

ORDINARY MEETING

Meeting Date: 11 November 2014

Item: 215

**CP - Planning Proposal to amend Hawkesbury Local Environmental Plan 2012
- 1420 Kurmond Road, Kurmond - (95498, 124414)**

REPORT:

Executive Summary

This report discusses a planning proposal which seeks to amend the *Hawkesbury Local Environmental Plan 2012* (the LEP) in order to permit the subdivision of 1420 Kurmond Road, Kurmond into 12 lots with a minimum lot size of not less than 4,000m².

This planning proposal proposes an amendment to the Lot Size Map of the LEP only and does not seek to change the existing RU4 Primary Production zone.

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

Consultation

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

Background

Since the adoption of the Hawkesbury Residential Land Strategy (HRLS) by Council in May 2011 six planning proposals requesting the LEP be amended to allow for large lot residential/rural residential development within the vicinity of Kurmond have been received by Council. All these planning proposals other than this proposal have already been assessed and reported to Council. However Council assessment of those planning proposals revealed that the proposals contained very limited assessment of the cumulative impact, in relation to traffic, on-site effluent disposal, etc, of possible similar rezonings within the vicinity of the Kurmond Neighbourhood Centre.

In response to a request for a "Gateway" determination for a planning proposal seeking an amendment to the LEP to allow subdivision of 1411 Kurmond Road, Kurmond into five large residential lots the then Department of Planning and Infrastructure advised Council to consider planning proposals in a strategic manner rather than assess and process them on an individual case by case basis. Given the Department's advice and the receipt of a considerable number of planning proposals for properties in the vicinity of the Kurmond Neighbourhood Centre, Council considered a report on a proposed investigation area for development within the vicinity of Kurmond at its meeting of 5 February 2013 and resolved (in part) as follows:

"That:

1. Council carry out investigations within the area on the map entitled "Kurmond Village large lot residential/rural-residential Investigation Area". These investigations are to determine the suitability of the identified lands for large lot residential and/or rural residential development and are to be funded by planning proposal application fees.
2. Investigations already undertaken by applicants for Planning Proposals within the Kurmond area be utilised by Council as a basis for their further investigations as appropriate.
3. The applicants be consulted by Council with a view of assisting the investigations where appropriate.

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7. Council consider any new planning proposals on their merit and compliance with the relevant criteria of the Hawkesbury Residential Land Strategy, unless and until the strategy is changed by Council."

The "Kurmond Village large lot residential/rural-residential Investigation Area" referred to in this report includes the subject land given its location within the one kilometre radius of the Kurmond Neighbourhood Centre (see Figure 1 below).

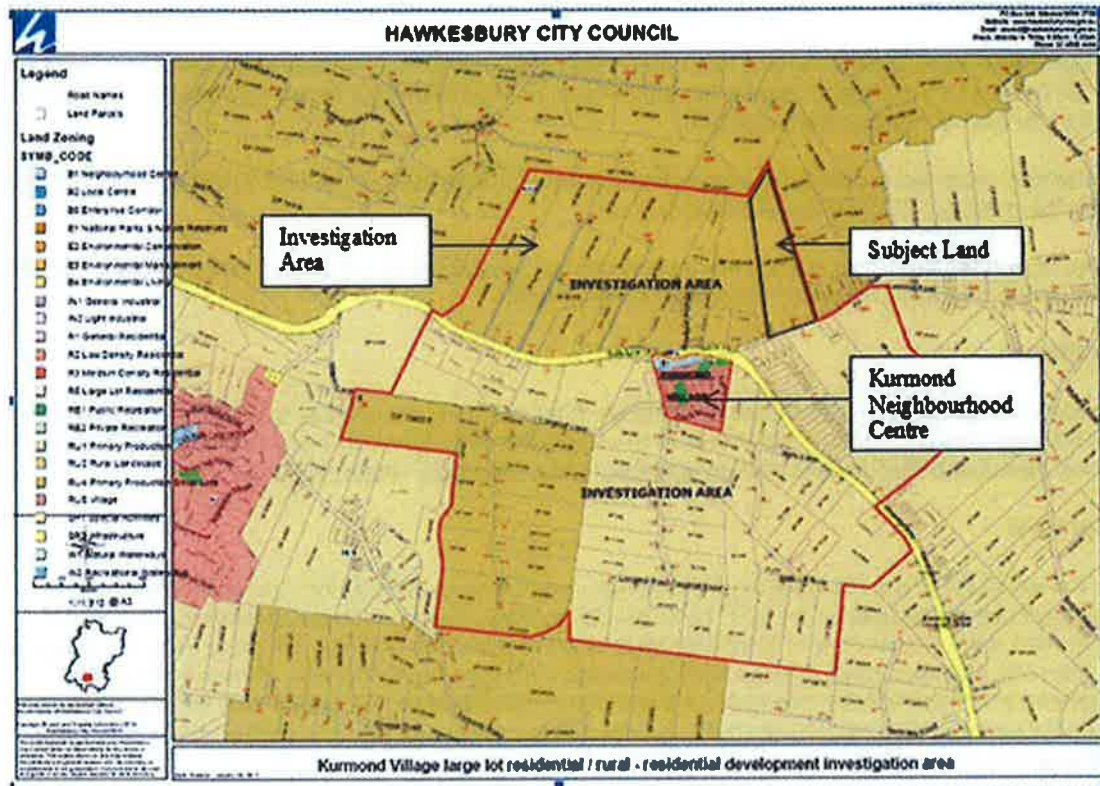


Figure 1: Kurmond Investigation Area

On 24 June 2014, Council considered a report on the progress and review of the HRLS and resolved (in part) to reinforce the above approach and is as follows:

"That:

2. The investigation for Kurmond identified by Council on 5 February 2013 be reviewed and be the first area to have a development/structure plan, (as described in the report) prepared.
4. Future planning proposals for residential development must be consistent with any structure plan and/or Section 94 Plan prepared for the locality. If no such plan is in place the applicant is to work with Council to prepare same as part of the planning proposal. Existing planning proposals currently submitted to Council will continue to be processed."

Given Council received the planning proposal in May 2014 the above part resolution does not apply to this planning proposal and therefore this report considers the proposal against the current state and local strategic planning framework and other relevant criteria.

