

ORDINARY MEETING

Meeting Date: 12 May 2015

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

The primary aims of 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. 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.

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

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
- 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

ORDINARY MEETING

Meeting Date: 12 May 2015

- 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.

The site falls within the Middle Nepean & Hawkesbury River Catchment Area of SREP 20.

It is considered that future dwellings on the planned additional lots have the potential to either satisfy the relevant provisions SREP No 20 or be able to appropriately minimise its impacts.

Topography

The land generally falls from Bells Line of Road with an elevation of approximately 154 AHD in south-easterly direction towards the existing dam which is located at a level of approximately 114 AHD and approximately 90m away from the north-eastern boundary of the site. A natural watercourse originates from the north-western slopes of the site and runs through the middle of the site and the dam. Also a small watercourse runs parallel to this watercourse and through a small dam located closer to the southern boundary. Both these watercourses flow further down in a south-easterly direction to join into the Redbank Creek.

According to Council's slope mapping, there are areas of land covered with dense vegetation along northern and western boundaries and two watercourses that have a slope greater than 25%. As shown in Figure 2 below approximately 45% is open grass land area with some scattered trees shown in red and cross-hatched and is generally less than 15% in slope. As the HRLS recognises slopes greater than 15% act as a constraint to development, future development of the site for residential purposes would need to be limited only to the land area with slopes less than 15%.

ORDINARY MEETING

Meeting Date: 12 May 2015

According to Council's slope mapping, proposed Lots 2 and 5 on the 10 large lot concept plan contain more than 80% of land with a slope greater than 15%. Also proposed lots 3 and 9 contains 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, effluent disposal system, and driveways.

The Strategy slope constraint combined with the impacts these slopes have on effluent disposal, potential impacts on the existing native vegetation and the proposed dwelling houses and site access, it is considered that the proposed 10 lots yield on the site as shown on the above concept plan may not be achievable. Given these circumstances it is considered appropriate to limit the proposed 4,000m² lot size only to the north-eastern corner of the site and the remainder of the site area for large lots with minimum lot size of 1ha as shown in Attachment 1 - Proposed Lot Size Map to this report. This would be likely to result in a lesser number of lots on the site than proposed. However this is not a determining factor for this assessment and it could be addressed at the development application stage.

Ecology

The Terrestrial Biodiversity Map of the LEP identifies the whole site area (other than a very narrow strip of land area near the southern boundary) as 'connectivity between remnant vegetation' and records the site as containing Shale Sandstone Transition Forest (Low sandstone influence) with conservation significance.

The planning proposal is accompanied by a flora and fauna survey and assessment report prepared by UBM Ecological Consultants. The report provides the following information on flora and fauna within and adjacent to the site.

Flora

There is no presence of Shale Sandstone Transition Forest or any other sandstone species on the site and the dominant extant community as Moist Shale Woodland (MSW) which is listed separately as an Endangered Ecological Community under the *Threatened Species Conservation Act 1995* (TSC Act).

Less than 10% area of regrowth MSW at the head of the central vegetated watercourse would need to be cleared or modified to create Asset Protection Zone (APZ) between the proposed building footprints and the hazard (i.e. the bushland). It is anticipated that the remainder of the bushland on the steep slopes and along the central watercourse will be retained and managed to preserve and protect its natural conservation values through a site-specific vegetation management plan.

An assessment of the impacts of the planning proposal, and specifically the need to create an APZ on the endangered MSW undertaken under Section 5A of the Act has determined that the likely impacts would be minimal in terms of the local occurrence of the MSW ecological community. As a result a Species Impact Statement has not been recommended for flora issues. However, if the Concept Plan of Community Title Subdivision is amended to remove or relocate the subject lots of concern to the bushfire ecologist, i.e. to move them closer to the vegetated central drainage line, it is likely that a Species Impact Statement will be required.

The report further indicates that there is no presence of threatened flora species or populations listed under the TSC Act on the site.

Fauna

In November 2013 during the field survey by the consultants, 28 native bird species were detected within, adjacent to, or flying over the site. One species of native reptile was observed, and two species of native frog were heard calling from dams in the site. Eight species of microbat were detected within the site. Two other native mammals were observed. Also foxes and Feral Red Deer were observed on the site.

ORDINARY MEETING

Meeting Date: 12 May 2015

Assessments of significance have been undertaken for those threatened species known to utilise the resources of the subject property/study area or considered likely to use these resources on occasion. These are the Powerful Owl, a suite of microbats and the Grey-Headed Flying Fox. The Assessments undertaken for the threatened species listed above have concluded that there will be no significant impact on these species, and that no further studies are required. However, if the concept plan is amended and additional areas of native vegetation are removed or modified, these assessments will have to be revisited.

