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## Plan finalisation report – PP-2020-3581

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Hawkesbury LEP 2012, 2 Inverary Drive, Kurmond

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Hawkesbury Local Environmental Plan 2012 (Amendment No. 31)

To amend the Hawkesbury LEP 2012 to reduce the minimum lot size from 10 hectares to a part 4,000m<sup>2</sup> and part 6 hectare minimum lot size to facilitate the development of a maximum of 8 rural residential lots.

### 1.1.2 Site description

**Table 1 Site description summary**

Site Description	The planning proposal ( <b>Attachment A1</b> ) applies to land at 2 Inverary Drive, Kurmond, legally known as Lot 2 DP 600414.
Type	Site
Council / LGA	Hawkesbury City Council
LGA	Hawkesbury

The site is battle-axe in shape with an area of 10.96 hectares, occupied by a dwelling house in the south-west corner of the site and cleared pasture fronting Inverary Drive. The predominantly cleared area fronting Inverary Drive is referred to as the north-western portion of the site throughout the report.

The site contains substantial vegetation, including Shale Sandstone Transition Forest, which is an endangered ecological community under the *Biodiversity Conservation Act 2016*, two dams and several watercourses. The vegetated part of the site is referred to as the north-eastern portion throughout.



**Figure 1 Subject site (Source: Ecological Assessment Report)**

### 1.1.3 Site context

The land, and the surrounding area, is zoned RU1 Primary Production and is predominantly used for rural residential purposes except for a plant nursery adjoining the site to the south east (as shown in **Figure 1**). There are two additional agricultural businesses further south east of the site, off Slopes Road. Land around Kurmond village and fronting Bells Line of Road is characterised by smaller rural residential land holdings, surrounding land characterised by larger land holdings.

The site sits within a 1.45km radius south east of the township of Kurmond. The area is likely to see increased rural residential development with several allotments in the vicinity of Kurmond village recently being rezoned to allow for reduced minimum lot sizes and therefore further subdivision. The adjoining property (396 Bells Line of Road) will facilitate a development of 33 residential lots as approved by Council under DA0332/16 as a result of an LEP amendment in January 2017. The constructed internal road network is shown in Figure 1.

### 1.1.4 Purpose of plan

The purpose of the plan is to facilitate rural residential development while preserving vegetation on the site. The table below outlines the controls to be amended within this LEP.

**Table 2 Current and proposed controls**

Control	Current	Proposed
Minimum lot size	10 hectares	Part 4,000m <sup>2</sup> , part 6 hectares
Number of lots	1	An additional seven (7) lots with a maximum of eight (8) lots as shown on the Restricted Lot Yield Map

The LEP will also insert a site-specific provision requiring that the Department of Planning, Industry and Environment's Secretary grant concurrence to a development application prior to consent being granted by the consent authority. The Planning Secretary must not grant concurrence unless satisfied that the impacts of the development on the Cumberland Land Snail and the Green and Golden Bell Frog will be adequately managed.

The LEP will not commence until 30 June 2022 to ensure that arrangements for the necessary infrastructure required to support the rezoning are in place prior to development proceeding.

### 1.1.5 State electorate and local member

The site falls within the Hawkesbury state electorate. Robyn Preston MP is the State Member.

The site falls within the Macquarie federal electorate. Susan Templeman MP is the Federal Member.

The Hon. Robyn Preston MP wrote to the Department on 22/01/2021 forwarding a letter from the developer in support of the proposal and of residential development in the LGA (**Attachment F**).

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

### 1.1.6 Gateway determination and alterations

The Gateway determination issued on 28/06/2018 (**Attachment B1**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered on three occasions (**Attachment B1**), all extending the timeframe with the final completion date being 24 December 2021. Post-exhibition, the Gateway was altered on 3/12/20 revising the minimum lot sizes which was subject to a review by the Independent Planning Commission (the Commission). This is discussed further in Section 3.1 of this report.

Following the Commission's advice, the Gateway was altered to give effect to the Commission's recommendations, insert additional site specific LEP provisions, and remove Council as the Plan Making Authority.

## 2 Public exhibition

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 29 June 2020 to 27 July 2020, as required by section 29 of the *Local Government Act 1993*.

A total number of six (6) community submissions (**Attachment C1**) were received, all objecting to the proposal. It should be noted that the exhibited planning proposal proposed approximately 30 rural residential lots. Five (5) submissions from state agencies (**Attachment D**) were received with three from Environment, Energy and Science Group. EES were the only agency raising concerns.

### 2.1 Community Submissions

The submissions raised the following primary concerns:

- Traffic between Richmond and North Richmond and a new Hawesbury River bridge needs to be resolved prior to the approval of the proposal. Further subdivision will impact local infrastructure and services, including the road network and the new intersection associated with 396 Bells Line of Road development.
- Minimum lot size of 2,000m<sup>2</sup> is overdevelopment and is inconsistent with the character of the area.
- Loss of watercourse of connectivity between adjoining properties and impacts on local flora and fauna.

