

Item: 144 **CP - Planning Proposal - Amendment to Hawkesbury Local Environmental Plan 2012 - 1442 and 1442A Kurmond Road, Kurmond - (95498)**

Previous Item: 10, Ordinary (5 February 2013)

REPORT:

Executive Summary

This report discusses a planning proposal which seeks to amend Hawkesbury Local Environmental Plan 2012 (LEP 2012) in order to permit the subdivision of 1442 and 1442A Kurmond Road, Kurmond into approximately 15 lots with a minimum lot size of not less than 4,000m².

It is recommended that Council support the preparation of a planning proposal to allow development of the 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 and associated Regulations and as specified in the "Gateway" determination.

Background

This planning proposal was briefly discussed in a report to Council on 5 February 2013. The purpose of the 5 February 2013 report was to advise Council of large lot residential / rural residential development related planning proposals and enquiries that Council staff have received in response to the Hawkesbury Residential Land Strategy, advise Council of recent advice from Department of Planning and Infrastructure (DP&I) to consider these proposals in a holistic strategic manner, and recommend that Council adopt an investigation area within the vicinity of the Kurmond village for the purposes of large lot residential/rural - residential development so that the cumulative impact of current and future planning proposals in the vicinity of Kurmond could be considered and addressed. That report did not propose a significant delay in the processing of any of those planning proposals.

In response Council resolved 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.*
- 4. Council resolve to carry out similar investigations for other rural villages within the LGA which would meet the criteria of the Hawkesbury Residential Land Strategy.*
- 5. The planning proposals for 1411 Kurmond Road and 396 Bells Line of Road, Kurmond be reported to the Ordinary Meeting as soon as practical.*

ORDINARY MEETING

Meeting Date: 30 July 2013

6. *The planning proposal for 1442 and 1442A Kurmond Road, Kurmond be reported to Council as soon as practical after the receipt of additional information.*
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."*

In accordance with Part 6 of the above resolution, the subject planning proposal is being reported to Council.

Planning Proposal

Falson & Associates Pty Ltd (the applicant), seeks an amendment to Hawkesbury Local Environmental Plan 2012 (LEP 2012) in order to permit the subdivision of 1442 and 1442A Kurmond Road, Kurmond into approximately 15 lots with a minimum lot size of not less than 4,000m².

The applicant proposes the following amendments to LEP 2012, either:

1. Rezone the land to R5 Large Lot Residential; or
2. Rezone the land to RU5 Village; or
3. Insert an enabling clause within the LEP to allow for the proposed subdivision

A concept plan of the proposal subdivision is attached to this report.

Further, the applicant states:

"The plan of subdivision shows fifteen rural/residential lots of varying sizes depending on topography, vegetation etc. It is recognised that this lot layout is for preliminary discussion purposes. Already the effluent report (in conjunction with flora/fauna and bushfire) has suggested that the lot layout may need to be altered although the basic concept of subdivision is accepted. It is believed that should Council support the proposal it could recommend to the Department of Planning that a more detailed subdivision plan be submitted that includes site constraints as identified and a lot layout to account for the constraints.

Following from a further detailed assessment of constraints it may be that the lot yield will be less than currently indicated and/or the lot layout will alter to account for constraints. Notwithstanding this however it is clear that a significant number of lots are able to be created on the land.

It is presumed that there will be provisions contained within the draft plan that would limit the number of lots to generally coincide with the planning proposal and that no further subdivision of this land would be permissible once the actual number of lots have been assessed as appropriate.

It is envisaged that the draft local environmental plan would include provisions relating to suitable dwelling location, vegetation management, bushfire asset protection zones, access and effluent disposal."

Subject Site and Surrounds

The site consist of two properties Lots 104 and 105 DP 1051518, 1442 and 1442A Kurmond Road, Kurmond. Lot 104 has an area of 9.54ha (approx), Lot 105 has an area of 1.45ha. The combined area is 10.95ha (approx).

The site is irregular in shape, has a frontage of approximately 77m to Kurmond Road and an overall depth of approximately 640m.

Lot 104 contains a dwelling and an uninhabited relocated dwelling, Lot 105 contains a small shed. Vegetation on the site consists of cleared pasture land, scattered vegetation and Cumberland Plain Woodland (a critically endangered ecological community). Previous uses of the site appear to be predominantly for low scale grazing of livestock.

