

## 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)**

### REPORT:

#### Executive Summary

This report discusses a planning proposal (LEP006/14) from Glenn Falson, Urban and Rural Planning Consultant, (the applicant) which seeks to amend *Hawkesbury Local Environmental Plan 2012* (the LEP) to enable subdivision of Lot 1 DP 120436, 631 Bells Line of Road, Kurrajong (the subject site) into 10 large residential community title lots with minimum lot sizes of 4,000m<sup>2</sup> and 1ha and one road lot.

It should be noted that this application was submitted before the Council resolution of 3 February 2015 to suspend new planning proposals. The site is part of the Kurrajong Investigation Area.

This planning proposal proposes an amendment to the Lot Size Map of the LEP only and does not seek to change the existing RU1 Primary Production zoning of the site.

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

#### Consultation

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

#### Background

On 3 February 2015 Council considered a Mayoral Minute regarding implementation planning for the Hawkesbury Residential Land Strategy (HRLS). Specifically the Mayoral Minute highlighted the need to undertake structure planning and development contribution planning for development areas.

In response to the Mayoral Minute Council resolved, in part, as follows:

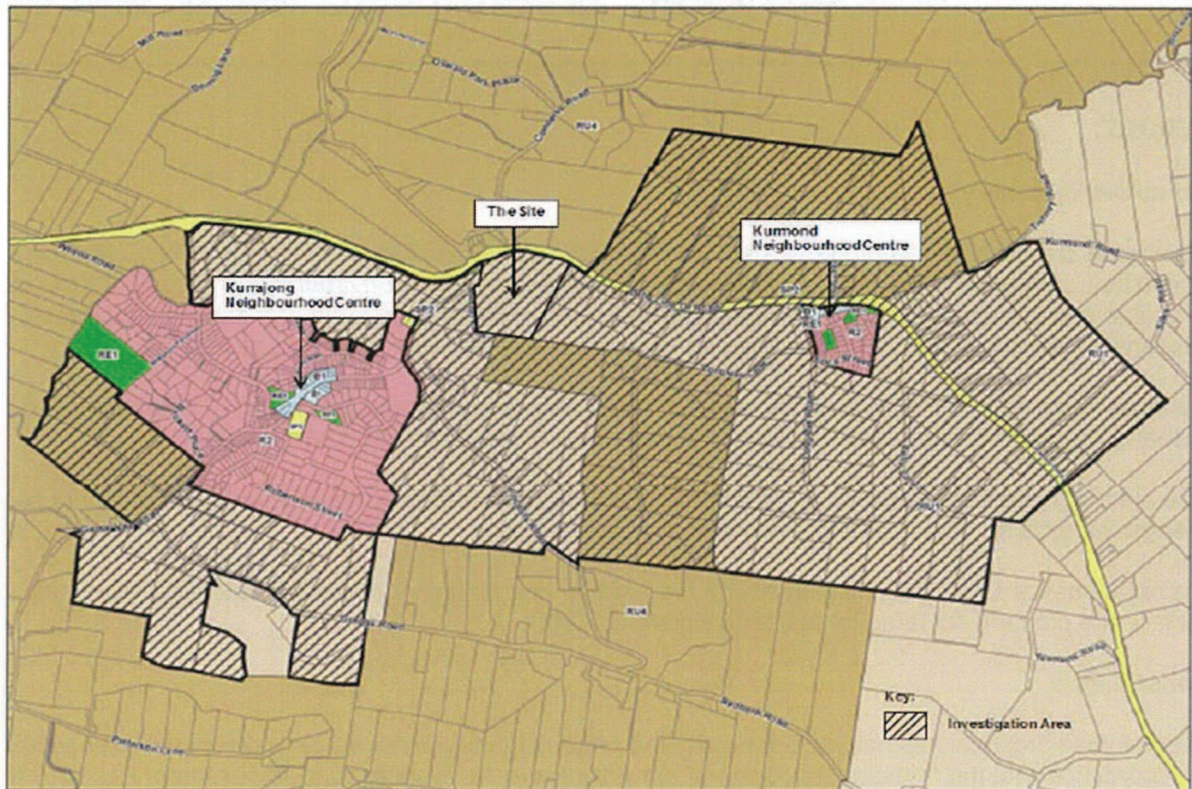
*"That:*

- 1. Council suspend acceptance of new planning proposals under the Hawkesbury Residential Land Strategy (RLS) until the key implementation actions of the RLS, in particular, structure planning and development contribution planning has been completed for the Kurrajong/Kurmond investigation areas or 31 July 2015.*
- 2. Planning proposals (for which the application fee payment has already been received) currently lodged with Council are to continue to be processed. These applications, in accordance with previous resolutions of Council, are not to proceed to gazettal until the relevant structure plan and/or S94 Plan is in place."*

Council received this planning proposal in December 2014, hence this report considers the planning proposal against the current state and local strategic planning framework and other relevant criteria in accordance with Part 2 of the above resolution.