#### Council response

Council has responded (**Attachment C1**) stating Council has undertaken an LGA wide traffic study which included a scenario modelling additional dwellings within the Kurmond Kurrajong Investigation Area. The development will not have a significant impact on the road network.

In respect of lot sizes, the planning proposal was amended post exhibition to increase the minimum lot size. The lot sizes are considered appropriate having regard to the protection of watercourses, riparian vegetation and endangered ecological communities and the maintenance of the rural character.

In respect of the watercourse connectivity, the proposal has been amended to retain and rehabilitate/revegetate the watercourse of concern.

#### Department comment

Council has satisfactorily responded to concerns raised by the community. During the Department's finalisation of the planning proposal, further amendments to the plan were made which will further reduce the development's impact on local infrastructure and services, character and watercourse connectivity.



## 2.2 Agency submissions

In accordance with the Gateway determination, Council was required to consult with the following agencies prior to public exhibition:

- Office of Environment and Heritage (now NSW Environment, Energy and Science);
- Roads and Maritime Services (now Transport for NSW);
- NSW Office of Water;
- Resources and Geoscience Division of the Department of Planning and Environment (now Geological Survey for NSW); and
- NSW Rural Fire Service.

Submissions were received from all agencies except NSW Office of Water.

### 2.2.1 NSW Environment, Energy and Science (EES)

EES provided three submissions, one within the exhibition period and two post exhibition. The last submission was considered by the Department only in its finalisation process and is discussed in Section 3.2.3. The following is a summary of key matters raised in the first two submissions:

- The site comprises critically endangered ecological communities (CEEC), Shale/Sandstone Transition Forest (SSTF), and habitat for several threatened species. The subdivision layout and minimum lot size has not been designed to avoid and minimise impacts to native vegetation and habitat. Much greater consideration needs to be given to the biodiversity values and locating the proposed development.
- A lower lot yield is recommended, with larger lots where vegetation is currently occurring. Appropriate controls are required to provide ongoing protection.
- The proposal is supported by inadequate Flora and Fauna reporting. The impacts of the proposal on CEEC have been underestimated, the extent of the impact to vegetation is not clear. The report does not include a figure for SSTF on site.
- The proposal will not facilitate retention or afford protection to the biodiversity values in the site. The Ecological Assessment Report states that “planning instrument (likely 88b) is intended to be used to protect vegetation in perpetuity” within the back of numerous lots. EES does not recommend or support the use of 88b instruments as they can be overridden, removed or modified. An 88b instrument is not a recognised conservation measure under the Biodiversity Offsets Scheme and Biodiversity Conservation Act 2016.
- The biodiversity areas to be retained and conserved should be in single ownership. A community title arrangement provides an opportunity to conserve areas of biodiversity value with a community lot. It also may be possible to establish a biodiversity stewardship agreement which is an in-perpetuity agreement that provides an income stream for the management of the land.
- The conservation areas should be zoned E2 Environmental Conservation.
- Further studies are required for the Green and Golden Bell Frog and the Cumberland Land Snail.
- Riparian corridor widths for the watercourses won’t be maintained given the proposed lot layout and road design.

### Council response

Since consultation with EES, the proposal has been amended to incorporate larger lots for the protection of vegetation, watercourses and riparian corridors.

### Department comment

The Department has addressed issues raised by EES in Section 3.2.3 of this report.

## 2.2.2 Transport for NSW (TfNSW)

Transport for NSW did not object to the proposal but raised the following matters:

- No objections to the development utilising the access point at 396 Bells Line of Road however the cumulative impacts of growth could have potential safety impacts. The development of the site should be limited in the LEP and a site-specific DCP is recommended to identify and future proof an alternate local road connection to Slopes Road or Silks Road via adjoining properties.
- It is recommended that the Council develop a future access strategy for the Kurmond area which could include a local road network in the DCP. This has been previously recommended to ensure a cohesive approach to small lot subdivision applications and reduce the need for additional connections to the classified road.
- Council may consider the need for a funding mechanism to obtain equitable developer contributions towards local and regional infrastructure.

### Council response

Council has undertaken a LGA wide traffic study which included a scenario modelling additional dwellings within the Kurmond Kurrajong Investigation Area. The development will not have a significant impact on the road network.

### Department comment

Further to Council's response, the Department has made amendments to the plan reducing the number of lots in this development to an additional 7 rural residential lots (8 lots in total). The number of lots will be restricted by the LEP. In addition, Council resolved at its meeting on 23 November 2021 to public exhibit a draft Voluntary Planning Agreement that would result in the developer paying a cash contribution to Council for local road upgrades.

In respect to cumulative impacts and requirement for a broader future access strategy, Council resolved on 23 February 2021 not to adopt the draft Kurmond Kurrajong Investigation Area structure plan. An access strategy is not required.

## 2.2.3 NSW Rural Fire Service (RFS)

RFS didn't object to the proposal and commented on matters to be considered at the development application stage and when establishing asset protection zones.

