

ACTION ITEM

ADOPTED

At the ORDINARY Meeting held on 28 October 2014

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: CP - Planning Proposal to amend Hawkesbury Local Environmental Plan 2012 - 373 Bells Line of Road, Kurmond - (95498)

Mr Glen Falson addressed Council, speaking for the item.

Mr Michael Want addressed Council, speaking against the item.

MOTION:

RESOLVED on the motion of Councillor Creed, seconded by Councillor Paine.

Refer to RESOLUTION

357 RESOLUTION:

RESOLVED on the motion of Councillor Creed, seconded by Councillor Paine.

That:

1. Council support the preparation of a planning proposal for Lot 11 DP 633630, 373 Bells Line of Road, Kurmond to allow development of the land for large lot residential / rural residential development.
2. The planning proposal be forwarded to the Department of Planning and Infrastructure for a "Gateway" determination.
3. The Department of Planning and Infrastructure be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
4. 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.

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.
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.

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:

For the Motion	Against the Motion
Councillor Conolly	Councillor Calvert
Councillor Creed	Councillor Porter
Councillor Ford	Councillor Rasmussen
Councillor Lyons-Buckett	
Councillor Mackay	
Councillor Paine	
Councillor Reardon	
Councillor Tree	
Councillor Williams	

Item: CP - Planning Proposal to amend Hawkesbury Local Environmental Plan 2012 - 373 Bells Line of Road, Kurmond - (95498)

REPORT:

Executive Summary

This report discusses a planning proposal which seeks to amend *Hawkesbury Local Environmental Plan 2012* (the LEP) in order to permit the subdivision of 373 Bells Line of Road, Kurmond into six development lots and one community lot.

It is recommended that Council support the preparation of a planning proposal to allow development of the subject land primarily for rural 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 administered by the Department of Planning and Environment (DP&E).

Background

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.*
- 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).