On 31 March 2015 Council considered a report on the proposed large lot residential/rural-residential development investigation area for Kurmond and Kurrajong and resolved to adopt an investigation area to enable structure planning and development contributions planning for the purposes of large lot residential / rural-residential within Kurmond and Kurrajong. The Kurrajong Investigation Area referred to in this report includes the subject site (see Figure 1 below).





**Figure 1: Kurrajong and Kurmond Investigation Area**

### Planning Proposal

The planning proposal seeks an amendment to the LEP in order to permit the subdivision of the site into 11 lots with new Lot 1 being the future access road that provides access to the proposed 10 large residential lots (Lot 2 - Lot 11) with two different minimum lot sizes of 4,000m<sup>2</sup> and 1ha. The applicant intends to achieve this proposed outcome by amending the Minimum Lot Size Map (Map Identification No. 3800\_COM\_LSZ\_008A\_040\_20140131) of the LEP.

The applicant presumes that the draft LEP will include a suitable provision to limit the maximum lot yield of the subdivision consistent with the planning proposal. The Department of Planning and Environment (DP & E) will ultimately decide on the type of amendment to the LEP. However it is understood that at present the DP & E's preferred option is to amend the Lot Size Map of the LEP and not include a clause or a provision in the LEP to limit the number of lots of subdivision of the land.

A concept plan for the proposed community title subdivision (Figure 3 of this report) for discussion purposes only in relation to the potential yield of the site and does not form part of the planning proposal. This concept plan shows ten large lots with minimum lot sizes of 4,000m<sup>2</sup> and 1ha.

### Subject Site and Surrounds

The subject site is located approximately north-east of the Kurrajong Neighbourhood Centre and is in very close proximity to the intersection of Bells Line of Road, Old Bells Line of Road and Mason Lane. The site has an area of 12.55ha and has an irregular shape with an approximate 400m frontage to Bells Line of Road. The site can also be accessed via Mason Lane (see Figure 2).

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



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The site contains a dwelling house, associated out buildings and two dams. The existing dwelling house is located on the north-eastern corner of the site adjacent to Bells Line of Road. The site is currently being used for residential purposes and has been previously used for grazing and fruit orcharding.

The site is partly cleared and areas of dense native vegetation occupy the northern and north-western slopes and along the central natural watercourse.

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

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

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

The land generally falls from Bells Line of Road with an elevation of approximately 154 AHD towards the existing dam which is located near the middle of the site at a level of approximately 114 AHD. A natural watercourse originates from the north-western slopes of the site and flows through the middle of the site and the dam. Another smaller watercourse runs parallel to this central watercourse and through a smaller dam located closer to the southern boundary. Both these watercourses flow south-east direction to join into the Redbank Creek network, which enters the Hawkesbury River north of Richmond.

According to Council's slope mapping land along northern and north-western boundaries and central watercourse has a slope greater than 25% and the remaining open grass land area with some scattered trees is generally less than 20% in slope.

The site is situated above 1 in 100 year ARI flood level.

The properties immediately to the north are zoned RU4 Primary Production Small Lots, properties immediately to the east and west are zoned RU1 Primary Production and properties immediately to the south are zoned RU4 and RU1. The immediate locality is predominantly zoned RU1 Primary Production. The current minimum lot sizes apply for the subdivision of the immediate surrounding properties are generally in the range of 4ha to 10ha in size.