Given the presence of these significant flora and fauna species within the site, any future development would require preparation of a flora and fauna report in accordance with Section 5A of the Act. This will enable Council to determine the likely impacts of the future development of the site on the existing flora and fauna species.

Public Transport, Accessibility 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 and every 120 minutes during off peak. The closest bus stop is located within the Kurrajong Neighbourhood Centre. Given the limited frequency of service and the location of the bus stop it is anticipated that the future residents of the proposed subdivision will most likely to rely upon private vehicles.

The site is currently accessed via Bells Line of Road which is classified as a 'main road' under the NSW *Roads Act 1993*.

The applicant states that the main access to the site will be from Mason Lane and the proposed access way off Mason Lane will be a private road managed under a community title.

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 taken into consideration by the planning proposal. It is considered that this is a matter for Council and Roads and Maritime Services (RMS) to address with the outcome being incorporated into affected planning proposals.

In recent reports to Council dealing with other planning proposals within the vicinity of Kurmond it has been noted that Council has received petitions from residents west of the Hawkesbury River concerned about rezoning of land for residential purposes in the absence of required infrastructure upgrades. To address this it has been 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 the required infrastructure, specially road upgrade and provision, in the locality. Alternatively applicants and Council can commence Voluntary Planning Agreement negotiations to address this issue. It is considered that it is a fundamental matter to be dealt with by Council prior to the finalisation of any planning proposals in the locality as the cumulative impact of these types of development will be unacceptable if no traffic improvements are made.

Bushfire Hazard

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

A bushfire risk assessment report prepared by Control Line Consulting in December 2013 in support of the planning proposal states that the site inspection and interpretation of aerial photo of the site confirms the Hawkesbury Bushfire Prone Land Map does not accurately represent the current extent of Category 1 Vegetation within the site and the area shown as Category 1 Vegetation is excessive. It further states that forest vegetation is limited to the north-west corner of the site and an occluded section within the south-eastern section of the site and Category 2 Vegetation occupies the vast majority of the site which represents grassland. The report concludes that future subdivision of the land as proposed in the subdivision concept plan could be able to comply with the provisions of bushfire regulatory requirements.

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. These lands are described by the classification system as:

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

Given the 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. However the land could still be used for light grazing.

Character

The predominant character of the immediate locality is rural residential (see Figure 4 below).



Figure 4: Aerial view of the site and surrounds

The area surrounding the site contains a mix of lot sizes and in particular there are a number of relatively small rural-residential lots with minimum lot sizes ranging from approximately 815m² - 3,000m² to the north-west and south-east fronting Bells Line of Road. The average size of lots immediately to south-west of the site fronting Mason Lane is 4,200m².

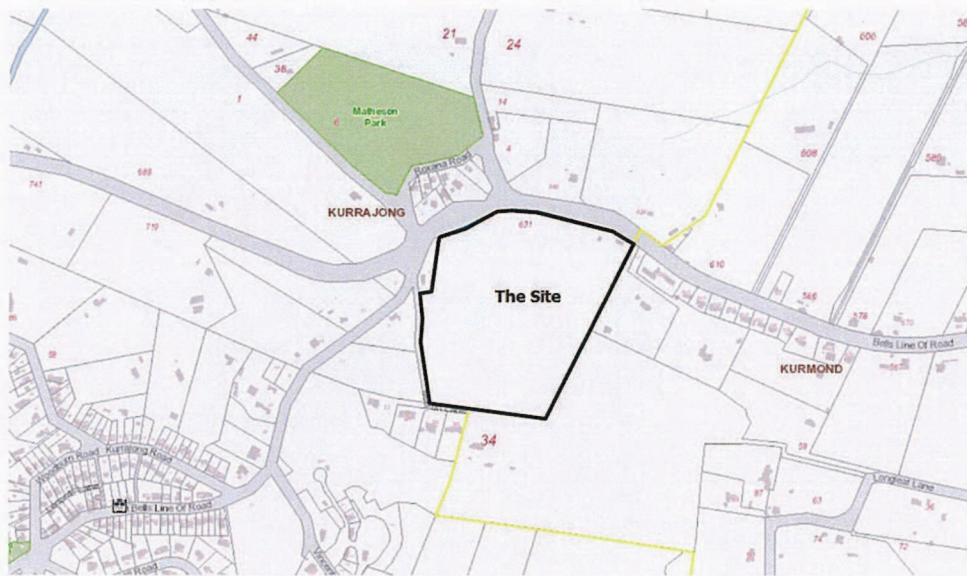


Figure 5: The Site and surrounding properties with a mix of lot sizes

Given the predominant rural residential character of the immediately vicinity and the abovementioned a mix of surrounding lot sizes, the intended outcome of the planning proposal to subdivide the land into large lot residential lots with minimum lot sizes of 4,000m² and 1ha is considered consistent with the existing character of the locality.