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Also on 28 October 2014 Council considered a planning proposal for 373 Bells Line of Road, Kurmond and resolved (in part) as follows:

"That:

6. Council also make a submission to the RMS, requesting details of:
 - a) *The current capacity of Richmond Bridge.*
 - b) *Any potential upgrades planned for Richmond Bridge, intersections between East Market Street and March Street, Richmond and Bells Line of Road, Grose Vale Road and Terrace Road, North Richmond and the expected completion dates and confirmation that the funds are allocated.*
 - c) *Council to inform the RMS of the number of dwellings constructed since the 2013 Richmond Bridge Study, west of the river, and potential dwellings expected in the next seven years (2021) west of the river and any other information so that the RMS has up to date details from Council to provide sound information."*

The above is still being pursued and if the planning proposal is to proceed, it will be referred to RMS for comment and information.

Planning Proposal

Falson & Associates Pty Ltd (the applicant) seeks an amendment to *Hawkesbury Local Environmental Plan 2012* (the LEP) in order to permit the subdivision of 1420 Kurmond Road, Kurmond into 12 lots with a minimum lot size of not less than 4,000m².

The applicant proposes to amend the Lot Size Map Sheets of LSZ_008AA and LSZ_008A of the LEP to specify 4,000m² minimum lot size for part of the land and retain the current 4ha minimum lot size provision for the remaining area of the land to allow subdivision of the land into 12 large lots.

As part of the proposed subdivision 6.2ha of native bushland which occupies the gully along the western boundary and extends down to the riparian corridor along Howes Creek (proposed Lot 1) is proposed to be retained and conserved under a community title. A subdivision concept plan depicting the proposed 12 lots is attached to this report (see Attachment 1).

Subject Land and Surrounds

The land is legally described as Lot 2 DP 805023, 1420 Kurmond Road, Kurmond. It is located north-east of the Kurmond Neighbourhood Centre (the Neighbourhood Centre), east of Kurmond Public School and north and east of the existing residential area (see Figure 2).

The site has an area of 11.03ha, and is irregular in shape, narrowing towards the rear, with a splayed rear boundary. It has a frontage of approximately 200m to Kurmond Road and an overall depth of approximately 650m (see Figure 2).

The land contains an old weatherboard house located at the middle of the frontage of the site and a masonry house and detached carport at the south east corner of the site with a number of ancillary outbuildings and two farm dams. Council records show that the masonry house was approved in 1981 and no approval has been granted for the weatherboard house but it is considered that this house was built prior to any planning schemes for the Hawkesbury Local Government Area (LGA). Given detached dual occupancy is a prohibited land use in rural zones the existing two detached dwellings on the land was not lawful. However, in September 2009 a development application (DA0140/09) for subdivision of the land into two lots incorporating the existing weatherboard house and the masonry house on proposed lot 21 and lot 22 respectively was approved but the five year consent for this development lapsed in September 2014. As a result the legality of the existing dual occupancy on the land is again an issue which needs to be addressed by the land owner, if this plan is not made to allow the proposed 12 lot subdivision on the land.

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Howes Creek dissects the property towards the rear of the site. One of the two dams is located at the rear of the site and in proximity to Howes Creek and the other one is located behind the weatherboard house.



Figure 2: Locality Map

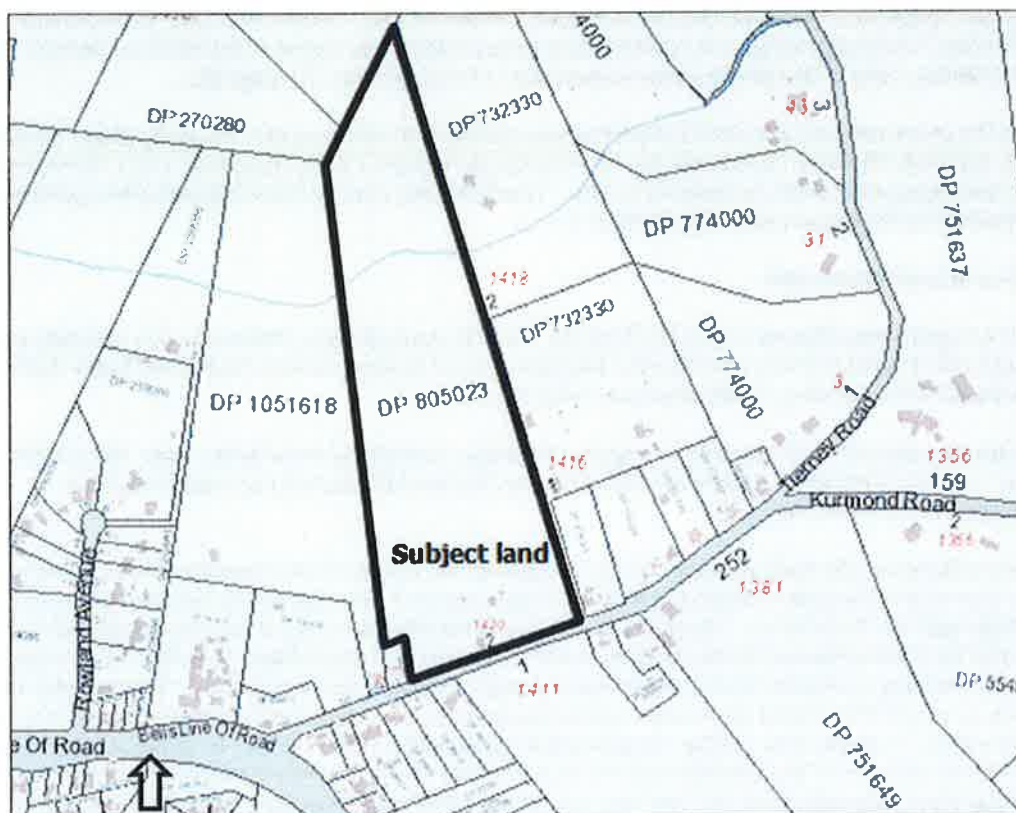


Figure 3: Subject Site

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According to Council records the site has been previously used for orcharding and grazing, and is currently used for horse training and hobby farming, with disused orchards and open woodland present.

The land is undulating and has an elevation of approximately 121m AHD at Kurmond Road and then falls to Howes Creek at an elevation of approximately 82.5m AHD. Then it rises towards the rear boundary at an elevation of approximately 95m AHD.

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

Much of the site is shown as either *Significant Vegetation* or *Connectivity Between Significant Vegetation* on the Terrestrial Biodiversity Map of LEP 2012. The majority of the native vegetation occurs on either side of Howes Creek and the natural drainage line running south-west to north-east through the two dams to Howes Creek (see Figure 4 below).

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

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

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

The site falls within the Middle Nepean & Hawkesbury River Catchment Area of *Sydney Regional Environmental Plan No.20 Hawkesbury - Nepean River (No.2 - 1997)* and is not within an area of scenic significance under this SREP.



