

CP - Planning Proposal for Large Lot Residential Development of Lot 1 ...**ACTION ITEM****ADOPTED**

At the ORDINARY Meeting held on *31 January 2012*

**User Instructions**

To view the original Agenda Item, double-click on 'Agenda Report' blue hyperlink above.

**Resolved Items Action Statement**

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

---

**ITEM: 3**                      **CP - Planning Proposal for Large Lot Residential Development of Lot 1 DP 880684, 1411 Kurmond Road, Kurmond - (95498)**

---

Mr Robert Montgomery, proponent, addressed Council.  
Mr Michael Want, respondent, addressed Council.

**MOTION:**

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

*Refer to RESOLUTION*

**RESOLUTION:**

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

That:

1. Council support in principle a planning proposal to permit not more than five large residential lots on Lot 1 DP 880684, 1411 Kurmond Road, Kurmond, generally consistent with the layout in plan prepared by McKinlay Morgan & Associates Pty Ltd., titled "Plan Showing Gradients Over Part of Lot 1 DP 880684 Kurmond Road, Kurmond", dated 1/11/2011.
2. The "in principle" support for this Planning Proposal must be subject to the proposal being responsible, jointly with the Roads and Maritime Services, for some upgrade to the intersection of Kurmond Road and Bells Line of Road to improve right turn movements into Kurmond Road for traffic travelling west along Bells Line of Road,
3. Montgomery Planning Solutions be requested to provide Council with a planning proposal consistent with resolution 1 and Department of Planning and Infrastructure's "A guide to preparing planning proposals".
4. As a result of parts 1, 2 and 3 of the resolution, the planning proposal be forwarded to the Department of Planning and Infrastructure for a "gateway" determination.

5. The Roads and Maritime Services be reminded of the concerns of the community and Council in relation to the significant existing traffic problems along Bells Line of Road through North Richmond and Richmond and request that this issue be addressed as soon as possible.

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

<b>For the Motion</b>	<b>Against the Motion</b>
Councillor Bassett	Councillor Calvert
Councillor Conolly	Councillor Paine
Councillor Ford	Councillor Porter
Councillor Mackay	Councillor Rasmussen
Councillor Reardon	Councillor Williams
Councillor Tree	
Councillor Whelan	

**ITEM:** CP - Planning Proposal for Large Lot Residential Development of Lot 1 DP 880684, 1411 Kurmond Road, Kurmond - (95498)

---

**REPORT:**

**Executive Summary**

This report discusses a planning proposal which seeks to rezone 1411 Kurmond Road, Kurmond for the purposes of five large residential lots.

The applicant is Montgomery Planning Solutions (MPS) and the objective of the planning proposal is to rezone part of the land to facilitate large lot residential development in keeping with the adjacent subdivision pattern to the west.

A plan showing the indicative lot layout is attached to this report.

**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.

**Planning Proposal**

MPS seeks to rezone the site in order to create five large residential lots and it is considered that there are two possible scenarios regarding the timing of the planning proposal, viz:

- if the planning proposal is to amend the Hawkesbury Local Environmental Plan 1989 (HLEP 1989), the appropriate provisions would be by way of an addition to "Schedule 3 – Development for certain additional purposes"; or
- if the planning proposal is to amend the draft Hawkesbury Local Environmental Plan 2011 (dLEP 2011) when made, the appropriate provisions would be by way of zoning a strip of land along Kurmond Road as RU5 Village, with the lot size map amended to a minimum of 4000m<sup>2</sup>.

**Site and Surrounds**

The site has an area of 11.5ha and is generally rectangular in shape, except for a 4,422m<sup>2</sup> irregular shaped lot towards Kurmond Road.

The site falls generally from Kurmond Road, with an elevation of approximately 120m AHD, to the south-east with a lower elevation of approximately 65m AHD. Slopes are substantially in excess of 15% for approximately the front third of the site, the middle third is generally either greater than 15% or between 11 and 15% in slope, the rear third of the site is generally 4 – 15% in slope.

