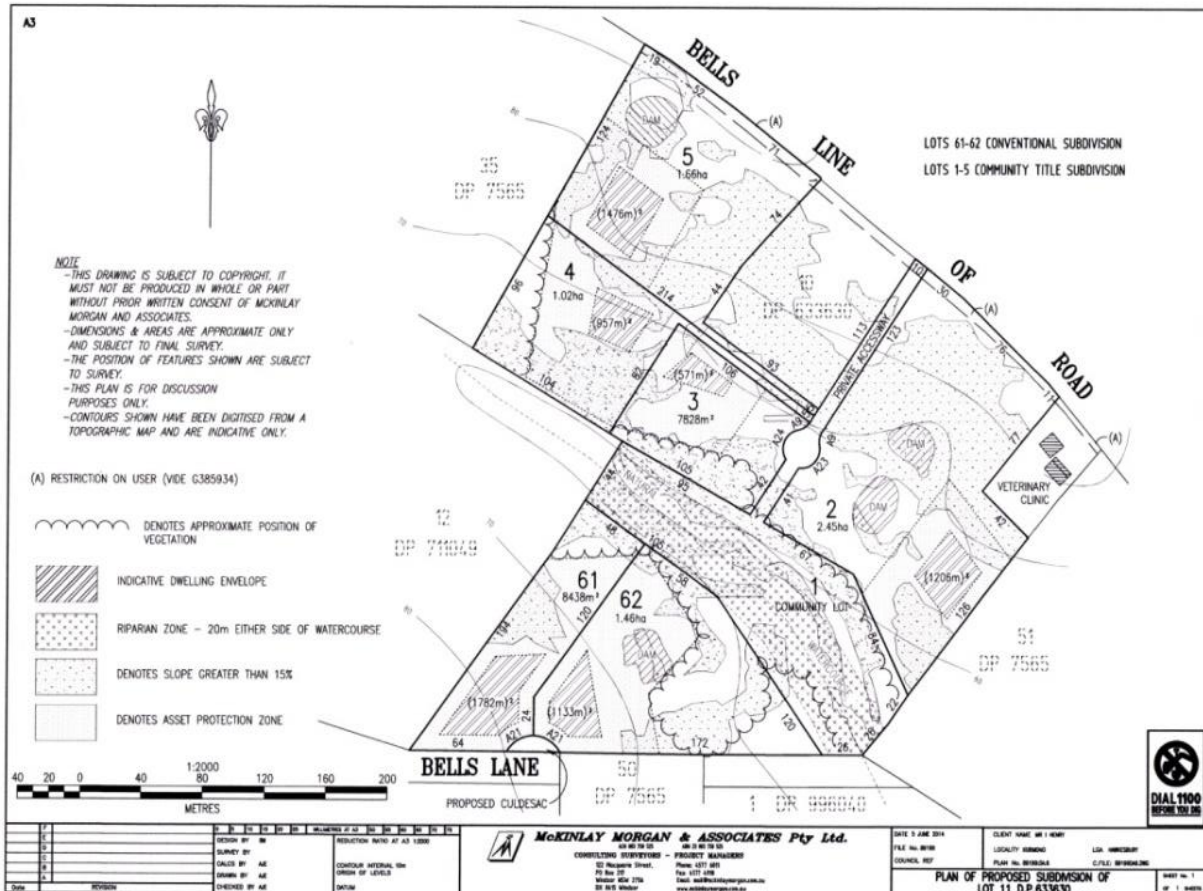


Figure 4: Subdivision Concept Plan

Proposed Amendment to LEP Maps

The current minimum lot size for subdivision of the subject site is 10ha. The planning proposal sought to amend the Lot Size Map of the LEP in order to permit minimum lot sizes of not less than 4,000m² and 1ha on the subject site. In line with the subdivision concept plan, the exhibited proposed Lot Size Map identifies a minimum lot size of not less than 1ha for part of the subject site having access to Bells Line of Road and a minimum lot size of not less than 4,000m² for the remainder of the subject site as shown in Figure 5 below.

An Amendment to the Exhibited Lot Size Map

Section 3.35 (1) of the EP & A Act makes provision for Council to vary the previous planning proposal as a consequence of its consideration of any submission received during consultation, or for any other reason. If any changes are made to the planning proposal following consultation, Section 58(2) of the EP & A Act requires Council to forward the revised planning proposal to the DP&E for endorsement.

As a consequence of the OEH response, a number of discussions were held with the applicant and the owner of the subject site regarding the existing native vegetation on the subject site and how to minimise fragmentation and loss of native vegetation through an appropriate amendment to the exhibited proposed Lot Size Map.

Following a series of discussions with the applicant and the owner of the subject site, and an assessment of the site constraints, a post exhibition amendment was made to the exhibited proposed Lot Size Map through the allocation of approximately of 3.3ha of irregular shaped land area accommodating the existing native vegetation area, two farm dams, the natural watercourse and the associated riparian zone in the middle of the subject site as a community title lot with a minimum lot size of not less than 2ha. Figure 6 shows the amended exhibited Lot Size Map.

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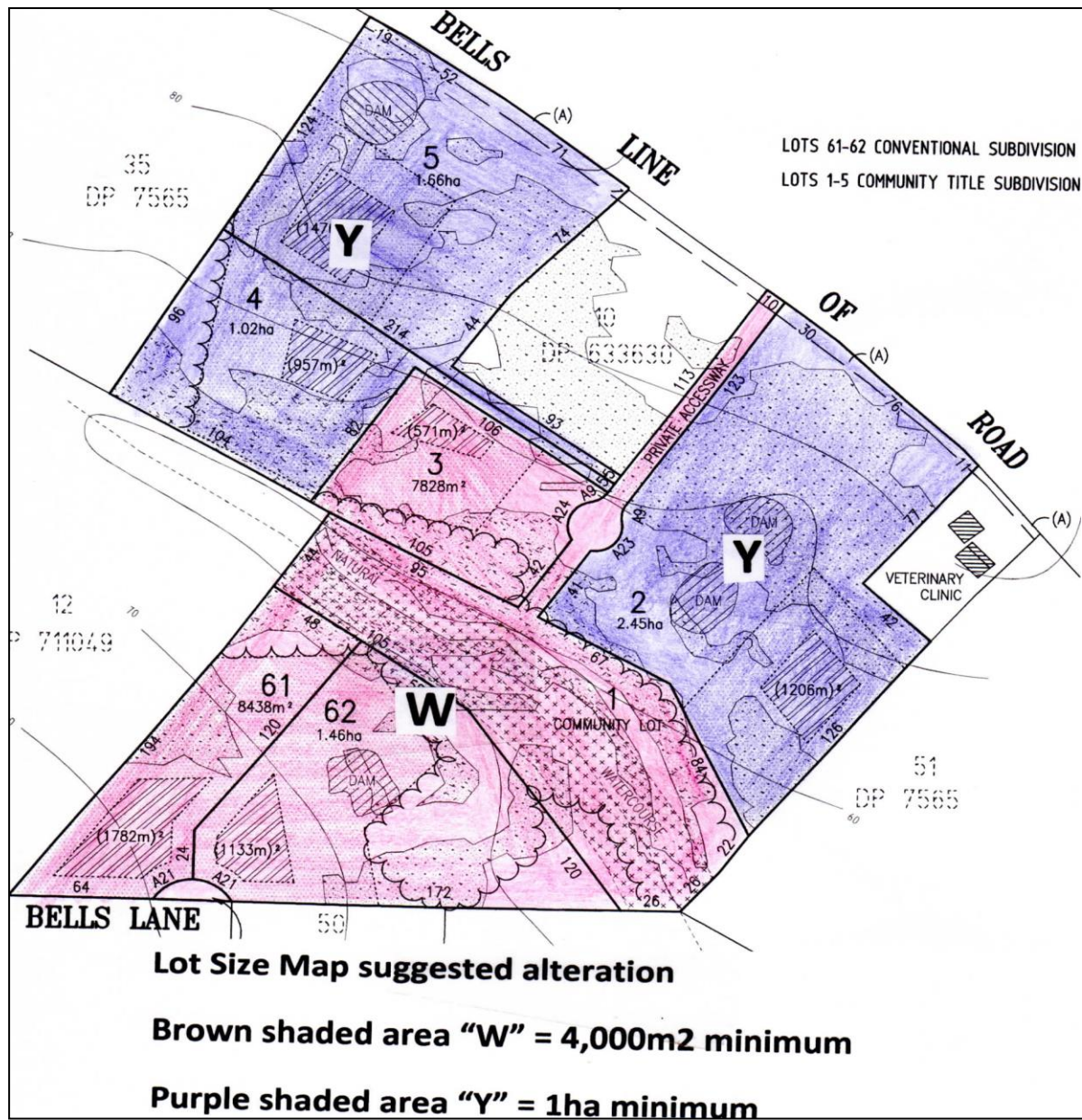


Figure 5: Exhibited Proposed Lot Size Map

As shown in Figure 6, a minimum lot size of not less than 4,000m² was specified for subdivision of the remainder of the land area north and south of the proposed community title lot identified as 'Area A' and 'Area B' respectively. Future residential lots within the 'Area A' which has an area of approximately 5.1ha can only be accessed via Bells Line of Road and future lots within the 'Area B' which has an area of approximately 1.6ha can only be accessed via Bells Lane. This arrangement avoids future access roads crossing the natural watercourse traversing the subject site.

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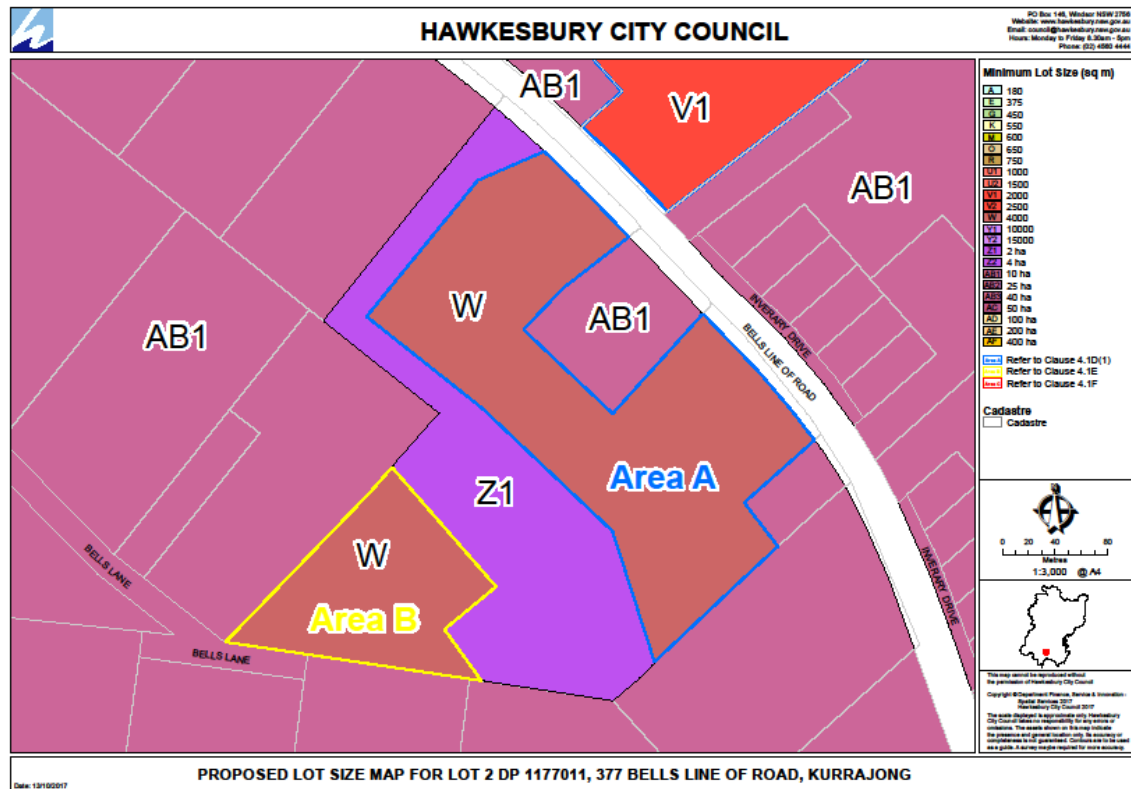


Figure 6: Amended Exhibited Lot Size Map

The post-exhibition amendment to the exhibited Lot Size Map would result in a large single lot approximately one third of the site area with no residential development potential being created in the middle of the subject site to accommodate the existing native vegetation, two farm dams, the natural watercourse traversing the subject site and the associated riparian zone.

If the proposed LEP amendment is made as detailed in this report, future subdivision of the subject site incorporating this lot as a community title lot will minimise fragmentation and loss of native vegetation and achieve an improved environmental outcome.

Given the proposed community title lot accommodating the existing native vegetation area with no residential development potential and Council has no intention to acquire and maintain that area of land as a protected area, the applicant will need to lodge a subsequent development application incorporating that lot as a community title lot for the subdivision of the subject site ensuring protection of native vegetation on the subject site, if this plan is made.

In addition, the inclusion of a Vegetation Management Plan as a condition of consent requiring appropriate maintenance and restoration of this community title lot through a combination of naturally assisted regeneration and planting as recommended by the Flora and Fauna Assessment Report prepared by Anderson Environmental Pty Ltd will ensure any ecological loss is compensated for and biodiversity of the subject site is not compromised.

In order to further address the OEH issue in relation to fragmentation and loss of native vegetation, it was considered appropriate to introduce a cap to limit housing lot yield on the subject site to minimise fragmentation of the subject site and any potential loss of native vegetation, and ensure a better environmental and land use planning outcome. This approach is discussed below.

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An Amendment to the Restricted Lot Yield Map

Given the proposed minimum lot size of not less than 4,000m² for subdivision of 'Area A' and 'Area B', 'Area A' would potentially be able to yield at least 10 lots after leaving 15% of the land area for future access roads subject to Council approval.

Similarly, 'Area B' would potentially be able to yield at least 3 lots, totalling 13 residential lots on the subject site. In order to allocate adequate land area for each future lot to accommodate an appropriate on-site effluent disposal system and other necessary services and an asset protection zone with no adverse impacts on the existing vegetation, it is proposed to amend the Restricted Lot Yield Map of the LEP to restrict the lot yield to a maximum of five lots on 'Area A' and two lots on 'Area B' as shown in Figure 7 below. Figure 7 also depicts how 'Area A' and 'Area B' can be subdivided into five and two lots respectively, however the applicant will need to lodge a separate development application for the subdivision of the subject site with Council if this plan is made.

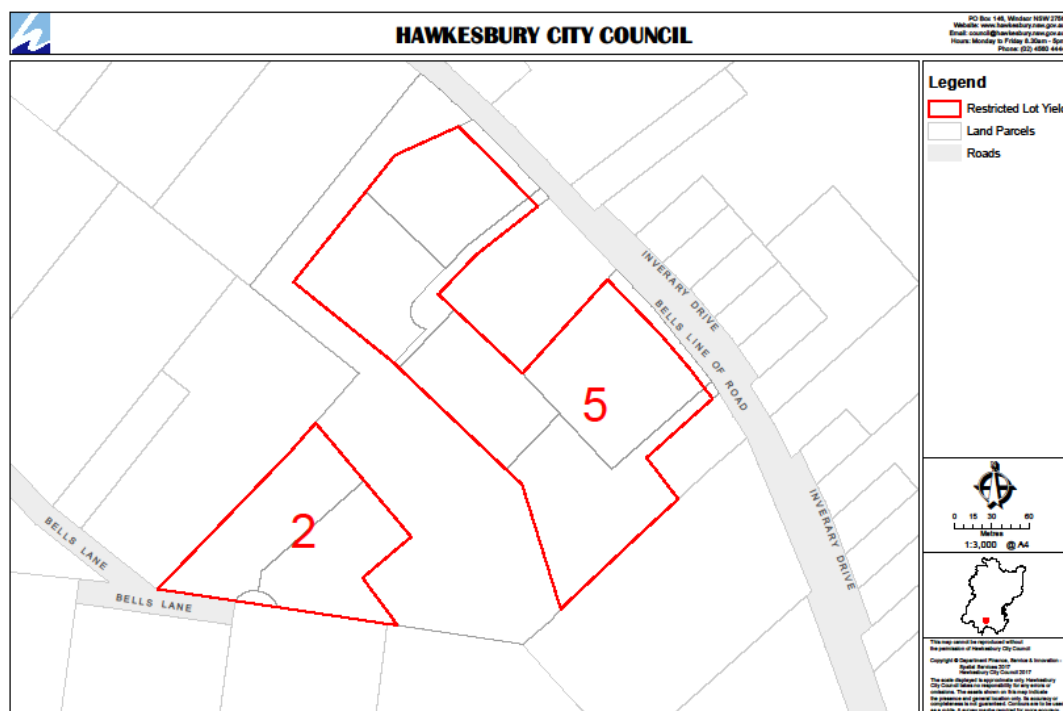


Figure 7: Proposed Restricted Lot Yield Map

The above approach will enable fairly large rural residential lots at least 8,500m² in size on 'Area A' and at least 6,800m² lots on 'Area B'. It is therefore considered that the above explained post-exhibition amendment to the exhibited Lot Size Map and the proposed amendment to the Restricted Lot Yield Map ensures improved environmental and land use planning outcomes and also satisfactorily addresses the OEH key concern in relation to fragmentation and loss of native vegetation.