Figure 4: Existing vegetation

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Land surrounding the site consists of a varied mix of lots sizes with some smaller lots located opposite in Kurmond Road and to the southwest in Bells Line of Road. Larger lots are generally located to the north, east and west (see Figure 5 below).

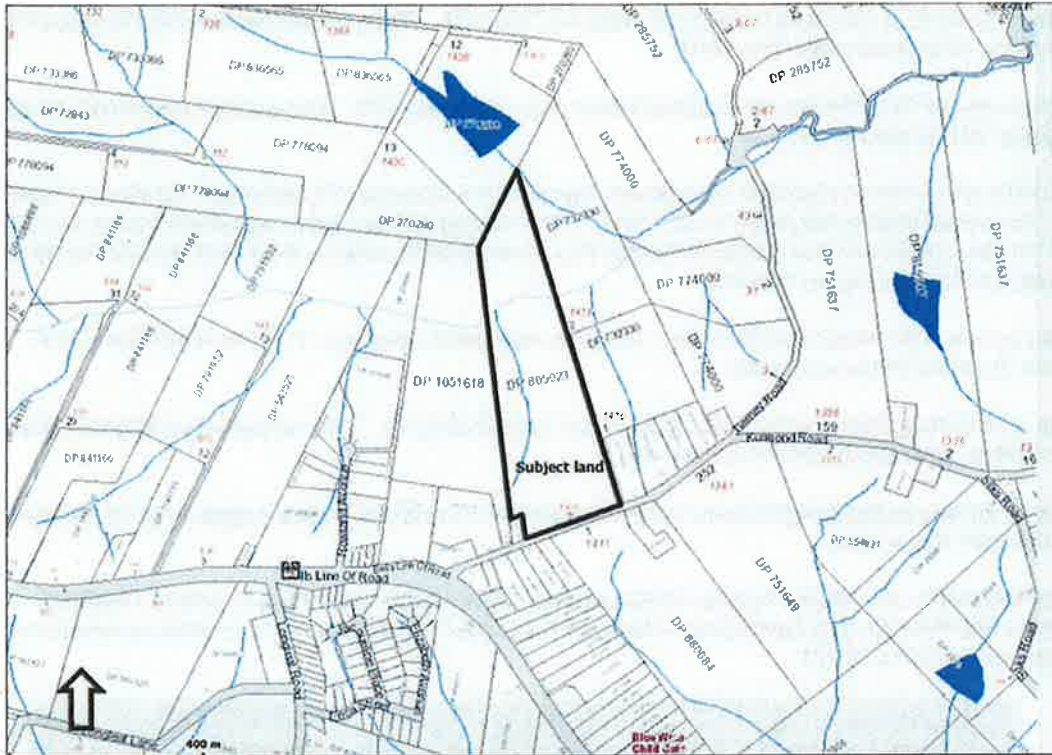


Figure 5: Existing lot sizes in the locality

The surrounding land uses include residential, business, retail, Kurmond Public School and public open spaces, and the predominant land use in the vicinity is low density residential and rural residential development.

Applicant's Justification of Proposal

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

- Preliminary site investigations have been carried out which has demonstrated that the land is capable of being subdivided into a number of lots that would be consistent with other lands in the vicinity and would form an appropriate component of village expansion at Kurmond.
- The planning proposal will enable economic use of the land for rural residential purpose consistent with the surrounding development.
- The land has appropriate physical characteristics to support the proposed 12 lot subdivision.
- The planning proposal will assist in maintaining the viability of the Kurrajong Neighbourhood Centre.
- The planning proposal is consistent with the Metro Plan, dNWSS, HRLS and other relevant statutory framework.
- There are no adverse environmental and visual impacts arising from this planning proposal.

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The remainder of the report provides an assessment of the planning proposal.

Metropolitan Plan for Sydney 2036, Draft Metropolitan Strategy for Sydney 2031, Draft North West Subregional Strategy and Hawkesbury Residential Land Strategy

The NSW Government's Metropolitan Plan for Sydney 2036 (the Metro Plan) provides a long-term planning framework for Sydney and identifies the following key Strategic Directions to transform Sydney as a more compact, networked city with improved accessibility, capable of supporting more jobs, housing and lifestyle opportunities by 2036:

- A. Strengthening 'the City of Cities'
- B. Growing and renewing centres
- C. Transport for a connected city
- D. Housing Sydney's population
- E. Growing Sydney's economy
- F. Balancing land uses on the city fringe
- G. Tackling climate change and protecting Sydney's natural environment
- H. Achieving equity, liveability and social inclusion
- I. Delivering the Plan

The Draft Metropolitan Strategy for 2031 (the draft Metro Strategy) released in March 2013 sets out a vision with key objectives, policies and actions to drive sustainable growth of Sydney to 2031 and beyond and it aims to achieve the following key outcomes for Sydney:

- *Balanced growth*
- *A liveable city*
- *Productivity and prosperity*
- *Healthy and resilient environment*
- *Accessibility and connectivity*

Once the draft Metro Strategy finalised, it will replace the Metro Plan.

The Draft North West Subregional Strategy (dNWSS) provides a broad framework for the long-term development of the north-western sector of Sydney, guiding government investment and linking local and state planning issues.

The abovementioned documents contain a number of key strategies, objectives and actions relating to the economy and employment, centres and corridors, housing, transport, environment and resources, parks and public places, implementation and governance, and identify a hierarchy of centres.

The applicant has provided an assessment of the planning proposal against the Metro Plan and dNWSS and concludes that the proposal is consistent with these strategies. Taking into consideration the location of the proposed residential development that is, on the western side of Hawkesbury River and on the fringe of Kurmond Neighbourhood Centre and a reasonable access to the required infrastructure it is considered that the proposal is generally in compliance with all these strategies.

Also given the location of land on the fringe of Kurmond Village, and the unsuitability of the site to provide for an increased density of housing development beyond what is proposed, it is considered that the proposal demonstrates satisfactory compliance with these strategies.

The Hawkesbury Residential Land Strategy (HRLS) is, in part, a response to the above mentioned State strategies and seeks to identify residential investigation areas and sustainable development criteria which are consistent with the NSW Government's strategies.

The 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 HRLS recommends that future residential development in rural villages should be low density and large lot residential, which focus on proximity to centres and services and facilities.

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The main aim of the planning proposal is to subdivide the land into 12 lots with a minimum lot size of not less than 4,000m² and therefore the proposal can be described as a rural residential / large lot residential development on the fringe of the Kurmond village.