The majority of the site is cleared and undeveloped except for a dwelling and outbuildings near Kurmond Road and two dams.

The site, and surrounding land to the west, south and east is currently zoned Mixed Agriculture under HLEP 1989 with a minimum subdivision lot size provision of 10ha. Land to the north is currently zoned Rural Living with a minimum lot size provision of 4ha.

All of the site is "bushfire prone land" (primarily vegetation category 1) according to NSW Rural Fire Service's Bushfire Prone Land Map and the site is "Class 5" land as shown on Council's Acid Sulfate Soils Planning Map.

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.

To the south-west of the site are 25 large residential lots, generally in the order of 1500m<sup>2</sup> to 8200m<sup>2</sup> in area. Land to the south-east and north-east is used for low intensity grazing. Land on the northern side of Kurmond Road comprises a mix of rural residential and grazing uses.

### **Applicant's Justification of Proposal**

MPS has provided the following reasons in support of the planning proposal:

1. *"The land has the appropriate physical characteristics to support large lot residential development as proposed.*
2. *The proposed rezoning will make use of existing infrastructure.*
3. *There will be no adverse environmental or visual impact as a consequence of development of the land.*
4. *No addition infrastructure is required and no new road construction is required.*
5. *The proposal represents a suitable expansion of the existing Kurmond Village.*
6. *The proposal is consistent with the Hawkesbury Residential Land Strategy and meets all criteria for rural village development.*
7. *The proposal will assist in achieving the target (contained in the North West Subregional Strategy) for new dwellings in the Hawkesbury".*

### **Assessment**

*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.

The Hawkesbury Residential Land Strategy (RLS) is, in part, a response to these 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 RLS 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;
- address environmental constraints and have minimal impact on the environment.

MPS claims that the site is capable of onsite sewerage disposal, however, no waste water feasibility study (or similar) has been provided to support this claim. Given the size of the site (11.5ha) and the relatively small number of additional lots it is considered that onsite sewerage disposal is feasible and the details of any proposed system(s) can be investigated at the development application for future subdivision. Note this may require proposed lots 1 and 2 to be increased in size. (Note: The Planning Proposal stage is not approving the lot layout of the proposal, but the overall minimum allotment size. The lot layout is determined and approved at the development application stage.)

The site is on the periphery of the Kurmond village and immediately adjacent to a cluster of rural – residential properties fronting Bells Line of Road.

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.*

At this stage in the assessment of the proposal, it is considered that the proposal achieves satisfactory compliance with Council's Community Strategic Plan and Residential Land Strategy and the proposal would have minimal impact on existing infrastructure in the Kurmond area.

*Section 117 Directions*

Section 117 directions are issued by the Minister for Planning and Infrastructure and apply to planning proposals. Typically, the 117 directions will require certain matters to be complied with and/or require consultation with government authorities during the preparation of the planning proposal. The key 117 directions are as follows:

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).

1.3 Mining, Petroleum Production and Extractive Industries – requires consultation with NSW Industry and Investment.

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).

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 Department of Planning & Infrastructure (DP&I), via the "gateway" process, regarding the applicability of this document.

4.1 Acid Sulfate Soils – requires consideration of the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of DP&I.

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.

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 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 Department of Planning, 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 Hawkesbury Residential Land Strategy (HRLS) has been prepared with consideration given to the various Policies and Strategies of the NSW Government and S117 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* 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. MPS advise that the land has been used for low intensity agriculture for many years and there is therefore a low risk of contamination.

Further MPS note that the Department of Planning and Infrastructure's "Local Plan Making Guidelines" states:

*In some cases it will be necessary to undertake technical studies or investigations to justify different aspects of a planning proposal. Generally, these studies or investigations should not be carried out in the first instance. Instead, the issues giving rise to the need for these studies or investigations should be identified in the planning proposal. The initial gateway determination will then confirm the studies or investigations required and the process for continuing the assessment of the proposal, including whether it will need to be resubmitted following completion of the studies or investigations.*

MPS claim that in terms of this planning proposal, it is considered that no study is warranted in order to progress the draft LEP. Any future development application for the use of the land may then require further investigation.