The land has an elevation of approximately 127m AHD towards Kurmond Road and then falls steeply (generally in excess of 15%) to approximately 104m AHD to a drainage line running south-west to north-east through Lots 104 and 105. The land then rises to a height of approximately 123m AHD and then falls (6% - 15%) over a distance of approximately 340m to Howes Creek with an elevation of approximately 84m AHD. Beyond Howes Creek is bushland for a distance of approximately 160m.

The site is zoned RU4 Primary Production Small Lots under LEP 2012. 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 significant vegetation is located within the vicinity of the drainage line towards to the front of the site and the bushland at the rear of the site.

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.

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 sulphate 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. 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 pasture. The overall production level is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown and 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.*

Land surrounding the site consists of a varied mix of lots sizes with smaller lots located immediately opposite in Kurmond Road and to the west in Rowland Avenue. Larger lots are generally located to the north and east. The Kurmond Public School adjoins to the site to the west.

Metropolitan Strategy, Draft North West Subregional Strategy and Hawkesbury Residential Land Strategy

The NSW Government's Metropolitan Strategy and Draft North West Subregional Strategy establish the broad planning directions for the Sydney metropolitan area and north-western sector of Sydney respectively. These documents identify a number of strategies, objectives and actions relating to the economy and employment, centres and corridors, housing, transport, environment and resources, parks and public places, implementation and governance.

These two documents have a high level metropolitan and regional focus and for the most part are not readily applicable to a singular rural-residential planning proposal at Kurmond. Notwithstanding this the applicant have provided an assessment of the planning proposal against these two documents and concludes that the proposal is consistent with these strategies. Taking into consideration the location of the proposed development i.e. on the western side of Hawkesbury River and 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 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 meeting 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.

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.

It is considered that the proposal has not adequately addressed the "Rezoning Land for Residential Purposes – Infrastructure Issues" in that the proposed development would increase the cumulative impact on the existing road system and no mitigation measures are proposed in this application. This issue is discussed later in this report.

Compliance with the HRLS has been discussed above. Compliance with CSP 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 LEP 2012, and the DP&I's gateway system for dealing with planning proposals.

The Policy is repeated below with responses provided by the applicant. Where appropriate additional staff responses are provided.

- a) Fragmentation of the land is to be minimised.

Applicant 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 response

The proposal is consistent with this principle.

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

Applicant response

The site does not front a main road and existing vegetation will largely screen the subdivision from Kurmond Road.

- d) No subdivision along ridgelines or escarpments

Applicant response

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

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

Applicant response

The lots will vary in size down to a minimum of 4000m². This is the size of allotment that is indicated 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). There has been an effluent disposal assessment which concludes that the size of lots proposal and other criteria is met such that the lots are suitable for effluent disposal.

Staff response

The waste water feasibility submitted with the planning proposal found that effluent disposal relying on an irrigation area of 1000m² could be achievable on proposed lots 35, 36, 37, 38, 41, 42, 43, 44 and 45 and that subject to a modified buffer zone to the creek/drainage line lots 33 and 34 would be worth further investigation. Hence effluent disposal is only achievable on 9 – 11 of the proposed 15 lots. For the lots where effluent disposal by way of a 1000m² irrigation area is not achievable this will require further consideration of alternative systems or a reduction in the total number of lots.

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

Applicant response

The subdivision does not propose removal of vegetation. Some vegetation removal may be required for bushfire asset protection zones and the flora/fauna assessment concludes that the proposal is satisfactory. The majority of the vegetation on site will be left in its current state and the percentage that might need to be removed is minimal.

Staff response

Part of the site contains Cumberland Plain Woodland and whilst the flora and fauna assessment submitted with the planning proposal states that the proposed subdivision will not have any adverse effects on the survival of this community [CPW] on the site because no trees will be removed the proposed building envelopes for proposed lots 31, 32, 39, and 40 as shown in Attachment 4 encroach into the CPW area. This apparent discrepancy requires further investigation/clarification by the proponent.

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

Applicant response

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

Staff response

Taking into consideration the scale of the development it is considered that an environmental study is not required. However, this will be a matter for the DP&I to advise Council on as a result of their "Gateway" process.

The need for a Section 94 Contribution Plan or a Voluntary Planning Agreement can be further discussed with the applicant if this planning proposal is to proceed.

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

Applicant response

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

Section 117 Directions

Section 117 Directions are issued by the Minister for Planning and Infrastructure 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. 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).