Services

The applicant states that:

"The proposal for 10 housing lots will not require the provision of additional public infrastructure. Electricity and telephone is available to the site. Reticulated water goes past the site's frontage. Whilst it is assumed that water would be available from Sydney Water if there was a supply difficulty then this would not be a bar to the subdivision occurring as the majority of nearby lots rely on water catchment rather than the reticulated supply."

The site does not have an access to a reticulated sewerage system and future development of the site would need to be depended on on-site sewerage management (OSSM) system. The existing dwelling house on proposed Lot 5 is served by an existing OSSM system. According to Council's records a five-year licence to operate the system issued by Council has expired in December 2014 and now the licence needs to be renewed to continue with the operation of the system. The location of this system relative to the boundaries of proposed Lot 5 is unknown, this can be further investigated at development application stage.

A preliminary effluent disposal report prepared by BRS has been submitted in support of the planning proposal. The report states that preliminary calculations carried out indicate an area of 994m² required for effluent disposal for each lot. Taking setbacks and other site constraints into consideration, areas in excess of 1,024m² for each proposed lot are available.

The report further states that based on a preliminary assessment and BRS's experience the site is considered to be suitable for on-site disposal of effluent generated by future dwellings within the recommended preliminary effluent disposal areas shown in Figure 6 below.

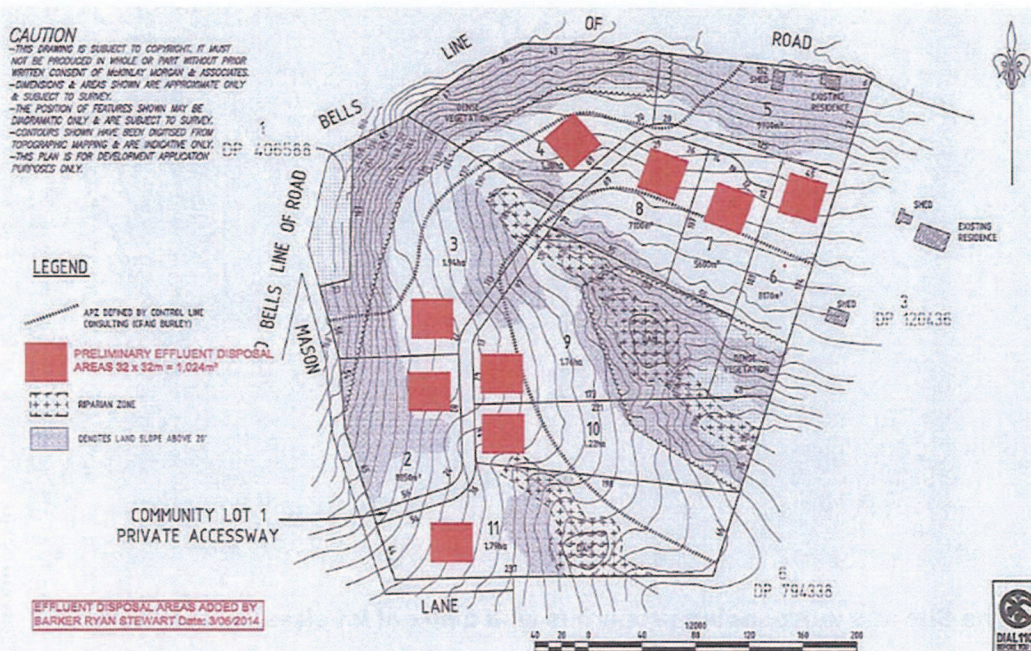


Figure 6: Proposed preliminary effluent disposal areas

The preliminary effluent disposal report concludes that:

"From the preliminary assessment of on-site effluent disposal for the proposed rezoning, each lot is considered suitable for the effective dispose of effluent using an aerated wastewater treatment system with surface irrigation serving a maximum number of 10 persons, without having detrimental impact on the environment provided:

- *The disposal area required for each proposed lot will be approximately 994m² while a provision of over 1,024 has been allowed for.*
- *A total wet weather storage of 3.1 cubic metres will be required to be provided within any proposed future system which will have a capacity of approximately 7,000m litres.*
- *The model of the system to be installed will be selected from the list of accredited units provided by the New South Wales Department of Health.*
- *Any system will need to be installed, operated and maintained in accordance with the manufacturer's instructions and the Council conditions of approval.*
- *Buffers and setbacks have been checked and maintained generally in accordance with the aforementioned on-site effluent disposal policies."*

However given the land area free of any slope/development constraints shown on the concept plan is inconsistent with the HRLS slope constraint criteria and possible reduction in number of lots on the site a detailed soil assessment will need to be undertaken at the subdivision application stage to determine the exact sizing and location of the effluent disposal areas. Verification/clarification of the distances of the effluent disposal areas from the two existing watercourses will also be required during further investigation and design of effluent disposal areas at the subdivision application stage.