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 impacts of the development on the environment, the feasibility of alternatives and consideration of specific matters such as water quality, water quantity, flora and fauna, agriculture, rural-residential development and metropolitan strategy. It is considered that the planning proposal achieves satisfactory compliance with the provisions of SREP No 20 (No. 2 – 1997).

#### *Character of the area*

The area surrounding the site has a mix of lot sizes with most notably 25 rural-residential properties immediately to the south-west with lot sizes ranging from approximately 1500m<sup>2</sup> to 8200m<sup>2</sup>. The proposed lots are of similar size to these existing properties and it is considered that future development of the lots by way of dwellings, driveways and outbuildings will be consistent with the surrounding rural-residential character of the area.

### *Topography*

The site falls generally from Kurmond Road, with an elevation of approximately 120m AHD, to the south-east with a lower elevation of approximately 65m AHD. Slopes are substantially in excess of 15% for approximately the front third of the site, the middle third is generally either greater than 15% or between 11 and 15% in slope, the rear third of the site is generally 4 – 15% in slope.

The HRLS recognises slopes greater than 15% act as a constraint to development.

The concept plan shows that proposed lots 1, 2 and 3 can accommodate, wholly or substantially, a 20m by 20m building envelope on land less than 15% in slope. It is considered that this area is satisfactory for the future construction of a dwelling. A building envelope has not been shown for proposed lot 5, however, given its large size and varying slopes there is sufficient area available with a slope less than 15% that can be development for the purposes of a residence.

The relatively steep slope of the land in proposed lots 1, 2 and 3 will act as a constraint for the location and type of effluent disposal system, driveways and outbuildings. At this stage it is considered that these constraints are not insurmountable and they can be examined in greater detail at development and subdivision stage.

### *Traffic and Access*

The vacant section of the site has frontage to Kurmond Road of approximately 160m. The speed limit in this area is 60km/hour and MPS claim that adequate sight distance is available in both directions and the additional driveways will not create any impacts in terms of functioning of Kurmond Road. It is not considered that the addition of 4 additional allotments will exceed the capacity of the surrounding road system.

### *Services*

Water, power and telecommunication services are available for connection to the land. It is considered that in some form the site is suitable for on-site effluent disposal and the exact type and location of proposed systems can be determined at development and subdivision stage.

### *Ecology and Bushfire Protection*

The majority of the site is cleared and undeveloped. A small stand of vegetation is located near a dam in the front third of the site and a stand of vegetation is located towards the rear of the site.

It is considered that the existing dams and vegetation do not pose an undue constraint on the proposed future development of the site.

If the planning proposal is to proceed it is anticipated that it will be referred to the NSW Rural Fire Service (RFS), being the responsible authority of bushfire protection, for comment. The RFS may make recommendation regarding the provisions of Asset Protection Zones which may require proposed lot boundaries to be altered. (Note: The Planning Proposal stage is not approving the lot layout of the proposal, but the overall minimum allotment size. The lot layout is determined and approved at the development application stage.)

### *Agricultural Land Classification*

The site consists of Class 3 and Class 4 land. The NSW Land and Water Conservation's 1988 Agricultural Suitability Classification System describes Class 3 and Class 4 land as follows:

*Class 3 – Moderately productive lands suited to improved pasture and to cropping within a pasture rotation. The overall level of production is moderate as a result of edaphic or environmental constraints. Erosion hazard or soil structural breakdown limit the frequency of ground disturbance, and conservation or drainage works may be required.*

*Class 4 – Marginal lands not suitable for cultivation and with a low to very low productivity for grazing. Agriculture is based on native or improved pastures established using minimum tillage. Production may be high seasonally but the overall level of production is low as a result of a number of major constraints, both environmental and edaphic.*

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. MPS advise that the site has been used for low intensity grazing and the proposed lot 5 could continue to be used for same without conflicting with the surrounding proposed large residential lots.