Endorsement of the Post Exhibition Amendments

Council may, at any time, vary its proposal under Section 3.35 (1) of the EP & A Act as a consequence of its consideration of any submission received during consultation, or for any other reason. If any changes were made to the planning proposal following consultation, Section 3.35 (2) of the EP & A Act requires Council to forward the revised planning proposal to the DP&E for endorsement.

A response received from the OEH during public agency consultation resulted in an amendment to the exhibited Lot Size Map and an amendment to the Restricted Lot Yield Map as detailed above. The exhibited planning proposal was amended with the incorporation of these amendments, and the revised planning proposal was forwarded to the DP&E seeking endorsement in accordance with Section 3.35 (2) of the EP&A Act.

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In early December 2017, Council received written advice from the DP&E endorsing the post-exhibition amendments. The Department of Planning and Environment acknowledged that the reconfiguration of the minimum lot sizes and the inclusion of a restricted lot yield are consistent with the intent of the original planning proposal and the Gateway determination, and therefore an amended Gateway determination or further community consultation was not required.

It also acknowledged that the proposed amendment to the Restricted Lot Yield Map is to ensure the future subdivision of the subject site is limited to better reflect the site constraints.

Authorisation for Council to Exercise Delegation

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

5. Policy considerations

The DP&E's '*A guide to preparing planning proposals*' August 2016 (the Guidelines) requires the applicant to demonstrate that a planning proposal is consistent with applicable local strategies/strategic plans, State Environmental Planning Policies (SEPPs) and Section 9.1 (formerly Section 117) Ministerial Directions.

The previous Council report (dated 28 October 2014) which included an assessment of the planning proposal demonstrated that the planning proposal is consistent with the Hawkesbury Residential Land Strategy, the relevant SEPPs and Section 9.1 Ministerial Directions.

The Gateway determination advising Council to proceed with the planning proposal advised that inconsistencies with Section 9.1 Ministerial Directions 1.2 and 2.4 and the provisions of *Sydney Regional Environmental Plan No 9 – Extractive Industry* and *Sydney Regional Environmental No 20 – Hawkesbury Nepean River* are of minor significance and no further approval is required in relation to these Directions and Sydney Regional Environmental Plans.

6. Discussion

A response from the Office of Environment & Heritage received during the public agency consultation raised issues in relation to fragmentation and loss of native vegetation on the subject site and the protection of vegetation through an E2 Environmental Conservation zone.

The Office of Environment & Heritage response stated that there are no additional planning controls proposed for the protection of native vegetation on the subject site. It is therefore expected that future development will result in the fragmentation and incremental loss of native vegetation through the erection of dwellings and associated Asset Protection Zones, infrastructure, effluent disposal areas, as well as clearing for fencing and ancillary development such as sheds. The Office of Environment & Heritage advised Council to consider how the protection of native vegetation on the subject site can be achieved.

Native vegetation occurs either side of an unnamed natural watercourse which generally traverses the middle of the subject site and flows in a south easterly direction towards Redbank Creek and along the north-western boundary as shown in Figure 3 above.

As shown in Figure 5 above, Proposed Lot 1 being the community title lot with a minimum lot size of not less than 4,000m² does not accommodate the entire native vegetation area shown in Figure 3 above. The remainder of the native vegetation area occupies parts of the land areas proposed for 4,000m² and 1ha minimum lots within the subject site.

The Office of Environment & Heritage submission stressed that this approach will result in fragmentation of the native vegetation area into small areas and loss of vegetation. As a result, the Office of Environment &

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Heritage concern was addressed with an amendment to the exhibited Lot Size Map which is discussed in a subsequent section of this report.

Zone Objectives

The subject site is zoned RU1 Primary Production under the LEP. In dealing with all other planning proposals within the Kurmond-Kurrajong Investigation Area the subsequent amendments to the LEP agreed to by Council have not altered the zoning of the respective sites, nor the zone objectives.

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.*
- *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.*

Clause 2.3(2) of the LEP outlines that Council “must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone”.

However, it should be noted that there is no requirement for a subsequent development to be consistent with all the objectives of a zone particularly when the development is permissible and satisfies applicable development standards.

A number of reports have been presented to Council regarding the Kurmond-Kurrajong Investigation Area. Of primary relevance are the reports to Council on 28 July 2015 and 24 November 2015 which included an analysis of land and environmental constraints within the Kurmond-Kurrajong Investigation Area.

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

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

An assessment against these fundamental principles and associated recommendations that are relevant to this planning proposal has been undertaken for consistency and is outlined in Tables 2 and 3 of the previous Council Report (11 April 2017).

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In dealing with all planning proposals within the Kurmond-Kurrajong Investigation Area that have proceeded to an LEP Amendment, Council has considered the fundamental constraints to development expressed through the Interim Policy. By considering those fundamental constraints the planning proposal addresses the zone objectives associated with vegetation, riparian corridors, landscape values and rural character. The remaining zone objectives essentially deal with land uses that have been in a state of gradual decline within the area for some time with these properties increasingly moving more towards lifestyle parcels of land rather than the traditional agricultural base.

A future development application over the subject site should this planning proposal proceed will have regard to the zone objectives at the time. However, it should be noted that in dealing with all planning proposals that have proceeded towards an LEP Amendment to date, the specific approach by Council was to amend the minimum lot sizes and where necessary restrict the yield as expressed through the Lot Size Map and Restricted Lot Yield Map respectively.

The recently completed Kurmond and Kurrajong Landscape Character Study recommends Council to consider possible rezoning of rural land with subdivision potential for rural residential purposes within the Kurmond Kurrajong Investigation Area to R5 Large Lot Residential to avoid any possible inconsistencies with respect to zone objectives.

Once the Structure Plan for the Kurmond-Kurrajong Investigation Area is completed and a suitable land area is identified for rural residential purposes, Council would be able to consider possible rezoning of such rural land to R5 Large Lot Residential.

However, in the interim, it is considered to be warranted to proceed with the making of plans to give effect to the planning proposals including this planning proposal that have received Gateway determinations and waited very long for their finalisation with no further delays. In future, Council would be able to rezone the potential rural land including the subject property and other rural properties subject of the previous LEP amendments that enabled subdivision of those properties.

Hawkesbury Traffic Study

SMEC Australia Pty Ltd were engaged by Council to undertake a comprehensive traffic study to:

- identify the current and future traffic and transport patterns
- assist Council in planning for the current and future traffic and transport needs of the Hawkesbury Community.

The study assesses the likely traffic impacts stemming from the future growth in the Hawkesbury Local Government Area in order to determine any required improvements or capacity needs to minimise any adverse traffic impacts of proposed development.

SMEC undertook the Study in two Stages, with Stage 1 having already been completed and reported to Council in September 2018. Stage 1 of the Traffic Study concluded that:

“To estimate future traffic flows with the addition of a new bridge near Navua Reserve, the Roads and Maritime STFM strategic model was coded to include the new bridge. This showed that the new bridge in the vicinity of Navua Reserve would result in the redistribution of traffic, which would result in a reduction in traffic at the Bells Line of Road/Gross Vale Road signalised intersection, at the Kurrajong Road/Old Kurrajong Road priority intersection, as well as Richmond Bridge.

Assessment indicates that a new bridge at Navua Reserve in 2027 would provide positive impact relating to the operation of the Bells Line of Road/ Gross Vale Road intersection and the Kurrajong Road/Old Kurrajong Road priority intersection would also operate satisfactorily during peak periods”.

The Stage 1 assessment also provided a good understanding of the problem locations and issues for assessment in further detail as part of Stage 2 of this Study.

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Stage 2 of the Study involves a number of key actions including the following:

- Undertake strategic assessment of proposed road projects and associated road alignments
- Determine the current and future based road network and demands
- Identify critical road network locations in consultation with Council and assess such road network locations in detail
- Test future road network demand scenarios, including a new bridge in the vicinity of Navua Reserve and other road infrastructure scenarios, as required
- Develop a strategic traffic model for Council to use now and in the future to assess the implications of background traffic growth, potential new roads infrastructure, as well as the impacts of other influencing factors, such as new developments.
- Prepare Stage 2 traffic report following completion of the required traffic modelling to identify critical road network elements that require to be upgraded to support future traffic growth, consider the impacts of the proposed strategic road projects and associated infrastructure as required.

In terms of Stage 2 of the traffic modelling for the Kurmond Kurrajong area the Hawkesbury Traffic Study has modelled a future base year 2027 with the following parameters, in order to assess impacts of any further development:

- The proposed new Grose River Bridge is operational
- Takes into account the remaining Redbank development (1,250 dwellings), Glossodia (250 dwellings), Pitt Town (150 dwellings) and Vineyard (900 dwellings).
- Includes the RMS upgrades along Bells Line of Road at Grose Vale Road, Yarramundi Lane and Bosworth Street/ March Street as well as the new Windsor Bridge.

In addition to modelling the future base year of 2027, the following Scenarios have been tested relative to the future base year:

- Scenario 1 - Future year base without Gross River Bridge
- Scenario 2 - Future year base plus 200 dwellings within the Kurmond-Kurrajong Investigation Area
- Scenario 3 - Future year base plus an additional 5% growth at Richmond and Windsor/ South Windsor areas.

Interim advice from the Consultant is that the new Grose River Bridge will improve the operation of the network taking into account the projected development in the future base year (2027) that includes development sites such as Redbank. The scenario modelling of the proposed 200 dwellings within the Kurmond-Kurrajong investigation area indicates that this development option is not considered to have any notable impact.

It should be pointed out that this Scenario is tested on the basis that the new Grose River Bridge is in place and that without the new bridge in place it would only lead to further deterioration in the road network performance.

The traffic assessment indicates that duplication of the Richmond bridge would be required to accommodate further development even with the new Grose River Bridge in place.

Landscape Character Study for the Kurmond-Kurrajong Investigation Area

In April 2018 Council engaged Clouston Associates to undertake a Landscape Character Study of the Kurmond-Kurrajong Investigation Area in order to determine what aspects of streetscapes, landscapes and buildings positively contribute to making Kurmond and Kurrajong unique. The Study also recommended

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strategies/controls to preserve and enhance the existing landscape when facilitating rural residential development within the Investigation Area.

Council considered the report regarding the Kurmond-Kurrajong Landscape Character Study and resolved to apply the approach adopted in relation to the Study.

A number of recommendations identified in the Study include:

- Complete landscape character study and establish related controls
- Pursue consolidation of rural zoning (at that stage potentially R5 – Large Lot Residential)
- Update controls on rural lot sizes
- Engage stakeholders in urban design upgrade concepts for the two villages
- Establish relevance of outcomes to other rural areas of the council.

In addition, the following development provisions were also recommended in the Study:

- Retain existing landscape qualities
- Provide additional landscaping to enhance landscape character, views and vistas.
- Provide sufficient setbacks between vegetation and buildings to ensure fire safety.
- Accommodate on-site sewerage detention and management.

The previous Council Report (27 February 2018) contained an assessment against the fundamental constraints adopted by Council in July 2015 relevant to the planning proposal. The findings of the assessment outlined below:

- The amended proposed Lot Size Map identifies a separate lot with a minimum lot size of not less than 2ha containing Shale Sandstone Transition Forest, the unnamed watercourse and the associated riparian corridor within the subject site. This lot can be identified as a community title lot on a future community title subdivision application for part of the subject site with access to Bells Line of Road as proposed by the applicant. There the likely adverse impacts of the proposed minimum lot sizes and the likely location of future lots on flora and fauna will be minimal.
- The amended proposed Lot Size Map identifies a separate lot with a minimum lot size of not less than 2ha containing Shale Sandstone Transition Forest, the unnamed watercourse and the associated riparian corridor within the subject site is able to minimise adverse impact development on watercourses and riparian areas.
- There are two existing farm dams located within the proposed community title lot and a dam located south of this lot within the subject site which are to be retained.
- Office of Environment and Heritage comments, the exhibited proposed Lot Size Map was amended to ensure the likely adverse impacts of the future APZ's on the existing vegetation would be minimal.
- Initial assessment of the subject site and proposed lot sizes suggested that a suitable on-site effluent disposal system to accommodate future development on the subject site could be achieved. This can be further considered at the development application stage.

Based on the above findings, the planning proposal is considered to be generally consistent with the recommended development provisions in the Landscape Character Study.

Kurmond Kurrajong Structure Plan

In order to achieve the recommendations of the Kurmond and Kurrajong Landscape Character Study, the Draft Structure Plan has considered the most appropriate minimum lot size for subdivision that would achieve the aims of providing for housing while protecting the biodiversity, ecological, scenic, character and amenity values of the locality.

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The Draft Structure Plan stipulates a minimum lot size of 4,000m² for the subject site, and as such is considered to be consistent given that:

- The planning proposal seeks to permit subdivision of the subject site into six large rural residential lots with a minimum lot size not less than 4,000m² and one community title lot
- No significant changes will occur to the pastoral character of the locality
- The views and vistas within the locality will remain unchanged.

Offer of a Voluntary Planning Agreement

Council considered a report on VPAs for the Kurmond-Kurrajong Investigation Area at its Ordinary Meeting of 10 November 2015. Council resolved:

"That:

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

The preparation of a Section 7.11 (formerly S94) Plan has commenced but the completion of that Plan is not expected to be completed in the short term. Given the above Council Resolution, Part 4 of Council's previous Resolution of 11 November 2014 and there is no set timeframe for the completion of the Section 7.11 Plan, the applicant on behalf of the developer/property owner offered to enter into a VPA with Council that would result in the developer paying a cash contribution to Council for the purposes of community facilities and works to the value of \$30,000 per vacant housing lot. A draft VPA has been prepared and finalised in consultation with relevant Council staff, and is attached to this Report as Attachment 2. The next step is the exhibition of the draft VPA for public comment in accordance with the relevant statutory provisions prior to reporting to Council for its finalisation and adoption.

7. Consultation

On 28 October 2014, Council considered a report on the planning proposal and resolved to forward the planning proposal to the (then) DP&I and received a Gateway determination advising to proceed in March 2015.

The relevant public agencies were consulted under section 3.34(2)(d) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) and consultation with the community was undertaken during the period Friday 6 November 2015 to Monday 23 November 2015.

The consultation undertaken with the relevant public authorities with respect to the planning proposal warranted an amendment to the exhibited Lot Size Map which is detailed in a subsequent section of this report.

On 27 February 2018 Council considered a report on the outcome of consultation and resolved to defer the matter the receipt of the further studies in relation to the Kurmond-Kurrajong Investigation Area.

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In accordance with the Gateway determination requirements, the community was consulted under Section 3.34 and Schedule 1 cl 4 of the *Environmental Planning and Assessment Act, 1979* (EP & A Act) during the period Friday 6 November 2015 to Monday 23 November 2015, and the relevant public agencies were consulted under section 3.34 of the EP&A Act.

An exhibition notice was placed in the Hawkesbury Courier on 5 November 2015 and letters were sent to adjoining and nearby land owners and occupiers advising of the public exhibition of the planning proposal. The planning proposal and supporting documentation was made available for public viewing during the exhibition period on Council's website and at Council's Administration Office. No submissions were received from the Community.

Council received responses from all public agencies (other than Telstra and Endeavour Energy). The response received from the NSW Department of Industry (Resources & Energy) raised no issues and all the other responses raised certain issues.

The response received from OEH warranted an amendment to the exhibited Lot Size Map which is detailed in an earlier section of this report, and the issues raised in the other responses and subsequent comments from the Council Officer were outlined in the previous Report (dated 27 February 2018) which is included as Attachment 1 of this report.

8. Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The proposal is consistent with the following Focus Area, Direction and Strategy within the CSP.

Our Future

5.3 Shaping our Growth

- 5.3.3 Plan for a balance of agriculture, natural environment and housing that delivers viable rural production and maintains rural character.

9. Fit For The Future Strategy Considerations

The proposal is aligned to the following Fit For The Future Strategy:

The proposal is aligned with Council's long term plan to improve and maintain organisational sustainability and achieve Fit for the Future financial benchmarks. The proposal will enable Council to sustainably manage community assets in accordance with the scheduled program of works in the Long-Term Financial Plan.

10. Conclusion

The consultation undertaken with the community and the relevant public agencies with respect to the planning proposal do not warrant the abandonment of the planning proposal other than amendments to the exhibited Lot Size Map and an amendment to the Restricted Lot Size Map as detailed in this report.

The planning proposal is considered to be consistent with relevant State and Local planning framework. As outlined in this report, the planning proposal is considered to be consistent with the Landscape Character Study for the Kurmond-Kurrajong Investigation Area.