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

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

- *Council's Residential Land Strategy has identified specific areas/localities that are considered by the Council as suitable for further investigation for urban expansion and in a range of lot sizes from denser urban areas to the rural surrounding areas. The site is considered to be within an area identified by broad description within Council's strategy for investigation and consideration for further urban development.*
- *The premise of the proposal is that it recognises that the subject land is, prima facie, suitable for large lot residential use and would be an appropriate transitional development between the existing Kurrajong Village and the larger rural and rural/residential holdings as they radiate from the village.*
- *Preliminary site investigations have been carried out which has demonstrated that the land is capable of being subdivided into a number of lots that would not be inconsistent with other lands in the vicinity and would form an appropriate component of village expansion at Kurrajong.*
- *Water, electricity, telephone and transport services are currently available to the site boundaries.*



- *The site is capable of containing on-site wastewater disposal and matters relating to vegetation management and bushfire control can be satisfied.*

**‘A Plan for Growing Sydney’ (the Sydney Metropolitan Strategy), Draft North West Subregional Strategy and Hawkesbury Residential Land Strategy**

The NSW Government’s ‘A Plan for Growing Sydney’ December 2014 (the Sydney Metropolitan Strategy) and Draft North West Subregional Strategy establish the broad planning directions for the Sydney metropolitan area and north-western sector of Sydney respectively. These documents identify a number of strategies, objectives and actions relating to the economy and employment, centres and corridors, housing, transport, environment and resources, parks and public places, implementation and governance.

These two documents have a high level metropolitan and regional focus and for the most part are not readily applicable to a singular rural residential planning proposal at Kurrajong. Notwithstanding this the applicant has provided an assessment of the planning proposal against these two documents and concludes that the proposal is consistent with these strategies. Taking into consideration the location of the proposed development, being on the fringe of Kurrajong Neighbourhood Centre, it is considered that the proposal for large lot residential development demonstrates satisfactory compliance with these strategies.

The 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 HRLS contained the following commentary and criteria regarding large lot residential / rural residential development.

***“2.10 Strategy for Rural Village Development***

*The Hawkesbury Residential Development Model focuses on future residential development in urban areas and key centres. However, the importance of maintaining the viability of existing rural villages is recognised. As such, the Hawkesbury Residential Strategy has developed a strategy for rural residential development.*

*Future development in rural villages should be of low density and large lot dwellings, which focus on proximity to centres and services and facilities. Rural village development should also minimise impacts on agricultural land, protect scenic landscape and natural areas, and occur within servicing limits or constraints.”*

The proposal can be described as a rural residential development on the fringe of the Kurrajong 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.”*



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For the purposes of this proposal, the relevant criteria for rural residential development, as stated in Section 6.5 of the HRLS, are that it be large lot residential dwellings and:

- Be able to have onsite sewerage disposal;
- Cluster around or on the periphery of villages;
- Cluster around villages with services that meet existing neighbourhood criteria services as a Minimum (within a 1km radius);
- Address environmental constraints and have minimal impact on the environment;
- Occur only 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 fringe of the Kurrajong Neighbourhood Centre and is within the one kilometre radius specified in the HRLS.

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 CSP will be discussed later in this report.

### **Council Policy - Our City Our Future Rural Rezoning Policy**

This Policy was adopted by Council on 16 May 1998 and had its origin in the Our City Our Future study of the early 1990s.

Since the time of adoption this Policy has essentially been superseded by subsequent amendments to *Hawkesbury Local Environmental Plan 1989*, *NSW Draft North West Subregional Strategy*, the *Hawkesbury Residential Land Strategy*, the *Hawkesbury Community Strategic Plan*, the commencement of *LEP 2012*, and the DP&Es "Gateway" system for dealing with planning proposals.



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The Policy is repeated below with responses provided by the applicant.

- a) Fragmentation of the land is to be minimised

*Applicant response*

The land is within an area identified within the HRLS as having urban potential. Fragmentation of the 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 subdivision along main roads and any subdivision to be effectively screened from minor roads.

*Applicant response*

Whilst the site fronts a main road all access will be via Mason Lane. Existing vegetation will screen the subdivision from view from Bells Line of Road.

- d) No subdivision along ridgelines or escapements.

*Applicant response*

The site is not on a ridgeline or escapements.

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

*Applicant response*

Each lot is greater than one hectare. There has been an effluent disposal assessment which concludes that the site of lots proposed and other criteria is met such that lots are suitable for effluent disposal.