#### **Conformance with Hawkesbury Community Strategic Plan 2010 – 2030 (CSP)**

It is considered that the proposal is consistent with or assists in achieving the following provisions of the CSP.

##### Looking after people and place

*Vision: In 2030 we want the Hawkesbury to be a place where we have: A community in which the area's character is preserved and lifestyle choices are provided with sustainable planned, well serviced development, within strongly connected, safe and friendly neighbourhoods.*

##### Directions:

- *Be a place where we value, protect and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.*
- *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.*

##### Goals:

- *Maintain and foster the rural character of villages within the Hawkesbury.*
- *Accommodate at least 5,000 new dwellings to provide a range of housing options (including rural residential) for diverse population groups whilst minimising environmental footprint.*
- *Towns and villages to be vibrant places that people choose to live in and visit.*

##### Caring for Our Environment

*Vision: In 2030 we want the Hawkesbury to be a place where we have: A community dedicated to minimising its ecological footprint, enjoying a clean river and an environment that is nurtured, healthy, protected and provides opportunities for its sustainable use.*

##### Directions:

- *Be a place where we value, protect, and enhance the cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.*

- *To look after our cultural and environmental assets for future generations so that they too can enjoy and benefit from a clean river and natural eco-systems, rural and cultural landscape.*

#### Supporting Business and Local Jobs

*Vision: In 2030 we want the Hawkesbury to be a place where we have: New and existing industries which provide opportunities for a range of local employment and training options, complemented by thriving town centres.*

#### Directions

- *Help create thriving town centres, each with its own character that attracts residents, visitors and businesses.*

#### Goals:

- *Increased patronage of local businesses and attract new residents and visitors.*

#### Shaping Our Future Together

*Vision: In 2030 we want the Hawkesbury to be a place where we have: An independent, strong and engaged community, with a respected leadership which provides for the future needs of its people in a sustainable and financially responsible manner.*

#### Directions

- *A balanced set of decisions that integrate jobs, housing, infrastructure, heritage, and environment that incorporates sustainability principles.*

#### Goals

- *Work together with the community to achieve a balanced set of decisions that integrate jobs, housing, infrastructure, heritage and environment.*

#### **Financial Implications**

MPS has paid the fees required by Council's Revenue Pricing Policy for the preparation of a local environmental plan.

#### **Conclusion**

It is considered that the proposal to amend HLEP 1989 or dLEP 2011 (when made) for allow five large residential lots is worthy of further consideration and forwarding to the DP&I for their "gateway" determination.

Recent advice provided by DP&I to Council is that the planning proposal submitted by MPS does not satisfy DP&I's required format or content for planning proposals. Furthermore, during the course of Council staff's assessment of the application, the proposal has been amended and therefore the original planning proposal submitted by MPS requires updating.

It is therefore recommended that Council support in principle a planning proposal for not more than five large residential lots on the site and that MPS be requested to provide Council with an updated planning proposal consistent with the DP&I required format.