### Department response

Council noted RFS' submission. Matters raised didn't require further consideration at the planning proposal stage.

## 2.2.4 Geological Survey for NSW (GSNSW)

GSNSW reviewed the proposal and has no resource sterilisation concerns to raise.

### Department response

Council noted GSNSW's submission, no further action required.



## 3 Post Exhibition

### 3.1 Gateway Determination Review

The proponent requested the Independent Planning Commission's (the Commission) review of conditions imposed through a Gateway alteration the Department issued in December 2020. The Commission issued its report on 1 July 2021 (**Attachment E**). The following is a summary of the Commission's key findings on the planning proposal as exhibited (30 lots):

- It is accepted that the Planning Proposal does not give effect to the Central City District Plan, particularly Planning Priorities W14, W16 and W17.
- The lot yield is not supported. The lot layout would adversely impact view corridors and landscape character and cause unacceptable biodiversity impacts. The proposal does not constitute 'organic growth' of existing settlements.
- The planning proposal is subject to the current strategic planning framework and the Interim Development Principles adopted by Council.
- Some limited weight can be afforded to the strategic approach adopted in the draft Structure Plan for the Kurmond Kurrajong Investigation Area (KKIA) particularly where the Interim Development Principles have been addressed and the objectives of the District Plan regarding values of the metropolitan rural area would not be compromised.
- Limited additional development of the northern portion of the Site may be justified consistent with draft Structure Plan and subject to more detailed consideration of the Interim Development Principles.
- The biodiversity value of the Site and the potential biodiversity impacts of rural residential subdivision are key considerations in determining site specific merit.
- The Proponent's indicative lot layout and Ecological Assessment Report has not demonstrated adequate avoidance of biodiversity impacts nor adequate protection of biodiversity on site. Appropriate biodiversity conservation measures are to be considered.
- The lot layout is inconsistent with some of Council's Interim Development Principles.

The Commission recommended minimum lot sizes of 4,000m<sup>2</sup> south of the creek and 1hectare lot sizes north of the creek. The Department accepted the advice of the Commission, the Gateway determination was altered accordingly (discussed in Section 3.2.1 below).

The final development outcome is consistent with the Commission's advice however the Department is proposing a minor variation to the minimum lot size for the land north of the creek (north-eastern portion of the site). The final development outcome will have one (1) lot at 4,000m<sup>2</sup> at the most north-eastern corner of the site adjoining the development to the north with the remainder of land within one lot equating to 6 hectares.

The one (1) 4,000m<sup>2</sup> lot is supportable because the site has been cleared and it adjoins recently approved 4,000m<sup>2</sup> lots on the northern boundary of the site. The remainder of heavily vegetated north-eastern portion of the site will be within single ownership preserving the significant vegetation, and resulting in negligible impacts on view corridors and desired landscape character.

### 3.2 Post-exhibition changes

This section discusses amendments made to the planning proposal following the Independent Planning Commission's review and additional consultation with Environment, Energy and Science Group.

### 3.2.1 Amended Planning Proposal responding to the Commission's recommendations

On 27 September 2021, the Department altered the Gateway determination (**Attachment B1**) to require the following amendments, giving effect to the Commission's recommendations:

- Amend the planning proposal in accordance with the Commission's advice on minimum lot size;
- Prepare an updated Ecological Assessment Report to address matters raised by Environment, Energy and Science Group;
- Preparation of a detailed site survey;
- Demonstrate consistency with Hawkesbury City Council's 2015 Interim Development Principles for planning proposals within Kurmond Kurrajong Investigation Area and to have minimal impact on vistas, view corridors and landscape character;
- Demonstrate consistency with planning priorities W14, W16 and W17 in the District Plan; and
- Insert site specific provisions into Part 2 – Explanation of Provisions of the planning proposal requiring the concurrence of the Planning Secretary prior to consent being granted. In granting concurrence, the Department's Secretary must be satisfied that the development appropriately responds to the outcomes of surveys for the Cumberland Land Snail and the Green and Golden Bell Frog. The Secretary must also consider whether infrastructure demands of the development have been addressed.

Following the receipt of this information, the Department worked with the proponent to improve how the proposal responds to the special characteristics of the site and improve the future development's environmental outcomes. The proponent submitted a revised submission dated 2 November 2021 which formed the basis for the Department's letter of conditional endorsement (**Attachment B3**) of the concept subdivision plan (10 rural residential lots). The endorsement enabled Council to consider a post exhibition report on the proposal.

The Department's conditional endorsement of the indicative subdivision layout did not preclude a full and proper assessment of the strategic and site-specific merits of the proposal by the Minister's delegate. The following issues were highlighted to discuss further when the proposal was submitted to the Department for finalisation:

- Incorporation of any updated comments received from the Environment, Energy and Science Group;
- The latest updated Environmental Assessment Report (**Attachment A3**) maintains that the proposal may potentially have a significant impact on the critically endangered ecological community, Shale/Sandstone Transition Forest. The indicative subdivision plan and minimum lot sizes should be reviewed to ensure that impacts are avoided where possible.