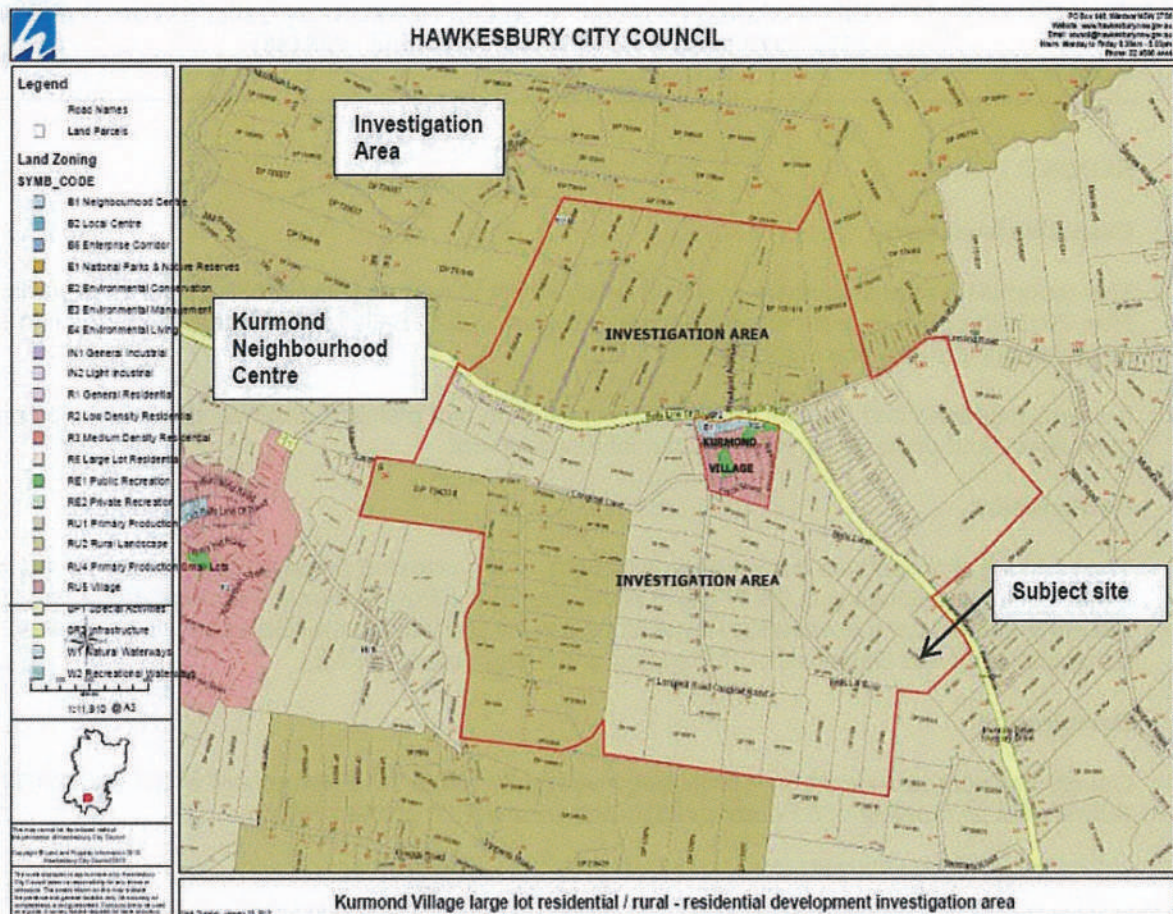


Figure 1: Kurmond Investigation Area

On 24 June 2014 Council considered a report on the progress and review of the Hawkesbury Residential Land Strategy (HRLS) which reinforced the Kurmond investigation area and also resolved in part as follows:

"That:

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 subject planning proposal in November 2013 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.

However, should the planning proposal be supported Council staff will work with the applicant with a view to ensuring that this proposal contributes fairly to the infrastructure that will be identified in the future S94 Plan for the locality.

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 373 Bells Line of Road, into six development lots and one community lot. The concept plan of the subdivision submitted with the proposal show the

development lots ranging in size from 7828m² to 2.45ha and the community lot consisting of a private accessway and a vegetated riparian area.

The applicant proposes to amend Lot Size Map Sheet LSZ_008AA of the LEP to allow the proposed subdivision of the land. A concept plan of a proposed subdivision is included as Attachment 1 to this report. (Note: this is for information purposes only and is not endorsed as an approved subdivision plan.)

Subject Site and Surrounds

The site is legally described as Lot 11 DP 633630, 373 Bells Line of Road, Kurmond. It is located approximately 1km south-east of the Kurmond Neighbourhood Centre (the Neighbourhood Centre).

The site has an area of 10.31ha, is irregular in shape, and has frontage to both Bells Line of Road and Bells Lane, Kurmond (see Figure 2).