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

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

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

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

For the purposes of this proposal, the relevant criteria for rural residential development are that it be large lot residential dwellings and:

- be able to have onsite sewerage disposal;
- cluster around or on the periphery of villages;
- cluster around villages with services that meet existing neighbourhood criteria services as a minimum (within a 1km radius);
- address environmental constraints and have minimal impact on the environment;
- 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 periphery of the Kurmond village centre.

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 HRLS has been discussed above. Compliance with the Hawkesbury Community Strategic Plan 2013 - 2032 will be 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 1990s.

Since the time of adoption this Policy has essentially been superseded by subsequent amendments to Hawkesbury Local Environmental Plan 1989, NSW Draft North West Subregional Strategy, the Hawkesbury Residential Land Strategy, the Hawkesbury Community Strategic Plan, the commencement of the current LEP, and the NSW Government's gateway system for dealing with planning proposals.

Section 117 Directions

Section 117 Directions are issued by the Minister for Planning and apply to planning proposals. Typically, the Section 117 Directions will require certain matters to be complied with and/or require consultation with government authorities during the preparation of the planning proposal. Each 117 Direction has criteria to be met to allow for inconsistencies. This criteria is set out at the end of this section of this report. A summary of the key Section 117 Directions follows:

Direction 1.2 Rural Zones

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

The planning proposal seeks an amendment to Lot Size Map of the LEP and does not propose any changes to the current RU4 Primary Production Small Lots zoning.

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.

Direction 1.3 (3) states that:

"This Direction applies when a relevant planning authority prepares a planning proposal that would have the effect of:

- (a) Prohibiting the mining of coal or other minerals, production of petroleum, or wining or obtaining of extractive materials, or*

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- (b) *Restricting the potential development of resources of coal, other mineral, petroleum or extractive materials which are of State regional significance by permitting a land use that is likely to be incompatible with such development."*

The subject land is not located within the Identified Resource Area or the Potential Resource Area or the Transition Area - areas adjacent to identified resource areas as defined by mineral resource mapping provided by the NSW Resource & Energy Division of NSW Trade & Investment. Also, the subject land is not located within or in the vicinity of land described in Schedule 1, 2 and 5 of the *Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995)* nor will the proposed development restrict the obtaining of deposits of extractive material from such land.

The planning proposal seeks amendments only to the Lot Size Map of the LEP, and does not propose any provisions prohibiting the mining of coal or other minerals, production of petroleum, or wining or obtaining of extractive materials, or restricting the potential development of resources of coal, other mineral, petroleum or extractive materials which are of State regional significance by permitting a land use that is likely to be incompatible with such development.

The current RU4 Primary Production Small Lots zoning of the land is to remain unchanged. However, given mining and extractive industries are prohibited land uses in this zone, consultation is required with the NSW Trade and Investment (NSW T&I) should Council resolve to proceed with the planning proposal and receive a gateway determination advising to proceed with the planning proposal from DP&E in accordance with this Direction.

Direction 3.1 Residential Zones

Planning proposals must include provisions that encourage the provision of housing that will:

- broaden the choice of building types and locations available in the housing market, and
- make more efficient use of existing infrastructure and services, and
- reduce the consumption of land for housing and associated urban development on the urban fringe, and
- be of good design.

Furthermore a planning proposal must contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it).

The planning proposal would enable an additional 11 lots on the land through an amendment to the lot size map of the LEP and provide the local community with increased housing in close proximity to the Kurmond Neighbourhood Centre. It would also help Council in achieving its dwelling target of additional 5,000 - 6,000 dwellings within the Hawkesbury LGA by 2031.

Given clause 6.7 Essential services of the LEP makes provisions for essential services the planning proposal does not propose a provision to ensure that all essential services are in place to accommodate future development on the land. Therefore it is considered that the planning proposal is generally consistent with this Direction.

Direction 3.3 Home Occupations

The objective of this Direction is to encourage the carrying out of low-impact small businesses in dwelling houses. Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.

The planning proposal seeks amendments only to the Lot Size Map of the LEP and the current RU4 Primary Production Small Lots zoning of the land is to remain unchanged. This zone permits carrying out of home occupations in dwelling houses without development consent. The planning proposal is therefore consistent with this Direction.

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Direction 3.4 Integrating Land Use and Transport

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

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

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

Direction 4.1 Acid Sulfate Soils

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

This Direction requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soil study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act. An acid sulfate soil study has not been included in the planning proposal.

The applicant has not provided an acid sulfate soil study demonstrating the appropriateness of the proposed minimum lot sizes for the land. 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 site is shown as being bushfire prone (bushfire 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 from DP&E, compliance with Planning for Bushfire Protection 2006, and compliance with various Asset Protection Zones, vehicular access, water supply, layout, and building material provisions.

Direction 6.1 Approval and Referral Requirements

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

- "(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and

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

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

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessary restrictive site specific planning controls. The planning proposal proposes an amendment to the Lot Size Map of the LEP only and does not include any restrictive site specific planning controls. It is therefore considered that the proposed amendment is consistent with this Direction.

Direction 7.1 Implementation of the Metropolitan Strategy

The objective of this Direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036. This Direction requires that a planning proposal should be consistent with the NSW Government's Metropolitan Plan for Sydney 2036.

'Metropolitan Plan for Sydney 2036', which is one of the issues taken into consideration in the early part of the assessment of the Planning Proposal, establishes that the planning proposal is consistent with this Plan.

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

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

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d) is of minor significance.

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

State Environmental Planning Policies

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

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

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

A contamination report has not been submitted with the planning proposal. The applicant states that:

The land has not been used for agricultural uses for many years. Previous uses were for limited grazing activities of cattle and horses. There is no obvious evidence of surface or groundwater pollution as a result of past uses.

Council records show that the land has been used for agricultural purpose in the past. According to Table 1 of Managing Land Contamination Planning Guidelines, SEPP 55 - Remediation of Land, agricultural activity may cause contamination.

If the planning proposal is to proceed, the DP&E can consider this as part of their "Gateway" determination and if required can request further information/consideration of this matter.

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

The primary aims of *Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995)*- (SREP 9) are to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance and to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential.

Given the site is not located within or in the vicinity of land described in Schedule 1, 2 and 5 of SREP 9 and the proposed development will not restrict the obtaining of deposits of extractive material from such land the planning proposal is consistent with this Regional Plan.

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

The aim of *Sydney Regional Environmental Plan No. 20 - Hawkesbury - Nepean River (No.2 - 1997)* - SREP 20 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.