### 3.2.2 Council's consideration of the planning proposal

Council at its Ordinary Meeting of 23 November 2021 considered a post exhibition report (**Attachment C1**) on the planning proposal. Council considered an amended planning proposal consistent with the Department's endorsement. Council resolved (**Attachment C2**) to support the planning proposal to proceed to the Department for finalisation. Council did not resolve to make any additional post exhibition changes.

### 3.2.3 The Department's recommended changes

The Department required post-exhibition changes in its September 2021 Gateway alteration (Section 3.2.1 above) and made further amendments as part of its finalisation processes. The post-exhibition changes resulting from the September 2021 Gateway alteration included:

- Planning Secretary concurrence requirement
- Minimum lot size amendments
- Restricted lot yield map

The requirement for the Planning Secretary to grant concurrence to a development application prior to consent being issued was to address EES' concern regarding the outcomes of surveys for the Cumberland Land Snail and the Green and Golden Bell Frog are adequately managed in a future development. These studies are seasonal and the timeframe to carry out these studies could not be accommodated within a reasonable timeframe for finalising the LEP.

The Gateway alteration also required the Planning Secretary to consider whether infrastructure demands of the development have been addressed. During the legal drafting process at finalisation stage, it was determined that a deferred commencement of 30 June 2022 was more appropriate. This timeframe is to ensure that there are arrangements in place for the provision of any local infrastructure required to support the rezoning prior to development proceeding.

In respect of lot size related amendments, the minimum lot size map for land in the north-western portion of the site was to have a minimum lot size of 4,000m<sup>2</sup>. The north-eastern portion of the site was further amended as part of the Department's finalisation process. The entire site will also be subject to a restricted lot yield map.

Although not part of the Gateway alteration, the planning proposal as exhibited sought to apply Clause 4.1D Exceptions to minimum subdivision lot size for certain land of the Hawkesbury LEP to the land. This clause would facilitate lots below 4,000m<sup>2</sup> if lots were serviced by reticulated sewerage and supported the exhibited proposal as it included lots 2,000m<sup>2</sup> in area. In accordance with the Commission's advice, this lot size is not supported. Clause 4.1D will not apply to the site.

The Department has made further changes to the planning proposal as part of its finalisation, to address comments from Environment, Energy, and Science Group. EES' submission dated November 2021 (**Attachment D**) provided the following feedback on the revised site layout:

- The revised Ecological Assessment Report addressed a number of previous comments however several issues have not been addressed and remain a concern including, the absence of a hollow bearing tree audit, details on the extent of SSTF on site or accurate figure for likely vegetation loss.
- Lack of details regarding the ownership and management of the riparian corridor.
- 4,000m<sup>2</sup> lot sizes are unlikely to result in the retention and protection of any additional vegetation with the proposed development lots due to cut/fill, asset protection zones, ancillary structures.
- The proposed asset protection zones would require the clearing of most vegetation within development lots on the north eastern portion of the site. EES is of the view the proposed number of lots on this portion of the site cannot be supported. This portion of the site can likely support two (2) lots at most if a minimum lot size of 2,000m<sup>2</sup> is applied.
- A further revised layout should be prepared, guided by avoidance of the biodiversity values present on site, consolidating lots with biodiversity values into a single lot and zoned E2 Environmental Conservation.
- A bushfire assessment has not been undertaken to inform the planning proposal and the indicative APZs appear to be conservative.

- The road design and layout are not sympathetic to the riparian corridor with the removal of vegetation required to facilitate the roadway proposed on both sides of the bank and within the creek line. Encroachment into the riparian buffer must be avoided.

In response to EES comments, the Department has amended the minimum lot size map for the north-eastern portion of the site to permit one rural residential lot with a minimum lot size of 4,000m<sup>2</sup> and the remainder of this land within single ownership being approximately 6 hectares in area. This lot will be responsible for the maintenance of the riparian corridor and significant vegetation (see Figure 2 ). The Department did not support a minimum lot size of 2,000m<sup>2</sup> because this is inconsistent with the recommendations of the Commission and the Interim Development Principles.



Figure 2 Excerpt of proposed minimum lot size map

The amendment to the minimum lot size map will decrease the proposal's impact on significant vegetation and the Department is satisfied this addresses EES' submission. The Department is not pursuing an E2 Environmental Conservation land use zone as the minimum lot size will ensure the significant vegetation and riparian corridor land can't be subdivided further. Council officers supported this approach.

All other matters raised by EES can be addressed at development application stage.

### 3.2.4 Justification for post-exhibition changes

The post-exhibition changes:

- Are a reasonable response to comments provided by the public authorities and the advice of the Commission.
- Ensure that the following matters are further addressed at, or prior to, the development stage:
  - The local infrastructure demands generated by the proposal;
  - The outcomes of additional biodiversity studies.
- Do not alter the intent of the planning proposal being rural residential development. The resultant number of lots are a significant decrease from what was exhibited (30 rural residential to 8 rural residential lots).