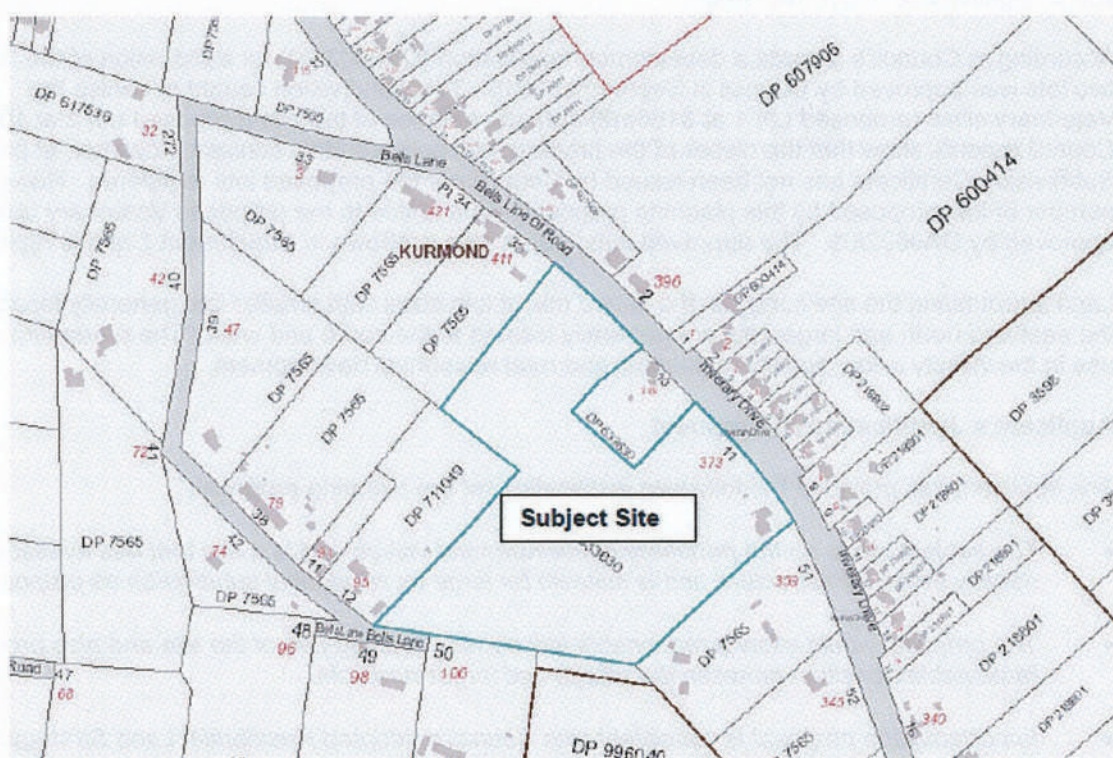


Figure 2: Subject Site

The site contains a Veterinary clinic in the south-east corner of the site and four dams. Outside of the immediate confines of the Veterinary clinic the site appears to be used primarily for low scale grazing.

An unnamed intermittent watercourse runs north-west to south-east generally through the middle of the site. Surrounding this watercourse is the majority of remnant vegetation on the site.

The land is undulating and has an elevation of approximately 93m AHD at Bells Line of Road and falling to approximately 55m AHD at the unnamed watercourse and then rising to an elevation of approximately 90m AHD towards Bells Lane. Slopes on the site generally exceed 10% with some parts of the site towards Bells Line of Road and the unnamed watercourse exceeding 15%.

The site is zoned RU1 Primary Production under the LEP. The current minimum lot size for subdivision of this land is 10ha.

Land within the vicinity of the unnamed watercourse and the north-western boundary is shown as *Significant Vegetation* on the Terrestrial Biodiversity Map of LEP 2012. Council's vegetation mapping

suggests this vegetation consists of Alluvial woodland, Shale Sandstone Transition Forest (High Sandstone Influence), Shale Sandstone Transition Forest (Low Sandstone Influence), and Shale Hills Woodland.

The site is shown as being bushfire prone (bushfire vegetation category 1 and 2 and buffer) 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 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.

According to Council's records a development application (DA0602/09) for subdivision of the land into two lots was approved by Council in September 2010. This subdivision sought to excise the Veterinary clinic (proposed Lot 1 at 3165m²) from the balance of the site (proposed Lot 2 at 10ha). Council records show that the owner of the property has activated this consent, however, at present a Subdivision Certificate has not been issued by Council nor the proposed lots registered. However, the number of lots proposed by this planning proposal is in addition to the proposed Veterinary clinic lot approved by DA0602/09. The approved subdivision plan is shown in Attachment 2 of this report.

Land surrounding the site consists of a varied mix of lots sizes with smaller lots generally located to the east and north and larger lots are generally located to the south and west. 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:

- *The subject site is on the periphery of the Kurmond village and is a site that has available low density urban infrastructure and is suitable for large lot residential subdivision as proposed.*
- *The proposal would allow a reasonable low density housing use of the site and also provides a reasonable transition between the village and larger rural lots.*
- *Importantly the proposal is consistent with Council's adopted Residential Land Strategy as it provides larger residential lots on the edge of an existing urban area commensurate with available services. It is also consistent with the Metropolitan Strategy and Draft North Western Subregional Strategy in that it will assist in a small way of creating the target of 5-6,000 dwellings to 2031.*
- *There will be a net community benefit in that the proposal (and subsequent residential use) will assist in maintaining local village commercial and retail uses.*
- *Additionally there is a multiplier effect associated with expenditure from subsequent access and dwelling construction which will be of benefit to the local community. This is manifest in the boost particularly to the local Kurmond community with added catchment for the local retail sector, provision of jobs, use of transport, and the strengthening of the general economic and social wellbeing of the local community. It is also noteworthy that the local public school needs more children to keep up their class numbers.*
- *There are no identified negative community impacts arising from the proposal.*
- *It is believed that the planning proposal satisfies the requirements of the Department of Planning & Infrastructure for a Gateway Determination by the LEP Review Panel.*