Heritage

The site is not identified as a heritage item/property in Schedule 5 Environmental Heritage of the LEP or located within a conservation area.

Conformance to the Hawkesbury Community Strategic Plan

The proposal is consistent with the Looking after People and Place Directions statement.

- Offer residents a choice of housing options that meet their needs whilst being sympathetic to the qualities of the Hawkesbury.
- Population growth is matched with the provisions 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.

Conclusion

It is considered that some form of rural residential development on the site is appropriate and it is recommended that Council support the preparation of a planning proposal to amend the LEP to allow development of the land for rural residential development.

Whilst the site has potential for the development of rural residential allotments for the reasons of slope constraints, which may contribute to increased potential adverse impacts on the existing Endangered Ecological Community from on-site waste water disposal, asset protection zones, etc., it is recommended that 4,000m² minimum lot size be limited to the north-east corner of the site and 1ha minimum lot size be applied to the remainder of the site as shown in Attachment 1 to this report.

It is 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, specially road upgrade and provision in the locality.

Financial Implications

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

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.

ORDINARY MEETING

Meeting Date: 12 May 2015

RECOMMENDATION:

That:

1. Council support the preparation of a planning proposal for Lot 1 DP 120436, 631 Bells Line of Road, Kurrajong to amend the Lot Size Map of Hawkesbury Local Environmental Plan 2012 to permit minimum lot sizes of not less than 4,000m² and 1ha on the land as shown in Attachment 1 to this report.
2. Council does not endorse any proposed subdivision layout/plan submitted with the planning proposal as this will need to be subject to a development application should the planning proposal result in making the plan.
3. The planning proposal be forwarded to the Department of Planning and Environment for a "Gateway" determination.
4. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
5. The Department of Planning and Environment and the applicant be advised that in addition to all other relevant planning considerations being addressed, final Council support for the proposal will only be given if Council is satisfied that satisfactory progress, either completion of the Section 94 Developer Contributions Plan or a Voluntary Planning Agreement, has been made towards resolving infrastructure provision for this planning proposal.

ATTACHMENTS:

AT - 1 Proposed Minimum Lot Size Map

ORDINARY MEETING

Meeting Date: 12 May 2015

Item: 69

CP - LEP006/14 - Planning Proposal to Amend Hawkesbury Local Environmental Plan 2012 - 631 Bells Line of Road, Kurrajong - (95498, 124414)

Mr Glen Falson and Mr Wally Karam addressed Council, speaking for the item.
Mr Michael Want addressed Council, speaking against the item.

A MOTION was moved by Councillor Conolly, seconded by Councillor Mackay.

That:

1. Council support the preparation of a planning proposal for Lot 1 DP 120436, 631 Bells Line of Road, Kurrajong to amend the Lot Size Map of Hawkesbury Local Environmental Plan 2012 to permit minimum lot sizes of not less than 4,000m² and 1ha on the land as shown in Attachment 1 to this report.
2. Council does not endorse any proposed subdivision layout/plan submitted with the planning proposal as this will need to be subject to a development application should the planning proposal result in making the plan.
3. The planning proposal be forwarded to the Department of Planning and Environment for a "Gateway" determination.
4. The Department of Planning and Environment be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.
5. The Department of Planning and Environment and the applicant be advised that in addition to all other relevant planning considerations being addressed, final Council support for the proposal will only be given if Council is satisfied that satisfactory progress, either completion of the Section 94 Developer Contributions Plan or a Voluntary Planning Agreement, has been made towards resolving infrastructure provision for this planning proposal.

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 Ford	Councillor Creed
Councillor Mackay	Councillor Lyons-Buckett
Councillor Reardon	Councillor Paine
	Councillor Porter
	Councillor Rasmussen
	Councillor Williams

Councillor Tree was not in the Chamber when the vote was taken.

The motion was lost.

ORDINARY MEETING

Meeting Date: 12 May 2015

MOTION:

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

Refer to RESOLUTION

112 RESOLUTION:

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

That Council not support the planning proposal.

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 Calvert	Councillor Conolly
Councillor Creed	Councillor Ford
Councillor Lyons-Buckett	Councillor Mackay
Councillor Paine	Councillor Reardon
Councillor Porter	
Councillor Rasmussen	
Councillor Williams	

Councillor Tree was not in the Chamber when the vote was taken.