## 4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to public consultation and engagement.

Considering the final development outcome and the delay between Gateway assessment and finalisation, this section reassesses the proposal against the District Plan, Council's local strategies, Section 9.1 Directions and State Environmental Planning Policies. It also reassesses any potential key impacts associated with the modified proposal.

### 4.1 Western City District Plan

There are three planning priorities relevant to this proposal.

- Planning Priority W14 – Protecting and enhancing bushland and biodiversity

The latest Ecological Assessment Report (**Attachment A3**) which considers the impacts of the subdivision layout supported by Council states the development has the potential to have a significant impact on the Shale Sandstone Forest (SSTF) being a Critically Endangered Ecological Community.

Following post-exhibition amendments made by the Department, the amended minimum lot size map will achieve a superior environmental outcome for the site and protect bushland and biodiversity. Future rural residential subdivision will generally only be permitted on existing cleared land within the site with the key watercourses, their riparian corridors, significant vegetation (SSTF) and habitat for threatened flora species to be contained within one (1) rural residential lot. Figure 3 shows the quality of SSTF on the site as mapped by AWC and the area circled in white being the vegetation to be subject to future rural residential development. The remainder of the SSTF will be within a single lot, as shown in Figure 2 above.



**Figure 3 Native Vegetation Communities Condition (Source: AWC Ecological Assessment Report Nov 2021)**

The enhancement of the bushland and biodiversity to be retained within the single lot will be subject to additional studies at the development application stage through vegetation management plans.

All types of vegetation condition shown in Figure 3 are also mapped as land having biodiversity value on the NSW Government's Biodiversity Values Map and Threshold Tool and Digital data

layer. This land is identified as habitat for threatened species or communities with potential for Serious and Irreversible Impacts. As such, the impact of the rural residential development on vegetation and habitats will be assessed further at development application stage through the preparation of a Biodiversity Development Assessment Report to determine offset credit requirements.

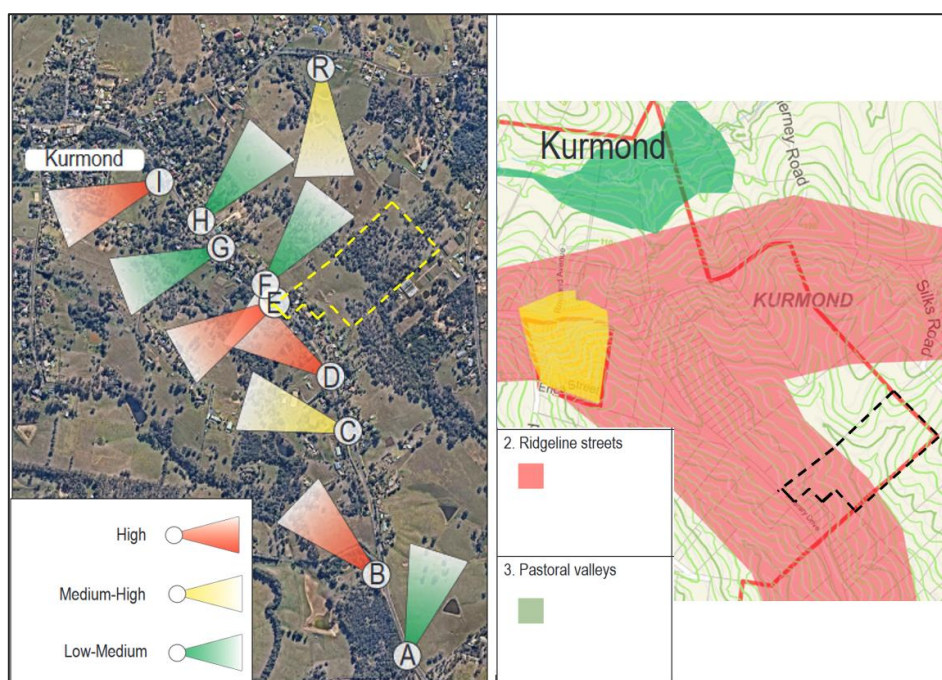
The Department is satisfied that the amended proposal meets the principles of avoid, minimise and mitigate vegetation/habitat with a priority given to avoiding or minimising and any inconsistency with this Planning Priority is justified.

- Planning Priority W16 – Protecting and enhancing scenic cultural landscapes

Council published a Landscape Character Study for the Kurmond Kurrajong area to determine the character of the area and to maintain it into the future. It identified four main landscape character types and view corridors including low-medium, medium-high and high, mostly from Bells Line of Road. The Study identifies the subject site as being within two significant view corridors categorised as medium-high and low-medium with the corresponding action of 'retain and protect' (Table 3), with views shown in Figure 4.