The following sections of this report provide 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 above explained 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 i.e. 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.

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 importance of maintaining the viability of existing rural villages is recognised in the HRLS and as such it 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.

The main aim of the planning proposal is to subdivide the land into six development lots and one community title lot with development lot sizes ranging from 7828m² to 2.45ha. Hence 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."

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.

NOTE: 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 HRLS, the Hawkesbury Community Strategic Plan, the commencement of the current LEP, and the DP&E's gateway system for dealing with planning proposals.

The Policy is repeated below with responses provided by the applicant. Where relevant, 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:

Existing vegetation will largely screen the subdivision.

Staff response:

The planning proposal proposes four lots with either direct or indirect access from Bells Line of Road which is a main road. If the planning proposal is to proceed it will be referred to Roads and Maritime (RMS) for comment regarding the permissibility, or otherwise, of additional accesses from Bells Line of Road.

It is considered that the two proposed lots accessed from Bells Lane would represent a minor change to the immediate visual catchment and no additional screening of these lots is necessary. The lots to be accessed from Bells Line of Road when viewed from Bells Lane will be substantially screened by the vegetation in along the unnamed watercourse running through the site.

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.***

(NOTE: This provision has been superseded by the LEP)

Applicant response:

The lots will vary in size down to a minimum of 7828m². This is larger than 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).

- 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. It is believed that dwellings and bushfire asset protection zones can be established on each lot without removal of significant vegetation. Some understorey management may be required.

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

(NOTE: The need for an environmental Study is determined by the Gateway process.)

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 is it considered that an environmental study is not required. However, this will be a matter for the DP&E's "Gateway" determination.

The need for a Section 94 Contribution Plan or a Voluntary Planning Agreement will 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 proposed subdivision incorporates community title subdivision for part of it that will allow proper management of access from Bells Line of Road and of vegetation along the watercourse.

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).

The planning proposal seeks an amendment to Lot Size Map of the LEP and does not propose any changes to the current RU1 Primary Production zoning.

The applicant states:

"the proposal is considered to be of minor significance only in terms of impact on the available rural zones and rural/agricultural lands. The site has not been used for any form of rural/agricultural use for many years and is currently required to be mechanically slashed to keep grass and weed infestation at bay. Due to the location of the site adjacent to dwellings on small lots and vegetation and watercourse on site the land is arguably not conducive to productive agricultural use. As the proposal . . . provides a community benefit and is considered to be of minor significance the proposal does not, in our view, warrant the preparation of a specific rural study particularly noting Council's Residential Strategy that identified sites such as this for village expansion."

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 winning or obtaining of extractive materials, or*
- (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. Further, 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 amendment 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 winning 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.

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 applicant states:

"subdivision of the land would allow for a variety of lot sizes and housing opportunities, enable connection to existing services and be of appropriate environmental impact."

Given clause 6.7 Essential services of the LEP already makes provision for essential services this planning proposal does not need to propose additional services requirements and 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 RU1 Primary Production 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.

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 as it would seem that the substantial increase in large lot residential development (rural residential development) may be contrary to this Direction.

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 sulphate 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 however the applicant does note the mapped classification and states:

"no works are proposed with the subdivision or subsequent dwellings that would require an assessment of soils. The draft LEP is of minor significance."

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 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*
- (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."*

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 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 planning proposals should be consistent with the NSW Government's Metropolitan Plan for Sydney 2036.

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

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. This would also be a consideration in any future development applications for the site.