In accordance with Council requirements, the applicant has offered to enter into a Voluntary Planning Agreement with Council that would result in the cash payment of \$30,000 per vacant housing lot created on the subject site.

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

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Planning Decision

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

RECOMMENDATION:

That Council:

1. Proceed with the making of a plan to amend the *Hawkesbury Local Environmental Plan 2012* in order to permit the subdivision of Lot 2 DP 1177011, 377 Bells Line of Road, Kurmond into not more than six large rural residential lots with a minimum lot size of not less than 4,000m² and one community title lot with a minimum lot size of not less than 2ha as detailed in this report.
2. Request that the Parliamentary Counsel's Office prepare a draft Local Environmental Plan to give effect to the planning proposal in accordance with Section 59(1) of the *Environmental Planning and Assessment Act, 1979*.
3. Adopt and make the draft local environmental plan, under the authorisation for Council to exercise delegation issued by the Gateway determination, upon receipt of an opinion from Parliamentary Counsel's Office that the plan can be legally made.
4. Following the making of the Plan, advise the Department of Planning and Environment that the Plan has been made and request to notify the Plan on the NSW Legislation website.
5. Publically exhibit the Draft Voluntary Planning Agreement attached to this report for a minimum of 28 days and the Draft Voluntary Planning Agreement be reported back to Council following public exhibition prior to finalisation.
6. Any future development application over the subject site consider the potential for a pedestrian/cycle connection through the subject site linking Bells Line of Road with Bells Lane.

ATTACHMENTS:

- AT - 1** Assessment of the Planning Proposal Against the Recommendations of the Kurmond-Kurrajong Investigation Area Landscape Character Study.
- AT - 2** Summary of Government Agency Submissions and Responses.
- AT - 3** An Assessment Against the fundamental Constraints and Associated Recommendations.
- AT - 4** Draft Voluntary Planning Agreement between Hawkesbury City Council and John Ian Henry.

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AT - 1 Assessment of the Planning Proposal Against the Recommendations of the Kurmond-Kurrajong Investigation Area Landscape Character Study

Theme/Item	Objective	Guideline	Application	LEP009/13 377 Bells Line of Road, Kurmond
Public Transport	Encourage bus use between neighbourhoods and major transit nodes (Richmond/Windsor).	Weather sheltered/ well-lit bus stops (<400m walk) • Access to real time travel information • Peak services to reflect realistic demand/requirements of residents.	Kurrajong and Kurmond Neighbourhood centres and major roads through Investigation Area.	The planning proposal seeking future development of the subject site for residential purposes will help improve the viability of the existing bus service in the area. Voluntary Planning Agreements to contribute towards provision of services and amenities.
Private Vehicle (including parking)	Coordinate approach to traffic flow and management to streamline roadways/ infrastructure.	Avoid multiple, isolated intersections, particularly from new development directly onto main roads • Keep parking clear of all documented district or regional views.	Roads and on road parking in proposed developments • Main road upgrades (eg Bells Line of Road).	Future parking associated with residential development onsite. Appropriate siting of future building footprints on larger lots > 4,000m ² will minimize any adverse impacts on the existing views and vistas.
Cycling and Walking	Promote walk/ cycle as means of accessing shops, bus routes and schools within neighbourhoods.	Establish cycle lane/path between Kurrajong and Kurmond • Create a safe and comfortable pedestrian environment within neighbourhood centres/villages, especially along ridges • Focus on 800m walking catchment within villages.	Cycle infrastructure (bike lockers etc) at Kurrajong and Kurmond centres • Dedicated cycle lane to follow ridge line road • Walkability action plan within Kurmond and Kurrajong.	A Voluntary Planning Agreement in support of the planning is to provide some funding to meet the required services and amenities in the locality Where considered necessary, a condition of consent for the subdivision of the subject site can be imposed requiring the construction of a public footpath or part of a footpath linking to the Kurmond Neighbourhood Centre.
Universal Access	Maximise universal access as far as natural gradients permit.	Define, audit and update most walkable routes within neighbourhoods • Ensure bus routes including community buses link valleys to ridgetops in villages to encourage walking within village and reduced car dependency for short trips.	Ridgeline streets in Kurmond and Kurrajong	With the completion of the Structure Plan for the Kurmond Kurrajong Investigation Area (KKIA) will be able to define walkable routes and any future bus routes within the KKIA. Given all the properties including the subject site within the KKIA are generally within a reasonable walking distance to these two

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Theme/Item	Objective	Guideline	Application	LEP009/13 377 Bells Line of Road, Kurmond
				Neighbourhood Centres, future car dependency is considered to be generally low.
Residential	Maintain clear distinction in residential types related to location and geography.	<p>Focus principal residential population in and around compact neighbourhood centres</p> <ul style="list-style-type: none"> • Prevent development and subdivision from sprawling and create a buffer between residential and active rural land uses • Ensure rural lot sizes maintain low density, optimise ecological corridors and open views. • Potential R5 Large Lot Residential Zone (4,000m²) • Use built form that responds to the steep terrain - a small footprint that steps down with the contours. 	Principal residential population in and around Kurmond and Kurrajong.	<p>The subject site is Located within the KKIA.</p> <p>The proposed minimum res lot sizes of 4000m² is considered to be generally consistent with the low density character of locality.</p> <p>The proposed Community Title lot accommodating native vegetation and associated riparian corridor will be able to maintain and improve ecological values of the subject site.</p> <p>Future development can be accommodated on land free of significant vegetation, riparian vegetation, watercourses or slopes greater than 15%.</p>
Retail Commercial	Maintain clear distinction between retail/ commercial and rural land uses.	<p>Retail and commercial within neighbourhood cores.</p> <ul style="list-style-type: none"> • Road front restaurants/hotels on main roads only • Encourage farm gate providers. 	<p>Neighbourhood centres</p> <ul style="list-style-type: none"> • Bells Line of Road • Farm gate properties. 	The planning proposal seeks only to change the minimum lot size provision applying to the subject site to enable future development of the subject site for residential purposes. Therefore, this matter is not relevant to the planning proposal.
Transport	Promote ease of access and movement around neighbourhood centres.	<p>Slow vehicle travel speeds, clearly legible environments (signage, cues, wayfinding)</p> <ul style="list-style-type: none"> • Integrated pedestrian/cycle/public transport information • Adequate car parking consolidated wherever possible in centres to avoid continuous line of cars on streets • Simple pull-offs on main roads near major views. 	<p>On/off street parking in neighbourhood centres</p> <ul style="list-style-type: none"> • Formalised pull-offs on Bells Line of Road near views. 	<p>Voluntary Planning Agreements or Section 7.11 Contributions Plan to provide for services and amenities for public domain.</p> <p>The planning proposal is not located within the Kurmond Neighbourhood Centre.</p>

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Theme/Item	Objective	Guideline	Application	LEP009/13 377 Bells Line of Road, Kurmond
Public Domain	Promote safe, pleasant public domain reflecting neighbourhood status.	<p>Vegetation, shade, shelter, quality pedestrian surfaces, social seating, lighting in critical locations and interpretation</p> <ul style="list-style-type: none"> • Formalised lookouts with wide district/ regional views • Avoid conflict between pedestrians, cycles and vehicles. 	<p>Specifically in the village and Neighbourhood Centres</p> <ul style="list-style-type: none"> • Social gathering space at Kurmond for locals shopping. 	<p>A Voluntary Planning Agreement in support of the planning is to provide some funding to meet the required services, amenities and improvements to public domain.</p> <p>The completion of the Kurmond Kurrajong Investigation Area Structure plan will inform the required services and facilities for public domain improvement within the Kurmond Neighbourhood Centre..</p>
Topography	Ensure that the area's natural topography is conserved.	<p>Controls on cut and fill in all built form including roads</p> <ul style="list-style-type: none"> • Maintenance of natural stream form. 	Across the Investigation Area	<p>Future development can be accommodated on land free of significant vegetation, riparian vegetation, watercourses or slopes greater than 15%.</p> <p>Any proposed cut and filling of the subject site to accommodate future dwellings can be assessed at the development application stage.</p>
Hydrology	Maintain and enhance the natural riparian systems of the area.	<p>Follow riparian guidelines on stream types and riparian corridor controls (NSW Office of Water)</p> <ul style="list-style-type: none"> • Minimise/consolidate road crossings of creeks • Restore minor creeks and chain of ponds as part of related development. 	Across the Investigation Area.	<p>A separate Community Title lot with no dwelling potential accommodating the existing natural watercourse and the associated riparian zone will enable the improved protection for the native vegetation and the associated riparian corridor and minimisation of road crossings of the watercourse.</p> <p>The areas proposed for future residential purposes and site access arrangements are free of any significant vegetation and other natural features.</p>
Vegetation	Protect land identified as high and very high	Retain, protect and regenerate vegetation	Any applicable land in Investigation Area.	A separate Community Title lot

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Theme/Item	Objective	Guideline	Application	LEP009/13 377 Bells Line of Road, Kurmond
	priority habitat (Ecological, 2018) from impact of residential development. • Conserve and enhance natural habitat corridors.	corridors identified in mapping • Do not permit small lot (<0.5ha) development of land identified as high, very high priority • Include riparian corridor restoration (planting) in development obligations.		with no dwelling potential accommodating the the existing native vegetation, a natural watercourse, two dams and the associated riparian zone will be able to retain, protect and regenerate native vegetation and the associated riparian corridor within the subject site.
Bushfire	Maintain bushfire protection.	APZ • Suitable access including for fire fighting vehicles.	Across the Investigation Area	Future residential development on two land areas free of any significant vegetation within the subject site will be able to comply with the relevant provisions of <i>Planning for Bushfire Protection 2006</i> . Any future Development Applications for the Subject site will be Referred to NSW Rural Fire Service for Comments.
Climate Change	Mitigate temperature change.	Tree canopy cover • Riparian corridor ecology.	Tree canopy especially on roads and in village centres.	Future development can be accommodated on land free of significant vegetation, riparian vegetation, or watercourses.
Physical Heritage	Conserve heritage items (including trees).	Monitor condition of heritage items • Consider extent of curtilage and integration of items.	Throughout the Investigation Area.	The subject site is not a heritage Item/property.
Heritage Interpretation	Make the story of the locality accessible and engaging.	Maintain views that assist in interpretation • Promote heritage trails.	Throughout the Investigation Area.	Large rural residential lots not less than 4,000m ² free of any significant vegetation can accommodate future dwellings with no adverse impacts on the existing views/vistas.
Urban Character	Maintain and enhance compact character of existing villages and neighbourhoods.	Respect existing scale and form: 1-2 storey limit • Retain existing subdivision pattern - avoid lot amalgamation.	Kurrajong and Kurmond neighbourhood centres.	Future dwellings with appropriate scale, size and built forms will be able to maintain and enhance the existing character of the locality and the Kurmond Neighbourhood Centre.

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Theme/Item	Objective	Guideline	Application	LEP009/13 377 Bells Line of Road, Kurmond
		<ul style="list-style-type: none"> • Low FSR per lot. Focus on high street as location for services rather than outside of neighbourhoods • Ridge line profile and view corridors to inform decisions in relation to scale and form of buildings (eg extensions or granny flats). 		Appropriate scale, size. Built forms and site coverage matters can be dealt at the development application stage.
Rural Character	Retain and protect pastoral/ rural character <ul style="list-style-type: none"> • Maintain clear distinction between urban rural interfaces. 	Prevent rezoning of critical land parcels that provide significant view corridors <ul style="list-style-type: none"> • Permit rezoning and subdivision of land deemed appropriate/lower order in terms of views. Prevent creation of small lot sizes • Control on road signage and promotions. 	Lands within Investigation Area.	Large rural residential lots not less than 4,000m ² with no significant vegetation will be able to accommodate future dwellings with no adverse impacts on the existing rural character, views and vistas. A detailed assessment of these matters can be undertaken at the development application stage.
Views and Vistas	Conserve 'pastoral' views, particularly from ridge line major roads <ul style="list-style-type: none"> • Protect regional vistas from neighbourhoods. 	Document and maintain key regional and district views (see maps) <ul style="list-style-type: none"> • Interpret views at key locations • Prevent loss of views from roads through controls on private boundary fences and hedges heights and designs. 	Lands within Investigation Area.	Part of the site area identified for future residential purposes is located within a high significant view/vista corridor, however the proposed lot sizes not less than 4000m ² free of any significant vegetation will be able to accommodate future dwellings with no adverse impacts on the existing views/vistas.
Microclimate	Optimise sun in winter and shade in summer <ul style="list-style-type: none"> • Maximise cooling breezes in summer • Provide ample outdoor seating. 	Carefully considered application of evergreen and deciduous trees, with primary focus on native species <ul style="list-style-type: none"> • Careful selection of non-invasive exotic species on streets in Centres. 	Shade and sun (and seating) particularly important in Centres and on roadsides.	Matters such as natural lighting, and ventilation and any need to plant deciduous trees need to be taken into consideration at the development application stage.
Passive Surveillance	Ensure a sense of personal safety for the public and residents.	Design with CPTED principles	Investigation Area.	This is a matter for consideration at the Development Application stage.

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Theme/Item	Objective	Guideline	Application	LEP009/13 377 Bells Line of Road, Kurmond
Urban (in town or village)	Retain existing scale and form. Prevent urban sprawl into currently non-urban areas or areas with significant view/ vistas.	<p>1-2 storeys. Consider impact of parapet and roof form on backdrop perspective. Protect existing incidental/occasional views (along streets, between buildings, pedestrian experience)</p> <ul style="list-style-type: none"> • Typical lot sizes (TBC) • Maximum site coverage controls for built form and minimum landscape controls. 	Kurmond and Kurrajong neighbourhood centres.	<p>Built forms and site coverage matters can be determined at the development application stage.</p> <p>The proposed 4,000m² lot size for the subject site is considered to be generally consistent with the existing subdivision pattern in the locality.</p>
Periphery (edge of town or village)	Consolidate urban form around neighbourhoods.	<p>Establish limit to neighbourhood fringe (exclusion zone/rural character zone)</p> <p>Focus commercial and retail within neighbourhoods.</p> <p>Large lot rural residential which does not interrupt views and vistas.</p>	Consider visual impact of development proposals from carriageway and impact on views and vistas, including whilst travelling.	Matters to be included within a development control plan for the Kurmond Kurrajong Investigation Area (KKIA) or to be considered at the development application stage.
Rural (out of town or village)	Maintain significant sweeping pastoral views by avoiding development of critical view paths.	<p>Land with supporting building on lot as dominant built form</p> <ul style="list-style-type: none"> • Consolidate built form footprint and access driveways (including outbuildings, pools, courts etc) • (Not less than 4000m²) with prescribed building envelopes for all lots • Maximum site coverage controls for built form and minimum landscape controls. 	Rural zoned land within the Investigation Area.	<p>Minimum lot sizes consistent with habitat priority rating and in maintaining low density character.</p> <p>Matters such as built forms, building footprints, lot amalgamation and site access to be included within a development control plan for KKIA or to be considered at the development application stage.</p>
Power lines	Minimise visual impacts of power lines.	<p>Selection of vegetation species under power lines</p> <ul style="list-style-type: none"> • Direction of easement across topography and especially over ridge lines • Level of co-operation with power suppliers. 	Investigation Area.	This is a matter for consideration at the Development Application stage.

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Theme/Item	Objective	Guideline	Application	LEP009/13 377 Bells Line of Road, Kurmond
Transport	Maximise opportunity to access transport and promote walking.	Bus routes maximise catchment <ul style="list-style-type: none"> • Community buses link valleys to ridge lines in village centres. 	Throughout but especially around village centres.	The planning proposal seeking future development of the subject site for residential purposes will improve the viability of the existing bus service in the area.