**Table 3 Significant view/vista corridors**

Corridor	Description	Significance	Action
F	Rural residential with views to rolling landscape	Medium	Retain and protect view
R	Rural properties in the foreground and views over the Richmond lowlands in the distance	Medium - High	Retain and protect view



**Figure 4 (L) View corridor analysis with subject site highlighted in yellow**  
**Figure 5 (R) Landscape Character analysis with subject site highlighted in black**  
 (Sources: Council's Landscape Character Study)

The Study identifies the subject site's landscape as ridgeline streets and pastoral valleys (Figure 5). 'Ridgeline streets' are predominantly urban and provide views of Richmond Lowlands and/or Blue Mountains. 'Pastoral valley' is defined by the lightly sloping open pastures with scattered trees



over gently sloping terrain. Properties are dotted amongst the hills and valleys of the landscape situated between groupings of trees.

It is considered that the final development outcome resulting in an additional five (5) rural residential lots within the 'Ridgeline streets' character maintains the envisaged character for this part of the site.

The final development outcome for land within 'Pastoral valley' is considered appropriate to maintain the envisaged character as the majority of the area will be contained within one lot and one smaller lot on the north-eastern corner of the site.

The Department agrees with Council's comments (**Attachment C1**) that the density/scale of future development will not be unlike that which exists, and therefore no significant additional impacts on the 'Pastoral Valley' character is expected.

Future development of new vacant lots will not obstruct views to the Richmond Lowlands as they will be sited on land at a lower level than viewing point.

The existing dwelling house will be located on proposed lot 100 which fronts Bells Line of Road/Inverary Drive, and therefore there will be no change to the visual character of this main road corridor as a result of the Proposal.

In respect of the view corridors, it is considered the proposed lot sizes and placement of lots will result in an acceptable impact the view corridors.

The proposal is consistent with this planning priority.

- Planning Priority W17 – Better managing rural areas by protecting environmental, social and economic values

The subject site is located within the Metropolitan Rural Area. The objective of this planning priority is to protect and enhance the environmental, social and economic values in rural areas. Rural-residential development is not an economic value of the District's rural areas and further rural-residential development is generally not supported. Limited growth of rural-residential development could be considered where there are no adverse impacts on the amenity, where the growth is considered to be the organic growth of an existing settlement and where the rezoning will also facilitate public benefits, like the preservation and regeneration of significant vegetation.

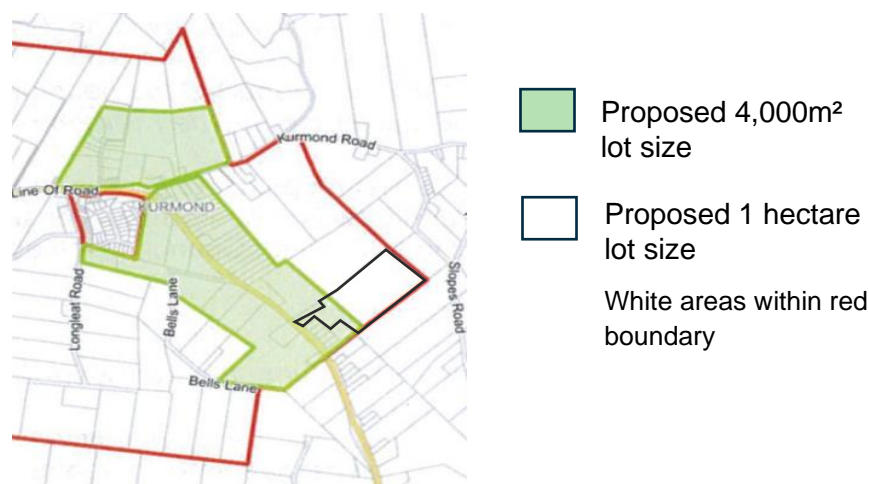
The final development outcome significantly reduces the rural residential component of this proposal to respond to the values of the MRA and the site's special characteristics more appropriately. The majority of the north eastern part of the site will remain in one ownership in order to maintain and preserve the watercourses and riparian corridors, significant vegetation, envisaged pastoral valley character of this land and view corridors.

The Department considers the proposal is consistent with this planning priority, demonstrates design led, place-based planning with the final development outcome being more sympathetic to the existing locality in respect of rural character and density and it will ensure the majority of significant vegetation is retained within one lot.

## 4.2 Local Strategies

### 4.2.1 Draft Kurmond Kurrajong Structure Plan

Council exhibited a draft Structure Plan for the Kurmond Investigation Area in September 2019 which included the subject site. The draft Structure Plan proposed to reduce the minimum lot sizes from 10ha and 4ha to 1ha and 4,000m<sup>2</sup> as shown in Figure 6 below. The plan identified the majority of the subject site to have a minimum of 1 hectare.



**Figure 6 Excerpt of draft Kurmond Kurrajong Structure Plan with subject site outlined in black**

Council resolved on 23 February 2021 to not adopt the Kurmond Kurrajong Investigation Area Structure Plan, but assess remaining individual planning proposals within the Structure Plan area against the interim development principles and the NSW Planning Framework (Sydney Region Plan and Western City District Plan including Metropolitan Rural Area).