#### **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.

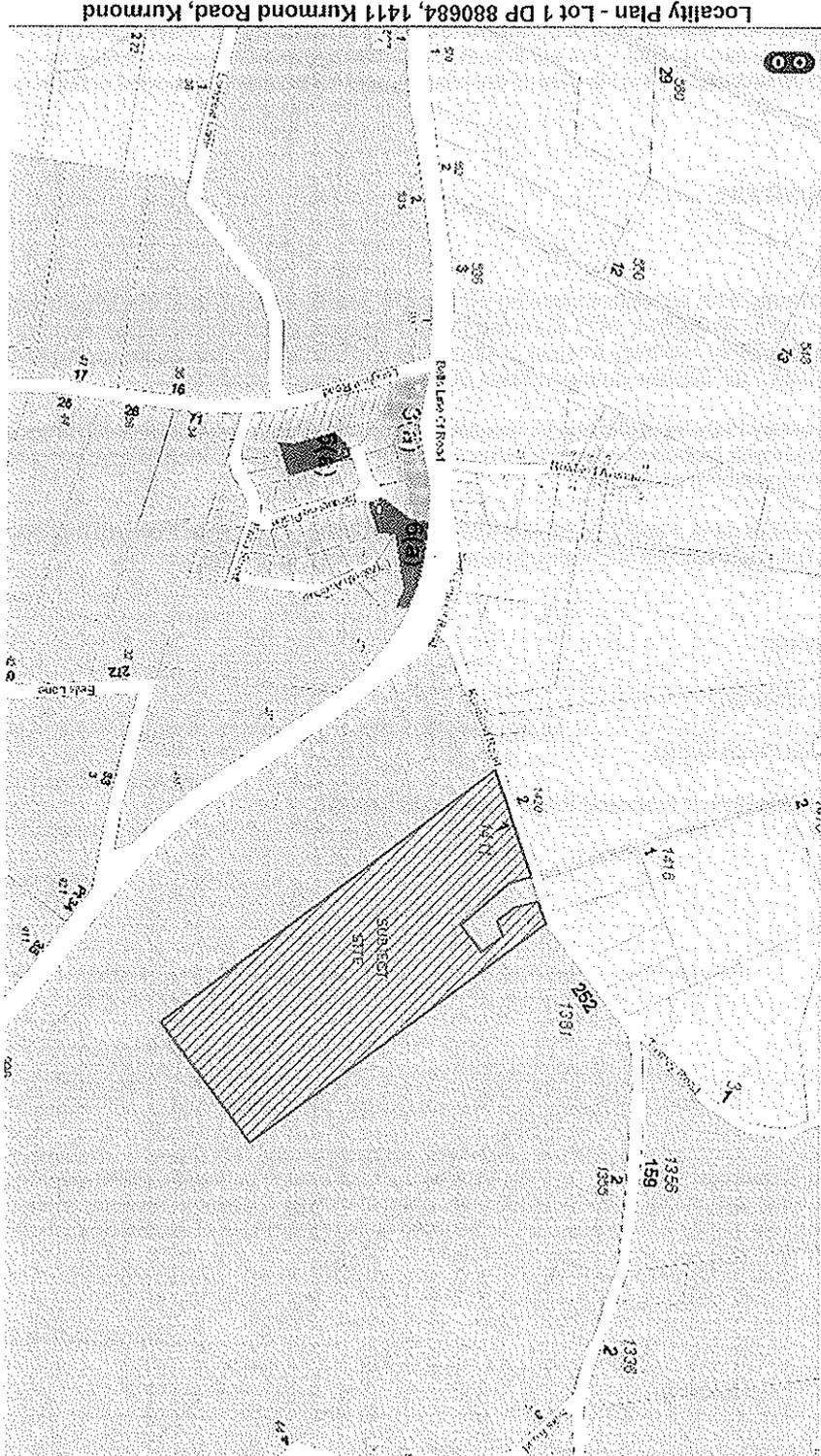
**RECOMMENDATION:**

That:

1. Council support in principle a planning proposal to permit not more than five large residential lots on Lot 1 DP 880684, 1411 Kurmond Road, Kurmond, generally consistent with the layout in plan prepared by McKinlay Morgan & Associates Pty Ltd., titled "Plan Showing Gradients Over Part of Lot 1 DP 880684 Kurmond Road, Kurmond", dated 1/11/2011.
2. Montgomery Planning Solutions be requested to provide Council with a planning proposal consistent with resolution 1 and Department of Planning and Infrastructure's "A guide to preparing planning proposals".
3. As a result of parts 1 and 2 of the resolution, the planning proposal be forwarded to the Department of Planning and Infrastructure for a "gateway" determination.