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Specifically SREP 20 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;
- when considering a proposal for the rezoning or subdivision of land which will increase the intensity of development of rural land (for example, by increasing cleared or hard surface areas) so that effluent equivalent to that produced by more than 20 people will be generated, consider requiring the preparation of a Total Water Cycle Management Study or Plan;
- minimise or eliminate point source and diffuse source pollution by the use of best management practices;
- site and orientate development appropriately to ensure bank stability;
- protect the habitat of native aquatic plants;
- locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land;
- consider the range of flora and fauna inhabiting the site of the development concerned and the surrounding land, including threatened species and migratory species, and the impact of the proposal on the survival of threatened species, populations and ecological communities, both in the short and longer terms;
- conserve and, where appropriate, enhance flora and fauna communities, particularly threatened species, populations and ecological communities and existing or potential fauna corridors;
- minimise adverse environmental impacts, protect existing habitat and, where appropriate, restore habitat values by the use of management practices;
- consider the impact on ecological processes, such as waste assimilation and nutrient cycling;
- consider the need to provide and manage buffers, adequate fire radiation zones and building setbacks from significant flora and fauna habitat areas;
- consider the need to control access to flora and fauna habitat areas;
- give priority to agricultural production in rural zones;
- protect agricultural sustainability from the adverse impacts of other forms of proposed development;

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- 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 some form of rural residential development on the subject land has the potential to either satisfy the relevant provisions SREP No 20 or be able to appropriately minimise its impacts.

Hawkesbury Local Environmental Plan 2012

The planning proposal does not propose to rezone the land, and the current RU4 Primary Production Small Lots zoning under the LEP is to remain unchanged.

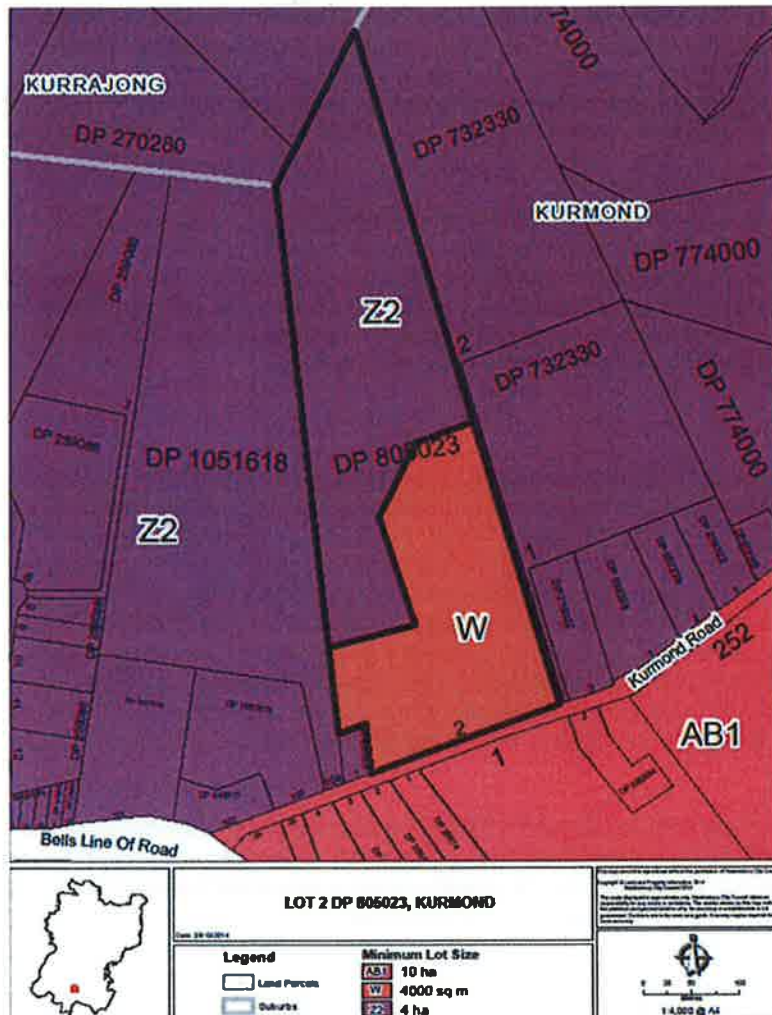


Figure 6: Proposed amendment to Lot Size Map

The planning proposal seeks to amend Lot Size Map Sheets of LSZ_008AA and LSZ_008A of the LEP to specify 4,000m² minimum lot size for part of the land and retain the current 4ha minimum lot size provision for the remaining area of the land as shown in Figure 6 above to allow subdivision of the land into 12 large

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lots. It also proposes to include a new provision in the LEP to limit the subdivision of the land into a maximum 12 lots.

The land area proposed for 4000m² minimum lot size shown as 'W' in Figure 6 above generally coincides with the land area which accommodates all the proposed 11 lots with 4000m² minimum lot size in the subdivision concept plan. This report does not propose to endorse any subdivision plan submitted in support of the planning proposal, hence it is not considered appropriate to support an amendment to the Lot Size Map of the LEP as proposed. Instead, it is preferred to amend the Lot Size Map to apply a 4000m² minimum lot size for the entire land and include a suitable provision in the LEP to limit the maximum number of lots to 12.

A similar approach has been adopted by the planning proposal for 1411 Kurmond Road, Kurmond which is currently being finalised by the DP&E.

Services

The applicant advises that reticulated water, power and telecommunication services are available for connection to the land but the site has no access to a reticulated sewerage system.

The planning proposal is accompanied by a wastewater feasibility statement prepared by Toby Fiander & Associates Pty. This statement provides a preliminary assessment of the site's suitability of on-site effluent disposal.

The statement briefly explains the soil profile and suitability of the undulating land for wastewater disposal and states that effluent disposal with an irrigation area of 1000m² could be achievable on the proposed lots. Further where this may not be available, the statement assumes that disposal would be possible by one of other methods (e.g. Wisconsin Mound) which requires an area of about 300m² of land as explained in AS 1547 - 2012. The statement concludes that there is sufficient suitable land available on each block of the indicative subdivision plan to allow for adequate disposal.

Topography

The land is undulating and has an elevation of approximately 121m AHD at Kurmond Road and then falls sharply (generally in excess of 15%) towards the existing dam located behind the weatherboard house and at an elevation of approximately 100m AHD. Part of the land adjacent to the western boundary covered with significant vegetation falls sharply along a drainage line running south-west to north-east through the site to Howes Creek at an elevation of approximately 82.5m AHD. The land then rises (6% - 10%) over a distance of approximately 165m towards the rear boundary which is at an elevation of approximately 95m AHD. A large area of open land with a few scattered and cluster of trees at the middle and a strip of land of varying width at the front of the site shown in red hatched lines in Figure 3 has some moderate slopes, varying in 6% - 15%. The remainder of the site (other than an area of land at the rear of the site between the Howes Creek and the rear boundary with significant vegetation) is generally greater than 15% in slope (see Figure 4).