In its review of the planning proposal, the Independent Planning Commission found that some limited weight can be afforded to the strategic approach adopted in the draft structure plan particularly where the interim development principles have been addressed and the objectives of the District Plan regarding the MRA values would not be compromised.

The final development outcome is generally consistent with the draft Structure Plan, with some adjustments to allow for biodiversity outcomes. Refer to Section 3.1 of this report.

#### 4.2.2 Local Strategic Planning Statement and supporting studies

The proposal is inconsistent with the local strategic planning framework including, the Local Strategic Planning Statement (LSPS) and supporting Local Housing Strategy and Rural Lands Strategy.

Neither the LSPS nor the Housing Strategy identify Kurmond-Kurrajong as an area for additional housing. The Rural Lands Strategy identifies Kurmond as a *local centre – village*, stating that Kurmond is not recommended for expansion other than natural or organic growth due to a number of natural, character and infrastructure constraints. The Department and the Commission agreed this proposal does not constitute organic growth.

Notwithstanding the above, the Commission's advice to the Department was that the planning proposal would have strategic merit if it addressed the Interim Development Principles and did not compromise the objectives of the District Plan regarding MRA values.

#### 4.2.3 Kurmond Kurrajong Interim Development Principles

On the 28 July 2015 Council adopted a series of development principles to be considered in the assessment of planning proposals within the Kurmond and Kurrajong Investigation Area. In accordance with the Commission's advice, one of the considerations for the progression of this planning proposal was the proposal is to satisfactorily address the Interim Development Principles. The principles include:

1. Essential services under LEP 2012 and fundamental development constraints are resolved.
2. Building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%.
3. Removal of significant vegetation is avoided.

4. Fragmentation of significant vegetation is minimised.
5. Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourse) are located outside of riparian corridors.
6. Road and other crossings of water courses is minimised.
7. Fragmentation of riparian areas is minimised.
8. Removal of dams containing significant aquatic habitat is avoided.

The final development outcome is consistent with the development principles given that the subdivision concept plan has been designed to:

- Minimise the removal of native trees by locating lots within areas that have been previously cleared, disturbed or contain minimal vegetation cover.
- Contain the two watercourses and associated riparian corridor within a single lot which will also minimise crossings of water courses.
- Locate most lots in areas with less than 15% slope. The proposed layout on the north eastern portion of the site meets the requirements of the slope principle (**Attachment A2**). The proposed layout on the north western portion of the site will mostly meet this development principle apart from proposed Lot 105. Approximately one third of Lot 105 has a slope in excess of 15% so not all components of the principle will be accommodated on slope less than 15%. In the context of the proposal's compliance with the development principles as a whole, this variation is considered minor.

#### 4.2.4 Local Planning Panel

The planning proposal was not referred to the local planning panel under Section 2.19(1)(b) of the Act. The requirement for councils to seek advice from the Local Planning Panel on planning proposals prior to reporting to Council for a Gateway Determination came into effect in mid-2018.

The proponent lodged a request for a rezoning review on 16 October 2017. Therefore, the requirement to refer the matter to the Panel does not apply in this instance.

### 4.3 Section 9.1 Ministerial Directions

The Gateway determination report (**Attachment B2**) assessed the proposal against relevant Section 9.1 Directions including:

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire

At the time of Gateway determination, the delegate of the Department's Secretary agreed the planning proposal's inconsistencies with Section 9.1 Directions Rural Zones and 4.1 Acid Sulfate Soils are justified in accordance with the terms of the Direction. No further approval is required in relation to these Directions.

There were two Section 9.1 Directions that required further justification and agreement of the Department's Secretary that the proposal is consistent with the Directions including:

- 1.3 Mining, Petroleum Production and Extractive Industries

Consultation with Geological Survey of NSW – Mining, Exploration and Geoscience was required to satisfy this Direction as per the Gateway conditions. Consultation occurred and no objections were raised in relation to the proposal.

- 4.4 Planning for Bushfire

Consultation with NSW Rural Fire Service (RFS) was required to satisfy this Direction. Consultation with RFS occurred prior to the exhibition of the Planning Proposal. RFS raised no objections to the proposal.

Both Directions are now satisfied.

The final development outcome for this proposal does not require further assessment against the above Directions. However, since the Gateway determination was issued, two additional Section 9.1 Directions are relevant to this proposal:

- 2.6 Remediation of Contaminated Land

The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities. A preliminary site investigation report prepared by Geotest Services (2019) concluded that *'the site is considered suitable for future residential land-uses from a contamination perspective'*. The proposal is consistent with this Direction.

- 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessarily restrictive site-specific planning controls. The draft LEP seeks to include a requirement for the Planning Secretary to grant concurrence to a development application. The matters for consideration in granting concurrence relate to ensuring the outcomes of biodiversity studies are adequately managed in a development proposal.

The wording of this provision is not considered restrictive, the inconsistency is considered minor.