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 nor will the proposed development restrict the obtaining of deposits of extractive material from such land the planning proposal is consistent with this direction.

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.

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;
- 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 RU1 Primary Production Small Lots zoning under the LEP is to remain unchanged. The planning proposal seeks to amend only the Lot Size Map of the LEP to allow the proposed subdivision of the land.

Given the site is located within the "Kurmond Village large lot residential/rural-residential Investigation Area" the proposal to amend the Lot Size Map is considered appropriate.

Services

The applicant advises that reticulated water, electricity, telephone, garbage and recycling services are provided to the site and would be available to the additional lots created. The detail of this servicing is a matter that must be considered at the development application stage for the site, should the planning proposal be supported.

There is no reticulated sewer in the vicinity of the site. Initial assessment of the land and proposed lot sizes suggests that on-site disposal of effluent could be achieved. This can be further considered at the development application stage.

Topography

The land is undulating and has an elevation of approximately 93m AHD at Bells Line of Road and falling to approximately 55m AHD at the unnamed watercourse and then rising to approximately an elevation of approximately 90m AHD towards Bells Lane. Slopes on the site generally exceed 10% with some parts of the site towards Bells Line of Road and the unnamed watercourse exceeding 15%.

The HRLS recognises slopes greater than 15% act as a constraint to development. The concept plan of subdivision shows that reasonable sized building envelopes can be accommodated on land with slope less than 15%.

Site Access, Public Transport and Traffic Generation

Vehicular access to the site is from Bells Line of Road and Bells Lane. These access points are relatively level and good sight distances could be achieved in each direction subject to some vegetation removal along the Bells Line of Road frontage. The subdivision design proposes to have a shared access from Bells Line of Road for the newly created lots. The existing access for the veterinary clinic will continue to exist.

The site is subject to a RMS re-alignment plan which affects a narrow strip of land adjacent to Bells Line of Road.

If the planning proposal is to proceed, it will be referred to RMS for comment regarding the proposed access and effect on the re-alignment plan.

The site is within reasonable cycling and walking distance to the Kurmond village shops. There is a bike path on the opposite side of Bells Line of Road that links North Richmond with Kurmond.

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 applicant has not undertaken a flora/fauna assessment of the site however states:

"the subdivision proposes that a "riparian zone" be established along the watercourse so that the area can be properly managed with development excluded from it. It is envisaged that this would be set up through a community title form of subdivision. It is

considered that houses could be built on the proposed vacant lots without the need for any clearing of vegetation. It is not considered that a formal report on flora/fauna of the site is required at this stage but would be more appropriate if identified through the Gateway process."

In general terms 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 will occur at development application stage.

Agricultural Land Classification

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

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

Given the site is in close proximity to the Kurmond Neighbourhood Centre, surrounding rural residential development and it not being used for intensive agricultural uses for many years it is considered that it is unlikely the site could be used for a substantial or viable agricultural enterprise.

Bushfire Hazard

No formal bushfire assessment has been undertaken at this stage however it is considered that there is sufficient room on each proposed lot to site a dwelling that complies with Planning for Bushfire Protection 2006 (PBP) including asset protection zones, water supply etc.

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 consideration. It is noted that the proposed access off Bells Line of Road appears not to comply with the provisions of PBP with respect to the number of lots served hence it is anticipated that the RFS will make comment regarding this.

Heritage Significance

The site does not contain or adjoin and 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

- 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.

Strategies

- Revitalise and enhance town centres and villages.
- 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 a local environmental plan.

Conclusion

It is considered that some form of large lot residential / rural 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 rural residential development.

It is also recommended that if the DP&E determines that the planning proposal is to proceed, this development, via a Section 94 plan or Voluntary Planning Agreement, contribute to the required infrastructure, especially road upgrade and provision, in the locality.