The HRLS recognises slopes greater than 15% act as a constraint to development and as such approximately 35% of the land area free of any significant vegetation is suitable for residential development. This land area generally coincides with the land area proposed for 11 additional residential lots (Lots 2-12) as shown in the subdivision concept plan.



Figure 7: Land less than 15% in slope

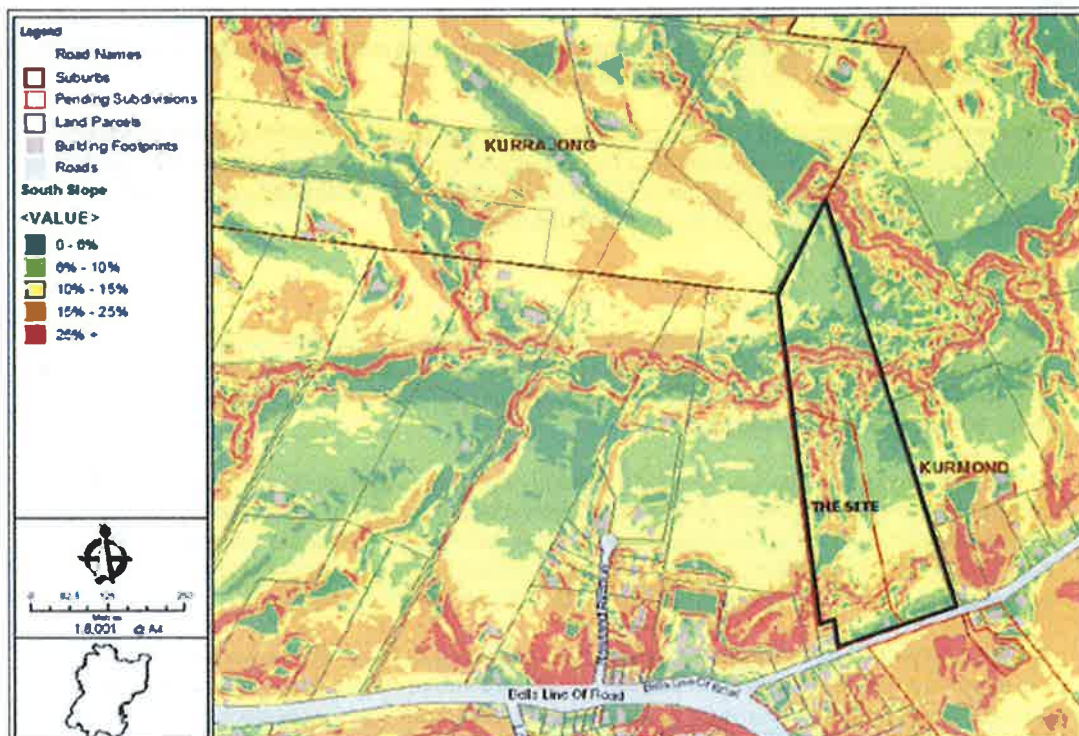


Figure 8: Slope Analysis

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Site access, public transport and traffic generation

Existing access to the site is by a gravel driveway which has separate entry and exit footway crossings.

Public transport is limited to the Westbus Route 682 service along Bells Line of Road between Richmond and Kurrajong. The service operates every 30 minutes during peak period. The closest bus stop is located near the Kurmond Post Office. Given the limited frequency of service and the location of the bus stop it is anticipated that the occupants of the proposed subdivision will be private vehicle dependent.

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

Council has received petitions from residents west of the Hawkesbury River concerned about rezoning of land for residential purposes in the absence of necessary infrastructure upgrades. It is considered this will be a fundamental matter to be dealt with by Council prior to the finalisation of any planning proposals in the locality as the cumulative impact of these types of development will be unacceptable if no traffic improvements are made. In response to this issue the applicant states:

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

Ecology

The planning proposal is accompanied by a flora and fauna survey and assessment report prepared by UBM Ecological Consultants Pty Ltd. The report states that:

"The property retains a large stand of native vegetation (bushland) with a highly modified understorey. This bushland is located in the gully which runs along the property's western boundary, and extends along Howes Creek, a tributary of the Hawkesbury River which traverses the property close to its northern boundary."

The report concludes that:

"Flora: No (0) flora species or populations listed in under the TSC Act or EPBC Act were recorded for the Study Area; therefore no impact to any threatened species is envisaged, and no Assessment of Significance (Seven-part Test or Commonwealth Assessment) will be required for flora species issues."

Plant Communities: There are two (2), possibly three (3) native plant communities within the Subject Property at Kurmond: Cumberland Plain Shale Woodland, with elements of Moist Shale Woodland on the upper slopes of the gully, and Shale Sandstone Transition Forest on the Howes Creek Riparian Corridor. All communities listed are considered to be either endangered or critically endangered under the environmental legislation."

The Cumberland Shale Plains Woodland with elements of Moist Shale woodland is found on the upper slopes of the property off Kurmond Road and in the broad gully on the western boundary. This area is not proposed for development, although it is possible that part of this bushland may be cleared or modified to create an Asset Protection Zone for bushfire safety purposes."

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Cumberland Shale Sandstone Transition Forest occurs along Howes Creek, which is downslope (north) and outside the proposed development area. A minimum area of 40 metres from the riparian corridor is recommended to serve as a 'buffer zone' between the lower edges of the proposed development and the reserved bushland.

*Fauna: Two (2) microchiropteran bats listed as Vulnerable under TSC Act were detected during the current field investigations with varying degrees of confidence. The Eastern Freetail Bat (*Mormopterus norfolkensis*) was identified with 'confidence' and the Eastern Bentwing Bat (*Miniopterus schreibersii oceanensis*) was identified as a 'possible' call.*

*Considering no roosting habitat or foraging habitat will be removed or impacted on the Subject Property and the fauna assessment has outlined that this species will not be influenced by off-site impacts of this proposal, a Seven-part Test of Significance is not required for these three (3) microbat species, listed as Vulnerable under NSW State legislation, i.e. the TSC Act. However as there are 2 large habitat trees (Forest Red Gum, *E. tereticornis*) in the south western corner of the property and two stags in the far end of the paddock that will likely be removed during construction, it is recommended that a qualified Ecologist be present whilst the felling of these trees occurs".*

It is considered that the concept subdivision plan shows sufficient land within the generally cleared area that could be available for the erection of buildings, waste water disposal and asset protection zones. Furthermore the planning proposal does not seek to amend Clause 6.4 Terrestrial biodiversity of the LEP or the associated map layer hence detailed consideration of any future development of the land can occur at development application stage.