Direction 1.3 Mining, Petroleum Production and Extractive Industries

Requires consultation with NSW Industry and Investment.

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).

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&I 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&I. The subject site is identified as "Class 5" (less constrained) on the Acid Sulphate Soils Planning Maps. The DP&I 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

Requires consultation with the NSW Rural Fire Service, 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. It is considered that the planning proposal is consistent with this Direction as it does not require 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 a number of options, including site specific provisions, to amended HLEP 2012 in order to enable the proposed subdivision. These options are to be discussed with DP&I.

Direction 7.1 Implementation of the Metropolitan Strategy

Requires planning proposals to be consistent with the NSW Government's Metropolitan Strategy City of Cities, A Plan for Sydney's Future.

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&I 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&I, 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
- 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 No. 9 - Extractive Industry (No 2- 1995) and Sydney Regional Environmental Plan No. 20 Hawkesbury - Nepean River (No.2 - 1997).

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.

The applicant advised 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.

If the planning proposal is to proceed further consideration of potential contamination can be dealt with after DP&I's "Gateway" determination.

The primary aims of SREP No 9 (No.2 -1995) 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, 2 and 5 of the SREP nor will the proposal development restrict the obtaining of deposits of extractive material from such land.

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

Specifically the SREP encourages Council to consider the following:

- rural residential areas should not reduce agricultural viability, contribute to urban sprawl or have adverse environmental impact (particularly on the water cycle and flora and fauna);

- develop in accordance with the land capability of the site and do not cause land degradation;
- the impact of the development and the cumulative environmental impact of other development proposals on the catchment;
- quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters;
- consider the need to ensure that water quality goals for aquatic ecosystem protection are achieved and monitored;
- consider the ability of the land to accommodate on-site effluent disposal in the long term and do not carry out development involving on-site disposal of sewage effluent if it will adversely affect the water quality of the river or groundwater. Have due regard to the nature and size of the site;
- 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;
- 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.

Character of the Area

The area surrounding the site contains a mix of lot sizes and in particular there are a number of relatively small rural-residential lots within the immediate vicinity in Kurmond Road, Bells Line of Road and Rowland Avenue. The proposed lots are of similar size to these existing properties.

Topography

The land has an elevation of approximately 127m AHD towards Kurmond Road and then falls steeply (generally in excess of 15%) to approximately 104m AHD to drainage line running south-west to north-east through Lots 104 and 105. The land then rises to a height of approximately 123m AHD and then falls (6% - 15%) over a distance of approximately 340m to a watercourse with elevation of approximately 84m AHD. Beyond this watercourse is bushland for a distance of approximately 160m.

The HRLS recognises slopes greater than 15% act as a constraint to development. Proposed lots 31, 32 and 33 contain significant portions of land with a slope greater than 15%.

The steeper sloping part of the land will, to varying degrees, act as a constraint for the location and type of dwelling, outbuilding, effluent disposal system, and driveways. One way of minimising these constraints would be to reconsider the layout of the proposed subdivision and possibly amalgamate the proposed lots 31, 32 and 33.

Public transport and Traffic generation

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. To address this it is recommended that Council commence the preparation of a Section 94 Contributions Plan for the land within 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. 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.

Services

The applicant advises that reticulated water, power and telecommunication services are available for connection to the land.

A wastewater feasibility study has been submitted with the planning proposal. This study provides a preliminary assessment of the site's suitability of on-site effluent disposal. The study considered the soil profile, required separation distance, existing vegetation, slope and it was assumed that an area of 1000m² would be required for irrigation disposal. The study found that effluent disposal with an irrigation area of 1000m² could be achievable on proposed lots 35, 36, 37, 38, 41, 42, 43, 44 and 45 and that subject to a modified buffer zone to the creek/drainage line lots 33 and 34 would be worth further investigation. Hence effluent disposal is only achievable on 9 – 11 of the proposed 15 lots. For the lots where effluent disposal by way of a 1000m² irrigation area is not achievable this will require further consideration of alternative systems or a reduction in the total number of lots.

Ecology

The planning proposal is accompanied by a flora and fauna survey and assessment prepared by Dr Trevor Hawkeswood. The report states:

Most of the surveyed area has been total altered from its natural condition as a result of clearing and rural activities during past and more recent times. Weeds are a major environmental factor affecting most areas of the site. As such, the presence of these conditions and factors make it detrimental for native flora and fauna to survive, and hence the native biodiversity is extremely low within these areas. Within the survey area, the Cumberland Plain Woodland is represented only by one large remnant/regrowth area to the north and another very small remnant/regrowth area in the south. Both of these remnants are highly degraded and altered and heavily weed infested. The proposed subdivision will not have any adverse effects on the survival of this community on the site because no trees will be removed.