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:

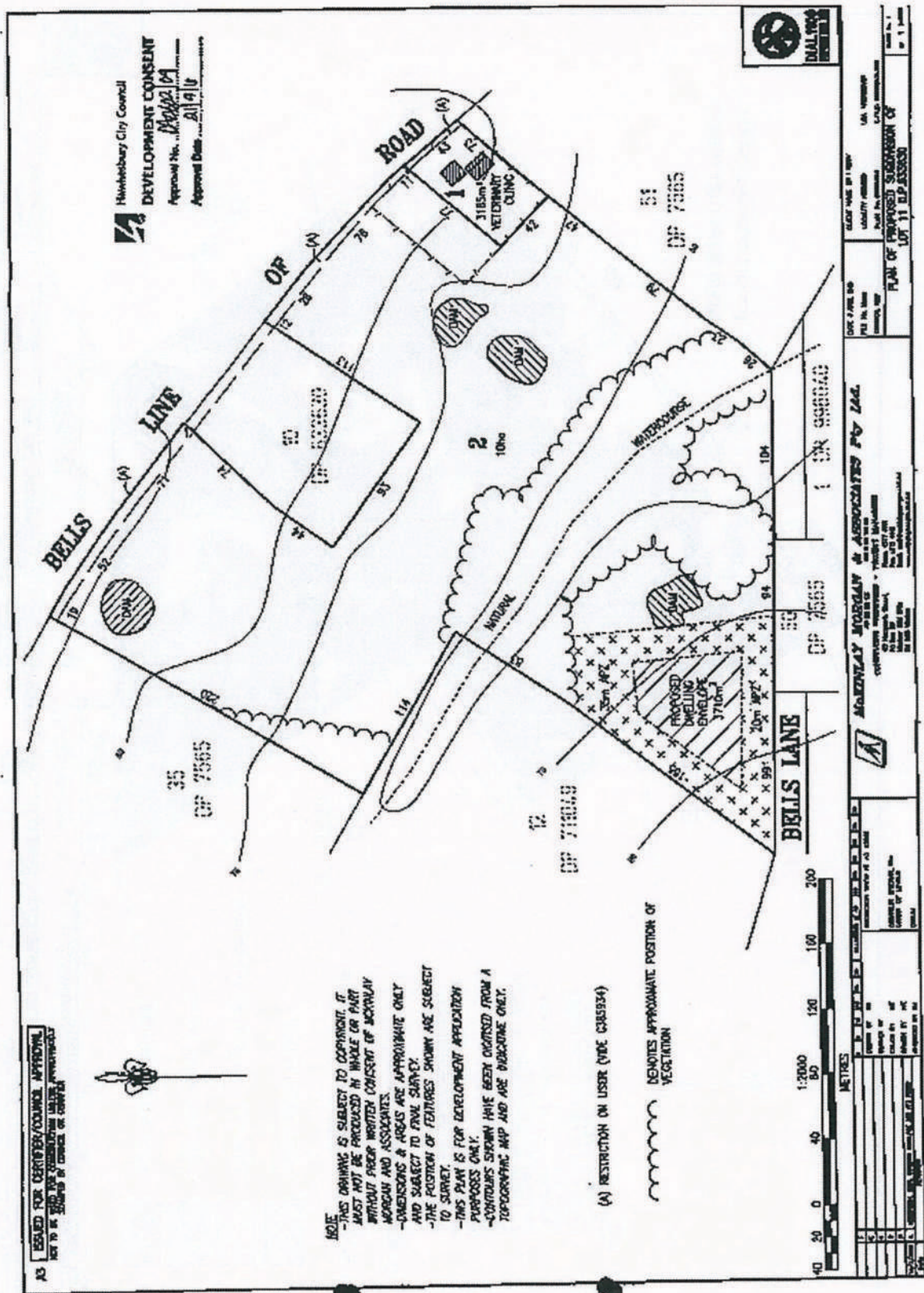
That:

1. Council support the preparation of a planning proposal for Lot 11 DP 633630, 373 Bells Line of Road, Kurmond to allow development of the land for large lot residential / rural residential development.
2. The planning proposal be forwarded to the Department of Planning and Infrastructure for a "Gateway" determination.
3. The Department of Planning and Infrastructure be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
4. 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.
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** Plan of subdivision approved by DA0602/09

AT - 2 Plan of subdivision approved by DA0602/09



oooO END OF REPORT Oooo