A recent site investigation undertaken by Council's Land Management Officer reveals that the area proposed for subdivision (not including the community land) is dominated by pasture grasses with scattered remnant trees of the Shale Sandstone Transition Forest vegetation community, and the likely impact of the proposed subdivision development on the current vegetation on site would be minimal. The majority of the existing vegetation is contained within the proposed community title. However, there may be a loss of some trees depending on the final locations of the proposed building platforms and this likely impact could be determined at the development application stage.

Agricultural Land Classification

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

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

Given the site is in very close proximity to the Kurmond Neighbourhood Centre, surrounding rural residential development and its non-agricultural use for many years it is considered that it is unlikely the site could be used for a substantial or sustainable agricultural enterprise.

Bushfire hazard

The planning proposal is supported by a preliminary bush fire hazard assessment report prepared by Control Line Consulting. The assessment is based on a 12 lot rural residential subdivision. The report states that:

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"The site is shown upon the Hawkesbury Bushfire Prone Land Map to be wholly within Category 1 vegetation.

However the site inspection and interpretation of aerial photography for the allotment confirms that the area of category 1 vegetation is significantly overstated and this vegetation is actually limited to the northern extent of the allotment and an area adjacent to the western boundary. The southeast section of the subject allotment would also be more accurately depicted as being category 2 vegetation over the area of grasslands previous noted.

As previously noted the subdivision plan does adequately allow for sufficient separation distance (that can be managed as an asset protection zone) for the development site.

The proposed allotments must maintain an asset protection zone from areas of forest of either 35 metres or 25 metres dependent on the relative slope and from any areas of grassland 10 metres irrespective of slope to satisfy Planning for Bushfire Protection 2006.

The site inspection undertaken for the purposes of the rezoning application noted the site is primarily dominated by grassland vegetation which by mowing will easily satisfy the provisions for an asset protection zone and that no reduction of the forest area will be proposed."

The report concludes that:

"After consideration of the aims and objectives of the Planning for Bush Fire Protection 2006 in the context of the Rezoning Application and the Concept Layout Plan for future development of the subject allotment it is my professional opinion that the provisions of bushfire regulatory requirements could be achieved and that the consent authorities would be likely to approve the indicated development."

The report recommends that the proposed lots (including land within the building envelopes on proposed lots 39 and 40) be maintained as an inner protection area as described in *Planning for Bushfire Protection 2006* and *Standards for Asset Protection Zones*.

Standards for an inner protection area include a tree canopy cover of less than 15% and the tree canopy should be located greater than 2 metres from any part of the roofline of a dwelling. Trees should have lower limbs removed up to a height of 2 metres above the ground. Ground fuels such as fallen leaves, twigs (less than 6mm in diameter) and branches should be removed on a regular basis, and grass needs to be kept closely mown and where possible green.

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

Heritage Significance

The site does not contain or adjoin any items of heritage significance or heritage conservation areas.

Conformance to the Hawkesbury Community Strategic Plan

The following provisions of the Hawkesbury Community Strategic Plan are of most relevance to the planning proposal.

Looking After People and Place

Directions

- Offer residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury

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- Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury
- Have development on both sides of the river supported by appropriate physical and community infrastructure

Strategies

- Manage rural and natural lands to support a balance of agriculture, environment and housing that delivers viable rural production and rural character

Financial Implications

The applicant has paid the fees required by Council's fees and charges for the preparation of an amendment to local environmental plan.

Conclusion

The assessment of the planning proposal with regard to the matters considered in this report reveals that the subject land has the potential for some form of large lot residential development and the planning proposal has some merit.

It is recommended that Council support amending the LEP in relation to minimum lot size as explained in this report to allow the subject land to be developed for large lot residential development.

The following matters and/or any other additional studies or investigations required by a Gateway determination issued by the DP&E in respect of this planning proposal will need to be undertaken by the applicant prior to finalisation of the proposed amendment to the LEP.

- Acid sulfate soil study
- A contamination report
- A traffic impact statement
- Consultation with the NSW Rural Fire Service

It is also recommended that if the DP&E determines that the planning proposal is to proceed, Council prepare a Section 94 Contributions Plan for the vicinity of Kurmond to ensure that all proposed developments in the locality contribute to the required infrastructure, especially road upgrade and provision, in the locality. Alternatively the applicant and Council can commence Voluntary Planning Agreement negotiations to address this issue.

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 preparation of a planning proposal for Lot 2 DP 805023, 1420 Kurmond Road, Kurmond to amend the Lot Size Map of the Hawkesbury Local Environmental Plan 2012 to permit minimum lot size of not less than 4,000m².
2. The planning proposal be forwarded to the Department of Planning and Environment for a "Gateway" determination.
3. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
4. The Department of Planning and Environment and the applicant be advised that in addition to all other relevant planning considerations being addressed, final Council support for the proposal will only be given if Council is satisfied that satisfactory progress, either completion of the Section 94 Developer Contributions Plan or a Voluntary Planning Agreement, has been made towards resolving infrastructure provision for this planning proposal.
5. Council does not endorse the subdivision concept plan submitted with the planning proposal as this will need to be subject to a future development application if the plan was made.