The surveyed site does not possess any threatened plant species as presently defined under the New South Wales Threatened Species Conservation Act (1995) nor within any schedule of the Commonwealth Environmental Protection and Biodiversity Conservation Act (2000). There are also no ROTAP plants on the site.

The subject site appears not to contain any endangered species of fauna and does not appear to act as an important corridor for endangered wildlife. The cleared/highly altered nature of the majority of the site would preclude numerous species of native fauna except for some birds, and the occasional reptile.

The area identified by Dr Hawkeswood as being Cumberland Plain Woodland is shown in Attachment 4 of this report.

Note, whilst the report states that the *proposed subdivision will not have any adverse effects on the survival of this community [CPW] on the site because no trees will be removed* the proposed building envelopes for proposed lots 31, 32, 39, and 40, as shown in Attachment 4, encroach into the CPW area. This apparent discrepancy requires further investigation/clarification by the proponent and may impact on the number of achievable lots.

Bushfire hazard

The planning proposal is supported by a preliminary bush fire hazard assessment prepared by Advanced Bushfire Performance Solution Pty Ltd. Note, the assessment is based on a 14 lot subdivision with proposed lots 31 and 32 being combined into one lot.

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. Hence, this will require removal of some CPW as shown in Attachment 4.

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.

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. This land is described by the classification system as being:

3. Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with pasture. The overall production level is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown and 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 proximity of the site to surrounding rural-residential properties and the size and slope of the site it is considered that it is unlikely the site could be used for a substantial or sustainable agricultural enterprise.

Compliance with DP&I Guidelines for Preparing Planning Proposals

The planning proposal has been prepared based on the DP&I guidelines published in 2009. These guidelines have been superseded by new guidelines issued in October 2012. As a result the planning proposal will require amendment to satisfy the new guidelines prior to forwarding the matter to the DP&I. If the planning proposal is to proceed these amendments can be dealt with by the applicant and Council staff. These amendments will also need to include resolution of the discrepancy between the application and accompanying documents, studies and reports in relation to the proposed number of allotments.

Conformance to Community Strategic Plan

The proposal is consistent with the Looking After People and Plan Directions statement:

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

and is also consistent with the Strategy in the Community Strategic Plan being:

- Identify community needs, establish benchmarks, plan to deliver and advocate for required services and facilities

The further consideration of matters pertaining to on-site effluent disposal, flora and fauna impacts, Section 94 contributions/voluntary planning agreement, and referral to government agencies such as the RMS and RFS as previously identified in this report will enable further consideration of the planning proposal with respect to the above mentioned provisions of the CSP.

Conclusion

It is considered that some form of large lot residential development on the subject site is appropriate and feasible and it is recommended that Council support amending LEP 2012 to allow the subject land to be developed for large lot residential development.

This report identifies certain matters such as feasibility of on-site effluent disposal, impact on Cumberland Plain Woodland and avoidance of steep sloping land that act as constraints on development of the land and require further consideration by the proponent. Whilst it is considered that for relatively unconstrained land a 4000m² minimum lot size may be appropriate, due to the constraints of the site the total number of lots proposed may not be achievable. It is therefore recommended that Council staff undertake further discussion with the proponent regarding the likely maximum yield for the site and that suitable provisions be included in the planning proposal to allow for both a minimum lot size and a maximum number of lots.

It is also recommended that if the DP&I determines that the planning proposal is to proceed, Council commence the preparation of 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.

Financial Implications

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

Planning Decision

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

RECOMMENDATION:

That:

1. Council support the preparation of a planning proposal for the land comprising of Lot 104 and 105 DP 1051618, 1442 and 1442A Kurmond Road, Kurmond to allow development of the land for large lot residential development.
2. Subject to further consideration by the applicant and Council staff of matters relating to on-site effluent disposal, impact on Cumberland Plain Woodland, and avoidance of steep sloping land the planning proposal include suitable provisions relating to minimum lot size and, if required, a maximum number of lots.
3. The planning proposal be forwarded to the Department of Planning and Infrastructure for a "Gateway" determination.
4. The Department of Planning and Infrastructure be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.