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AT - 2 Summary of Government Agency Submissions and Responses including Appendix 1

Agency	Issue	Council Officer Response
Roads & Maritime Services (RMS)	<p><u>Road Widening Reservation</u></p> <p>The RMS raised no objection to the planning proposal provided that part of the subject site along Bells Line of Road identified for future widening of Bells Line Road as shown in Appendix 1 of this Attachment is maintained.</p>	<p>If this plan is made, the applicant will need to lodge a development application seeking approval for the subdivision of the subject site. The applicant will be advised to show that part of the subject site identified for future road widening in the Appendix 1 of this Attachment as a separate lot in the proposed subdivision plan for the subject site. This will enable Council to impose a condition of consent for the development application ensuring that lot is reserved and maintained for future road widening purposes.</p> <p>It was noted that the RMS proposed road widening has not been included in the current Land Reservation Acquisition Map of <i>Hawkesbury Local Environmental Plan 2012</i> (the LEP). It is also noted that 1420 Kurmond Road, Kurmond is also subject to the RMS proposed road widening and not identified in the current Land Reservation Acquisition Map of the LEP. Therefore it is recommended to address this matter at a subsequent house-keeping amendment to the LEP in consultation with the RMS.</p>
	<p><u>Cumulative Impact</u></p> <p>The RMS raised concern over the cumulative impacts of the growing number of site specific planning proposals for rural residential developments in the locality, but understands that Council is undertaking a broader investigation of the impacts of rural residential development within the Kurmond Kurrajong and Investigation Area on the existing road network and infrastructure needs.</p> <p>The RMS recommended that this investigation includes a traffic study to investigate the impacts to the surrounding road network and individual intersections that are likely to be adversely impacted by the increase in traffic as a result of these planning proposals within the Kurmond Kurrajong Investigation Area.</p>	<p>In accordance with Council Resolution of 29 November 2016 Council is not accepting any new planning proposals within the Kurmond Kurrajong Investigation Area until such time the Structure Plan for the Kurmond Kurrajong Investigation Area is completed and continuing with processing the planning proposals within the Kurmond Kurrajong Investigation Area that have received support via Council resolution to proceed to a Gateway determination and any planning proposals currently lodged with Council as at 29 November 2016.</p> <p>Once the Structure Plan is completed and the potential dwelling yield within the Kurmond Kurrajong Investigation Area is known, Council will be able to commence a local traffic study to assess the likely impact of the increased dwelling yield on the surrounding road network and individual intersections within the Kurmond Kurrajong Investigation Area in close consultation with the RMS.</p> <p>It should also be noted that Council's broader LGA wide traffic study has commenced.</p>

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Agency	Issue	Council Officer Response
RMS	<p><u>Funding Mechanism for Road Improvements</u></p> <p>The RMS suggested Council where possible in the development of a suitable funding mechanism like a Section 94/94A plan for the Kurmond Kurrajong Investigation Area or planning agreements to require contributions for local and State road improvements in the locality.</p>	<p>Council at its Ordinary Meeting of 10 November 2015 resolved to agree to enter into negotiations for Voluntary Planning Agreements (VPAs) in the Kurmond Kurrajong Investigation Area in the absence of an adopted Section 94 developer contributions plan.</p> <p>The preparation of a S94 Plan has commenced, but the completion of that Plan is not expected to be completed in the short term.</p> <p>Given the above Council Resolution and that there is no set timeframe for the completion of the S.94 Plan, a draft VPA incorporating \$30,000 monetary contribution per additional lot created on the subject site be acceptable to Council to fund local and State road improvements in the locality was received from the applicant. This report includes a recommendation to place the draft VPA on public exhibition and report back to Council following exhibition prior to finalisation. If the proposed LEP Amendment outlined in this report is made to give effect to the planning proposal, a monetary contribution for future subdivision of the subject site will be required as per the draft VPA which is included as Attachment 3 of the Report.</p>
Transport for NSW (TfNSW)	<p><u>The Bells Line of Road – Castlereagh Connection Corridor</u></p> <p>The NSW Government has commenced planning to identify and preserve the Bells Line of Road – Castlereagh Connection Corridor, and the subject site is within the Bells Line of Road – Castlereagh Connection Corridor Investigation Area. The subject site cannot be ruled out as a possible location for the Bells Line of Road – Castlereagh Connection Corridor until Corridor Investigation Study has been finalised. In the interim, TfNSW would not object to development within the study area.</p>	<p>It is noted that the Bells Line of Road – Castlereagh Connection Corridor is a corridor to provide a connection from Kurrajong to Sydney's motorway network and thereby allowing an alternate network across the Blue Mountain to improve road connectivity and transport efficiency within Western Sydney and to regional areas west of Sydney.</p> <p>The TfNSW recently briefed Council Officers about the Bells Line of Road – Castlereagh Connection Corridor and discussed its preferred route. Council Officers requested the TfNSW to finalise the corridor earlier to provide certainty for the Community and enable Council to appropriately plan the area with effective integration between land use and transport and advise the affected land owners accordingly.</p> <p>However, given the Bells Line of Road – Castlereagh Connection Corridor is not yet finalised and there are no set time frames for statutory protection and acquisition of properties affected by this corridor, it is not considered warranted delaying the plan making process.</p>

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Agency	Issue	Council Officer Response
Transport for NSW (TfNSW)	<p><u>Integrating Land Use and Transport</u></p> <p>The planning proposal should consider Ministerial Directions in accordance with Section 117 of the <i>Environmental Planning & Assessment Act, 1979</i> (EP&A Act). Direction 3.4 – Integrating Land Use and Transport which indicates that a planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for Planning and Development (DUAP 2001)</i>.</p> <p>A key objective of this document is for every household to be within 400m walking distance of a bus route (accessing such a node) served at least every 30 minutes. This requirement should be addressed in the planning proposal.</p>	<p>Direction 3.4 – Integrating Land Use and Transport applies when Council prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes, but the planning proposal applies to rural land. Therefore, this direction does not apply to the planning proposal.</p>
	<p><u>Cumulative Impacts</u></p> <p>TfNSW has recently reviewed several planning proposal referrals from Council for similar larger lot residential subdivisions in the surrounding area (particularly in Kurmond). It is recommended that a Strategic Planning Study is undertaken to determine the potential residential lot increase in the surrounding area and assess the cumulative impacts on the local and regional traffic and transport infrastructure and identify mitigation measures.</p>	<p>This issue is addressed in the early part of this Attachment.</p>

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Agency	Issue	Council Officer Response
Office of Environment & Heritage (OEH)	<p><u>Zoning and Planning Controls</u></p> <p>There are no additional planning controls proposed for the protection of native vegetation on the subject site. It is therefore expected that future development will result in the fragmentation and incremental loss of vegetation through the erection of dwellings and associated Asset Protection Zones, infrastructure, effluent disposal areas, as well as clearing for fencing and ancillary development such as sheds. Council will need to consider how the protection of the vegetation can be achieved.</p>	<p>The exhibited proposed Lot Size Map has now been amended to minimise fragmentation and potential loss of vegetation and ensure better protection of native vegetation with high biodiversity values through the identification of a land area containing the existing native vegetation, the riparian corridor and the watercourse as a separate allotment. This matter is discussed in detail in the Council Report.</p>
Agency	Issue	Council Officer Response
OEH	<p><u>Split Zoning</u></p> <p>Council should consider split zoning for the subject site allowing rezoning of that part of the subject site with high biodiversity values to E2 Environmental Conservation.</p>	<p>In addition to the existing provisions in the LEP applying to the subject site to maintain terrestrial biodiversity, Council would be able to impose a condition of consent for future subdivision application over the subject site requiring the preparation of a Vegetation Management Plan for that part of the subject site identified as a separate lot accommodating existing native vegetation to ensure the biodiversity on the subject site is protected, maintained and enhanced. Given these circumstances, a split zoning enabling rezoning of part of the subject site to a E2 Environmental Conservation zone is not considered necessary.</p>

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Agency	Issue	Council Officer Response
NSW Rural Fire Service (NSWRFS)	The RFS raised no objection to the making of the plan subject to a requirement that the future subdivision of the subject site complies with <i>Planning for Bushfire Protection 2006</i> .	If this plan is made, any future development applications for the subject site will be referred to RFS for comment.
Department of Primary Industries – Agriculture (DPI Agriculture)	The DPI Agriculture generally does not support ad-hoc planning proposals which have tenuous relationship to housing supply for the Hawkesbury and do not follow sound planning principles.	<p>Council does not support any planning proposals that allow fragmentation and alienation of sustainable agricultural land, and always assess them against their merits, relevant planning legislation and the Local planning framework to ensure potential and productive agricultural land are maintained for sustainable primary industry production and agricultural activities.</p> <p>However, the Hawkesbury Residential Land Strategy (HRLS) recognises the importance of maintaining the viability of existing rural villages and therefore focuses large lot rural residential development within 1km radius of existing rural villages/neighbourhood Centres that satisfactorily meet other rural residential criteria specified in the HRLS. The subject site is located within 1km radius and meets the criteria in general.</p> <p>Further, the subject site is shown as being Agriculture Land Classification 3 on maps prepared by the former NSW Department of Agriculture. These lands are described by the Classification system as:</p> <p><i>"Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production rate is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown, or other factors, including climate, may limit the capacity for cultivation".</i></p> <p>Given the subject site is in close proximity to the Kurmond Neighbourhood Centre, surrounding rural residential development and it not being used for intensive agricultural uses for many years it is considered that it is unlikely the subject site could be used for a substantial or viable agricultural enterprise.</p>

Appendix 1



Note: A narrow strip of land along the frontage of 77 Bells Line of Road, Kurrajong shown in pink colour in the above image is subject to future widening of Bells Line of Road.

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AT - 3 An Assessment Against the fundamental Constraints
and Associated Recommendations

Table 1: Physical Environment

Factor	Degree of Constraint to Development	Recommendation
Terrestrial Biodiversity		
Impact of development on threatened or endangered flora and fauna	Fundamental - Major	Legislation applies to threatened and endangered species. OEH concurrence may be required. Removal of significant vegetation is to be avoided. Fragmentation of significant vegetation is to be minimised.
<p>Comment: Shale Sandstone Transition Forest (High Sandstone Influence) occurs along an un-named watercourse and the north-western boundary, which is outside of the proposed development area. The amended proposed Lot Size Map identifies a separate lot with a minimum lot size of not less than 2ha containing Shale Sandstone Transition Forest, the un-named watercourse and the associated riparian corridor within the subject site. This lot can be identified as a community title lot on a future community title subdivision application for part of the subject site with access to Bells Line of Road as proposed by the applicant. Therefore the likely adverse impacts of the proposed minimum lot sizes and the likely location of future lots on flora and fauna will be minimal.</p>		
Watercourses and Riparian Areas		
Impact of development on watercourses and riparian areas	Fundamental - Major	Legislation applies to threatened and endangered species. OEH concurrence may be required. Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourses) are to be located outside of riparian corridors. Road crossings of watercourses are to be minimised. Fragmentation of riparian areas is to be minimised.
<p>Comment: The amended proposed Lot Size Map identifying a separate lot with a minimum lot size not less than 2ha containing Shale Sandstone Transition Forest, the un-named watercourse and the associated riparian corridor within the subject site is able to comply with the above recommendations for minimising impact of development on watercourses and riparian areas.</p>		

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Factor	Degree of Constraint to Development	Recommendation
Dams		
Impact of development on aquatic habitat. Proximity of dams to effluent disposal systems	Fundamental - Minor	<p>Legislation applies to threatened and endangered species. OEH concurrence may be required.</p> <p>Removal of dams containing significant aquatic habitat is to be avoided. Minimum required buffer distances for effluent disposal systems are to be adhered to.</p>
<p>Comment: There are two existing farm dams located within the proposed community tile lot and a dam located south of this lot within the subject site which are to be retained.</p>		
Bushfire threat		
Impact of the location and management of APZs and perimeter roads	Fundamental - Major	<p>RFS concurrence may be required</p> <p>Building construction and water supply is to comply with NSW Rural Fire Service's <i>Planning for Bushfire Protection 2006</i>, e.g. APZs and roads</p>
<p>Comment: In line with OEH comments, the exhibited Proposed Lot Size Map was amended to ensure the likely adverse impacts of the future APZ's on the significant existing vegetation would be minimal. It is considered this issue can also be satisfactorily dealt with at development application stage by way of referral to the RFS and conditions of consent.</p>		
Aboriginal Heritage		
Impact of development on Aboriginal heritage items	Fundamental - Moderate	<p><i>National Parks and Wildlife Act 1974</i> applies.</p> <p>Council and developers are also to consider relevant provisions of <i>Heritage Act 1977</i> when preparing and considering development applications</p>
<p>Comment: No known aboriginal relics are located on the site. Further consideration will be given to this at development application stage.</p>		

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Factor	Degree of Constraint to Development	Recommendation
Land Contamination		
Suitability of land to be developed given potential for land to be contaminated	Fundamental - Minor	Remediation action plans and validation may be required. Council and developers are to consider relevant provisions of <i>State Environmental Planning Policy No 55—Remediation of Land</i> when preparing and considering development applications.
Comment: Council records show the land has been used for cattle grazing for many years but that there are no records to suggest that any activities have occurred on the land which would give rise to contamination. Further consideration will be given to this at development application stage.		
Acid Sulfate Soils		
Impact of disturbance of acid sulfate soils on the environment and development	Fundamental to Minor	Development proposals and land class are to be assessed with respect to Clause 6.1 Acid Sulfate Soils of LEP 2012. Acid sulfate soils management plans required.
Comment: The subject site is within the Acid Sulfate Soils Class 5 categorisation which is the least restrictive of the 5 classifications. Further consideration, if required, will be given to this at development application stage.		

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Table 2: Infrastructure and Services

Factor	Degree of Constraint to Development	Recommendation
Road network		
Capacity and safety of existing road network	Fundamental - Major	<p>RMS concurrence may be required Development contributions are to be levied for road improvements.</p> <p>Council and developers are to consider relevant provisions of <i>State Environmental Planning Policy (Infrastructure) 2007</i> when preparing and considering development applications.</p>
<p>Comment: RMS has not requested a development contribution from this planning proposal for road works and have not raised any objection to the proposal, provided that Council make provisions to limit the maximum lot yield on the subject to seven.</p> <p>Council Officers have had detailed discussions with RMS regarding the road network and the developer contribution mechanism for future residential development within the Investigation Area. A draft VPA has been finalised as part of this planning proposal to contribute to general infrastructure upgrades, and the Report recommends to place the draft VPA on exhibition for public comment. The detail as to where those contributions are to be expended will be the subject of a separate report to Council.</p>		
Wastewater		
Capacity of land to cater for on-site effluent disposal	Fundamental	<p>Sydney Water concurrence may be required Developers are to demonstrate that waste water can be disposed of on site in an environmentally sensitive manner.</p> <p>Alternatively developers may provide reticulated sewer service to new lots in accordance with relevant licences and/or authority requirements. Clause 6.7 - Essential Services under LEP 2012 applies.</p>
<p>Comment: Initial assessment of the subject site and proposed lot sizes suggested that a suitable on-site effluent disposal system to accommodate future development on the subject site could be achieved. This can be further considered at the development application stage.</p>		

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Factor	Degree of Constraint to Development	Recommendation
Public Transport Services		
Provision of bus service to cater for the needs of incoming population	Fundamental - Moderate	Transport NSW and RMS concurrence may be required. Possible levying of development contributions for bus services. Clause 6.7 - Essential Services under LEP 2012 applies.
<p>Comment: The RMS suggests to use sustainable modes of travel including buses, bicycles and walking. The Hawkesbury Residential Land Strategy requires that any rural land subject to a planning proposal enabling rural housing should be within a 1km radius of a rural village or neighbourhood centre identified in the Hawkesbury Residential Land Strategy. This is to enable sustainable development with reasonable access to the required infrastructure and services including sustainable modes of transport. It is therefore considered that this locational criterion generally satisfies the RMS suggested sustainable travel modes.</p>		
Stormwater drainage		
Quantity and quality of stormwater run-off entering watercourses	Fundamental - Moderate	Developers are to demonstrate that stormwater can be captured, treated and released in an environmentally sensitive manner. Possible levying of development contributions for stormwater purposes Clause 6.7 - Essential Services under LEP 2012 applies.
<p>Comment: It is considered this can be satisfactorily dealt with at development application stage by way of the assessment of drainage designs and conditions of consent.</p>		

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Factor	Degree of Constraint to Development	Recommendation
Water Supply		
Provision of reticulated water supply to new lots	Fundamental - Moderate	<p>Sydney Water concurrence may be required.</p> <p>A reticulated water service is to be provided to new lots by developers in accordance with relevant authority requirements</p> <p>Clause 6.7 - Essential Services under LEP 2012 applies</p>
Comment: Reticulated water can be provided to the subject site.		
Electricity		
Provision of electricity service to new lots	Fundamental	<p>Electricity provider concurrence may be required.</p> <p>Electricity services are to be provided to new lots by developers in accordance with relevant authority requirements</p> <p>Clause 6.7 - Essential Services under LEP 2012 applies</p>
Comment: Electricity is available to the subject site.		

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AT - 4 Draft Voluntary Planning Agreement between
Hawkesbury City Council and John Ian Henry

Voluntary Planning Agreement
377 Bells Line of Road, Kurmond

THIS PLANNING AGREEMENT is made on the 10th day of September 2018
BETWEEN:

HAWKESBURY CITY COUNCIL ("the Council")

AND:

JOHN IAN HENRY (known as "the Developer")

Introduction

- A. The Developer is the registered proprietor of the Development Land.
- B. On 14th January 2015 the Council lodged a Planning Proposal Application with the Department of Planning and Environment to amend the *Hawkesbury Local Environmental Plan 2012* Lot Size Map to facilitate subdivision of the Development Land.
- C. The Developer proposes to make Development Applications to Council for Development Approval to carry out the Proposed Development if the Lot Size Map for the Development Land is altered generally in accordance with the Planning Proposal Application.
- D. The Developer has offered to provide a Developer's Contribution in the form of a Cash Contribution on the terms and conditions contained in this agreement if Development Approval is granted to the Proposed Development.