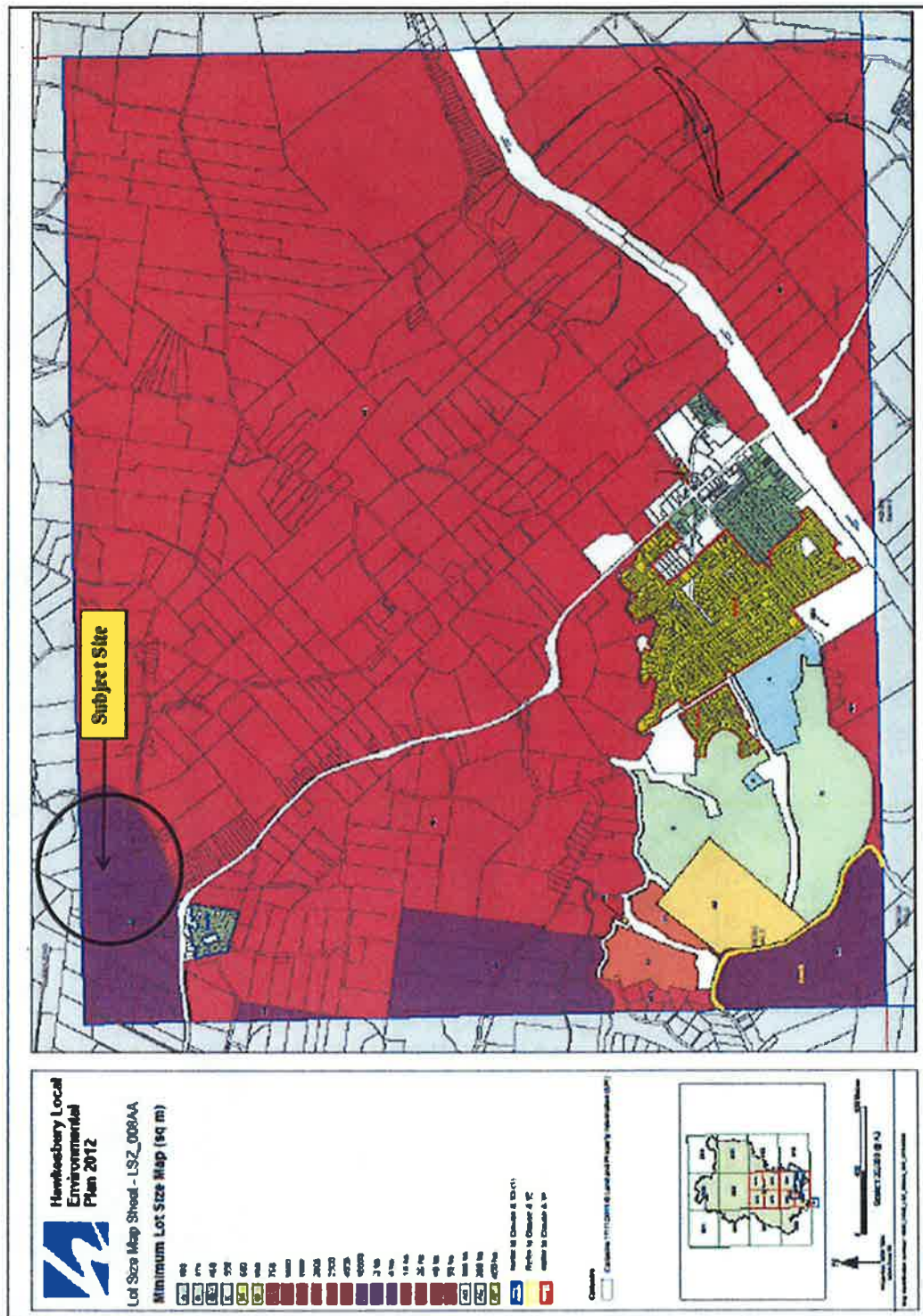
ATTACHMENTS:

- AT - 1** Concept Plan of the Proposed Subdivision
- AT - 2** Current Minimum Lot Size Map
- AT - 3** Proposed Minimum Lot Size Map

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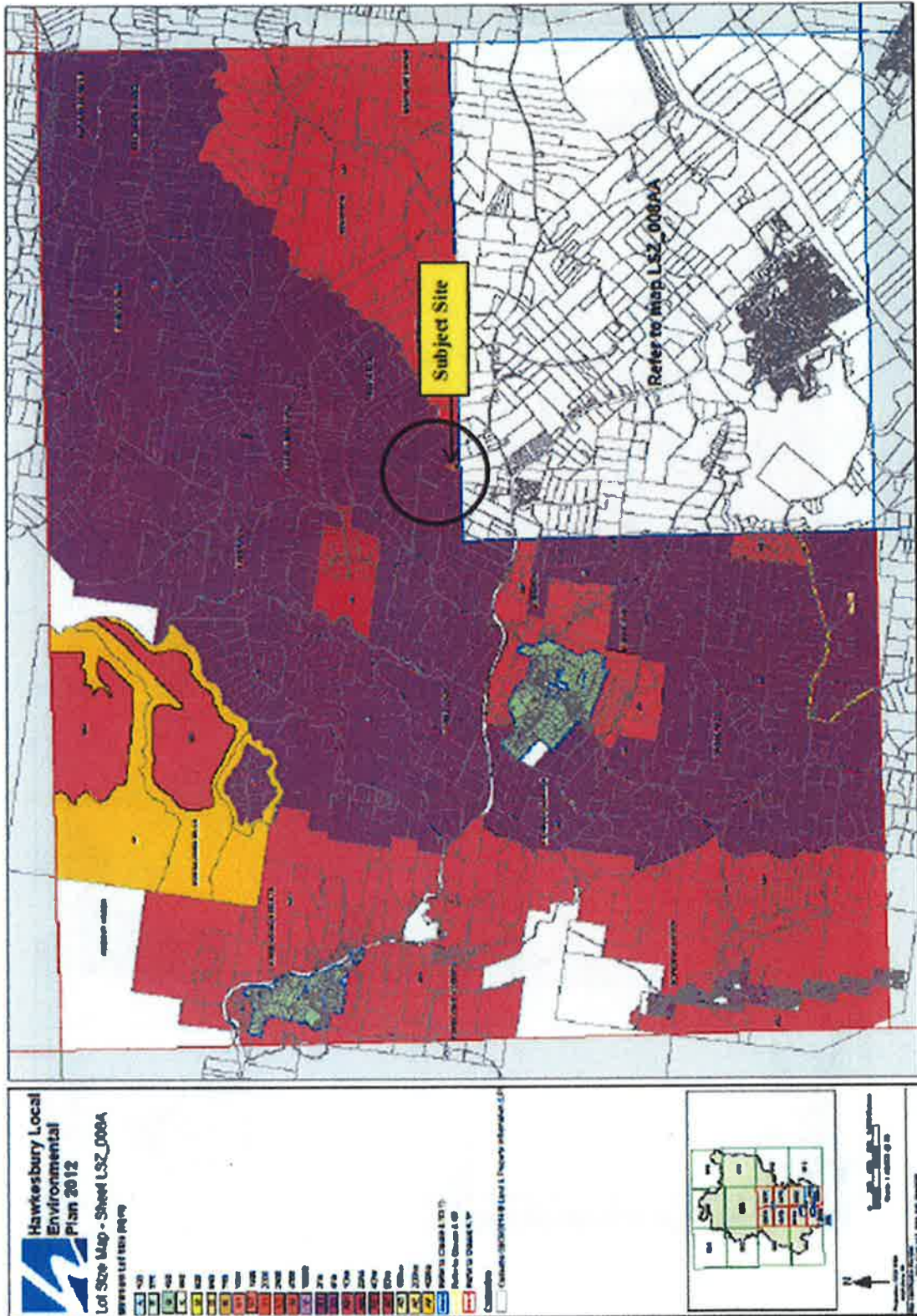
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AT - 2 Current Minimum Lot Size Map



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