**ATTACHMENTS:**

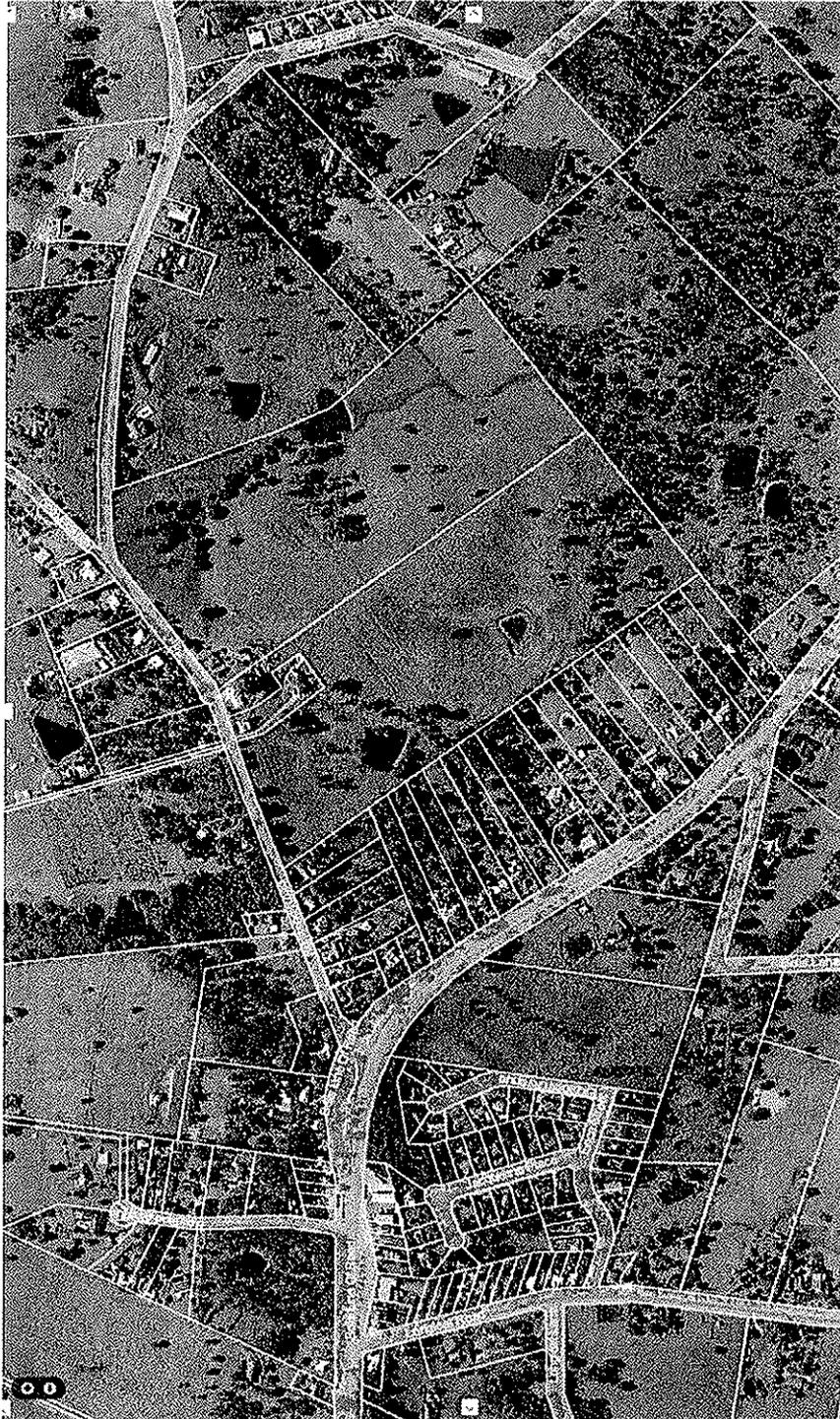
- AT - 1 Locality Plan.
- AT - 2 Aerial Photo of Site.
- AT - 3 Concept Plan of Proposed Rezoning and Lot Layout.



Locality Plan - Lot 1 DP 880684, 1411 Kurmond Road, Kurmond

AT - 1 Locality Plan

AT - 2 Aerial Photo of Site



Aerial Photo – Lot 1 DP 880684, 1411 Kurmond Road, Kurmond