And it is agreed as follows

1 Definitions and Interpretation

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

- 1.1 "Act" means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended from time to time).
- 1.2 "Approval" means any approvals consents, modifications, certificates (of all types) permits, endorsements, licenses, conditions or requirements (and any variation to them) which may be required by Law for the Proposed Development including road works.
- 1.3 "Authority" means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body, commission, department, agency, tribunal or other authority or body.
- 1.4 "Base CPI" means the CPI number for the quarter ending immediately before the commencement of this Agreement.
- 1.5 "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act and thing is to be performed or a payment is to be made.
- 1.6 "Cash Contribution" means, subject to clause 5 and clause 6, an amount calculated on the basis of \$30,000 per vacant Housing Lot.
- 1.7 "Completion Certificate" means the release of the subdivision, either in whole or in stages, to enable the lodgement to and issue of Housing Lot titles by the LPI.

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- 1.8 "CPI" means the Consumer Price Index released by the Australian Bureau of Statistics for "Sydney - All Groups" or such other consumer price index that might replace it.
- 1.9 "CPI Review Date" means each quarterly anniversary of the date of this agreement.
- 1.10 "Current CPI" means the CPI number for the quarter ending immediately before the relevant CPI Review Date.
- 1.11 "Developer's Contribution" has the meaning given in clause 5 and 6.
- 1.12 "Development Application" means an application under Part 4 of the Act for Development Approval.
- 1.13 "Development Approval" means a development consent issued under the Act with respect to all or part of the Proposed Development.
- 1.14 "Development Land" means the land comprising Lot 2 DP 1177011, 377 Bells Line of Road, Kurmond.
- 1.15 "Dispute" in connection with this agreement means an argument, a controversy, a difference, a dispute including of opinion or interpretation.
- 1.16 "Event of Insolvency" means anyone or more of the following occurrences:
- (a) the Developer becomes bankrupt, is served with a bankruptcy notice or a bankruptcy petition, has committed an act of bankruptcy or has entered into an arrangement within and under the meaning of the *Bankruptcy Act 1976* (Cth); or
 - (b) the Developer becomes subject to any order or declaration under the *Mental Health Act 2007* (NSW) or is otherwise incapable of managing his or her own affairs.
 - (c) if the Developer is a company, if:
 - (i) a resolution is passed for the winding up or liquidation of that company
 - (ii) a liquidator, provisional liquidator, receiver, receiver manager, controller, controlling manager, administrator, voluntary administrator or official manager is appointed to the Developer or a resolution is passed for the purposes of placing that party in the control of an external administrator
 - (iii) it suspends payment of its debts or is unable to pay its debts including of money payable under this agreement or is deemed insolvent
 - (iv) it fails to or is taken as having failed to comply with a statutory demand under the *Corporations Act 2001* (Cth);
 - (v) if anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction with respect to the Developer.
- 1.17 "GST" has the same meaning as the GST Act and other words or expressions used in the GST Act which have a particular defined meaning (including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning.
- 1.18 "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

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- 1.19 "Housing Lot" means a lot approved by a Development Consent comprising part of the Development Land that is intended to be used for the purposes of a single dwelling house without being further sub-divided.
- 1.20 "Housing Lot Contribution" means subject to clause 5 cash to the value of \$30,000 per vacant Housing Lot arising from a Development Consent of the Development Land.
- 1.21 "Law" means:
- a) the common law and principles of equity;
 - b) the requirements of legislation, regulations and by-laws; and
 - c) a binding order made by an Authority.
- 1.22 "LPI" means Land and Property Information or any other government agency replacing it.
- 1.23 "Lot Size Map" means the maps with a corresponding name and forming part of Hawkesbury Local Environmental Plan 2012.
- 1.24 "Party" means a party to this agreement, including their successors and assigns.
- 1.25 "Proposed Development" means the alteration of the Lot Size Map and subdivision of the Development Land into housing lots and a community lot containing a new road and the existing environmental features.
- 1.26 "Planning Proposal Application" means the application to alter the Hawkesbury Local Environmental Plan 2012 Lot Size Map to allow the Proposed Development on the Development Land.
- 1.27 "Subdivision Certificate" means a certificate issued under section 109C(d) of the Act with respect to the Proposed Development.
- 1.28 "Transfer" means to settle, assign, transfer, convey, alienate, otherwise dispose of or part with possession of.
- 2 Interpretation:**
- In this agreement unless the contrary intention appears:
- 2.1 One gender includes the opposite gender.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A party includes that party's executors, administrators, successors, permitted assigns, permitted legal representatives and substitutes.
- 2.4 Dollars or \$ means Australia dollars and all money payable under this agreement is payable in that currency.
- 2.5 "Including" and similar expressions are not words of limitation.
- 2.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.7 Headings, any table of contents or index are for convenience only and do not affect interpretation of this agreement.
- 2.8 An explanatory note which relates to this agreement does not affect the interpretation of this agreement.

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- 2.9 A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible wholly or partly for the preparation of this agreement or the inclusion of a term or condition in this agreement.
- 2.10 If an act and thing must be done on a specific day which is not a business day, it must be done instead on the next business day.
- 2.11 A person means and includes a person, a body corporate, Authority, firm, body of persons, association, trust, joint venture or other legal commercial entity or undertaking recognized by law whether or not incorporated.
- 3 Planning Agreement**
- 3.1 This agreement:
- 3.1.1 applies to the Development Land;
 - 3.1.2 is a planning agreement within the meaning set out in section 93F of the Act;
 - 3.1.3 is to be registered on the title of the Development Land under section 93H of the Act;
 - 3.1.4 is not a confidential document and may be exhibited without restriction by either party.
- 3.2 Subject to clause 3.3, this Agreement operates from the date it is executed.
- 3.3 This agreement will only operate if and when Council grants Development Approval (or Development Approvals as the case may be) to the Proposed Development on the Development Land.
- 4 Application of s94 and s94A of the Act to the Development**
- 4.1 This agreement excludes the application of section 94A and section 94 of the Act to the Proposed Development. Should this agreement be terminated section 94A and section 94 of the Act will apply to the Proposed Development.
- 4.2 Notwithstanding Clause 4.1, should a Section 94 Plan which applies to the land come into force prior to the issue of any development consent for subdivision of the land, this Agreement shall be terminated immediately and the adopted contribution rate within such Section 94 Plan shall be applied in place of the Developer's Contribution cited within this Agreement.
- 4.3 Clause 4.2 does not allow the Council or the Developer to retrospectively apply a Section 94 contribution for the additional allotment for which development contributions have been paid in accordance with this Agreement.
- 4.4 Subject to Clause 16 should this Agreement be terminated in accordance with clause 17, Section 94A or Section 94 of the Act, whichever is applicable, will apply to the Proposed Development.
- 5 Registration of this Agreement**
- 5.1 Within 30 days from the commencement of this Agreement the Developer must take all reasonable steps to procure the registration of the Agreement, in accordance with Section 93H of the Act on the relevant folios of the register held by the LPI pertaining to the Development Land.

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5.2 The Council agrees:

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

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

6 Developer's Contribution

6.1 Subject to the terms of this Agreement, including clause 3.3, the Developer agrees to provide the Developer's Contribution, subject to clause 8, in the form of the Cash Contribution via a condition of Development Consent at the rate of \$30,000, subject to clause 9, for the creation of each additional vacant Housing Lot on the Development Land.

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

7 CPI Adjustment of Developer's Contributions

7.1 On each CPI Review Date the Housing Lot contribution will be calculated as follows:

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

Where:

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

RAC C = Adjusted Housing Lot contribution at CPI review date.

8 Staged Provision of Subdivision

8.1 The parties acknowledge that the Proposed Development can be undertaken in stages.

8.2 For each stage the Developer must provide a Cash Contribution in accordance with this Agreement for each vacant Housing Lot created within the particular stage.

9 Payment of Cash Contribution

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

10 G.S.T

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

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

11 Dispute Resolution

11.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then the Parties must in a reasonable time endeavour to resolve that dispute.

11.2 Notice of Dispute

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

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

11.3 Representatives of Parties to Meet

- a) The representatives of the Parties must promptly (and in any event within 15 Business Days of the written notice provided in accordance with clause 12.2 meet in good faith to attempt to resolve the notified dispute
- b) The Parties may, without limitation:
 - (i) ~~resolve~~ the dispute during the course of that meeting
 - (ii) ~~agree~~ that further material, expert determination in accordance with clause 12.5 or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution)
 - (iii) ~~agree~~ that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 No party may constrain

If:

- a) ~~at~~ least one meeting has been held in accordance with clause 12.3
- b) ~~the~~ Parties have been unable to reach an outcome identified in clause 12.3
- c) ~~any~~ of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 12.3(b)(iii), then, that Party may, by 15 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

11.5 Expert Determination of Dispute

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

11.6 Urgent Relief

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

12 Agreement of the Developer

12.1 The Developer warrants that it:

- 12.1.1 ~~is~~ the legal and beneficial owner of part of the Development Land
- 12.1.2 ~~will~~ take all practicable steps and use best endeavours and do all acts and things required to procure:
 - 12.1.2.1 ~~the~~ execution of any documents necessary to effect registration of this Agreement with LPI
 - 12.1.2.2 the production of the relevant certificates of title for the Development Land and the registration of this Agreement at LPI on the title of the Development Land within 30 days of the date of the commencement of this Agreement.

- 12.2 Council shall not be required to seal any sub-division plan made pursuant to the Development Approval unless and until this Agreement has been registered at LPI on the title of the Development Land.

13 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in a court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates, subject to compliance with clause 15.
 - (ii) ~~the~~ Council from exercising any function under the Act or any other Act or law.

14 Assignment and Dealings

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14.1 The Developer is not to:

- 14.1.1 ~~sell~~, transfer, mortgage or charge the Land, or
- 14.1.2 ~~assign~~ the Developer's rights or obligations under this Deed, or ~~novate~~ this Deed, to any person unless:
 - 14.1.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold, transferred, mortgaged or charged or the Developer's rights or obligations under this Deed are to be assigned or ~~novated~~, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 14.1.2.2 ~~the~~ Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, mortgagee, charge, assignee or ~~novatee~~, is reasonably capable of performing its obligations under this Deed, and
 - 14.1.2.3 ~~the~~ Developer is not in breach of this Deed, and
 - 14.1.2.4 ~~the~~ Council otherwise consents to the transfer, mortgage, charge, assignment or novation, such consent not to be unreasonably withheld.

14.2 Clause 14.1 does not apply in relation to any sale, transfer, mortgage or charge of the Land if this Deed is registered on the title to the Land at the time of the sale.

14.3 Upon the commencement of this Deed, the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74E(1) of the *Real Property Act 1900* (NSW) and consequently the Council has a sufficient interest in the Land to lodge and maintain with the Land and Property Management Authority a caveat notifying that interest.

14.4 The Developer consents to the Council lodging a caveat on the Land where this Deed is not registered on the title to the Land due to a breach by the Developer of its obligations 11.2.1 Agreement to comply with this Agreement as if the transferee was the Developer with respect to that part of the Development Land transferred, including in relation to obligations which arose before the Transfer; and

15 Release

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

16 Termination

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

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

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17 Review Procedures

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

18 Notices

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

- a) ~~delivered~~ or posted to that Party at its address set out below
- b) ~~faxed~~ to that Party at its fax number set out below.

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

The Developer:

John Ian Henry

Address: 373 Bells Line of Road, ~~Kurmond~~ 2757

Email: ijhenry42@yahoo.com.au

Telephone: 0405 182314

Council

Address: Hawkesbury City Council

Attention: General Manager
366 George Street,
WINDSOR NSW 2571

| Email: council@hawkesbury.nsw.gov.au

Telephone: (02) 4560 4444

18.3 If a Party gives the other Party three business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

18.4 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- a) If it is delivered, when it is left at the relevant address
- b) If it is sent by post, two business days after it is posted
- c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

18.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

19 Proper Law and Jurisdiction

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

20 Severance

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

21 Waiver

- 21.1 No failure on the part of a party to exercise and no delay in exercising and no cause of dealing with respect to, any condition and the rights, powers or remedies of that party under this Agreement will impair any of those rights, powers or remedies, nor constitute a waiver of any of those rights, powers or remedies.
- 21.2 No single or partial exercise by a party of any condition and rights, powers or remedies under this agreement will preclude any other or further exercise of those or exercise of any other conditions rights or remedies.
- 21.3 Any condition and the rights, powers or remedies under or relating to this agreement are cumulative and will not exclude any other rights, powers or remedies under or relating to this agreement at Law.
- 21.4 No waiver of any of the conditions of this agreement will be effective unless in writing signed by the party against whom such waiver is sought to be enforced.
- 21.5 Any waiver of the conditions of this agreement will be effective only in the specific instance and for the specific purpose given and the waiver will not be deemed a waiver of such obligations or of any subsequent breach of the same or some other obligation.

22 Approvals and Consent

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

23 Entire Agreement

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

24 No Fetter

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

25 Representatives and Warranties

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

26 Costs

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

Executed as an agreement on

2017

Execution by Council

THE COMMON SEAL of HAWKESBURY CITY COUNCIL was hereunto affixed on the ____ th day of _____ 2017 pursuant to a resolution passed on the ____ th day of _____ 2017 in the presence of:)))))
---	-----------------------

General Manager of Council

Clr Mary Lyons-Buckett - Mayor

Execution by JOHN IAN HENRY

Signed by:	
Signature of Developer Given Name Initial and Last Name	Signature of Developer Given Initial and Last Name
Print name	Print name

□

oooO END OF REPORT Oooo

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CITY PLANNING

Item: 169 **CP - Submission to Draft Regulatory Framework for Short Term Rental Accommodation - (95498,)**

Directorate: City Planning

PURPOSE OF THE REPORT:

The purpose of this Report is to provide:

- a summary of the proposed legislation for short-term rental accommodation that is currently on exhibition;
- a discussion of the implications, if any, of each new policy; and
- a recommendation, if appropriate, for the submission of comments to the Department of Planning, Industry and Environment.

EXECUTIVE SUMMARY:

Following a Parliamentary Inquiry into the adequacy of the regulation of short-term holiday letting in NSW, a new policy framework for short-term rental accommodation has been developed.

Short term rental accommodation is traditionally the use of existing dwellings for holiday letting, and the industry has grown as a result of the popularity of online advertising platforms and booking services such as Air B&B and Stayz.

Short term rental accommodation is also commonly used for corporate and business trips, annual community events, family reunions, temporary accommodation while looking for long term rental, and emergency accommodation.

The Department of Planning, Industry and Environment and the Department of Customer Services are seeking feedback on the instruments which will introduce the state-wide regulatory framework, including:

- a State Environmental Planning Policy for short-term rental accommodation,
- an amendment to the Environmental Planning and Assessment Regulation, 2000,
- an amendment to the Fair Trading Regulation 2012,
- a mandatory Code of Conduct for short-term rental accommodation,
- a Short-term Rental Accommodation Fire Safety Standard, and
- a short-term rental accommodation register.

Exhibition of the framework by the NSW Government commenced on 14 August 2019, and closes on 11 September 2019, giving a short timeframe in which to consider the implications of the new framework, and report the matter to Council.

This report discusses the implications of the proposed framework, and makes a recommendation that Council make a submission to the Department of Planning, Industry and Environment in relation to the matters discussed in the report.

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RECOMMENDATION SUMMARY:

It is recommended that Council endorse the forwarding of a submission, addressing the matters discussed in this report, to the Department of Planning, Industry and Environment for consideration.

REPORT:

Context and Background

The Short-term rental accommodation industry was estimated to be worth \$31.3 billion nationally in 2016, with New South Wales sharing approximately 50% of this figure. Short-term rental accommodation creates jobs, benefits the economy and provides income for property owners.

In June 2018, the NSW Government announced a policy for short-term rental accommodation in NSW including:

- a state-wide planning instrument permitting the use of dwellings for short-term rental accommodation under certain conditions, including limits on the days the activity can take place.
- A mandatory Code of Conduct that will apply to online booking platforms, letting agents, hosts and guests.
- Clarification that strata schemes can adopt a by-law that prohibits short-term rental accommodation where a lot is not a host's principal place of residence. Any such by-law will need to be adopted by special resolution, with 75 per cent of votes supporting the proposal at a general meeting.

The NSW Government policy for Short-term rental accommodation seeks to enable local economies to continue to benefit from Short-term rental accommodation while protecting communities from anti-social behaviour such as increased noise for neighbours.

The following proposed regulatory framework is proposed:

- a State Environmental Planning Policy for short-term rental accommodation,
- an amendment to the Environmental Planning and Assessment Regulation, 2000,
- an amendment to the Fair Trading Regulation 2012,
- a mandatory Code of Conduct for short-term rental accommodation, and
- a Short-term Rental Accommodation Fire Safety Standard.

The proposed amendments to the retail land use definitions of the Standard Instrument LEP can be viewed at <https://www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms>

The proposed regulatory framework is on exhibition, and open for comment, until 11 September 2019.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy given they are matters about which the NSW State Government is undertaking community consultation.

Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The proposal is consistent with the following Focus Area, Direction and Strategies within the CSP.

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Our Leadership

- 1.5 Regulation and Compliance - Encourage a shared responsibility for effective local compliance.
- 1.5.1 Undertake Council initiatives within a clear and fair framework of strategic planning, policies, procedures and service standards as required under all regulatory frameworks.
- 1.5.2 Best practice, sustainability principles, accountability and good governance are incorporated in all activities undertaken by Council.

Discussion

Existing Situation

The *Hawkesbury Local Environmental Plan 2012* contains a definition for 'tourist and visitor accommodation' being:

Tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) *backpackers' accommodation,*
- (b) *bed and breakfast accommodation,*
- (c) *farm stay accommodation,*
- (d) *hotel or motel accommodation,*
- (e) *serviced apartments,*

but does not include:

- (f) *camping grounds, or*
- (g) *caravan parks, or*
- (h) *eco-tourist facilities.*

Currently any dwelling that is proposed to be rented out for holiday letting requires development consent as 'tourist and visitor accommodation' within the Hawkesbury Local Government Area where it is permissible in the zone.

The proposed regulatory framework for short-term rental accommodation will provide a definition for short-term rental accommodation and provide the circumstances under which such an activity can be carried out as either exempt or complying development.

Where a proposed short-term rental accommodation activity does not meet the requirements of exempt or complying development, then development consent would need to be obtained as 'tourist and visitor accommodation' under the *Hawkesbury Local Environmental Plan 2012*.

General Comments

Policy

It is understood that the proposed regulatory framework seeks to cater for both holiday accommodation, as well as shorter period leasing of a dwelling as a temporary residence (ie. for seasonal worker, itinerant worker).

It is noted that the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018* defines 'short-term rental accommodation arrangement' to mean "a commercial arrangement for giving a person the right **to occupy residential premises for a period of not more than 3 months at any one time**, and includes any arrangement prescribed by the regulations to be a short-term rental accommodation arrangement, but does not include any arrangement prescribed by the regulations not to be a short-term rental accommodation arrangement."

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It is considered that the *State Environmental Planning Policy (Short-term Rental Accommodation) 2019* should make reference to a maximum period for occupancy of a short-term rental accommodation premises, and that the maximum period should be 3 months to be consistent with the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018*.

Clause 13(2) of the draft Policy also provides that the use of non-hosted short-term rental accommodation as complying development for 21 or more consecutive days by the same person/s does not count towards the 180 day maximum. The inclusion of a maximum period of stay would minimise any misunderstandings and abuse of this Clause.

Bush Fire Prone Land

By way of comment, the structure and wording of clause 13 of the draft State Environmental Planning Policy relating to Complying development – non-hosted short-term rental accommodation lends an interpretation that complying development can only be carried out if the dwelling is situated on bush fire prone land (Clause 13(d)). This is obviously not the intent of the Clause, as if the land is not bush fire prone but is a flood controlled lot the activity would not be able to be undertaken as exempt or complying development. Therefore it is suggested that the Clause should be amended to read:

13 Complying development – non-hosted short-term rental accommodation

- (1) Development for the purpose of non-hosted short-term rental accommodation is complying development for the purposes of this Policy if –
 - (a)
 - (b)
 - (c)
 - (d) if the dwelling is situated on bush fire prone land, and
 - (i) no part of the lot on which the dwelling is situated is bush fire attack level-40 (BAL-40) or in the flame zone (BAL-FZ), and
 - (ii) the dwelling complies with the requirements of Planning for Bush Fire Protection (ISBN 0 9751033 2 6) published by the NSW Rural Fire Service in December 2006, and
 - (iii) in the case of the dwelling being situated in a lot in Zone RU5, there is –
 - a. a reticulated water supply connection to the lot and a fire hydrant within 60m of any part of the dwelling, or
 - b. a 10,000 L capacity water tank on the lot, and
 - (iv) in the case of the dwelling being situated in a lot in any zone other than Zone RU5, there is –
 - a. a reticulated water supply connection to the lot, and
 - b. a fire hydrant within 60m of any part of the dwelling, and
 - (e) in the case of the dwelling being situated on a flood control lot, the development meets the requirements of clause 14, and
 - (f) the development meets the general requirements for complying development specified in clause 10.

State Environmental Planning Policy (Short-term Rental Accommodation) 2019

This Policy provides definitions for short-term rental accommodation, and hosted and non-hosted short-term rental accommodation. It provides the circumstances in which short-term rental accommodation can be carried out as either exempt development or complying development.

The aims of the Policy are:

- (a) *to support short-term rental accommodation as a home sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

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- (b) *to provide for the safety of users of short-term rental accommodation who may be less familiar with the dwelling,*
- (c) *to clarify the types of housing that may be used for the purposes of short-term rental accommodation.*

Under this draft Policy, Short-term rental accommodation is defined to mean an existing dwelling:

- (a) *that is lawfully used by the owner, tenant or permanent resident of the dwelling (the **host**) to provide accommodation on a commercial basis for a temporary or short-term period, with or without the host residing on the premises during that period, and*
- (b) *that, if it were used predominantly as a place of residence, would be one of the following types of residential accommodation –*
 - (i) *an attached dwelling,*
 - (ii) *a dual occupancy,*
 - (iii) *a dwelling house,*
 - (iv) *multi dwelling housing,*
 - (v) *a residential flat building,*
 - (vi) *a rural workers' dwelling,*
 - (vii) *a secondary dwelling,*
 - (viii) *a semi-detached dwelling,*
 - (ix) *shop top housing.*

Short-Term Rental Accommodation as Exempt Development

The draft Policy proposes to permit:

1. Short-term rental accommodation as exempt development if the host is staying on the premises with guests, and the number of persons residing at the dwelling does not exceed:
 - (a) 2 persons for each bedroom in the dwelling, or
 - (b) 12 persons in total for the dwelling,whichever is the lesser.

As Hosted Short-term rental accommodation exempt development there is no limit on how many days per year the dwelling can be used for short-term rental accommodation and can be carried out on a flood control lot and on bush fire prone land.

2. Non-hosted Short-term rental accommodation as exempt development if the number of persons residing at the dwelling does not exceed:

- (a) 2 persons for each bedroom in the dwelling, or
- (b) 12 persons in total for the dwelling,

whichever is the lesser, and the dwelling is **not** situated on a flood control lot or on bush fire prone land. Non-hosted Short-term Rental Accommodation as exempt development only permits the use of the dwelling for accommodation for a maximum of 180 days in a calendar year.

Officer Comment:

Hosted short-term rental accommodation requires the host to stay on the premises with guests. It is considered that the term 'premises' is ambiguous and needs to be clarified. The dictionary definition for 'premises' includes 'house or building with the grounds' and 'a tract of land', and therefore it is suggested

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that the definitions of hosted and non-hosted short-term rental accommodation be amended to replace 'premises' with the term 'property' or similar, to make it clearer that a host can reside in a dwelling house whilst providing accommodation in a secondary dwelling on the same land, or one side of a duplex, or a rural workers dwelling.

The draft Policy restricts the number of days a dwelling can be used for short-term rental accommodation to 180 days where the host is not present. This will be difficult to monitor and due to the seasonality of such accommodation it is unlikely that premises will be used all year round for short-term rental accommodation. Therefore, no concern is raised for non-hosted short-term rental accommodation as exempt development being carried out all year round, and particularly given that this activity is not permitted on flood control lots or bush fire prone land.

It is recommended that the Department of Planning, Industry and Environment be requested to consider:

- a) the rewording of the definitions of hosted and non-hosted short-term rental accommodation to avoid ambiguity and misunderstandings about whether a host is required to stay in the dwelling being used for short-term rental accommodation or whether they can stay in another lawful dwelling that is situated on the same land as that being used for short-term rental accommodation; and
- b) having no restriction on the number of days in which non-hosted short-term rental accommodation that is exempt development can be used.

Short-Term Rental Accommodation as Complying Development

The draft Policy proposes to permit non-hosted short-term rental accommodation as complying development if:

- (a) the number of persons residing at the dwelling does not exceed:
 - (c) 2 persons for each bedroom in the dwelling, or
 - (d) 12 persons in total for the dwelling,whichever is the lesser,
- (b) The dwelling is not used for accommodation for more than 180 days in a calendar year.

The draft Policy also provides that the use of non-hosted short-term rental accommodation as complying development for 21 or more consecutive days by same person/s does not count towards the 180 day maximum.

The draft Policy also provides controls relating to bushfire prone land and flood control lots.

Officer Comment:

Bush Fire

The Draft Policy proposes that non-hosted short-term rental accommodation as complying development must have a reticulated water supply connection to the land and a fire hydrant within 60m of any part of the dwelling, or a 10,000 litre capacity water tank if within the RU5 Rural Village Zone (Clause 13(1)(g)). In any other zone there must be a reticulated water supply connection to the land and a fire hydrant within 60m of any part of the dwelling (Clause 13(1)(h)).

The RU5 Rural Village zone in the Hawkesbury Local Government Area has been applied to existing small lot rural land, often located in remote areas, and with no services such as reticulated sewer and water. The RU5 Rural Village zone has been used in a rural context, and land in this zone has no residential character or amenity.

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The Hawkesbury Local Government Area is a peri-urban area, with the majority of private lands being within a rural or environmental zoning. Proposed Clause 13(1)(h) would preclude any dwellings being used for non-hosted short-term rental accommodation in most of the rural and environmental areas/zones in the Hawkesbury, given that:

- these zones are within areas that are either bush fire prone or flood liable;
- these zones are generally within areas that are not serviced by reticulated water.

It is considered that there is no logic in permitting non-hosted short-term rental accommodation in the RU5 Rural Village zone without reticulated water, and not within other rural and environmental zones that do not have reticulated water.

It is recognised that that some existing dwellings situated on bush fire prone land may be of an age that predates the requirements of *Planning for Bush Fire Protection 2006*. Consideration needs to be given to whether or not these dwellings need to be upgraded to meet *Planning for Bush Fire Protection 2006* when changing from a dwelling to being used for short-term rental accommodation.

It is understood that *Planning for Bush Fire Protection 2006* contains requirements for “holiday lets”, and is being reviewed and updated in regard to short-term rental accommodation. It is therefore considered that draft *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*, in relation to short-term rental accommodation as complying development, should include a requirement for compliance with the updated *Planning for Bush Fire Protection 2018* and this document should come into effect at the same time as the framework commences .

Flooding

Clause 13(i) of draft *State Environmental Planning Policy (Short-term Rental Accommodation) 2019* provides for the carrying out of short-term rental accommodation as complying development on flood control lots. It states:

- (i) *in the case of the dwelling being situated on a flood control lot, the development meets the requirements of clause 14, and*

Clause 14 Requirements for complying development on flood control lots

- (1) *For the purposes of clause 13(1)(i), the development must not be carried out on any part of a flood control lot other than a part that the council or a professional engineer who specializes in hydraulic engineering has certified, for the purposes of the issue of the relevant complying development certificate, as not being any of the following-*
- (a) a flood storage area,*
 - (b) a floodway area,*
 - (c) a flow path,*
 - (d) a high hazard area,*
 - (e) a high risk area.*

The Policy defines ‘flood control lot’ to mean “*a lot to which flood related development controls apply in respect of development for the purposes of industrial buildings, commercial premises, dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (other than development for the purposes of group homes or seniors housing).*”

Clause 14 would prevent any dwelling to be used for short-term rental accommodation to be sited on land at or below the 1 in 100 year flood level (flood planning level for Hawkesbury, where flood related development controls are applied) as, if below the 1 in 100 year flood level, the land would be within a flood storage area.

In most instances, guests will not be aware of whether or not a property may be subject to flooding and to what extent during a particular flood event. Whilst a short-term rental accommodation building may be

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located above the 1 in 100 year flood level, the land may become isolated in a 100 year flood event or smaller. As a result, consideration should be given to a requirement for the provision of:

- a flood warning sign to be installed within the dwellings in a prominent place advising that the area is subject to flooding;
- information as to the extent of flooding and evacuation information, such as evacuation routes and at what point do they need to leave so as not to become isolated.

Consideration should also be given to how guests will be informed of a flood or bush fire emergency, and the responsibility, if any, of the host in informing their guests of an emergency situation, or in the case of bushfire prone areas the maintenance of the property (landscaping, asset protection zones, building) in accordance with any conditions of development consent relating for bush fire protection.

It is therefore recommended that the Department of Planning, Industry and Environment and Department of Customer Services be requested to consider:

- the wording of Clause 13 of draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019 to include the use of dwellings in rural and environmental zones for short-term rental accommodation that are situated on bush fire prone land and do not have a reticulated water supply;
- the requirements of Planning for Bush Fire Protection 2018 in relation to the proposed requirements for short-term rental accommodation;
- the consequences of using existing older dwellings that have not been constructed in accordance with Planning for Bush Fire Protection and are to be used for short-term rental accommodation and how these are to be managed;
- emergency management measures for flooding and bushfire prone areas under the draft State Environmental Planning Policy and/or the Code of Conduct, and include a requirement for warning signs and evacuation plans for flooding and bush fire events.
- a hosts responsibility in advising guests of an emergency situation, and of maintaining a property for bush fire protection in accordance with any development consent for the dwelling.

The definitions within draft *State Environmental Planning Policy (Short-term Rental Accommodation) 2019* for 'flow path', 'high hazard area' and 'high risk area' make reference these items being "*identified in the council's flood study or floodplain risk management study carried out in accordance with the Floodplain Development Manual.*"

Recently, the Hawkesbury Nepean Valley Regional Flood Study has been released by Infrastructure NSW. As the most up-to-date flood information for the Hawkesbury Local Government Area, particularly in respect to flood levels, extent and flood hazards, Hawkesbury Council may adopt the Regional Study for floodplain management purposes. In these circumstances the definitions provided in the draft Policy would restrict Council to considerations in an outdated study or plan. As a result it is considered that these definitions be amended to read:

Flow path means a flow path identified in **a flood study adopted by a council** or **a council's** floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

High hazard area means a high hazard area identified in **a flood study adopted by a council** or **a council's** floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

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High risk area means a high risk area identified in a **flood study adopted by a council** or a **council's** floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

It is recommended that the Department of Planning, Industry and Environment be requested to amend these definitions as discussed above.

Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Regulation 2019

The draft *Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Regulation 2019* proposes to introduce provisions that prohibit a dwelling from being used for the purposes of short-term rental accommodation unless the dwelling complies with certain fire safety and evacuation controls, being the requirements of the *Short-term Rental Accommodation Fire Safety Standard*.

Officer Comment:

No objection to the proposed Regulation and Fire Safety Standard is raised, as it provides a higher fire safety standard for occupants of dwellings used for short-term rental accommodation.

Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019

The NSW Parliament passed the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018* on 14 August 2012, which provided for the introduction of a new mandatory Code of Conduct for short-term rental accommodation industry participants.

The draft *Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019* will declare the Code of Conduct for the purposes of s54B(1) of the Act and support the Code's implementation.

Clause 22C of the draft Regulation also identifies participants that are excluded from the Code of conduct. Clause 22C states:

22C Short-term rental accommodation industry participants excluded from code of conduct

The following classes of short-term rental accommodation industry participants are excluded from the application of the code of conduct declared under this Part:

- (a) *the proprietor or manager of tourist and visitor accommodation within the meaning of the standard instrument prescribed by the Standard Instrument (Local Environmental Plans) Orders 2006,*
- (b) *the proprietor or manager of a registrable boarding house within the meaning of the Boarding Houses Act 2012,*
- (c) *the park owner or park manager of a holiday park within the meaning of the Holiday Parks (Long-term Casual Occupation) Act 2002.*

Officer Comment:

Under *Hawkesbury Local Environmental Plan 2012*, 'tourist and visitor accommodation' means "a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (i) *backpackers' accommodation,*
- (j) *bed and breakfast accommodation,*

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- (k) farm stay accommodation,*
- (l) hotel or motel accommodation,*
- (m) serviced apartments,*

but does not include:

- (n) camping grounds, or*
- (o) caravan parks, or*
- (p) eco-tourist facilities.”*

It is considered that there is an over-lap between short-term rental accommodation and some forms of ‘tourist and visitor accommodation’. For example ‘bed and breakfast accommodation’ and ‘serviced apartments’ easily fit into the definition of short-term rental accommodation.

In addition, in the Hawkesbury Local Government Area, ‘bed and breakfast accommodation’ is permitted without consent in the Rural, Residential and Environmental zones.

This provides an opportunity for potential short-term rental accommodation participants to opt for ‘bed and breakfast accommodation’ to avoid having to comply with the Code of Conduct.

It is Hawkesbury City Council’s experience that ‘bed and breakfast accommodation’ usually result in complaints from neighbours due to noise disturbance. This is due to a number of factors, including:

- owners of the premises not being present; and
- guest exceeding the maximum number permitted.