*Staff response*

The proposed lots 2, 5, 6, 7 and 8 are less than one hectare. However a preliminary effluent disposal report prepared by Barker Ryan Stewart (BRS) and attached to the planning proposal concludes that each lot is considered suitable for the effective disposal of effluent using an aerated wastewater treatment system with surface irrigation. This issue is considered in detail in the latter part of this report.

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

*Applicant response*

The subdivision does not propose removal of vegetation. Bushfire asset protection zones and effluent disposal can take place without the need for clearing of vegetation.



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### *Staff response*

A flora and fauna survey and assessment report prepared by UBM Ecological Consultants (UBM) and submitted in support of the planning proposal states that less than 10% area of regrowth Moist Shale Woodland (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). However the likely impacts of the planning proposal would be minimal in terms of the local occurrence of the MSW ecological community. This issue is considered in detail under the heading of 'flora and fauna' in the latter part of this report.

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

### *Applicant response*

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

### *Staff response*

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

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

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

### *Applicant response*

The planning proposal is put to Council on the basis of a community title subdivision.

## **Section 117 Directions**

The Minister for Planning, under section 117(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), issues directions that relevant planning authorities including councils must comply when preparing planning proposals. The directions cover the following broad range categories:

- Employment and resources
- Environment and heritage
- Housing, infrastructure and urban development
- Hazard and risk
- Regional planning
- Local plan making
- Implementation of a Plan for Growing Sydney

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. However all these Directions permit variations subject to meeting certain criteria (see the last part of this section of the report). The principal criterion for variation to a 117 Direction is consistency with an adopted Local or Regional Strategy. A summary of the key Section 117 Directions follows:



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### *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 the Lot Size Map of the LEP and it does not propose any zoning changes or contain provisions to increase the permissible density of land. It is therefore considered that the planning proposal is consistent with this Direction.

### *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.

Should Council resolve to proceed with the planning proposal and receive a Gateway determination advising to proceed with the planning proposal from DP&E, the NSW Trade & Investment (NSW T&I) would be consulted in accordance with the Direction 1.3(4).

### *Direction 3.4 Integrating Land Use and Transport*

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

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

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

### *Direction 4.1 Acid Sulfate Soils*

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate 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 acid sulfate soils on the Acid Sulphate 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 DP&E will consider this as part of their "Gateway" determination and if required can request further information/consideration of this matter.



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### *Direction 4.4 Planning for Bushfire Protection*

The land is identified as bushfire prone, containing Vegetation Category 1. This Direction requires consultation with the NSW Rural Fire Service following receipt of a Gateway determination, 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.”*

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

### *Direction 6.3 Site Specific Provisions*

The objective of this Direction is to discourage unnecessary restrictive site specific planning controls. The planning proposal proposes an amendment to the Lot Size Map of the LEP only. It is therefore considered that the proposed amendment is consistent with this Direction.

### *Direction 7.1 Implementation of ‘A Plan for Growing Sydney’*

This Direction requires planning proposals to be consistent with ‘A Plan for Growing Sydney’ (the Sydney Metropolitan Strategy) released in December 2014. ‘A Plan for Growing Sydney’ is the NSW Government’s 20-year plan for the Sydney Metropolitan Area. It provides directions for Sydney’s productivity, environmental management, and liveability; and for the location of housing, employment, infrastructure and open space.

‘A Plan for Growing Sydney’, which is one of the issues taken into consideration in the early part of the assessment of the planning proposal, establishes that the planning proposal is consistent with this Plan.



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

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

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

### State Environmental Planning Policies

The State Environmental Planning Policies of most relevance are *State Environmental Planning Policy (SEPP) 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)*

SEPP 55 requires consideration as to whether or not land is contaminated and, if so, is it suitable for future permitted uses in its current state or does it require remediation. The SEPP may require Council to obtain, and have regard to, a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

The applicant states that:

*"The land has not been used for an agricultural use for many years. Previous uses were for limited grazing activities of cattle and horses. There is no obvious evidence of surface or groundwater pollution as a result of past uses. It is not believed that any geotechnical investigations need to be carried out for the planning proposal to proceed."*

The site also has been used as a hobby farm for cattle.

Council's Regulatory Services - Compliance and Enforcement Section has carried out a site investigation in August 2013 and observed several earth mound motorbike jumps (less than 600mm in height above the natural ground level) constructed as part of a motorbike track within the site. The occupier of the site at the time of inspection advised the Council's compliance and enforcement officers that no fill material was imported to the site.

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