## 4.4 State Environmental Planning Policies

The Gateway determination report assessed the proposal against relevant State Environmental Planning Policies (SEPP) including:

- SEPP No. 55 – Remediation of Land. This SEPP is no longer relevant for planning proposals and is addressed under Section 9.1 Direction 2.6.
- SREP No. 20 – Hawkesbury-Nepean River. The Gateway determination required consultation with NSW Office of Water to ensure the proposal's consistency with the deemed SREP. This agency was consulted with but did not provide a response. Consistency with this SREP (deemed SEPP) is addressed below.

### State Regional Environmental Policy No. 20 – Hawkesbury-Nepean River

The aim of this plan 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. It contains specific planning policies and recommended strategies. The site is included within the Middle Nepean and Hawkesbury River Catchment.

The relevant planning considerations for this proposal include:

- Manage flora and fauna communities so that the diversity of species and genetics within the catchment is conserved and enhanced.
- Rural residential development should not reduce agricultural sustainability, contribute to urban sprawl, or have adverse environmental impacts (particularly on the water cycle or on flora or fauna)

The final development outcome will ensure the majority of the significant vegetation, water courses and riparian corridors, and wetland is contained within one lot to be preserved and managed. As

planning continues for the site, the impacts on the Hawkesbury-Nepean will continue to be considered, and ultimately addressed in a future development application

The proposal is consistent with this SREP.

## 4.5 Site Specific Merit

### Social & Economic impacts

It is not envisaged the proposal would have adverse social and economic impacts. The provision of additional rural residential development may provide positive economic benefits for local businesses.

The final development outcome will assist in minimising land use conflict with the adjoining nursery on the site's south-eastern boundary as the majority of this boundary will be in a single lot and will not be intensively developed.

### Environmental impacts

As outlined in earlier sections of this report, the final development outcome will significantly improve the development's environmental impact. It is considered the final development outcome demonstrates place-based planning of the site which can be seen through the following:

- Majority of the Shale/Sandstone Transition Forest will be within one lot.
- The minimum lot size map will facilitate the majority development in existing cleared areas.
- Confirmation was received from Natural Resources Access Regulator (NRAR) (**Attachment D1**) that the east-west running stream is a second order stream and requires a 20m riparian buffer zone. All watercourses and riparian corridors will be within one (1) lot.
- The density/scale of future development will not be unlike that which exists. The proposal will only facilitate an additional seven (7) rural residential lots.

### Infrastructure impacts

The Gateway determination report stated the former Roads & Maritime Services (RMS) had advised council of its concerns regarding the cumulative impacts of planning proposals for subdivision in the area and as the proposal sought 41 additional lots (at Gateway stage), RMS were to be consulted during exhibition.

Since the assessment at Gateway, Council has undertaken an LGA wide traffic study to assist in informing decision making. The scenario modelling of the proposed dwellings within the former Kurmond Kurrajong Investigation Area indicated that development within the investigation area would not have a significant impact on the road network. In addition, the final development outcome is proposing an additional seven (7) rural residential lots.

The planning proposal states the land is serviced by electricity, telephone and communications and reticulated water. Future dwellings facilitated by the proposal will be connected to the Sydney Water Sewage Treatment Plan at North Richmond. Sydney Water has confirmed that there is sufficient capacity.

Council at its meeting on 23 November Council resolved to exhibit a draft Voluntary Planning Agreement (VPA) relating to the proposal. The draft agreement would result in the developer paying a cash contribution to Council to the value of \$30,000 per additional housing lot for the purposes of local infrastructure. It is anticipated that contributions collected by Council will be used for infrastructure and facilities such as, but not necessarily limited to, cycleways, bus shelters, landscape and park embellishments and road improvements.

## 5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

**Table 4 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	3 maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> .  Council confirmed on 6/12/2021 that it had no comments on the draft LEP. ( <b>Attachment G</b> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 9/12/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at <b>Attachment PC</b> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with the Western City District Plan.
- It is consistent with the Gateway Determination (as altered)
- Is consistent with the Independent Planning Commission's recommendations
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



13.12.21

Elizabeth Kimbell

Manager, The Hills & Hawkesbury



17.12.21

Jane Grose

Director, Central (Western)

Assessment officer

Genevieve Scarfe

Planning Officer, Central (Western)



## Attachments

Attachment	Document
A1	Revised Planning Proposal V9.1 – November 2021
A2	Revised Subdivision Plans – 1 November 2021
A3	Revised Ecological Assessment Report – November 2021
B1	Gateway Determination & alterations
B2	Gateway Determination Report
B3	DPIE conditional endorsement of layout November 2021
C1	Council Meeting 23 November 2021 Report and community submissions
C2	Council Meeting 23 November 2021 minutes
C3	Council request to finalise the proposal
D	State Agency submissions
D1	NRAR clarification on riparian corridor widths
E	Independent Planning Commission advice – 1 July 2021
F	Submission from Robyn Preston MP – 22 January 2021
G	Consultation with Council on draft LEP
Attachment PC	Parliamentary Counsel Opinion