This is problematic in terms of compliance action, and if this type of development was included under the Code of Conduct it is envisioned that these situation would be better managed and resolved.

It is therefore recommended that the Department of Planning, Industry and Environment and Department of Customer Services be requested to ensure that there is no confusion between the definition of short-term rental accommodation and the definitions of other forms of tourist and visitor accommodation.

In addition, it is also requested that draft Clause 22C of the draft *Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019* be amended so that ‘bed and breakfast accommodation’ operators are subject to the Code of Conduct.

Code of Conduct

The principle objectives of the proposed Code are to:

- (a) set out the rights and obligations of Short-term Rental accommodation industry participants*
- (b) provide for resolution of disputes and complaints concerning the conduct of Short-term Residential Accommodation industry participants*
- (c) outline the compliance and enforcement approach that applies for contraventions of the Code by Short-term Rental Accommodation industry participants*
- (d) facilitate the oversight of the Short-term Rental Accommodation industry.*

The Code of Conduct provides that any complaints, compliance or enforcement will be the responsibility of the Commissioner for Fair Trading in the NSW Department of Customer Service. However, if a breach of planning law, council is the regulatory authority, Councils will still deal with contraventions of the *Environmental Planning and Assessment Act 1979*, *Local Government Act 1993* and *Protection of the Environment Operations Act 1997*.

The Code of Conduct requires the keeping of an exclusion register, which applies to both host and guests and are recorded on the exclusion register for five years. The register will be publicly available.

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Officer Comment:

No objection is raised to content or function of the proposed Code of Conduct.

Proposed Register

Comment is also being sought by the Department of Planning, Industry and Environment and Department of Customer Services in respect to the creation of a short-term rental accommodation property register. The register could:

- provide planning authorities with data about short-term rental accommodation properties that can be used to enforce planning laws
- draw on the Code of Conduct's exclusion register to enforce compliance
- be used as an avenue to raise hosts' awareness of their obligations under the planning framework and relevant strata by-laws.

Officer Comment:

In general, a register of all properties being used for short-term rental accommodation is supported, as this would assist in the timely resolution of complaints or compliance action by councils.

However, it is further considered that it should be made mandatory that all properties are on the register, and that this should be done through *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018* and draft *Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019*.

Any register should be available to Council to assist in compliance matters.

It is therefore recommended that the Department of Planning, Industry and Environmental be advised of Hawkesbury city Council's support of a register and request that such a register should be mandatory and readily available to councils.

Financial Implications

There are no financial implications applicable to this report.

Fit For The Future Strategy Considerations

The proposal is aligned with Council's long term plan to improve and maintain organisational sustainability and achieve Fit for the Future financial benchmarks. The proposal has no resourcing implications outside of Council's adopted 2019/2020 Operational Plan, which will adversely impact on Council's financial sustainability.

RECOMMENDATION:

That Council endorse the forwarding of a submission, addressing the matters discussed in this report, to the Department of Planning, Industry and Environment for consideration in respect to the proposed regulatory framework for short-term rental accommodation.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

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SUPPORT SERVICES

Item: 170 **SS - Administration of the September 2020 Hawkesbury City Council Local Government Elections - (79351)**

Previous Item: 214, Ordinary (29 October 2013)
 025, Ordinary (26 February 2013)

Division: Support Services

PURPOSE OF THE REPORT:

The purpose of this report is to seek Council's endorsement to engage the NSW Electoral Commission to administer the September 2020 Hawkesbury City Council's elections, polls and constitutional referendums.

EXECUTIVE SUMMARY:

The Local Government Act, 1993 (the Act), provides that council elections including constitutional referendums and polls are to be administered either:

- by an electoral services provider engaged by the council concerned, or
- by the NSW Electoral Commission through an arrangement with the council.

Section 296AA (5) of the Act, stipulates that a council is required to resolve in regard to an arrangement regarding the Local Government Elections in 2020 by 1 October 2019.

Council Officers have reviewed Council's options in regard to the administration of the September 2020 elections. In light of:

- the changes to the Act which removed the option for the General Manager to administer elections;
- the recent change in the election process;

it is proposed that Council engage the NSW Electoral Commission to administer to 2020 election.

RECOMMENDATION SUMMARY:

The report recommends that Council enter into an arrangement with the NSW Electoral Commission to administer the September 2020 Hawkesbury City Council's elections.

REPORT:

Context and Background

Section 296 of the Local Government Act, 1993 (the Act), provides that Local Government Elections are to be administered either:

- by an electoral services provider engaged by the council concerned, or
- by the NSW Electoral Commission through an arrangement with the council.

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Section 296A of the Act stipulates how elections may be administered by an electoral service provider (refer to Attachment 1 – Local Government Act 1993 - Section 296A).

Section 296B stipulates how elections may be administered by the NSW Electoral Commission (refer to Attachment 2 – Local Government Act 1993 - Section 296B).

Section 296AA (5) of the Act stipulates that a council is required to resolve in regard to an arrangement regarding the local government elections in 2020 by 1 October 2019.

Discussion

The last Hawkesbury City Council Local Government Elections were held in September 2016 and were administered by the NSW Electoral Commission. All previous elections since 1995 were also undertaken by the NSW Electoral Commission. The next Local Government Elections are due to be conducted in September 2020. The Act stipulates that councils must by resolution no later than 1 October 2019 determine the manner by which the elections for the local government area are to be administered. Section 296 of the Act provides that Local Government Elections are to be administered either:

- by an electoral services provider engaged by the council concerned, or
- by the NSW Electoral Commission through an arrangement with the council.

In previous elections, councils also had the option to administer elections themselves. This option is no longer available in the Act. New preference counting rules that will come into effect at the next Local Government Elections mean that it will no longer be possible for votes to be manually counted, making it impossible for councils to administer their own elections without the assistance of an expert electoral services provider.

Council Officers have reviewed the options available. Below is an evaluation of the respective options.

Option 1 – Council engages an electoral service provider to administer its elections

Currently, there is only one known private service provider that is offering local government election services – the Australian Election Company.

The option of engaging a private service provider such as the Australian Election Company has not previously been explored by Council. A survey of a number of councils indicated that the vast majority of councils have used the NSW Electoral Commission to administer their elections.

As Council pointed out in its recent submission to IPART on the review of local government election costs, the use of private service providers to deliver election services could have a negative impact on public confidence. It could be perceived that the engagement of the provider and the election process itself is not as independent and transparent as it would be if the NSW Electoral Commission administered the process.

Option 2 – Council enters into an arrangement with the NSW Electoral Commission to administer its elections

Hawkesbury City Council Local Government Elections have been undertaken by the NSW Electoral Commissioner since 1995, including the latest election held in September 2016. It is considered that these elections have been successfully undertaken by the NSW Electoral Commission.

A successful and independent electoral process is important in any election that may be undertaken. A significant element relating to the successful running of an election is risk management, and it is suggested that the best approach is to appoint those with the most expertise and experience in undertaking the process, and in this case it is suggested that this is the NSW Electoral Commission.

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Policy considerations

The matters discussed in this report are subject to legislative provisions. Sections 296AA to 296B of the Local Government Act 1993 detail the requirements in regard to the planning for and administering Local Government Elections.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy.

Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The proposal is consistent with the following Focus Areas, Directions and Strategies within the CSP.

Our Leadership

- 1.1 Local Leadership and effective governance - Provide representative, responsive and accountable governance.
 - 1.1.1 Council's elected leaders will actively connect and collaborate with the community.
- 1.5 Regulation and Compliance - Encourage a shared responsibility for effective local compliance.
 - 1.5.2 Best practice, sustainability principles, accountability and good governance are incorporated in all activities undertaken by Council.

Financial Implications

The matters raised in this report have direct financial implications. Election costs are provided for in Council's Long-Term Financial Plan by way of a restricted Reserve. The current provision is based on the cost of the 2016 election, allowing for cost escalation based on CPI movements, as has occurred in previous years.

As reported to Council at its meeting on 30 July 2019, IPART has published a draft Report on Local Government Election costs, which recommended staged increases to the charges of the NSW Electoral Commission to provide election services to councils.

Council has made a submission to IPART, challenging the approach proposed by IPART in the draft report. Council has also submitted a motion to the Local Government NSW Annual Conference in relation to Council's opposition to the proposed increase in Local Government Election Charges that were recommended by IPART. More specifically, Council's motion requested that the NSW Electoral Commission pricing regime for the 2020 elections be retained and the major changes to the NSW Electoral Commission's services delivery model be brought forward to reduce costs for future Local Government Elections.

At the time of writing this report, IPART had not publically released the final report to Minister. Accordingly, the final recommendations in regard to the NSW Electoral Commission pricing that would apply to the September 2020 election are not known.

The total cost to hold the September 2016 Local Government election was \$334,000, with an additional \$24,000 being incurred to undertake a referendum.

Council's current Long Term Financial Plan currently has allocated a total of \$441,000 for the September 2020 election. The draft IPART report states that, should the current model for the conduct of elections be retained by the NSW Government, the projected costs to administer the 2020 Hawkesbury City Council Local Government Election by the NSW Electoral Commission would be \$440,000. This is compatible with Council's financial estimate and provision.

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However, as indicated in the draft IPART report, should the Stage 1 recommendations be implemented, the costs for the NSW Electoral Commission to conduct the 2020 Hawkesbury City Council Local Government Election would increase by \$224,000 to \$558,000. Council will therefore need to allocate additional funds of approximately \$120,000.

If Council were to adopt the option of engaging an electoral service provider to administer its elections, a quotation would need to be sought. However in the absence of the NSW Electoral Commission pricing being available, Council would not be able to assess whether the pricing offered by the service provider was competitive.

Fit For The Future Strategy Considerations

As this stage it is unknown whether the proposal is aligned with Council's long term plan to improve and maintain organisational sustainability and achieve Fit for the Future financial benchmarks. In light of the final report submitted to the Minister currently being unavailable, it is unknown whether the proposal to engage the NSW Electoral Commission to undertake the 2020 elections has resourcing implications, outside of Council's adopted Long Term Financial Plan.

Conclusion

Under the Local Government Act, 1993, council elections, polls, and constitutional referendums are required to be administered by either the NSW Electoral Commissioner, or a private service provider. Section 296AA (5) of the Act stipulates that a council is required to resolve in regard to an arrangement regarding the Local Government Elections in 2020 by 1 October 2019.

It is recommended that Council enter into an arrangement with the NSW Electoral Commission to administer the September 2020 Hawkesbury City Council's elections, polls and constitutional referendums.

RECOMMENDATION:

That the Hawkesbury City Council ("the Council") resolves:

1. Pursuant to s. 296(2), (3) and (5A) of the Local Government Act 1993 (NSW) ("the Act") that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.
2. Pursuant to s. 296(2), (3) and (5A) of the Act, as applied and modified by s. 18, that a council poll arrangement be entered into by contract for the Electoral Commissioner to administer all council polls of the Council.
3. Pursuant to s. 296(2), (3) and (5A) of the Act, as applied and modified by s. 18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.

ATTACHMENTS:

AT - 1 Local Government Act, 1993 - Section 296A.

AT - 2 Local Government Act, 1993 - Section 296B.

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AT - 1 Local Government Act, 1993 - Section 296A

296A Elections administered by an electoral services provider

- (1) *This section applies to an election administered by an electoral services provider engaged by a council.*
- (2) *The electoral services provider is to appoint a returning officer and a substitute returning officer for the election. In the absence of the returning officer, the substitute returning officer is to exercise the functions of the returning officer.*
- (3) *The returning officer is to appoint one or more electoral officials.*
- (4) *An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council.*
- (5) *A general manager cannot be appointed as a returning officer, substitute returning officer or electoral official for any area.*
- (6) *For the purpose of conducting an election, the returning officer and substitute returning officer for an area are entitled to access to any relevant records of the council for the area.*
- (7) *For the purpose of administering an election, the electoral services provider is to:*
 - (a) *appoint the polling places, and*
 - (b) *determine the fees payable to the returning officer, substitute returning officer and electoral officials.*
- (8) *For the purpose of conducting an election, the returning officer is to determine any matter not provided for by this Act or the regulations.*
- (9) *Expenses incurred by the returning officer, substitute returning officer and electoral officials in connection with an election are to be met by the council.*
- (10) *The returning officer and the substitute returning officer must not vote at any election that they are conducting.*

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AT - 2 Local Government Act, 1993 - Section 296B

296B Elections administered by the Electoral Commissioner

- (1) *This section applies to an election administered by the Electoral Commissioner.*
- (2) *The Electoral Commissioner is to appoint a returning officer and a substitute returning officer for each area. The returning officer is to conduct elections on behalf of, and under the direction of, the Electoral Commissioner. In the absence of the returning officer, the substitute returning officer is to exercise the functions of the returning officer.*
- (3) *The returning officer is to appoint one or more electoral officials.*
- (4) *An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council.*
- (5) *For the purpose of conducting an election, the returning officer and substitute returning officer for an area are entitled to access to any relevant records of the council for the area.*
- (6) *For the purpose of conducting an election, the Electoral Commissioner is to:*
 - (a) *appoint the polling places, and*
 - (b) *determine the fees payable to the returning officer, substitute returning officer and electoral officials, and*
 - (c) *determine any matter not provided for by this Act or the regulations.*
- (7) *The Electoral Commissioner, the returning officer and the substitute returning officer must not vote at any election that they are conducting.*

oooO END OF REPORT Ooo

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Item: 171 **SS - Amendment to Code of Meeting Practice - (95496, 96333, 79351)**

Previous Item: 92, Ordinary (28 May 2019)
 41, Ordinary (12 March 2019)
 55, Ordinary (27 February 2019)
 194, Ordinary (31 October 2019)

Directorate: Support Services

PURPOSE OF THE REPORT:

The purpose of this report is to propose amendments to Council's current Code of Meeting Practice – as adopted on 28 May 2019. The proposed amendments:

- Reflect the proceedings of a recent Councillor Workshop
- Will facilitate Council making adjustments to the placement and frequency of Council meetings over the course of the year
- Will allow for the gradual migration of Council's current committee structure to a composition that aligns more directly with the Community Strategic Plan objectives.

Council's current Code is based on the recently revised Model Code of Meeting Practice released by the Office of Local Government and prescribed on 14 December 2018.

The proposed amendments to the Code of Meeting Practice must be placed on public exhibition for a minimum of 28 days, with a submission period of 42 days.

EXECUTIVE SUMMARY:

In late 2018 the Office of Local Government released its new Model Code of Meeting practice. The Model Code of Meeting Practice was prescribed on 14 December 2018.

At its meeting on 12 March 2019 Council considered a report that proposed a number of variations to the Model Code of Meeting Practice. Council subsequently endorsed the draft Code and resolved to place it on public exhibition, with a submission period of 42 days.

At its meeting on 28 May 2019 Council considered a report in relation to the exhibition of its Draft Code of Meeting Practice and resolved to adopt it subject to amendments in relation to:

- Members of the public addressing Council
- Councillors requesting leave of absence
- Where relevant, the General Manager preparing a report in relation to Mayoral Minutes
- Voting at a meeting
- The removal of non-mandatory Clauses 3.15 and 10.9.

More recently, Councillors held a workshop at which time they considered background information in relation to Council and Committee meetings, including:

- The current concentration of administrative responsibilities upon a limited number of staff
- The benefits of having the relevant skills and resources in place to support the work of Committees
- Ongoing State Government actions that have limited the involvement of Councillors in some decision making processes

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- The reduced number of reports being considered by Council under its current twice monthly meeting schedule
- Options for transitioning Council's committee structure over time, to improve the alignment between the committee structure and Council's Community Strategic Plan objectives
- Options for facilitating greater Councillor involvement in a greater range of committee activities
- Upcoming requirements for each council to adopt a Community Engagement Policy
- Options for amending the Council meeting cycle to better balance workloads between Councillor Briefings, Committee Meetings and Council Meetings
- Options for establishing a more family friendly environment, whereby some meetings are scheduled outside school holiday periods.

An amendment to the current Clause 3.1 of Council's Code of Meeting Practice has been prepared. It will allow Council to make adjustments to the placement and frequency of Council meetings over the course of the year, consistent with the points covered during the recent Councillor workshop. A copy of the current and proposed amended version of the relevant clause of Council's Code of Meeting Practice as located at Attachment 1 to this report.

RECOMMENDATION SUMMARY:

The report recommends that Council approve the amendment to Clause 3.1 of the Code of Meeting Practice to allow Council to make adjustments to the placement and frequency of Council meetings over the course of the year, and place it on public exhibition, with a submission period of 42 days.

REPORT:

Context and Background

In December 2018, a new Model Code of Meeting Practice was prescribed by Government Gazette. All local councils were required to adopt a new Code of Meeting Practice based on the Model within six months of that date.

Council staff reviewed the new Model Code of Meeting Practice in comparison with Council's existing Code. A proposed new Code was drafted and reported to Council in March 2019.