ORDINARY MEETING

Meeting Date: 30 July 2013

5. If the Department of Planning and Infrastructure determines that the planning proposal is to proceed, Council commence the preparation of 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.
6. The Department of Planning and Infrastructure and the applicant be advised that in addition to all other relevant planning considerations being addressed, final Council support for the proposal will only be given if Council is satisfied that satisfactory progress, either completion of the Section 94 Developer Contributions Plan or a Voluntary Planning Agreement, has been made towards resolving infrastructure provision for this planning proposal.

ATTACHMENTS:

AT - 1 Subject Site

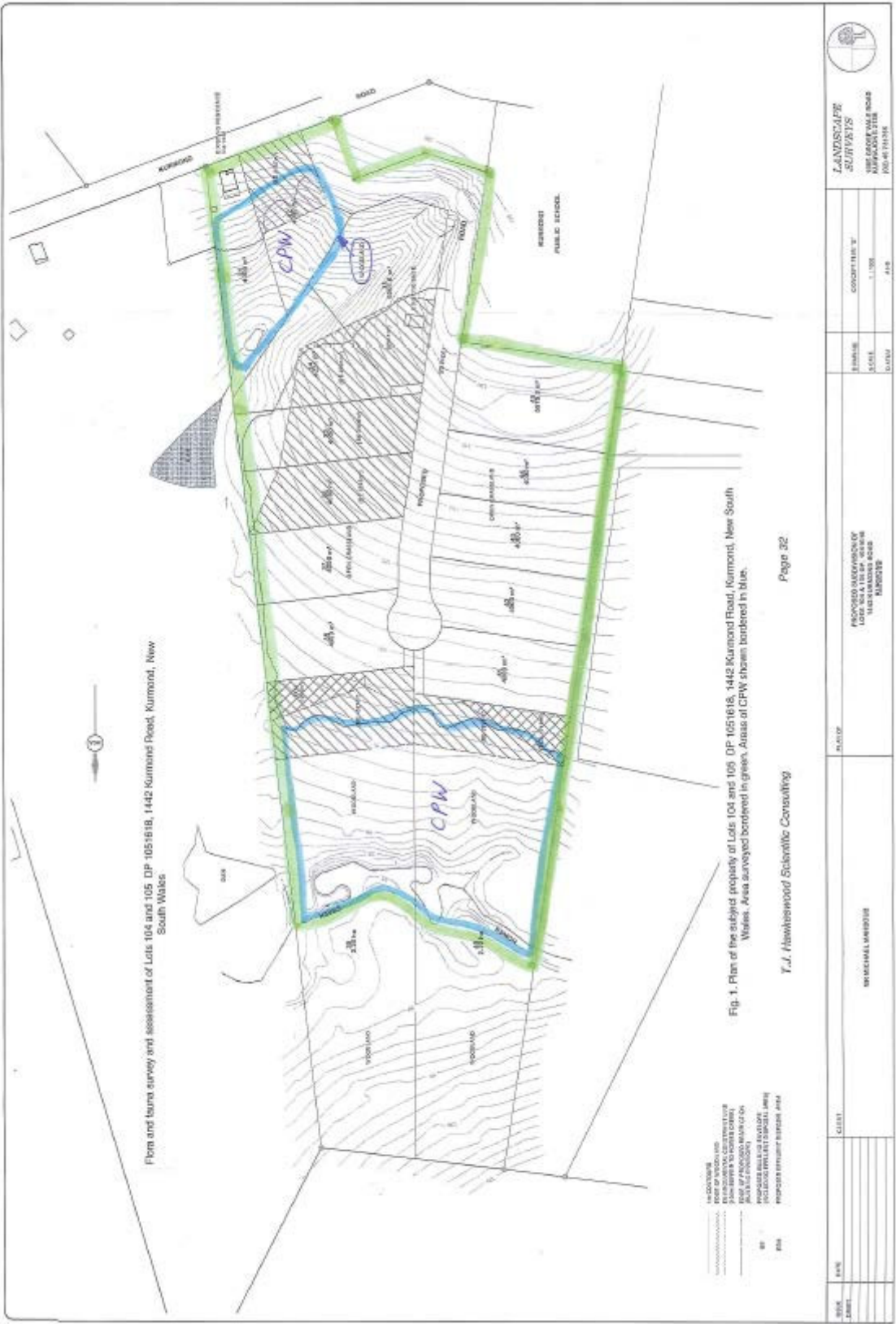
AT - 2 Aerial Photo of Site

AT - 3 Concept Plan of Proposed Subdivision

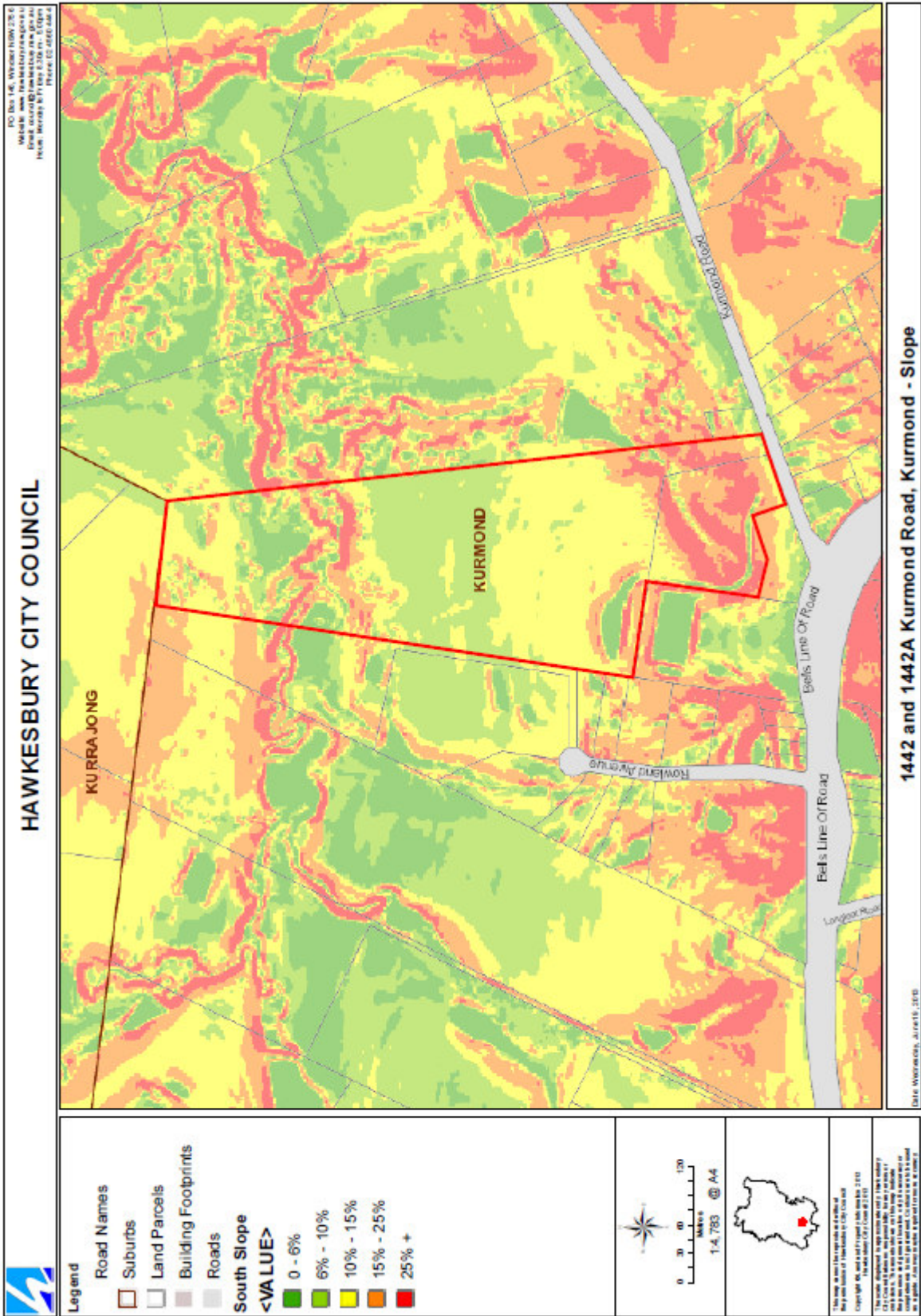
AT- 4 Plan showing location of Cumberland Plain Woodland (CPW)

AT- 5 Slope Map

AT- 4 Plan showing location of Cumberland Plain Woodland (CPW)



AT- 5 Slope Map



oooO END OF REPORT Oooo