The draft Code was placed on exhibition with a submission period of 42 days. In May 2019 Council considered a report in relation to the exhibition of its Draft Code of Meeting Practice and resolved to adopt it subject to amendments.

Any further amendments to Council's current Code of Meeting Practice will generally require a similar community engagement process.

Detailed History, including previous Council decisions

At its meeting on 12 March 2019, Council considered a report that described the background of the new Model Code of Meeting Practice, the various mandatory and non-mandatory provisions of the new Model Code that would have a significant effect on Council's current meeting practices, and the assessment that was undertaken to determine how to incorporate these new provisions into a new, compliant Code of Meeting Practice for Council.

During the course of the meeting, Council also resolved to amend the draft Code that was proposed, in order to incorporate provisions that would cause all individual votes at Council Meetings (including meetings that are closed to the public) to be recorded in the Minutes. This provision was included as Clause 11.6 in the updated version of the draft Code that was publicly exhibited.

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Council resolved to place the draft new Code of Meeting Practice on public exhibition for a period of 28 days, and seek submissions from interested parties for 42 days.

Public Exhibition

At its meeting on 28 May 2019 Council considered a report in relation to the exhibition of its Draft Code of Meeting Practice and resolved to adopt it subject to the following amendments:

1. The subsequent Clauses to read as follows:

- 4.2 Members of the public may address Council on any items in the Business Paper, with the public only addressing Council in regard to the Confirmation of Minutes concerning the validity of the minutes.
- 5.4 A Councillor's request for leave of absence from council meetings should identify (by date) the meetings from which the Councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 9.10 If the General Manager considers that a Mayoral Minute submitted for consideration at an ordinary meeting of the Council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the General Manager may prepare a report in relation to the Mayoral Minute for inclusion with the business papers for the meeting at which the Mayoral Minute is to be considered by the Council.
- 11.5 Voting at a meeting, including voting in an election at a meeting, is to be by open means with all Councillors who are present in the chamber required to stand in favour of the motion or amendment being voted on. However, the Council may resolve that the voting in any election by Councillors for Mayor or Deputy Mayor is to be by secret ballot.
- The removal of non-mandatory Clauses 3.15 and 10.9

Councillor Workshop

Councillors have since held a workshop at which time they considered background information in relation to Council and Committee meetings, including:

- **The current concentration of administrative responsibilities upon a limited number of staff**

At the moment the administrative and logistical responsibilities associated with the support of the existing committees sit with a limited number of staff, one staff member has responsibility for six of the existing committees.

It is therefore proposed that the responsibilities associated with the support of any new committee structure be spread more evenly across the organisation, in areas with the necessary knowledge and resources to support them.

- **The need to have the skills and resources in place to support the work of committees**

Council's structure has remained basically unchanged for a number of years and as such Council is yet to secure the necessary skills and resources to support initiatives in the more recently identified key areas of heritage, urban design, environment, transport and climate change. Furthermore, where existing resources do exist, they are already

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fully occupied on day to day operational matters and as such lack the capacity to take on additional responsibilities in relation to the support of committees.

Over time the structure of the organisation is being refined to secure resources to support future action in the areas of heritage, urban design, environment, transport and climate change.

- **State Government initiatives to limit the involvement of Councillors in decision making processes**

Over the years successive State Governments have taken action to remove Local Government involvement in a range of issues. Most recently the State Government introduced mandatory Local Planning Panels to eliminate the opportunity for Councillors to participate in the assessment of Development Applications. This has in turn reduced the number of planning related reports being considered by Council.

- **The number of reports being considered by Council under its current twice monthly meeting schedule**

A review of recent statistics has confirmed that the number of reports being considered by Council at each Council meeting has been dropping.

- **Options for transitioning Council's committee structure over time, to improvement the alignment between the committee structure and Council's Community Strategic Plan objectives**

In 2016 and 2017 Council devoted significant time and resources towards the review of the Community Strategic Plan. The Community Strategic Plan was adopted on 28 March 2017 and includes objectives in relation to Leadership, The Community, The Environment, Assets and The Future.

In recognition of this shift in focus, it would be appropriate to commence a gradual transition in association with key stakeholders, towards a committee structure that:

- is more closely aligned to the Community Strategic Plan objectives
- is based on Terms of Reference – flowing from the Community Strategic Plan and set by Council.

- **Options for facilitating greater Councillor involvement in a greater range of committee activities**

Reducing the overall number of committees will reduce overlaps between committee meetings and in the process provide an opportunity for Councillors to participate – both formally and informally, in the proceedings of a larger number of committees.

- **Upcoming requirements for each Council to adopt a Community Engagement Framework – including a Community Participation Plan**

Going forward Hawkesbury City Council decision making will have to include an engagement program that is values-based and goal-driven. A proposed Community Engagement Framework is being developed to ensure we deliver a consistent and best practice approach. The Engagement Framework will align with the newly inserted Section 402A, of the Local Government Act, 1993.

Council must also develop a Community Participation Plan specifically for engagement on land use planning. This is due to the Environmental Planning and Assessment Act, 1979 being amended to require all planning authorities to prepare a Community Participation Plan

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outlining how they will engage with their respective community in carrying out their planning functions.

- **Options for amending the Council meeting cycle to better balance workloads between Councillor Briefings, Committee Meetings and Council Meetings**

Reducing the overall number of meetings will reduce the opportunity for meeting clashes and in doing so facilitate a better balance in the workload of Councillors, thereby allowing for greater participation. In the process it will also provide an opportunity for Councillors to participate in Briefings, Committee Meetings and Council Meetings.

- **Options for establishing a more family friendly environment, whereby some meetings are scheduled outside school holiday periods**

A review of better practices has confirmed that some councils endeavor to schedule meetings outside the school holiday periods. This has benefits – increased opportunities for participation, reduced financial costs and simpler logistical arrangements for a range of participants, including:

- Residents with family responsibilities
- Existing and prospective elected representatives with family responsibilities
- Staff who have family responsibilities.

Code of Meeting Practice

Based on the observations and discussions during the course of the Councillor Workshop, it is proposed to amend the current Code of Meeting Practice by making Council responsible for setting the placement and frequency of Council meetings over the course of the year. This is a practice that is already in place in a number of other councils. As a result it is proposed that the current Clause 3.1, which reads as follows:

- 3.1 *Ordinary meetings of the council will be held on the second Tuesday of every month (except January), and on the last Tuesday of every month (except January and December), at the Council Chambers, George Street, Windsor. Meetings shall not be held on the Tuesday directly following a public holiday, based on this scheduling. Ordinary meetings shall commence at 6:30pm and finishing at 11pm, unless otherwise resolved by Council. The chairperson may adjourn the meeting for a short break where a meeting has been in session for some time.*

be replaced with the following new Clauses 3.1 to 3.5:

- 3.1 *The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.*

Note: Under section 365 of the Act, councils are required to meet at least 10 times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.

- 3.2 *In addition to the meeting cycle adopted, council may resolve to hold additional meetings as considered necessary.*
- 3.3 *Additional meetings of council convened by resolution of council are subject to the three days' notice rule and must also be advertised in accordance with clause 3.4 of this Code of Meeting Practice.*
- 3.4 *Generally, council will recess during school holiday periods.*
- 3.5 *Council meetings will generally commence at 6.30pm, but this commencement time may vary for particular meetings if the council so resolves.*

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Subsequent to Council's decision in relation to this matter, Council staff can then prepare detailed Council Meeting Cycle options for consideration and implementation by Council. Options can range from:

- maintaining a monthly cycle with a single Council meeting each month; to
- a rolling three weekly cycle of Briefings, Committee and Council meetings that generally fall outside the school holiday periods.

Both options are currently in practice in other councils across the metropolitan area.

Council Committee Structure

During the course of the workshop, Councillors also noted some specific points in relation to the current structure and operation of the existing committees, including:

- The level of commitment shown by community members to the work of their respective committees and the need to respect that commitment going forward
- The need to involve existing committee members in any change process
- The current configuration of Council committees, in particular the Statutory and Council initiated groups
- Existing frustration that exists in some instances due to the lack of progress being achieved
- Benefits of better governance, such as:
 - Aligning the committee structure and terms of reference with the Community Strategic Plan – Refer Attachment 2
 - The pursuit of consistent, quality and evidence based decisions
- Variation in meeting cycles and frequency which results in clashes in dates, preparation of agendas and drafting of minutes
- Upcoming requirements for each council to adopt a Community Engagement Policy

Based on the observations and discussions during the course of the Councillor Workshop, it is proposed to commence a process of working with relevant stakeholders to migrate the current Committee Structure over time, to:

- a configuration that is more closely aligned to the Community Strategic Plan objectives
- achieve a better balance between resources and productivity.

Consultation

The issues raised in the report concern matters which constituted a trigger for Community Engagement under Council's Community Engagement Policy.

The proposed amendment to the current Code of Meeting Practice will have to be placed on public exhibition for a period of 28 days, with submissions being accepted for 42 days, as required by Section 361 of the Local Government Act, 1993.

It is also proposed to commence a process of working with relevant stakeholders to migrate the current committee structure over time, to a configuration that is more closely aligned to the Community Strategic Plan objectives.

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Conformance to the Hawkesbury Community Strategic Plan 2017-2036

The proposal is consistent with the following Focus Area, Direction and Strategies within the CSP.

Our Leadership

1.5 Regulation and Compliance - Encourage a shared responsibility for effective local compliance.

1.5.1 Undertake Council initiatives within a clear and fair framework of strategic planning, policies, procedures and service standards as required under all regulatory frameworks.

1.5.2 Best practice, sustainability principles, accountability and good governance are incorporated in all activities undertaken by Council.

Financial Implications

There are no direct financial implications applicable to this report.

Fit For The Future Strategy Considerations

The proposal is aligned with Council's long term plan to improve and maintain organisational sustainability and achieve Fit for the Future financial benchmarks. The proposal has no resourcing implications, outside of Council's adopted Long Term Financial Plan.

Conclusion

The matters covered in this report:

- Reflect the proceedings of a recent Councillor Workshop
- Will facilitate Council making adjustments to the placement and frequency of Council meetings over the course of the year
- Will allow for the gradual migration of Council's current committee structure to a composition that aligns more directly with the Community Strategic Plan objectives.

RECOMMENDATION:

That:

1. The Code of Meeting Practice, amended in accordance with Attachment 1 to this report, be placed on public exhibition for a period of 28 days, with submissions being accepted from interested parties for 42 days.
2. Staff initiate a process of working with relevant stakeholders to migrate the current committee structure over time, to a configuration that is more closely aligned to the Community Strategic Plan objectives.

ATTACHMENTS:

AT - 1 Draft Amendment to Code of Meeting Practice.

AT - 2 Alignment of the committee structure and terms of reference with the Community Strategic Plan (*Distributed under separate cover*).

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AT - 1 Draft Amendment to Code of Meeting Practice

ATTACHMENT 1

Current	Proposed
<p>Timing of ordinary council meetings</p> <p>3.1 Ordinary meetings of the council will be held on the second Tuesday of every month (except January), and on the last Tuesday of every month (except January and December), at the Council Chambers, George Street, Windsor. Meetings shall not be held on the Tuesday directly following a public holiday, based on this scheduling. Ordinary meetings shall commence at 6:30pm and finishing at 11pm, unless otherwise resolved by Council. The chairperson may adjourn the meeting for a short break where a meeting has been in session for some time.</p>	<p>Timing of ordinary council meetings</p> <p>3.1 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.</p> <p>Note: Under section 365 of the Act, Councils are required to meet at least 10 times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.</p> <p>3.2 In addition to the meeting cycle adopted, the council may resolve to hold additional meetings as considered necessary.</p> <p>3.3 Additional meetings of the council convened by resolution of the council are subject to the three days' notice rule and must also be advertised in accordance with clause 3.4 of this Code of Meeting Practice.</p> <p>3.4 Generally, the council will recess during school holiday periods</p> <p>3.5 Council meetings will generally commence at 6.30pm, but this commencement time may vary for particular meetings if the council so resolves.</p>

oooO END OF REPORT Oooo

ordinary

section 4

reports
of committees

ORDINARY MEETING

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SECTION 4 – Reports of Committees

No Reports of Committees.

ordinary

section 5

notices of motion

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SECTION 5 – Notices of Motion

Item: 172 **NM1 - Global Climate Strike - (138882)**

Submitted by: Councillor Wheeler

NOTICE OF MOTION:

That Council:

1. Notes that on Friday 20 September 2019 there will be a Global Climate Strike called by student climate strikers who are calling on all concerned citizens to join massive climate strikes and a week of actions. Strikes will take place in the Sydney CBD and at the Springwood Hub. The students, including local students from Macquarie Electorate Student Climate Action (MESCA), have three key demands:
 - a) No new coal, oil and gas projects
 - b) 100% renewable energy by 2030
 - c) A just transition and job creation for all fossil-fuel workers and communities.
2. Endorses the Global Climate Strike, consistent with its Climate Emergency Declaration.
3. Encourages all Councillors to attend the Global Climate Strike.

FINANCIAL CONSIDERATIONS:

There are no financial implications applicable to this report.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

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Item: 173 **NM2 - Passing of Heritage Advisory Committee Member Professor Ian Jack - (79351)**

Submitted by: Councillor Wheeler

NOTICE OF MOTION:

That Council:

1. Places on record the extraordinary contribution Professor Ian Jack made to researching, recording and preservation of the heritage of the Hawkesbury and Australia, and extends its deepest sympathies to his wife, Jan Barkley-Jack, and his family.
2. Following adoption of this recommendation, observes a minutes silence in recognition of the passing of Professor Jack.

BACKGROUND:

It is with the deepest regret and sadness that I present this Notice of Motion to place on Council's official record our sincere and deepest regret on the passing of an esteemed and highly valued member of our community, Professor Ian Jack MA, PhD, FRHistS, FRAHS.

Professor Jack was an Honorary Fellow of the University of Sydney, which he joined in 1961 and Senior Fellow at St Andrew's College.

He was the longest serving President of the Royal Australian Historical Society having served in that role from 2003 until 2010, and has an extensive publication record. He published extensively in the areas of heritage, local history and historical archaeology. He was a co-founder of the discipline of Historical Archaeology in the University of Sydney in 1974, and one of the first practitioners of industrial archaeology in Australia. Some of Professor Jack's many publications, journal articles and conservation plans included:

- The Andrew's Book, 3rd edition 1989, and 4th edition 2013
- Australia's age of iron: history and archaeology co-authored with Aedeen Cremin.
- A Colonial scene : the Hawkesbury-Nepean Valley / edited by R. Ian Jack
- Exploring the Hawkesbury
- Macquarie's Towns
- St Matthew's, Windsor : an Anglican landmark celebrating 200 years co-authored with Jan Barkley-Jack
- Local government records and the local historian co-authored with Terry Kass

Professor Jack was a member of Council's Heritage Advisory Committee for 28 years, beginning in 1991, including terms as Chair and Deputy - Chair. He generously provided invaluable advice to Council and the community. He maintained a fierce determination to protect and honour the heritage of the Hawkesbury, often when hope was scarce.

He was the author of numerous books and journal articles about the Hawkesbury, past President of the Royal Australian Historical Society and the Hawkesbury District Historical Society, member of the National Trust, the Heritage Council of NSW and a professional member of International Council on Monuments and Sites (ICOMOS).

Professor Jack's legacy is visible throughout the Hawkesbury LGA, including at the Australiana Pioneer Village, where he and his wife Jan Barkley-Jack prepared the successful application for State Listing,

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Hawkesbury Museum and Howe House, his former home Glenroy, and in the on-going fight to save Windsor Bridge and preserve Thompson Square.

He is remembered by the current Heritage Advisory Committee as a man of the deepest professionalism and integrity; a quiet gentleman with the most extraordinary knowledge and passion, and a great desire to educate. He will be greatly missed, and I feel that it is befitting that Council acknowledge the contribution that Professor Ian Jack has made to our local and Australia's community during his lifetime.

FINANCIAL CONSIDERATIONS:

There are no financial implications applicable to this report.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

ORDINARY MEETING**Questions with Notice****Meeting Date:** 10 September 2019**QUESTIONS WITH NOTICE****Item: 174****Councillor Questions with Notice**

Questions - 10 September 2019

#	Councillor	Question	Response
1	Lyons-Buckett	Enquired as to whether Council staff can investigate the whereabouts of the sandstone kerbing from Thompson Square, And if we know if the sandstone kerbing was salvaged, if yes, where is it being stored and is it under appropriate security.	The Director Infrastructure Services advised that Council was storing sandstone blocks, removed from Thompson Square. This material is stored at a Council owned site and consists of 76 lineal metres of stone. Originally 88 lineal metres was delivered by RMS contractors, and 12 lineal metres was subsequently taken back for reuse at Thompson Square. The arrangement to store the stone on behalf of RMS was made to ensure that any stone removed was retained for reuse where possible. Should any stone not be ultimately reused Council will seek to identify appropriate reuse of the stone for repair/renewal in the Thompson Square precinct.

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ordinary
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